


INJURY OF HUMAN RIGHTS AND THE RIGHT TO LIFE DURING THE COVID-19 PANDEMIC IN THE OLDER POPULATION

ABSTRACT: It has been more than a year since the Covid-19 pandemic began. Millions of people continue to die around the world. Most of them are elderly, but their importance is not downplayed for this reason. The indiscriminate practices being carried out all over the world, in terms of the suffered abandonment, make us reflect in favor of the study of the protection systems of the most vulnerable people. It also includes the attempt to preserve their fundamental rights at the global level, and, above all, the legal point of view. Consequently, and despite the improvement in the situation produced by the application of the different vaccines against Covid-19, nothing prevents this from being repeated in the future if we do not establish the appropriate measures to assure a real and effective protection. The improvement that is assumed and expected should not refer to the field of health only, but also to the rule of law in which the majority of the world population find themselves regarding the approval of the necessary regulations providing the desired results. Therefore, the essence of this paper is searching for legal solutions to protect the human rights of the most vulnerable people - the elders, through the study of the right to their health protection and the functioning of the established systems concerning this field. The main objective is articulating the

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necessary strategies and instruments that guarantee the integrity of the elderly people throughout the planet.

Keywords: *Fundamental rights, vulnerability, protection, Covid-19.*

1. Introduction

“COVID-19 pandemic exposed all the shortcomings of global and national societies. The world was taken by insecurity, isolation, and confusion, which consequentially carry certain security challenges, in a combination the world has not previously seen. Some of these challenges are a consequence of the pandemic itself, but another part of challenges arose from the reaction of countries to the pandemic and changes in the everyday lives of individuals” (Bjelajac & Filipović, 2020, p. 9). After the last year lived in relation to the Covid-19 pandemic and due to its special devastating incidence due to the increase in deaths in the elderly due to lack of attention in terms of health protection. This circumstance invites us to reflect in favor of the fight and defense of the rights of all citizens, especially the older ones for having been the most affected. Since the Charter of the United Nations and Statute of the International Court of Justice (1945) and later in successive international texts on the diversity of aging and its respect for dignity (Martinson & Berridge, 2014, p. 58), that have been developed to this day, they have highlighted the need to eliminate the situation of invisibility of the older group and consequently, guarantee their effective protection from all spheres, both social, political and economic. To do this, we must analyze the past and present situation and, as a consequence, what to do in the future in response to the needs and weaknesses found in favor of improving the quality of life of the elderly. For this reason, in this research work the legal situation of the Right to health of the elderly will be studied, not only at the national level of the Spanish State but also the influence that has been transferred from the various international texts that have been taking place, from the Charter of Human Rights of 1948, to even at European level, through its derived Law. In short, it is inexcusable to know the situation of our elders in favor of the defense of their right to health in all contexts of their lives and much more in the health context that we have been experiencing since the start of the pandemic.

2. Methodology

With the aim of studying the scenario that has occurred in the Covid-19 pandemic and its impact on the elderly in terms of their rights (Díez-Picazo, 2008, pp. 27–30), especially in terms of their hope and quality of life, as well as protection against illness and death, this study is proposed where, in the first place, the current legal situation in relation to the protection of the rights of the elderly and its effectiveness will be analyzed. In this way, we can better recognize the weakest points of its legal regulation and the needs that have arisen as a result of Covid-19.

Secondly, it will be observed whether the protection of the elderly is effectively fulfilled with the protection of rights as important as the protection of health, life and equality.

Likewise, the situation of the existing residence model in the Spanish system will be evaluated with the aim of eliminating the models that produce greater vulnerability in the elderly and that least respect their rights, in order to seek a new model that is more respectful of the preferences of the older people and their diversity.

And, finally, it will conclude with the enhancement of this group and its visualization in the life of the community, highlighting its importance both in the past and in the future, proposing proposals to improve the elderly's quality of life.

3. Legal regime of protection for the elderly, the international, European, and Spanish system, joining forces

3.1. The situation of the elderly and their social recognition

It is evident that there is contempt for old age in society because it makes this group invisible in a subtle way. Those people who in previous decades raised the country are now despised by the circumstance of age. For this reason, various international texts on the need to protect dignity have been drawn up since the Second World War and the quality of life of the elderly and encourage their active participation in all areas of community life. Despite its lack of promotion in the social participation of this group is clear, in this last year the urgent need for the protection of the elderly has become even more evident, since the discriminatory treatment that has been dispensed to them has been profoundly evident during the Covid-19 pandemic, in particular, in the care and attention to their health and especially to those people who lived

in residential centers, since their abandonment has been so evident by the multitude of cases of death and treatment of lack of dignity in terms of the absence of health care in the moments prior to his death.

Over the centuries, the perception of old age has been changing since ancient times, society underestimated this personal circumstance through invisibility and abandonment in a subtle way. Today it is still a constant in many areas of life because those people who in previous decades raised the country are now underestimated because of their age. For this reason, various international texts have been drafted since the Second World War (Liang & Luo, 2012, p. 327) on the need to protect the dignity and quality of life of older persons, promoting their active participation in all areas of community life. Despite its lack of notoriety in the social participation of this group being clear, in recent years the urgent need for protection of this vulnerable group has become even more evident, since the discriminatory treatment that has been dispensed during the Covid-19 pandemic, above all, in the care and attention to their health and especially to those people who lived in residential centers, since their abandonment has been so evident caused by the multitude of cases of death and treatment of lack of dignity in terms of the absence of health care in moments prior to their death, in the scarcity of resources when it comes to saving their lives and not only in Spain but worldwide.

3.2. Legal regime for the protection of the elderly in the international scenario

As has already been mentioned, the concept of health protection was born after the Second World War motivated by its great harmful impact both physically and psychologically on the survivors. We can see it in the declarations of the United Nations Organization (UN) of 1946, where in its article 25, it collected the right of the person to an adequate standard of living, establishing the criteria of health and well-being. Subsequently, the UN created the World Health Organization in 1948, as an instrument for the promotion and protection of health worldwide. In 1966, article 12 of the International Covenant on Economic and Social Rights recognized the right to both physical and mental health, providing the concept of mental health worthy of protection as an essential protective element for adequate health.

Diversity of international texts followed another supporting such conception, thus in the Inter-American Convention on the protection of the Human Rights of the Elderly Persons of 1991, a new principle on the protection

of the health of the elderly was introduced in its preamble, recognizing the need to guarantee every person who ages a minimum of security in all areas of their life, in a full, autonomous and independent way, related to health. According to the principles of Resolution 46/91 of the United Nations (1991), the elderly must be protected in the different spheres of social life, not only from the point of view of maintaining their basic needs such as food, water, and housing but in attention to participation in working life, to obtain income, to care for their health, to live in safe environments (WHO, 2002), to be integrated into society, to receive decent treatment without any discrimination, among others. All this comes to develop the recognition of older persons established in the Charter of the United Nations and in compliance with the International Plan of Action on aging (1982) approved by the World Assembly on Aging in Resolution 37/51 of December 3. In short, this Resolution aimed to strengthen the quality of life of the elderly because it considered that the increase in life expectancy was an indication, not only of living longer but of living better and in quality of life. This Resolution encouraged States to introduce a series of basic principles of protection for the elderly, divided into four blocks: independence, participation, care, and self-realization.

In the 1992 Declaration on Aging of October 16, the need to integrate older persons and protect all social, political, and economic contexts was proclaimed, echoing the aging of the population at a global level. In 1999, the General Assembly of the United Nations Organization proclaimed that year as the International of the elderly, and October 1 of each year its international day.

Later, in 2002, the Second World Assembly on Aging was held in Madrid, adopting a Political Declaration and the International Plan of Action on Aging in Madrid with the fundamental objective of seeking a change of attitude regarding policies and strategies to further promote the capabilities of our elders, as well as prioritizing the protection of their health and well-being in their own environment (Tejero Morales & Cerdeña Macías, 2017).

Other subsequent regional instruments insist on these protective principles of health with the elderly, such as the Regional Implementation Strategy for Latin America and the Caribbean of the Madrid International Plan of Action on Aging (2003), the Declaration of Brasilia (2007), the Plan of Action of the Pan American Health Organization on the health of older persons, including active and healthy aging (2009), the Declaration of Commitment of Port of Spain (2009), and the Charter of San José on the rights of older persons in Latin America and the Caribbean (2012).

3.3. Legal regime for the protection of the elderly in the European space

Undoubtedly, the European Union is the result of a clear international effort through a long historical evolution with a prolonged objective for centuries of joining forces so that, initially, it reinforces a common market and later, gradually opens up to other lines of performance. However, its evolution has given rise to the development of different strategies through the Treaties of the Member States of the Union to become, today, a space with much more than economic objectives, already entering the political and social ones that integrate to all citizens equally.

The first protective instrument in the European space was the European Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, adopted by the Council of Europe on November 4, 1950. This instrument which was inspired by the Universal Declaration of Human Rights of 1948 had as its fundamental task the protection of human rights and fundamental freedoms of the person and that for its control was judicially bound. However, regarding the protection of the health of the elderly, it was not expressed explicitly, but the spirit of protection and integration was apparent in its articles, especially in article 14, in terms of non-discrimination.

As a concept of the principle of health protection within the European Union, it appears for the first time in the Maastricht Treaty in 1992, in its article 129-129.

We cannot forget the resolution of the European Parliament on measures in favor of the elderly, of 1994, where it collects a series of proposals on the rights of the elderly that deal with the protective regimes of social security and their convergence between Member States, controls on early retirement, informal care and intergenerational support.

In the Treaty of Amsterdam in 1997 in its articles 3 and 152, it further promoted community competence in public health, involving all political forces in its mission. Subsequently, this concept was included in the failed European Constitution, later being included in the Treaty of Lisbon as a goal, the inclusion of health with a specific interest, considering that this situation directly affects economic growth (Del Llano, 2021), opening a new point of view necessary for its recognition and protection (Guimarães & Freire, 2007).

From then on, a multitude of documents and declarations did not stop succeeding each other in favor of their protection and enhancement of the right

to health of the elderly and their own worth. Thus, we can highlight, among others, due to its importance and impact, Recommendation 98/9 (1998) on the protection of dependency, as the fourth pillar of well-being (Tejero Morales & Cerdeña Macías, 2017), which would mark a before and after, since the situation of dependency would begin to be considered as a right subjective for the Member States of the European Union.

And, finally, highlight the Communication from the Commission to the Council and the European Parliament, of March 18, 2002, the contribution of the European Union to the Second World Assembly on Ageing, which highlights the need to integrate older people, dependency, and disability in all spheres of social life, through the promotion of healthy lifestyle education.

Given the international instruments for the protection of the health of citizens without any discrimination and, therefore, that of the elderly, it is obvious to elucidate the urgent need in which we find ourselves to ensure that these principles and values that emerge are effective and effective, guaranteed by the public authorities in a responsible manner.

3.4. Legal regime for the protection of the elderly in Spain

The Spanish Constitution (1978) in its article 9.2 declares that it corresponds directly to the public powers to promote the conditions of freedom and equality of individuals to achieve fullness and participate in all areas of community life. In its article 50, it also adds that these same public authorities have the obligation to guarantee adequate and up-to-date pensions for the elderly and must promote their well-being through an adequate health and social services system. In view of the foregoing, there is no doubt that our system reinforces the discriminatory rejection of any individual, as established in article 14 of the Constitution, where it insists on non-discrimination for any social circumstance, in the same way as Throughout its articles it refers to the promotion of health protection (Guerra Vaquero, 2015), the well-being of the individual, attributing the sphere of competence to the autonomous communities by the principle of proximity so that its effects are as effective as possible. Law 39/2006 of December 14, on the Promotion of Personal Autonomy and Attention to people in a situation of dependency, which meant the recognition of protection with legal linkage, that is, as a subjective right of protection to the situation of vulnerability due to the circumstance of need of a third person or disability in the exercise of their basic needs.

3.5. Current situation of the protection of the elderly

Despite all the national and international efforts to promote the protection of the elderly, today, it seems that it is not enough, since the devastating results that we have been able to appreciate during the period of the Covid-19 pandemic have shown that the higher mortality rates, without a doubt, have been in the group over 64 years of age, according to the Momo¹ institution, which studies excess mortality.

Thus, we can analyze how the health crisis has affected the quality of life of older people and their hope. As is well known, since our recent experience, Covid-19 has considerably affected the direction of our lives, limiting them to a great extent. However, if this is the case in the middle-aged population, in the elderly it has caused a great disaster and not only in terms of mortality, which has been disastrous, but also due to abandonment, accusation of invisibility and loss of basic rights, leaving questioning their protection system and further evidencing their vulnerability.

In 2011, the White Paper on active aging (published in 2011 by INSERSO) was published after the II World Assembly on Aging held in 2002 in Madrid and the Organization of the Ministerial Conference of the United Nations Economic Region for Europe (UNECE), held in León in 2007 in matter of aging, with the fundamental objective of recognizing a profound change in the personal and social characteristics of the elderly who demand new needs aimed at prevention and health care, independent living for as long as possible, active participation in the community and training throughout his life. It is the result of the absolute reflection of the definition of aging of the World Health Organization (2015), giving a new vision of aging as a group with a positive value that fulfills its function.

According to HelpAge Internacional, the international global network dedicated to protecting the human rights of the elderly, through its 3rd report,

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denounced the need to protect and promote the rights of the elderly as they age. It highlights the need to value advanced age, posing it as a strength since age should be considered as a time of personal growth and leadership capacity due to the knowledge and experiences acquired. However, discrimination that occurs in this age range, violence, and abuse are denounced. It also highlights that, even so, there is progress, but there is still a long way to go and continue in order to support the elderly so that they are fully involved in all areas.

Consequently, the UN, through the Secretary-General, Antonio Gutiérrez, presented on May 1, 2020, a report on the impact that Covid-19 was having on older people. In it, the rights that are being injured in the elderly are evidenced, such as life, health (Martínez, 2006, pp. 129–150), personal autonomy, safety, abuse, and neglect, posing a clear risk to the social and economic well-being of the elderly.

An expert (Rosa Kornfeld-Matte) from the United Nations in Geneva, on March 27, 2020, already stated that everyone's obligation is to protect our elders and that in the pandemic the situation of poverty, access to limited to health and seclusion in small spaces and hospices, detecting the need to apply holistic protection strategies to the elderly, and even claiming the need for equal and fair health treatment for this age range, eliminating the prioritization of health care due to age, discriminating its use on the basis of age or disability, being applied exclusively by scientific criteria. Likewise, she made an appeal for solidarity with the elderly and their caregivers.

The situation that has been experienced in the scenarios of residential centers worldwide, has called into question the lack of care and protection of our elders, the absence of necessary sanitary material in these places, and of necessary personnel. And all this has been glimpsed before the experiences lived during the pandemic, in its most initial moment, when the data of a considerably high number in terms of the mortality of residents in centers, both medicalized and not, followed each other day after day. Despite the endowment of health resources that many of them possessed and the assistance of their health personnel, it has been possible to demonstrate patent discrimination in terms of referral to hospitals and care in the same of this sector of the vulnerable population, our elders. and the disabled, giving rise to inefficient and ineffective management, despite being considered a priority population sector. All the indicators observed from the social agents have coincided with the need to change the residential system until now, raising the need to model the residential system, so that health protection, integration of the full life of the community in an active way, making their rights effective.

3.6. Proposals for the protection of the dignity of the elderly

In view of the above, we cannot forget that the subjective conception of the elderly has been changing, reaching a fairly positive position in the last decade, advancing in visualization and protection. However, as a result of the Covid-19 pandemic, we have been able to verify that the efforts made have taken a step backward, because much to our regret, we have seen how the dignity of the elderly during the pandemic has been compromised by not giving them the attention that corresponded to them, being victims of abandonment in residential centers especially, neglecting their health to the point of causing death. While it is true that no State was prepared to face this challenge that was thrown at us, it is also true that despite the extraordinary measures of protection and efforts to save lives, it is evident that our elders have been left aside for reasons of age, especially at the time of choosing which life to save in the health system, if they came to it, prioritizing care for the youngest person, carrying out discriminatory behavior prohibited by the Spanish legal system.

Given the lack of attention and neglect of our elders in their subjective right to health protection and fundamentally their right to life, they have been abandoned to their fate under the pretext of residing in centers, since they are not prepared in resources health to beat the ailments and symptoms derived from the virus. During the time of crisis, different social groups along with the media echoed this situation, repeatedly denouncing these practices. To avoid these situations in the future, we must reflect so that what happens does not happen again and that older people are treated equally, as well as propose new models of protection that are more individualized and respectful of their autonomy and preferences, as well as the need for a change in the care system in residential centers. Despite the approval of Law 39/2006, on dependency, where a new subjective right of protection for dependency is developed, there is still much to do, and even more so, if its effectiveness continues to depend on political ideologies and they continue to be considered exchange coins. The protection of dependency and the support of active aging must have a stable investment, maintained over time and under the co-responsibility of all social agents because in this way its development will be more effective and lasting.

4. Future research directions

A line of research is proposed around the new models of residence in which the elderly person can identify as a home of their own, that caregivers are part of the center in an integral way, respecting their job stability, to

maintain a lasting connection with residents and referents in the center. In addition, home care models will be studied so that the elderly can be cared for at home for as long as possible if they so desire.

5. Conclusions

Given the health crisis, the clear need to enhance the protection of the rights of the elderly has been proven; failures of both the social and health system have been detected in residential centers especially. The need to change residence models has been evidenced, as well as support for the elderly in their own environment, with the fundamental objective of eliminating their invisibility and promoting their development.

Once we have seen what happened to the elderly and analyzed their situation during the covid-19 pandemic period, we have reached the certainty that there really is a disadvantageous situation in terms of the defense and protection of their rights, especially due to their situation of dependency in some cases or simply because they are not actively in society. There has been an urgent loss of rights in terms of their attention and priorities for consideration by the health and social systems, giving rise to a notable violation of rights such as equality, health, and in some cases, even human rights of life. Already from the UN, on May 1, 2020, the imminent discrimination of the elderly was denounced to the entire world community, and they tried to value their role as a key piece that was and continues to be in society. For this reason, from here the need arises to work in order to visualize this group, to offer them real and effective protection from all contexts, and enhance their potential in the community because they really fulfill their function of great importance for society.

It is important to highlight the importance of the role that older people have had and still have in the past, as well as in the present, those who have fought for what we have and are today, those who have fought for our rights and quality of life. It is necessary that we seek the appropriate legal measures that promote the quality of life, hope, and the active participation of life in the community, not only from international contexts, but to transfer it to the States effectively because in that way we will achieve a much fairer world.

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POVREDA LJUDSKIH PRAVA I PRAVA NA ŽIVOT TOKOM PANDEMIJE COVID-19 KOD STARIJE POPULACIJE

REZIME: Prošlo je više od godinu dana od početka pandemije Covid-19 i milioni ljudi i dalje umiru širom sveta. Većina njih su starije životne dobi. Neselektivne prakse koje se sprovode širom sveta, u smislu pretrpljenog napuštanja, teraju nas da se osvrnemo na proučavanje sistema zaštite najugroženijih ljudi, kao i na pokušaj očuvanja njihovih osnovnih prava na globalnom nivou i, pre svega, sa pravne tačke gledišta. Shodno tome, i uprkos poboljšanju situacije izazvanom primenom različitih vakcina protiv Covid-19, ništa ne sprečava da se ovo ponovi u budućnosti ako ne uspostavimo odgovarajuće mere da obezbedimo stvarnu i efikasnu zaštitu. Poboljšanje koje se pretpostavlja i očekuje ne bi trebalo da bude samo iz oblasti zdravstva, već iz pravne države u kojoj se nalazi većina svetske populacije u pogledu usvajanja neophodnih propisa koji daju željene rezultate. Stoga, opravdanost i suština ovog rada jeste iznalaženje zakonskih rešenja koja će se baviti zaštitom ljudskih prava najugroženijeg dela populacije – starijih ljudi, kroz proučavanje prava na njihovu zdravstvenu zaštitu i funkcionisanje sistema koji su za to uspostavljeni, a sa glavnim ciljem da se opredele neophodni strategijski akti i instrumenti koji garantuju integritet starijih širom planete.

Ključne reči: osnovna prava, ranjivost, zaštita, Covid-19.

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