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Social and legal problems of discrimination by age in the medical field

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Abstract

The article aims to analyze the medical and legal aspects of human equality. Discrimination in the medical field affects both medical personnel and patients. The authors have used the method of comparison of legal regulations of various states, the systematic method, which allowed to reconcile the approaches: medical and legal and the synergistic method as a method of development of a modern globalizing society. It has been found that the typical policy of agism includes the requirement to examine elderly physicians as to their competence or skills without objective and substantiated reasons. Everything leads to the conclusion that, discrimination of elderly patients manifests itself in treating them with less respect and courtesy and providing a worse level of services in medical institutions. Discrimination of gediatric patients is caused by their lack of legal opportunity to express their opinion on consent or voluntary refusal of treatment, including vaccinations.

Keywords: discrimination in the medical sphere; medical personnel; patients; vaccinations; COVID-19.

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Problemas sociales y jurídicos de la discriminación por edad en el ámbito médico

Resumen

El artículo pretende analizar los aspectos médicos y jurídicos de la igualdad humana. La discriminación en el ámbito médico afecta tanto al personal médico como a los pacientes. Los autores han utilizado el método de comparación de la normativa legal de varios Estados, el método sistemático, que permitió conciliar los enfoques: médico y jurídico y el método sinérgico como método de desarrollo de una sociedad moderna en vías de globalización. Se ha comprobado que la política típica del agismo incluye la exigencia de examinar a los médicos de edad avanzada en cuanto a su competencia o habilidades sin razones objetivas y fundamentadas. Todo permite concluir que, la discriminación de los pacientes de edad avanzada se manifiesta en el trato con menos respeto y cortesía y en la prestación de un peor nivel de servicios en las instituciones médicas. La discriminación de los pacientes gediátricos se produce por su falta de oportunidad legal de expresar su opinión sobre el consentimiento o la negativa voluntaria a recibir tratamiento, incluidas las vacunas.

Palabras clave: discriminación en el ámbito médico; personal médico; pacientes; vacunas; COVID-19.

Introduction

The widespread spread of digital technologies and the creation of new information and communication methods create conditions in which the boundaries of a person's personal space are either completely erased or become thin, balancing on the verge of full disclosure of personal information. A person's age, personal and professional life become public knowledge, are studied in detail, and "flaunted. The consequence of this is that the thin line that exists between a person's private life and society at the present stage, which encroaches on their personal freedom and values, subjects the individual to discrimination to one degree or another.

Differentiation, exclusion, restriction or preference that denies or diminishes the equal exercise of rights represent all manifestations of discrimination, which is a widespread problem in contemporary society, infringing upon individuality, democracy, humanism, equality and other value categories developed by humankind throughout its history.

Everyone has the right to be treated equally, regardless of his or her race, ethnicity, nationality, class, caste, religion, creed, sex, language, sexual orientation, gender identity, sex characteristics, age, health or other

condition, merely on the basis that he or she is a self-sufficient person and possesses individual dignity. However, social stereotypes quite often violate the individual value of an individual only on the basis that he/she belongs to a "different group". To be different in today's world, to maintain your individuality and personal boundaries, is becoming increasingly difficult.

The world is changing rapidly, crushing in its path everything that used to be considered acceptable, permissible and right for society. The values that were cherished yesterday are no longer of any value today. Human life, which in past eras was short, fraught with difficulties and dangers, had a special value for every human being. Thanks to modern technologies, in particular those that have recently emerged in the field of medicine, human life has become easier, longer, and, at the same time, the attitude toward people, especially the elderly, has changed.

One of the most common manifestations of discrimination is ageism since it affects people of all ages and is particularly prevalent today. A wide range of interdisciplinary research shows that individuals face discrimination based on age in many contexts, including health care. Ageism, which is defined as "the systematic stereotyping and discrimination of people because of their old age", is widespread in society, and a significant proportion of older people report experiencing age discrimination in their daily lives.

It would seem that medical professionals, who help everyone to extend their lives, are a category that should not be discriminated against, but rather admired, respected, and thanked. But the realities of everyday life show the opposite process. Both medical workers and patients are subject to discrimination in the medical sphere. The peculiarities of discriminatory manifestations against them require a substantive analysis.

1. Materials and Methods

The authors have used the method of comparing the legal regulation of several states, the systematic method, which allowed reconciling medical and legal approaches and the synergistic method as a method of developing a modern globalizing society.

2. Results and Discussions

2.1. Discrimination of medical workers in the workplace

At all times, elderly people have evoked associations with wisdom, experience and competence in one sphere or another. If we talk about the image that arises in our minds when we talk about a folk healer, for

example, it is likely to be an old man or an old lady, who is respected by the entire population of a particular locality. But modern society, overloaded with new technologies, with the help of which it has been able to defeat more than a dozen deadly diseases that have killed several thousand people on all continents, perceives in a completely different way medical workers who have reached old age.

Health care workers are discriminated against based on their age in the workplace. Workplace discrimination should be understood as any act or failure to act, expressing any direct or indirect disparagement, exclusion or privilege on the basis of race, color, political, religious or other beliefs, sex, ethnic or social origin, property, place of residence , on linguistic or other grounds unrelated to the professional qualities of an employee or group of employees, if they are aimed at limiting or prevent the recognition, enjoyment or exercise on various grounds of labor rights, are arbitrary and entail legal liability.

One of the significant problems of modern society is the rapid aging of the population. The birth rate is falling rapidly in all countries of the world, which inevitably leads to an increase in the number of elderly people. The population is aging, and changes in the population age structure has led to an aging national workforce. An important challenge for firms and organizations is the impact of an aging workforce on labor costs, productivity, and the economic sustainability of the organization.

However, an aging population also entails individual problems, it is a factor that violates the humanistic doctrine and infringes on human rights. This is logical from the point of view that man functions not only as a biological being or a social unit, but is also a person, an individual, with a distinctive, characteristic only for him character, way of thinking, and views on life.

The attitude towards the elderly in society, as a category of the population that has "outlived" it's time and is more of a burden than an asset for the nation, is also confirmed by scientific research and experiments. Health care workers, similar to all other workers, are discriminated against as their age increases. The results of a recent economic experiment confirm this trend, in which more than 6,000 fictional resumes with randomly assigned age information (35-70 years old) were sent to Swedish employers concerning vacancies in low- and medium-skill occupations.

The callback rate begins to fall substantially for workers in their early 40s and becomes very low for workers close to retirement age. The decline in the callback rate by age for women is precipitous compared to that for men. Employers' stereotypes regarding the ability to master new tasks, flexibility, and ambition seem to be important explanations for age discrimination (Carlsson and Eriksson, 2019).

The indicated issue concerns all spheres of economic activity, however, taking into consideration significant educational requirements, the period of training, which is much longer for medical workers (on average, it takes from 10 to 14 years to become a fully licensed doctor) (How long does it take to become a doctor? n.d.), the issue of age discrimination in the field of labor becomes particularly important.

According to the American Medical Association, 43% of all doctors and surgeons are 55 or older. Specialists, on average, are older than primary care physicians. These figures provide the basis for an increase in cases of ageism. Advances in medicine have given humans longevity, but this longevity can be lost if the medical community negatively perceives old-age doctors (Ageism in medicine: A look at medical ethics, laws, and regulations, 2020).

On the other hand, to be objective, given the long period of training of medical professionals, as well as the long time it takes them to acquire the necessary knowledge, skills, and abilities to become a specialist in this field, such age figures seem adequate.

Currently, about 5% of health care facilities have age-related screening policies. The typical agism policy includes the requirement to test an older physician's competence or skills without objective, reasonable methods; inquiries on disability; or requiring an employee to undergo a physical, medical, or cognitive examination without reasonable belief or justification that the physician cannot perform the essential functions of his or her job.

Aging is associated with a decline in cognitive abilities and other functions, and proponents of age-based screening programs argue that assessments are necessary to protect patient safety. For instance, the U.S. Equal Employment Opportunity Commission disputes mandatory retirement policies or other forms of age discrimination against Yale New Haven Hospital on their general "senior doctor" policy, which requires a series of mandatory tests starting at age 70 (U.S. The Equal Employment Opportunity Commission, 2022).

It would seem to be quite reasonable approach and reasonable requirements to medical workers, based on the best motives, care about the patient, and the quality of medical services that are provided to him. But, on the other hand, there is a fine line between caring for the patient and discriminating against the medical professional, which is manifested by the implication that the elderly person cannot properly, professionally, and competently, perform his official duties because of the age in which he is.

The question arises as to whether the professional performance of the duties of a health care worker is related to the age of the worker. Academic research on this subject argues that there is no such correlation. There is no conclusive evidence that older doctors perform worse. The research shows

that between the ages of 40 and 75, average cognitive ability declines by more than 20%, but there is considerable variability from one individual to another, indicating that while some older physicians have profound impairments, others retain their abilities and skills.

Studies have shown high mortality rates from cardiovascular procedures performed by, for example, older surgeons, however, high mortality rates from gastrointestinal surgeries performed by younger surgeons (Dellinger *et al*., 2017).

We should note that the senior population performs a very important function; not only do they impart knowledge and experience, but they also provide a significant portion of the working staff. In today's world, there is no tendency for the birth rate to increase. Pandemics, natural disasters of a global nature, and local and international conflicts only exacerbate the situation. Accordingly, the process of aging of the world's population will continue to gain momentum in the future. The nation's population is aging, and older people need more medical care, with the U.S. estimating a shortage of at least 46,000 physicians by 2032. Senior specialists can help to tackle this issue.

At a time when it is impossible to stop the aging of mankind, it is necessary to take urgent measures to preserve the intellectual potential already available in all spheres of life, including medicine, regardless of the age of its representatives. A comprehensive legal and social policy is needed to overcome this problem. In particular, the most effective method of overcoming discrimination is administrative and financial leverage against employers. Experts state that in the States where the legislation on age discrimination allows a greater penalty, there is less discrimination against senior people (Neumark *et al.,* 2019).

2.2. Age discrimination of patients

It is also surprising that those who took the Hippocratic oath, medical professionals, competent specialists, and professionals who should treat all patients with respect, including the elderly, often show the opposite of the stated behavior. The most common practice is discrimination against patients by health care providers. Discrimination as patients in the field of health care is primarily suffered by the elderly. The recent research performed by experts proves that among participants who reported experiencing age discrimination (1,406 respondents) said they were treated with less respect and courtesy (45,1%) reported being treated as being unreasonable and indicated that they received worse services or treatment in health care institutions (41.4) (Jackson *et al*., 2019). Other studies show that one in five adults over the age of 50 is discriminated against in health care institutions (Rogers *et al.,* 2015). This leads to the conclusion that the problem is extremely widespread.

Health care providers must offer health care to all patients equally, and patients should not be discriminated against under any circumstances on the basis of sex, nationality, religion, ethnicity, gender identity or age. In practice, however, age has served as a criterion for establishing treatment policy. Older women with breast cancer tend to have fewer options for conservative breast surgery than younger women (Smith *et al.,* 2009).

In addition, women over 70 years old are 40% more likely to be scheduled for radical surgery than younger women (Di Rosa *et al.,* 2018). Nursing care for immunotherapy, breast reconstruction, and chemotherapy is less available for older patients with breast cancer than for younger patients (Schroyen *et al.,* 2016). According to this study, we can conclude about a kind of neglect of elderly patients, about age discrimination against them.

This raises another question, whether age discrimination applies only to the category of the elderly. As practice shows, this category of the population is not the only one when it comes to discrimination, biased and ambiguous treatment of patients in the medical field. Issues of the legal status of children in the medical sphere are of particular importance. The category of patients in need of a special consent procedure primarily includes children.

The Convention on the Rights of the Child in Article 1 states that "a child is every human being below the age of eighteen years unless under the law applicable to a particular person he or she attains majority earlier" (Council of Europe, 1996). The perception of the concept of "child" and the definition of the boundary from which a person becomes an adult, capable of understanding this or that situation, of perceiving its consequences, will differ from country to country, which is related to the cultural and social factors of a particular society. Regardless of this, however, the obvious need is to determine the age of the child we are considering as a patient.

A child's ability to participate in the treatment process depends on his or her age. The consideration of underage patients' opinion contributes to more effective protection of their legitimate interests. As stated in Article 2 of the Convention on the Rights of the Child, "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child".

Moreover, Article 12 of the Convention explicitly states that a child who is capable of forming his or her own views should be assured the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity.

Another international instrument, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (known as the Oviedo Convention) declares in Article 6 that: "The opinion of the minor shall be taken into

consideration as an increasingly determining factor in proportion to his or her age and degree of maturity" (Council of Europe, 1997). However, the initial age limit of a child's age when his or her opinion is taken into account in the case of a medical intervention is different (Miric, 2020).

For instance, Section 4-4 of the Norwegian Patients' Rights Act states that when a child "has reached 12 years of age, he or she shall be allowed to give his or her opinion on all questions concerning his or her own health" (The act of 2 July 1999 no. 63 relating to patients' rights (the patients' rights act), n.d.). The similar norm can be found in Art. 26 of the Icelandic Patients' Rights Act (Iceland - patients' rights act no 74/1997, 1997).

There is no clear lower boundary for considering a patient's opinion in Australian law, but it is explained here that "when a person is under the age of 16 and a health care professional, observing him/her, believes that they can make decisions about themselves, they are given the right to decide their own health care" (Consent to Medical and Healthcare Treatment Manual - Policy and procedure manuals, n.d.).

In a number of countries this age of voluntary consent is below the age of majority. It can be 13 years old (the Czech Republic, Denmark, Ireland, Latvia, Poland, Spain, Sweden, Great Britain), 14 years old (Ukraine, Russia, Bulgaria), 16 years old (Hungary, the Netherlands). By a certain time, limit, patients cannot provide informed consent or refusal of intervention, this right is fully transferred to their parents or other legal representatives, who are responsible for the life and health of their children and must legally represent their interests. It is considered that the child has reached a certain level of development, socialization, in order to understand the meaning of his/her actions and to be able to express his/her position, but cannot yet fully enter into legal relations on his/her own. We consider this position to be reasonable.

However, there is a wide range of countries, such as Cyprus, Croatia, Estonia, Finland, France, Greece, Italy, Latvia, Portugal, Romania, and Slovenia (Consent to use data on children, 2018), where only parents, without asking minors' consent, must agree to medical interventions. All the above is additional evidence that the legislator, when adopting a rule of law, is primarily guided by the cultural traditions of his people.

We believe that this approach is clearly discriminatory. A person at the age of supposedly 17 years old is mature enough to take responsibility for his or her own life and health. Issues of medical intervention are particularly sensitive information. For example, a girl of this age can lead a sexual life, has the biological ability to become a mother of a child, but she cannot independently decide the question of reproduction, birth, or termination of pregnancy, since she is underage, and her legal representative decides these issues.

Obviously, in this situation, we are no longer talking about a child, but about a person who has entered adulthood and is responsible for the decisions he makes independently and adequately perceives their consequences. Children should not only be cared for, but also prepared for independent life. In this way, minors are given the opportunity to express their individual opinions, defend their beliefs, and learn to take responsibility for themselves and their health.

2.3. Discrimination in the sphere of vaccination

On the one hand, humanity is successfully fighting terrible diseases, such as plague and smallpox, while on the other hand, it is facing new health challenges. The COVID-19 pandemic is a vivid example of the fact that humanity was not prepared for new threats on a planetary scale in the field of medicine. Not only was the issue of combating the new disease and its consequences acute, but also the methods of combating it, and a new form of discrimination associated with vaccination against it emerged. Even before the outbreak of the coronavirus disease, there were two opposing groups of people in the world, those who supported the vaccination of children and those who considered it unnecessary and harmful.

Another aspect related to the legal status of children in the medical field, namely the possibility of medical intervention with parental consent, the issue of vaccination, and the consequences that can occur if parents refuse to immunoprophylaxis of their children from serious diseases (which, by the way, are most dangerous precisely in the first years of life, therefore, the argument of anti-vaccinationists "when a child grows up, he/she will decide themselves on getting vaccinated", as horrible as it sounds, requires the continuation "if he/she survives").

Numerous cases have been known in which children unvaccinated due to parental persuasion have died or become disabled from tetanus or polio, infections that can be controlled by specific prophylaxis. At the same time, the bacterium Clostridium tetani, which causes tetanus, exists almost everywhere, an infection can occur even from micro-injuries, and the effectiveness of vaccination against this disease reaches almost 100%.

There is an opinion that such parental behavior, in general, is a violation of the rights of the child to health Caplan and Hotez (2018), and in case of serious consequences, it can be qualified as a negligent performance of parental duties and entail legal responsibility.

Whether it's easy for parents to decide whether to vaccinate their child when it comes to preventing him or her from contracting a deadly disease, or the possible unavoidable negative health consequences of vaccination, obviously not. Mass refusal to vaccinate (without a valid reason) is recognized by the WHO as one of the 10 most dangerous threats to public health (Ten

health issues WHO will tackle this year, 2019). But the issue of compulsory vaccination is certainly not topical. Even the Covid-19 pandemic, caused by the SARS-CoV-2 virus, has not convinced the global community to impose compulsory vaccination due to concerns about compliance with the principle of non-discrimination.

Thus, PACE Resolution 2361 (2021) "COVID-19 vaccines: ethical, legal and practical considerations" (Doc. 15212) provides that the Assembly calls on member states and the European Union to "ensure that citizens are informed that vaccination is not compulsory, that no one can be subjected to political, social or other pressures to be vaccinated unless they themselves so choose"; "ensure that no one is discriminated against for not being vaccinated for possible health risks or unwillingness to be vaccinated" (Parliamentary Assembly Resolution 2361, 2021).

This demonstrates that the trend toward prohibiting coercive medical interventions with respect for human dignity has persisted since the establishment of the six principles of legitimate medical research (later expanded to 10) known as the Nuremberg Code, among which is the principle of free consent, which requires precisely the free and informed consent of the individual to the intervention. This principle was further recognized in the 1966 International Covenant on Civil and Political Rights (Article 7), the 1997 Oviedo Convention on Human Rights and Biomedicine, and the 2005 Universal Declaration on Bioethics and Human Rights with respect to any medical intervention.

Thus, the parental decision to vaccinate or not to vaccinate their children at this stage of the formation of international human rights standards can hardly be subject to peremptory influence by the state. This situation should be influenced by strategies to popularize immunoprophylaxis, prevent the spread of misleading or distorted information about the "harm" of vaccination, and spread reliable information about its importance in preventing or eliminating a number of deadly infectious diseases altogether. What is indisputable is that in doing so, a fine line must be preserved between the needs of the entire state to ensure the health of its people and the boundaries of each individual's private life, rights and legitimate interests.

Thus, in the absence of an opportunity to effectively address the issue of parental violation of children's rights and the violation by such actions of everyone's right to a safe environment and sanitary and epidemic well-being, other aspects of this issue are worth considering. There are at least two issues that fall within the realm of age discrimination, which arise precisely on the basis of the "anti-vaccination" behavior of parents.

The first is the issue of protecting children who cannot be vaccinated for various reasons (health status, immunosuppressive therapy, newborn

period, lack of vaccines, etc.), and which ones are most in need of protection through collective immunity. The second is the normative prohibition of unvaccinated children from attending childcare (educational institutions), which is prevalent in a number of European countries.

Regarding the first issue, it was the need to develop collective immunity to protect the small proportion of persons who are contraindicated by vaccination that led to the development and adoption of the famous "Lorenzini Law" prohibiting children from attending school without vaccination (Lege Vaccini, 2021). The information spread about a case where an eight-year-old child could not attend school in Rome because of a weak immune system. After long-term treatment for leukaemia, the child was at risk of infection because a percentage of the students at the school had not been vaccinated, including several children in the same class.

It appears that in a state governed by the rule of law, in civil society, in a world that seeks to spread the ideas of justice, equality, tolerance, and the rule of human rights, this kind of discrimination is perhaps the most inhumane. Considering this, it is important to understand that when we are talking about diseases that are transmitted from person to person (anthroponoses), especially if transmission occurs through airborne droplets, it is by no means a personal matter of an individual.

The confirmation of the unacceptability of such an approach can be seen even in those ECtHR decisions that generally uphold the idea of self-determination in medical care. Thus, in the case of Jehovah's Witnesses of Moscow and Others v. Russia (Application no. 302/02) (2010) the ECtHR on the basis of analysis of national practice noted:

> Although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life ... free choice and self-determination were themselves fundamental constituents of life and that, absent any indication of the need to protect third parties – for example, mandatory vaccination during an epidemic, the State must abstain from interfering with the individual freedom of choice in the sphere of health care, for such interference can only lessen and not enhance the value of life (ECHR, n.d.).

Thus, in this case the scales of justice tipped in the direction of the decision to protect human rights, namely his right to dispose of his life and health.

An extremely important event precisely in relation to the debate on compulsory vaccination marked the current 2021, namely: The Grand Chamber of the European Court of Human Rights (by a vote of 16 to 1) ruled on April 8, 2021, in the case of Vavřička and Others v. the Czech Republic (Applications nos. 47621/13 and 5 others). Notably, for the first time,

the European Court ruled on compulsory vaccination against childhood diseases that are well-known to medical science (Court's first judgment on compulsory childhood vaccination: no violation of the Convention, n.d), and the Court found no violation of Article 8 of the Convention.

The Court determined that the purpose of the Czech legislation is to protect against diseases that may pose a serious health risk. This applies both to those who receive appropriate vaccinations and to those who cannot be vaccinated and thus are in a state of vulnerability, relying on the achievement of a high level of vaccination in society as a whole to protect against contagious diseases. This goal is consistent with the public health and the protection of the rights of others as recognized by Article 8 of the Convention (Q&A on the case of Vavřička and Others v. the Czech Republic, 2021).

The Court's interpretation of Article 2 (right to life) and 8 (right to respect for private life) of the Convention as a positive obligation of states to take appropriate measures to protect the life and health of individuals within their jurisdiction requires particular attention. In the Czech Republic, the obligation to vaccinate represents the national authorities' response to an urgent social need for protection against any downward trend in vaccination rates among children.

According to judicial practice, children's best interests are paramount in all decisions concerning them. It follows that states have an obligation to place the interests of the child, as well as those of children as a group, at the center of all decisions affecting their health and development. About immunizations, the aim should be to protect every child from serious diseases.

In most cases, children who receive a full immunization schedule during their first years of life achieve this. Those who cannot be administered such treatment are indirectly protected from contagious diseases if the necessary level of vaccination coverage is maintained in their community; that is, protection occurs from collective immunity. This health policy is based on appropriate arguments and as such is consistent with the best interests of targeted children.

In the Court's view, it cannot be seen as disproportionate for the State to require those for whom vaccination poses a remote health risk to accept this commonly used protective measure as a legal obligation and in the name of social solidarity for the sake of the small number of vulnerable children who cannot benefit from vaccination. The Court concluded that it was a valid and legitimate decision for the Czech legislature to make this choice, which is fully consistent with the public health rationale.

The decision under consideration also relates to the other issues highlighted above in the area of age discrimination in the medical field,

which arises from parents' refusal to vaccinate their children, namely the non-admission of such children to pre-school educational institutions. The ECtHR considers that this "means the loss of an important opportunity to develop their personalities. But it was a consequence (clearly provided for in the legislative texts) of the parents' choice to decline to comply with a legal duty, which was aimed at the health of young children and had an essentially preventive rather than punitive character".

In other words, limiting the ability of unvaccinated children to exercise their right to education specifically in full-time form (provided they retain access to other forms of education) seems justified. However, such measures are extremely traumatic specifically for the child, who faces the inability to attend school with his peers, and therefore feels different, dangerous, and perhaps even "contagious" (given how cruel children are sometimes, and how they are not fully aware of the nature of the issue, which has been difficult even for adults to perceive and correctly interpret the ban by his/her classmates to study together with all because of the danger of contagious diseases).

It seems that the entire world community must now unite to minimize the manifestations of the anti-vaccine movement and make its supporters aware of how they, by their own actions, are contributing to the violation of the rights and discrimination of their children, and what consequences this will have on their health, both physical and psychological.

Thus, we cannot speak of discrimination against those who oppose vaccination, if only because every rejection increases the likelihood of the entire human civilization being killed by a deadly disease.

Whether discrimination is a factor that affects human life solely in the social aspect is evidently not. Finally, discrimination on any basis negatively affects a person's social standing, as well as causes severe psychological and physical consequences.

Researchers have examined the hypothesis that psychological distress through perceived discrimination can lead to chronic pain, where perceived discrimination is based on age, gender, race, ethnicity, disability, sexual orientation, height/weight, religion and other characteristics.

Using a sample of 1,908 people in the U.S., they found statistically significant relationships between perceived daily discrimination and psychological distress, between lifetime discrimination and psychological distress, and between psychological distress and chronic pain. Overall, experts estimated that 4.1 million people in the United States in 2016, aged 40 and older, experience chronic pain caused by increased psychological distress, where psychological distress has increased through perceived discrimination (Brown *et al.,* 2018).

Discrimination is neither age, nor social status, nor a certain color. It is a destructive restriction of human rights and freedoms in society. In fact, this does not only apply to the elderly. It also applies to adolescent behavior. Perceptions of discrimination are associated with more depressive and internal symptoms; greater psychological distress; lower self-esteem; weaker academic achievement and inclusion in the educational process; less academic motivation; greater involvement in risky sexual behavior and drug abuse; and greater association with deviant peers (Benner *et al.*, 2018).

Conclusion

The age of digital society dictates its own rigid rules for the survival of human civilization. More and more often in today's world, one person's interests are being sacrificed for common interests, infringing on his personal and professional life. Discrimination extends to almost all aspects of human life. Age discrimination is a common form of discrimination. The field of medicine, as one of the most important to ensure the continuation of human life, is also subject to discrimination. In the medical field, it affects both medical personnel and patients.

Since a person's life consists not only of ensuring his vital activity as a living organism, but also as a representative of society, his professional activity, and social life are also important. Discrimination in the labor sphere is associated with age in all professions. However, medical workers, given a longer period of training than other professionals, have the problem of insufficient period of professional realization.

The typical agism policy includes the requirement to test an older physician's competence or skills without objective, reasonable methods; inquiries on disability; or requiring an employee to undergo a physical, medical, or cognitive examination without reasonable belief or justification that the physician cannot perform the essential functions of his or her job.

The motivation is the assumption that aging is associated with a decline in cognitive abilities and other functions, and proponents of age-based screening programs argue that assessments are necessary to protect patient safety. However, this policy is opposed to age discrimination, is considered illegitimate, and patient safety should be addressed with a more flexible, individualized approach.

Discrimination against elderly patients is manifested through the treatment with less respect and courtesy and providing a worse level of services in medical institutions. Discrimination against paediatric patients occurs due to their lack of legal opportunity to express their opinion

regarding voluntary consent/refusal to receive treatment since only legal representatives have this right until children reach the age of majority (particularly in countries such as Cyprus, Croatia, Estonia, Finland, France, Greece, Italy, Latvia, Portugal, Romania, and Slovenia).

The refusal of a child's legal representatives to vaccinate also creates a legal conflict between the right to privacy and the right to life and health of the child. Discrimination, in this case, consists in the lack of immune protection and in counteracting socialization through the normative prohibition of unvaccinated children from attending children's institutions (educational institutions). The latter general peremptory norm also discriminates against individuals who are medically prohibited from being vaccinated, although it is justified in the context of protecting public health.

Issues of age discrimination in the medical field should be further studied in order to develop practical, effective methods to combat ageism, since its existence is unacceptable in today's civilized society.

Bibliographic References

AGEISM IN MEDICINE: A LOOK AT MEDICAL ETHICS, LAWS, AND REGULATIONS. 2020. Available online. In: h. ps://www.enttoday.org/article/ageism-in-medicine-a-look-at-medical-ethics-laws-and-regulations/. Consultation date: 03/05/2022.

BENNER, Aprile; WANG, Yijie; SHEN, Yishan; BOYLE, Alaina; POLK, Richelle; CHENG, Yen-Pi. 2018. "Racial/ethnic discrimination and well-being during adolescence: A meta-analytic review" In: The American Psychologist. Vol. 73, No. 7, pp. 855-883.

BROWN, Timothy; PARTANEN, Juulia; CHUONG, Linh; VILLAVERDE, Vaughn; CHANTAL GRIFFIN, Ann; MENDELSON, Aaron. 2018. "Discrimination hurts: The effect of discrimination on the development of chronic pain" In: Social Science & Medicine. Vol. 204, pp. 1–8. Available online. In: https://doi.org/10.1016/j.socscimed.2018.03.015. Consultation date: 03/05/2022.

CAPLAN, Arthur; HOTEA, Peter. 2018. "Anti-vaccine misinformation denies children's rights Seattletimes" In: PLOS Biology. Vol. 16, No. 9. PLOS Biology. Available online. In: https://doi.org/10.1371/journal.pbio.3000010. Consultation date: 03/05/2022.

CARLSSON, Magnus; ERIKSSON, Stefan. 2019. "Age discrimination in hiring decisions: Evidence from a field experiment in the labor market" In: Labour Economics. Vol. 59, pp. 173–183. Available online. In: https://doi.org/10.1016/j.labeco.2019.03.002. Consultation date: 03/05/2022.

CASE OF VAVŘIČKA AND OTHERS v. THE CZECH, REPUBLIC APPLICATION NO. 47621/13 and 5 others. Decision of the European Court of Human Rights. Available online. In: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-209039%22]}. Consultation date: 03/05/2022.

CONSENT TO MEDICAL AND HEALTHCARE TREATMENT MANUAL – POLICY AND PROCEDURE MANUALS. 2022. Policy and procedure manuals. Available online. In: https://www.health.nsw.gov.au/policies/manuals/Pages/consent-manual.aspx. Consultation date: 03/06/2022.

CONSENT TO USE DATA ON CHILDREN. 2018. Available online. In: https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/consent-use-data-children. Consultation date: 03/05/2022.

COUNCIL OF EUROPE CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS. 1996. Available online. In: https://rm.coe.int/european-convention-on-the-exercise-of-children-s-rights/1680a40f72. Consultation date: 03/05/2022.

COUNCIL OF EUROPE CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND DIGNITY OF HUMAN BEING WITH REGARD TO THE APPLICATION OF BIOLOGY AND MEDICINE CONVENTION. 1997. Available online. In: https://rm.coe.int/168007cf98. Consultation date: 03/05/2022.

COURT'S FIRST JUDGEMENT ON COMPULSORY CHILDHOOD VACCINATION: NO VIOLATION OF THE CONVENTION. n/d. Available online. In: file:///C:/Users/%D0%B2%D0%B8%D1%82%D0%B0%D0%BB%D0%B8%D0%B9/Downloads/Grand%20Chamber%20judgment%20Vavricka%20and%20Others%20v.%20Czech%20Republic%20%20obligation%20to%20vaccinate%20children%20against%20diseases%20that%20were%20well%20known%20to%20medical%20science.pdf. Consultation date: 03/05/2022.

DELLINGER, Patchen; PELLEGRINI, Carlos; GALLANGHER, Thomas. 2017. "The aging physician and the medical profession: A review. In: JAMA Surgery. Vol. 152, No 10, pp. 967-971.

DI ROSA, Mirko; CHIATTI, Carlos; RIMLAND, Joseph; CAPASSO, Marina; SCANDALI, Valerio; PROSPERO, Emilia; CORSONELLO, Andrea; LATTANZIO, Fabrizia. 2018. "Ageism and surgical treatment of breast cancer in Italian hospitals" In: Aging Clinical and Experimental Research. Vol. 30, No. 2, pp. 139-144.

HOW LONG DOES IT TAKE TO BECOME A DOCTOR? n/d. Available online. In: https://www.indeed.com/career-advice/finding-a-job/how-long-does-it-take-to-become-a-doctor#:~:text=Doctors%20must%20complete%20a%20four,become%20a%20fully%20licensed%20doctor. Consultation date: 03/6/2022.

HUDOC: EUROPEAN COURT OF HUMAN RIGHTS. 2022. Available online. In: https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]}. Consultation date: 03/05/2022.

INTERNATIONAL LABOUR ORGANIZATION. 1997. Iceland - patients' rights act no 74/1997. Available online. In: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=87694&p_count=96679. Consultation date: 03/05/2022.

JACKSON, Sarah; HACKETT, Ruth; STEPTOE, Andrew. 2019. "Associations between age discrimination and health and wellbeing: cross-sectional and prospective analysis of the English Longitudinal Study of Ageing. The Lancet" In: Public Health. Vol. 4, No 4, pp. 200–208.

LAW OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE. 2021. COVID-19 Vaccines: Ethical, Legal and Practical Considerations. Resolution of the Parliamentary Assembly of the Council of Europe No 2361 (2021) of 27.01.2021. Available online. In: https://www.quotidianosanita.it/allegati/allegato7984722.pdf. Consultation date: 03/05/2022.

LEGE VACCINI. 2021. Available online. In: https://www.salute.gov.it/portale/vaccinazioni/dettaglioContenutiVaccinazioni.jsp?lingua=italiano&id=4824&area=vaccinazioni&menu=vuoto. Consultation date: 03/05/2022.

MIRIC, Filip. 2020. "New legal status of patients' gratitude to medical workers" In: Temida: Casopis o Viktimizaciji, Ljudskim Pravima i Rodu. Vol. 23, No. 1, pp. 125-137.

NEUMARK, David; BURN, Ian; BUTTON, Patrick; CHEHRAS, Nanneh. 2019. "Do state laws protecting older workers from discrimination reduce age discrimination in hiring? Evidence from a field experiment" In: The Journal of Law & Economics. Vol. 62, No 2, pp. 373–402.

ROGERS, Stephanie; THRASHER, Angela; MIAO, Yinghui; BOSCARDIN, John; SMITH, Alexander. 2015. "Discrimination in healthcare

settings is associated with disability in older adults: Health and Retirement Study, 2008-2012" In: Journal of General Internal Medicine. Vol. 30, No. 10, pp. 1413-1420.

SCHROYEN, Sarah; MISSOTTEN, Pierre; JERUSALEM, George; GILLES, Carl; ADAM, Stan. 2016. "Ageism and caring attitudes among nurses in oncology" In: International Psychogeriatrics. Vol. 28, No. 5, pp. 749-757.

SMITH, Grace; XU, Ying; SHIH, Ya-Chen; GIORDANO, Sharon; SMITH, Benjamin; HUNT, Kelly; STROM, Eric; PERKINS, George; HORTOBAGYI, Gabriel; BUCHHOLZ, Thomas. 2009. "Breast-conserving surgery in older patients with invasive breast cancer: current patterns of treatment across the United States" In: Journal of the American College of Surgeons. Vol. 209, No. 4, pp. 425-433.

TEN HEALTH ISSUES WHO WILL TACKLE THIS YEAR. 2019. Available online. In: https://www.who.int/news-room/spotlight/ten-threats-to-global-health-in-2019. Consultation date: 03/05/2022.

THE ACT OF 2 JULY 1999 NO. 63 RALATING TO PATIENTS' RIGHTS (THE PATIENTS' RIGHTS ACT). 2022. Available online. In: https://app.uio.no/ub/ujur/oversatte-lover/data/lov-19990702-063-eng.pdf. Consultation date: 03/05/2022

U.S. THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. 2022. Available online. In: https://www.eeoc.gov/. Consultation date: 03/05/2022.

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