



RESEARCH ARTICLE

The Right to Health in Tunisian Law: Concept and Guarantees

Saoussen Bouzir^{1*}, Awicha Daouthi²

¹Department of Law, College of Business Administration, Northern Border University, Arar, Saudi Arabia

²Department of Law, Higher Institute of Legal and Political Studies. University of Kairouan, Tunisia

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ABSTRACT

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The right to health differs from the right to enjoy good health because health may be affected by factors beyond the control of the state, such as the biological composition of the human being. Therefore, the right to health means the right to the highest possible level of physical and mental health and not the unconditional right to enjoy good health. The right to health developed in statutory laws and rose in the second half of the twentieth century to the rank of a human right, and it was called the second generation of human rights. Protecting health is a duty imposed on all countries, which was confirmed by the World Health Organization through its recognition of the need for governments to bear the responsibility of ensuring the right to health for their people.

***Corresponding Author:**

Sawsen.bawazir@nbu.edu.sa

INTRODUCTION

The primary goal of enacting laws is to protect humans in all areas of life. A person enjoys a number of rights, some of which are financial, meaning they can be evaluated with money, such as real rights, and some are non-financial, which are non-dhimmi rights connected to the human self, meaning that they protect themselves as human beings. Among the most important of these rights is the right to health, the importance of which has been confirmed, especially with the Corona pandemic that we have witnessed. The world in late 2019 Which has confused the international community and caused the virus, with its various waves and mutations, to become an unparalleled global health crisis, revealing the necessity of giving priority to the right to health and encouraging scientific research in the medical field.

The right to health is a fundamental right that concerns the individual and society at the same time. For the individual, his health is considered the most valuable thing he possesses. The Indian leader Gandhi affirmed, "Health is the true wealth, a piece of gold and silver." A person is naturally keen to protect his health because it is one of the components of his life.

For society, health is of public interest, and the human being represents a fundamental value for the group. In the words of one jurist: "Health is a debt owed to society that must be repaid to the individual."

Due to the value of health, it has risen to the level of a right and is no longer just a human need that falls within the realm of ideals. It was not accepted as a right by liberal countries, which interpreted it as only humanitarian needs and not human rights, with the aim of not considering it as rights that bind states. Former Secretary of the United Nations, Kofi Annan, confirmed that

“Health is not a blessing that can only be hoped for in prayer, but rather as a human right that must be fought for.” Today, the right to health has been recognized as a basic human right, especially after the global health crisis of 2019. To further understand this right, terms must be defined, as the right has been the subject of controversy and Discussion: Jurists were divided over the definition of the right. The personal theory considers the right to be a voluntary authority granted by the law to the individual, while the objective theory defines it on the basis that it is the interest protected by the law according to Hearing.

The jurist Dabin criticized these two theories and adopted a mixed theory that depends in defining the right on a number of elements, namely exclusivity and control, the law’s protection of the right, and respect for this right by others, meaning that the right is the set of privileges that the law grants to the individual and ensures their protection and guarantees their enjoyment.

As for health, we do not find a definition for it in our legislation, and the language of health is the noun “sahih” (infinitive) and “sahih” which means the disappearance of sickness and freedom from every defect. “Sahih” is “sahih” and “sahih” from a healthy and healthy people, so health is the absence of sickness and disease.

In terms of terminology, the World Health Organization sought to define health in the preamble to its constitution in Article 1 as “a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity.”

This definition has been criticized on the grounds that it is an unrealistic and broad definition, and here the World Health Organization has approved a distinction between ideal health and health without imperfections. Illness is the minimum level of health, and here it must be emphasized that the full and absolute enjoyment of the right to health is not available to millions of people in the world. Likewise, it is not easy to make a precise distinction between health and illness, so there are those who consider that the right to health is the right to treatment and not an absolute right to Full health and This right is characterized by an evolving and not fixed content, as “there is no specific ceiling for protecting it and developing the concept of human physical, mental and social comfort, but only obtaining the best possible condition.”

Health is governed by several biological, social, economic, and even political factors, and all of these factors determine the extent to which a person enjoys the right to health. Therefore, the International Covenant on Rights defines it as “...the right of every human being to enjoy the highest attainable standard of physical and mental health,” and that is the core of Article 12. the right to treatment are the source of the right to health.

The right to health differs from several neighboring concepts, such as the right to physical sanctity, as it is more comprehensive as it includes the human right to both physical and moral health. This is in addition to the presence of several rules that protect the right to health and that violate physical sanctity, such as obligatory vaccination and obligatory treatment when It concerns communicable diseases.

This right also differs from the right to social security, as the latter is represented in a set of legal rules that guarantee the protection of the individual from social and professional risks that may prevent him from practicing his professional activity or increase his family burdens.

The right to social security in our country is guaranteed by the National Social Security Fund, the National Retirement and Social Security Fund, and the National Sickness Insurance Fund. Several social security systems have also been created in the private sector, as the right to social security is a comprehensive right because it is not limited only to illness, but insurance against All social risks (birth, work accidents, occupational diseases, disability, old age...)

But the right to health remains more comprehensive because it is recognized for every human being, regardless of his social or economic status, regardless of his gender, religion, color, or race. While social security is not recognized for every human being, the right to health includes all preventive and curative health services, while the right to social security includes a specific list of diseases and risks.

There is also confusion between the right to health and the right to treatment, and there are those who see that they are two sides of the same coin and consider that the right to treatment is a natural extension of the right to health.

In reality, the right to health is more comprehensive than the right to treatment, which only arises when illness exists. However, the right to health includes the right to prevention and several other rights.

The state is not required to guarantee good health, but rather is obligated to provide all appropriate medical and scientific services and mechanisms of good quality.

Protecting health is a duty imposed on all countries, which was confirmed by the World Health Organization through its recognition of the need for governments to bear the responsibility of ensuring the right to health for their people. The International Covenant on Economic, Social and Cultural Rights obligated states parties to recognize the right of every human being to obtain the highest possible standard of health. Physical and mental. These countries are committed to taking all necessary measures to ensure the prevention and treatment of epidemic, occupational and other diseases. This is what has made health a social issue due to its impact on society.

The issue of the right to health has a number of importance. Today, with the development of epidemics to the point that we are talking about germ warfare, this issue has become of certain importance, especially since this global epidemic represented by Covid-19 has caused a shock in the entire world, as thousands have lost their lives and destroyed the economies of a number of countries, and it has proven its importance. Maximum health protection for every individual has led to deepening disparities between developed countries and poor countries.

Historically, the right to health appeared for the first time with the Greek philosopher Hippocrates, who lived in the 5th century BC and established what is called medical ethics, which defines the ethical rules that must govern the doctor's relationship with the disease. The Greeks and Romans also knew the number of hospital structures that provided health services to the public.

As for Islamic law, it emphasized the importance of human health by urging resistance to diseases and treatment through medicine, as our Master Muhammad, may God bless him and grant him peace, said, "Take care. If no disease is caused, a cure will be given to it." He warned of the danger of infection from the plague epidemic and recommended quarantine. Islam urged On cleanliness and purity, and the prohibition of drinking alcohol, fornication, and eating foods that cause harm to the human body.

Our country has ratified various international agreements and instruments devoted to this right, whether international or regional, including the International Covenant on Rights. Social, economic and cultural for the year 1966 As well as the African Charter on Human and Peoples' Rights, which states in Article 16 that "Everyone has the right to the enjoyment of the best attainable state of physical and mental health: States parties to this Charter undertake to take the necessary measures to protect the health of their peoples and to ensure their access to medical care in the event of illness. "

Based on these agreements, Tunisia is obligated to respect the right to health and is called upon to protect it by taking the necessary measures, putting it into effect and facilitating its exercise and use. The importance of the right to health in our country has been confirmed since the revolution, as this right was one of the most important axes of social movement in the interior regions and border states. The unrest that the country witnessed during the transitional period had a profound impact on the right to health. It was prepared in light of community dialogue with the participation of various stakeholders in the sector, and the goal is to obtain fair opportunities to enhance everyone's health and reach comprehensive health coverage.

In practice, the right to health today poses several challenges, as the Covid-19 crisis has demonstrated the stark disparity in activating the right to health and revealed the deep gap between developed and developing countries.

Since 1977, the World Health Organization and UNICEF have emphasized the impact of this disparity on the right to health. Therefore, they organized an international conference in the capital of Kazakhstan, through which they set a forward-looking goal, which is the need for all peoples of the world to achieve, by the year 2000, a level of health that will enable them to lead a socially and economically productive life.

It reorganized a new international conference to evaluate the Alma-Ata conference in October 2008 under the title "Primary health care now more than ever." It confirmed the failure of the Alma-Ata conference, the deterioration of the right to health, and the deepening of the gap between countries. The health crisis and the collapse of various health systems in the world were confirmed with the global pandemic related to Covid-19, which affected the right to health and undermined various human rights. This crisis included Tunisia, as health services differ between... regions, as most public and private health facilities are based in major urban areas, unlike inland areas. The exercise of this right varies according to the economic situation of the citizen, and this is due to the weakness of the economic resources of countries. Today, the urbanization of countries is measured by the extent of activating and exercising the right to health. Therefore, strengthening the right to health has become one of the basic goals of sustainable development that seeks to provide all services.

Good preventive and curative treatment at the lowest costs for all citizens. Therefore, Tunisia ratified the Sustainable Development Goals "Agenda 2030" emanating from the United Nations Convention issued by a resolution of the General Assembly in September 2015. They are called the Sustainable Development Goals and are represented in seventeen goals, among which is providing the right to health. For mother and child, protection from infectious diseases, reducing the death rate resulting from traffic accidents, pollution, smoking and drugs, and ensuring comprehensive health for all.

Therefore, in the face of all these challenges related to the right to health, the following question arises: How does Tunisian law deal with the right to health?

Tunisia, like other countries, is today betting on the right to health by defining it and by providing guarantees to exercise it.

2. Defining the right to health

The Tunisian legislator has sought to pay attention to the right to health and has worked to define its legal nature and control its content.

2.1 The legal nature of the right to health

Today, the right to health is considered the most basic human right, and it is a right whose legal nature is characterized by several characteristics, including that it is a right that has a constitutional character, as our legislator did not neglect to acknowledge this right and consider the health sector as one of the vital sectors. The first seed of this right was born in the 1959 Constitution. The new Tunisian constitution dated 25 July 2022 stipulates in Chapter 43 that health is a right for every human being. The state guarantees prevention and health care for every citizen and provides the necessary capabilities to ensure safety and quality of health services. After independence, the Tunisian country expanded its interest in the health sector and established a ministry independent of the Ministry of Social Affairs, which is the Ministry of Health, in 1974, and its mission is according to Chapter 1 of the decree. Number 1664 of 1974 is "Vigilance for the health of the population..."

The right to health has also been stipulated in several laws, orders and decrees, which makes us acknowledge the abundance of texts related to the field of health. It supports the right to health protection by issuing Law No. 63 of 1991 dated July 29, 1991 related to health regulation, which was completed by Decree No. 50 of 2022 dated August 22, 2022, which explicitly stated in its first chapter that "Every person has the right to protect his health to the best of its ability." "possible circumstances" The Doctor's Duties magazine also included several chapters from which it can be seen that the legislator is keen to protect the right to health by placing the duty on the doctor to treat, because the right to treatment is an extension of

the right to health. This right was enshrined through several other laws, such as the law related to mental health, amended under Law No. 14 of 2004 dated 5/3/2004, as well as the Communicable Diseases Law and Drug Law No. 52 of 1992, in addition to several publications emphasizing the consecration of the right to health as a right. Essentially, the explicit dedication of the right to health as a basic right was one of the features of the Constitution 2014, as it stated in its Chapter 38 that "Health is a right for every human being. The state guarantees prevention and health care for every citizen and provides the necessary capabilities to ensure safety and quality of health services."

The state guarantees free treatment for people without support and for people with limited income. "It guarantees the right to social coverage in accordance with what is regulated by law." He recognized every citizen's direct right to health and obligated the state to guarantee its exercise. He included this right in the highest document, which is the constitution, thus raising it to the rank of constitutional rights. Consequently, one of the consequences of this is the necessity of activating it and adapting the rest of the laws to be consistent with this. Right if issued Laws that reduce or attack this right become unconstitutional, and the constitutional character of this right is enshrined in the current Constitution of Tunisia, which is the Constitution of July 25, 2022, and that is the core of Chapter 43. Approving the constitutional character of the right to health confirms the Tunisian country's keenness to guarantee this right and supports citizens' requests to enjoy their right. health and therefore their right to treatment. The right to health, in addition to being a constitutional right, is also a comprehensive right, and its importance stems from it being an essential factor for activating and maintaining the rest of human rights, as taking care of a person's health is an important factor for preserving his right to life and his right to dignity. Since the Tehran International Conference on Human Rights organized by the United Nations in 1968, integration between civil and political rights on the one hand and social, economic and cultural rights has been considered one of the most important conditions for balance in the relationship between the state and the individual. The right for health is the right that brings together a wide range of human rights and basic freedoms. It is closely linked to this right to life, the right to proper nutrition and the provision of potable water, the right to adequate housing, and the right to a sound environment. The scholar Ibn Khaldun linked the spread of epidemics and diseases and Age, as it is considered that "cities in which the air doctor did not take into account the abundance of diseases are common."

The Universal Declaration of Human Rights emphasized the importance of several other rights in guaranteeing the right to health, as Article 25 of it affirmed that: "Every person has the right to a standard of living adequate to maintain the health and well-being of himself and his family, which includes nutrition, housing, and medical care: It also enshrined Constitution of July 25, 2022 Several rights closely related to the right to health, the most important of which are the right to life, the right to bodily integrity, which guarantees the right to health, and the prevention of torture, which is considered a blatant assault.

On the right to health, enshrining the right to a healthy environment, and committing the state to resisting environmental pollution, the right to drinkable water, the right to dignity, and other rights that make the right to health a central right around which the rest of the rights revolve. They support it and make it a comprehensive right that cannot be dispensed with because it is health. It is the most valuable thing a person possesses, and without it, he would be unable to perform all his functions. Several individual rights may be abandoned in order to protect the right to health, especially health security. If public health is threatened, the legislator may take all necessary measures to guarantee it, even if the matter leads to imposing restrictions on some basic rights and freedoms, which is confirmed by Article 55 of the Constitution. 2022, such as limiting freedom of movement, freedom of trade, freedom to practice religious rituals, and attacking personal data in the event that a person is infected with a communicable disease, which happened during the Covid 19 pandemic, The state has taken several exceptional measures to protect public health and preserve lives, such as quarantine and prohibition of movement. A decree was issued by the Prime Minister regarding the prohibition of violating the Golan Heights, specifying it, and comprehensive quarantine, which is Decree No. 9 dated 4/17/2020. This confirms that the right to Health

remains the fundamental right that is at the same time an individual right and a right that concerns the group as a whole. It is a comprehensive right whose content is difficult to determine.

2.2 Content of the right to health

It is difficult to determine the content of the right to health because it is an evolving and changing right, and it is a comprehensive right linked to several standards and considerations that would contribute, directly or indirectly, to respecting and activating the right to health. The right to health is one of the basic components of this right. This is explicitly confirmed by the Universal Declaration of Human Rights in Article 25. The prevention of diseases is one of the most important links that guarantee the enjoyment of the right to health, so providing reasons that will contribute to preserving.

The right for health may seem to some to be more important than building and equipping hospitals. Prevention includes avoiding the causes of disease and the necessity of achieving balance in all aspects of life, such as ensuring proper nutrition, exercising, staying away from smoking and drugs, and psychological comfort, as maintaining health begins with a person's daily actions and the extent of his awareness of the importance of maintaining his health. The right to health includes the right to treatment, which is an essential component to ensuring the exercise of the right to health. Treatment is the first need that arises in a person when his health deteriorates. This right includes a negative aspect, which is refraining from violating a person's physical privacy, and a positive aspect, which is the right to obtain treatment. The legislator has enshrined the right to treatment on the basis that it is a duty imposed on the doctor through the Code of Doctor's Duties, which is a humanitarian and legal duty.

The essential role of the doctor is to preserve human health, according to Chapters Five and Six of this Code, and he has the duty to treat the patient even in the absence of imminent danger, according to Chapter 51 of this Code, except in exceptional cases stipulated in Chapter 37 of this Code. The draft basic law on patients' rights and medical responsibility emphasized in its tenth chapter that health structures and health professionals are required to ensure the safety of patients in accordance with the specifications and quality of treatment. The patient has the right to obtain the necessary treatment in accordance with the requirements of his health condition and the requirements of the medical profession, according to Chapter 31 of this code. He has the right to treatment according to the latest available therapeutic capabilities, meaning he has the right to enjoy high-quality treatment at the level of machines, techniques and treatment methods. The doctor is required to exercise the necessary care to ensure the protection of the patient's health and keep up with all medical and scientific developments. The right to treatment is included according to Chapter 5 of Law No. 63. of 1991, his right to safety and moral assistance, whether inside or outside the country Public or private health institutions, means protecting him from all risks that may threaten his physical or moral safety.

Here, the doctor is required to achieve a result regarding safety and the need to provide moral assistance, especially to those with serious illnesses.

The right to treatment is enjoyed by every person, regardless of his health and social status, according to Chapter 34 of the law relating to health regulation, which affirms the principle of equality for all citizens before public health structures, and the right to treatment includes even those who are not sick, including those addicted to drugs, those suffering from mental disorders, and those infected with communicable diseases. The legislator also provides special health care for people with special needs.

It also provides the right to treatment and health protection for children, who are the groups most in need of subsidized health care. The Child Protection Magazine emphasized in Chapter 15 the need to guarantee the child's right to health, including the disabled child.

Most modern systems also provide health protection for prisoners for diseases that afflict them while they are carrying out custodial sentences. The law regulating prisons recognizes the prisoner's right to health and psychological care.

It should be noted, however, that in principle, the patient is not subject to treatment except with his consent. Accepting treatment is a personal right available only to the patient, and it is one of the essence of medical ethics, with the aim of achieving recovery for the patient and not forcing him to receive treatment that may have negative repercussions on his psychological health, but in order to preserve public health, given that the right to health also concerns the group, the patient may be forced to receive treatment, especially for communicable diseases that pose a threat to the public health system, which is what was stipulated in the Communicable Diseases Law, which emphasized it is necessary for a person suffering from a communicable disease to undergo treatment in order to preserve his health and the health of others.

But he did not arrange a punishment in the event of his refusal, contrary to the French legislator and Belgian law, and the health authority can force him to submit medical certificates within the deadlines it specifies proving that he has undergone treatment according to Paragraph 2 of Chapter 9 of the Communicable Diseases Law. Here, the seriousness of the disease and its negative effects on public health justify compromising individual freedom. If he refuses treatment, he will be forced into mandatory hospitalization, meaning he will be isolated from the rest of society in a closed space with the aim of combating the spread of the disease and protecting public health. . The mandatory hospitalization procedure is a decision taken by the judicial authority without the administrative authority, specifically the emergency judiciary, and the competent judge is the president of the territorially competent court of first instance.

The maximum period of compulsory hospitalization is three months, renewable.

Access to medicines is an important component of the right to health. Medical care in the event of illness requires obtaining sufficient, good-quality medicines at the right time, and the right to obtain medicines is linked to the human rights system. It is linked to the principle of equality and non-discrimination. To this day, this right suffers from several shortcomings and is fundamentally linked to economic factors. To this day, several countries suffer. There is a lack of access to medicines in poor countries, which threatens human dignity and directly threatens the right to health. The global pandemic Covid-19 has exposed the inequity in access to vaccines and the lack of respect for the right to health for all people. The right to obtain medicines and vaccinations at affordable prices is still an aspiration for millions of people in the world, and our country is suffering, especially after the Covid pandemic, from a shortage of medicines that has negatively affected the right to health. Therefore, there are those who are calling for the necessity of establishing a national medicine agency similar to the developed countries. Like America, there is a need to develop a national strategy for manufacturing medicines supplied in Tunisia. The Ministry of Health works to achieve the principle of health for all and ensure the provision of all guarantees and remove all obstacles in order to activate the right to health and ensure its enjoyment.

3. Guarantees for exercising the right to health

It is not sufficient for the enjoyment of the right to health to be enshrined in legal texts and for the legislator to give it a constitutional character. Rather, care must be taken to exercise it and ensure its implementation, especially since it is one of the rights whose enjoyment depends on the positive intervention of the state, as it is required to provide mechanisms to ensure its implementation. Article 2 of the International Covenant on Social, Economic and Cultural Rights. Thus, we find that the state is keen to provide the necessary guarantees to implement the right to health, and these guarantees vary between structural and judicial guarantees.

3.1 Structural guarantees

Chapter 43 of the 2022 Constitution affirmed that the state "...guarantees prevention and health care for every citizen, and provides the necessary capabilities to ensure safety and quality health services. The state guarantees free treatment for the disabled and those with limited income.

It guarantees the right to social coverage in accordance with what is regulated by law. "We conclude through this chapter that the state is obligated to implement the right to health according to the available capabilities, through the structures of the health system and through the public sector, which, according to

Law No. 63 of 1991 related to health regulation, contains 3 lines: The first line consists of basic health centers Local hospitals provide health services of a preventive and curative nature and health education. They are located in all regions of the Republic and provide vaccination services, including school vaccination, on the basis of the principle of equality for all.

The second line includes regional hospitals that provide services close to the citizen, and they support the first line and, when necessary, refer to university hospitals. They suffer from several problems, such as the lack of human resources and the unequal distribution of specialized doctors between coastal cities and inland and border cities. Therefore, to avoid these shortcomings, the state sought to develop a support program. For interior areas It depends on the voluntary contribution of specialized doctors in order to guarantee the right to health for all citizens

It also required university hospitalists to work for at least one year in one of the public health facilities in priority health areas.

The third line includes university hospitals that provide highly specialized health care and contribute to the development of university education in the health field, health professional training, and scientific research. They are concentrated in only 13 states, which contributes to the disparity between regions.

The private sector also contributes to ensuring the implementation of the right to health and has witnessed great development in recent years thanks to the tax incentives provided by the state and thanks to external demand from neighboring countries. It contains advanced medical equipment and high-quality technologies and provides good health services that keep pace with global developments, which contributes to ensuring the enjoyment of the right. In health, especially since the 2022 Constitution explicitly stipulates in Chapter 17 of it that “the state guarantees coexistence between the public and private sectors and works to achieve integration between them on the basis of social justice.” In 2015, the legislator specified the rules for partnership between these two sectors, and Presidential Order No. 38 of 2022 also approved the possibility of medical cooperation between the two sectors when practicing telemedicine, but in reality this cooperation remains limited, as there are no actual partnership agreements, but there are Some signs of dealing, especially during the Corona pandemic, if the private sector contributes to confronting it by conducting vaccination for free in pharmacies and at some private clinics and dentists. However, the activation of the right to health at this level remains limited, especially since the health scene in Tunisia is still witnessing the concentration of most health institutions in some areas, as well as the growing phenomenon of health professional migration, which has worsened in recent years, which has negatively affected the right to health. Also, the difficult economic situation that the country is going through and the different situation of people has exacerbated the disparity and affected the principle of social justice and the principle that health is a right for everyone, which was confirmed by the Tunisian Forum for Economic and Social Rights on several occasions.

Despite all these shortcomings, the state seeks to guarantee the right to health through several mechanisms, including emphasizing the principle of proportionality between treatment costs and the patient’s financial ability. The principle is no longer free in obtaining health services, but rather the principle is that the patient pays a fee to obtain therapeutic services, as approved by Chapter Three of the Health Regulation Law. The fee is paid according to whether the patient has the status of social security or not.

The trend at the beginning and after independence was towards free treatment, but in the nineties, the health law backed away from this option and established a distinction between those who enjoyed free treatment and those who enjoyed low tariffs and paid treatment. Today, the law guarantees the right to free treatment for some groups, as it grants a free treatment card for the purpose of treatment and residence in public health institutions to every needy Tunisian, his wife, and his children who are under his legal sponsorship.

Several other groups also enjoy free treatment, including resistance fighters, soldiers, internal security forces, and customs agents.

This right has also been approved for those wounded in the revolution since 2011 in accordance with Decree No. 97 of 2011 dated 10/24/2011 regarding compensation for the wounded of the revolution.

Decree No. 20 of 2022, dated 4/9/2022, approved the right to free treatment for victims of terrorist operations, including soldiers and agents of the internal security and customs forces, and those entitled to the right among the martyrs and wounded of the revolution.

The right to free treatment is granted to families with limited or no income, and as a result of the principle of solidarity, the state bears the expenses of treatment for this group, which is explicitly stipulated in Chapter 35 of the Health Regulation Law, and this applies to public health institutions.

Prisoners also enjoy free treatment, which is included in Chapter 17 of the law regulating prisons. They also enjoy free treatment for those suffering from communicable diseases due to their danger to public health, and these patients are encouraged to seek treatment automatically.

The state also provides the right to free or low-priced treatment for the disabled, according to Chapter 15 of the Directive Law on the Advancement of the Disabled.

Also, out of its keenness to exercise the right to health, the state provides for some preventive and curative services free of charge, including compulsory vaccinations and some health services for women within the framework of the birth control policy. Family planning in our country represents an important political and health option. Tunisia has been a role model in the field of reproductive health for several decades and provides family planning centers, basic health centers, and maternal care centers. The child has several services, including pregnancy monitoring and postpartum follow-up, within the framework of the national plan to reduce the number of maternal deaths

Among the guarantees provided by the legislator to activate the right to health and ensure its benefit is that it established social health insurance since the fifties of the last century, as it established the first compulsory health system for workers in the public sector in 1951, then compulsory health insurance was established in the private sector in 1960, and in 2004 it was established. Compulsory insurance for patients For the benefit of the socially insured and those entitled to the right, this system is maintained by the National Fund for Disease Insurance. This system guarantees adequate coverage of the most important health risks, such as surgeries, chronic diseases, and ordinary diseases. With the participation of the socially insured patient (whether in the public sector or the private sector) in this new system, he has the choice between 3 methods for covering the expenses of health services, which are the public treatment system, the private treatment system, or the expense recovery system.

As for the first system, it enables its choice to provide direct support for all services provided in public health structures, and the percentage of care for serious diseases may reach 100% and without an annual ceiling. As for the rest of the diseases, care is given within the limits of an annual ceiling, and the Ministry of Social Affairs approved it in a statement issued on January 15, 2024. Reviewing the annual ceiling on expenses for external health services covered in a way that guarantees the right to health. This increase included all systems.

The percentage of coverage in the private system and the expense recovery system varies according to the health services provided.

This mechanism aims to improve the quality of health services provided to the beneficiary, that is, the social security and those who sponsor it, and to achieve social justice and assistance.

To control treatment costs. Social Security pays a certain percentage and the Fund takes care of the rest of the expenses. Despite this, these guarantees remain insufficient to absolutely guarantee the right to health, because the percentage of public spending on health remains less than the approved recommendations, especially since the state is obligated to dedicate and implement the right to health in accordance with the international agreements it has ratified. They are required to provide health structures with the necessary resources in order to provide high-quality health services. Therefore, public health institutions complain of

several shortcomings that hinder the implementation of the right to health and make them unable to perform the tasks assigned to them, despite the fact that a public health support fund has been established that provides additional funding for services provided to patients. Beneficiaries of free treatment and low-fare treatment cards.

One of the manifestations of keenness to exercise the right to health is ensuring and monitoring quality with regard to the services provided. *Al-Tabib* magazine emphasized the necessity of the doctor refraining from practicing his profession in circumstances that may compromise the quality of treatment except in cases of necessity. Quality is monitored by internal control structures affiliated with the Ministry of Health, which are the medical control structure, the pharmaceutical control structure, and the financial and administrative control structure. The National Authority for Accreditation in the Health Field was also created, and its mission is to develop the quality of health services through external evaluation of the functioning of public and private health structures. Its tasks also include monitoring and evaluating health technologies and health interventions. Since 2016, the principle of safety and quality in the health field has been established by sending a system for managing the quality of health services to 31 health institutions.

However, despite this, these health institutions, especially the public ones, still do not respond to the aspirations of the citizen due to several factors, including the disparity between the authorities, excessive centralization, and the decline in the regulatory role of the Ministry of Health in offering services. Also, these Institutions are still devoting a health care system that is not completely digitized and focuses on curative services more than preventive services. These structural guarantees are still insufficient and ineffective, which may negatively affect the right to health. Therefore, the state must take into account medical ethics and provide services. Good quality health care includes all human and material resources, the use of telemedicine and electronic health services, and keeping pace with all developments related to the health field in order to ensure the proper exercise of the right to health. These structural guarantees still require judicial guarantees to enable the right to health to be enjoyed.

3.2 Judicial guarantees

The various international instruments that address the right to health have emphasized the obligation of member states to ensure that their people enjoy an appropriate level of health, and in the event that some of them are unable to do so, it is the responsibility of the international community to provide the necessary assistance. This is the best evidence of the importance of this right. Our country has sought to ensure the activation of this right through several judicial mechanisms that would guarantee the effective enjoyment of the right to health.

It basically consists of approving responsibility for both public hospital institutions, which are subject to the Administrative Court, and also includes private health institutions, which are subject to the judicial judiciary. However, the acknowledgment of medical responsibility remains one of the most important judicial guarantees for activating and protecting the right to health, especially since medical work is fraught with risks.

In principle, the doctor is required to exercise the necessary care when providing health services to the patient and not to achieve a result. Despite this, his responsibility remains in place in the form of providing the conditions set by the legislator. On June 5, 2024, the House of People's Representatives approved draft law No. 30 of 2023 related to the rights of beneficiaries of health services and responsibility. Medical law for health professionals, which is an important law that seeks to overcome all shortcomings Related to medical liability, as a contribution to ensuring the right to health and balancing the rights of the patient with the rights of those involved in the health sector. This law adopted the idea that human error is possible, but medical negligence is a crime. The medical error was defined in its third chapter on the basis that it is an unintentional error, which is the basis of the medical responsibility of the health professional. The medical accident was defined as every health emergency that occurs when providing health services.

It specified the entities claiming compensation and distinguished between medical liability in the private sector. Insurance companies are responsible for compensation in the event that medical liability is proven for health professionals in the private sector and public sector doctors who practice their activities with a special title and responsibility. This law emphasized the compulsory insurance for private health institutions and the necessity of paying all health professionals. Health professionals practicing their activities in the private sector Public sector doctors who practice their activity under a special title and contribute to insurance companies under the title of covering their medical civil responsibilities and the liability of the agents assigned to them in consideration. In the event of non-payment and fulfillment of the legal deadlines, they are subject to the penalty of temporary prohibition from practicing their professions.

As for civil liability in the public sector, the state undertakes to compensate the patient or his heirs when the medical liability of the health professional in the public sector and the liability of the agents responsible for them is proven, as well as when the civil liability of public health structures and medical accidents in the public sector is proven.

According to this law, the patient loses his right to compensation if the damage resulted from his personal error or his refusal or failure to follow up on treatment, if this responsibility still requires fault for its establishment, or if the damage resulted from known and common disturbances resulting from the natural development of the disease or if it was the result of a failure therapeutic.

This law approved the procedure of consensual settlement between the patient and the civil official, in Chapters 38 to 47, as the injured party is obliged to submit a request for consensual settlement and compensation directly or through his legal guardian, legal representative, or heirs according to a form determined by a decision of the Minister of Health to the competent committee. Conciliation letters shall be concluded and the document shall be given executive status within a maximum period of six months from the date of submitting the application. If this deadline has passed, he has the right to go to court and establish a consensual settlement after ensuring that the patient obtains compensation and activates his right to health. Compensation will be for material and moral damage. This law protects the health professional from criminal repercussions in the event of an unintentional error, as it recognizes the possibility of eliminating a prison sentence in this case. Thus, it is not possible to talk about criminal liability in the case of wrongful violence or wrongful killing. Unless the serious error is proven, in this case the expert committee shall investigate the seriousness of the medical error and submit a report on this matter to the competent judicial authority.

If this law seeks to ensure a balance between the rights of patients and the rights of health professionals to achieve and activate the right to health, the implementation of this law will reveal the extent of its effectiveness in achieving these goals.

Until it enters into force, the traditional rules of medical liability remain the norm. The doctor is disciplinary responsible if he violates the honor of the profession, by the professional body responsible for this matter.

His civil liability is also based on the general rules of liability according to the nature of the relationship that links him to the patient. This responsibility may be contractual if there is a medical contract between him and the patient. This is in the case of a doctor who opens a private clinic. He is in a state of continuous affirmation directed to the public.

This offer consists of an offer to provide health services and includes all the essential elements of the contract. If the patient goes to this clinic to request treatment, this is called acceptance, and if the patient calls the doctor to his home, it is called an offer, which is accepted by the doctor and the contract is formed between them.

Pursuant to this contract, the doctor is obligated to exercise the necessary care in accordance with recognized scientific rules, which was confirmed by the Court of Cassation in several decisions, including Civil Cassation Decision No. 22773 dated 1/18/2003.

The doctor is committed to the safety of the patient, which is an obligation to achieve a result, meaning he is committed not to expose him to any harm when using tools, machines, medical devices, and medicines, and not to transmit an infectious disease to him as a result of not taking the necessary precautions.

Just as the doctor's commitment in plastic surgery is a commitment to achieving a result, especially since the goal of plastic surgery is not healing, but rather correcting the physical disfigurement that has occurred.

If there is no contract between the doctor and the patient, This liability becomes tortious in the event that the doctor intervenes on his own initiative, or if the doctor works in a public hospital, or if the doctor commits a criminal error. This responsibility may arise when a doctor refrains from rescuing a person in danger. In this case, he is considered to have violated the ethics of his profession and must be held criminally accountable on the basis of Chapter 2 of Law No. 48 of 1966 relating to the crime of prohibited abstention. The most common area to talk about the tortious liability of the doctor is that which is at the core of public health structures. This was confirmed by the Bouglitta decision issued by the Administrative Court in 1988.

This liability is a form of civil liability, and before the draft medical liability for health professionals, the legislator did not recognize medical error and subject it to the divisions contained in Chapters 82 and 83 of the Code of Obligations and Contracts.

Medical error was defined on the basis that it represents “negligence and lack of caution that results in harm to others, and is in fact a deviation from normal, familiar behavior that requires a person to be alert and insightful so as not to cause harm to others.”

Therefore, the doctor is held accountable for every negligence in medical conduct, and the doctor does not fall into it if he is aware of the external circumstances that surrounded the responsible doctor.

Proving this error in principle falls on the plaintiff, but due to the difficulty of proof and the inability of the aggrieved party to often prove this error, the work of the courts has settled on reversing the burden of proof by forcing the doctor to prove that he exercised the necessary care to achieve recovery for the patient.

The element of damage must be provided, which may be material or moral, and must be a natural result of the medical error and verified, and there must be a causal relationship between the medical error and the harm caused to the patient. It is one of the difficult matters to prove. French jurisprudence has considered that this relationship is assumed by adopting the theory of missing an opportunity for recovery. The doctor's responsibility is excluded in the event of force majeure or the fault of the injured person himself. Most of these provisions were reviewed in accordance with the draft health professional liability law, so that medical liability becomes a responsibility with several characteristics. Provides greater guarantees of the right to health.

The doctor's responsibility in modern laws is not limited only to the civil aspect, but rather includes the penal aspect, although today the law related to medical liability stipulates the necessity of reducing the criminal character with regard to health professionals, meaning the legislator adopts a policy of decriminalization and protecting the health framework while practicing his profession, and the law does not interfere. Criminal law, except in the case of a serious error. However, today there are several crimes that a doctor may commit, including the crime of handing over a medical certificate as courtesy, according to...

Today, there is the crime of accidental injury and accidental murder, the subject of Articles 217 and Article 225 of the Code. The Medical Liability Law has emphasized the necessity of devoting a special responsibility to the health professional that differs from the rules contained in these two chapters, in order to protect these persons and ensure the proper implementation of the right to health, especially since Human error is present in this field.

This law will have many advantages that will enhance the protection of the right to health and its implementation for all citizens.

4. CONCLUSION

- The absence of an international agreement specifically specific to the right to health, despite the many international instruments that relate directly or indirectly to the right to health.
- The absence of the Public Health Journal and the presence of multiple and dispersed texts related to the health field, which hinders the effectiveness of its application.
- Lack of human and material resources in this field.
- Immigration of all types of health professionals.
- Failure to keep pace with scientific developments, whether with regard to scientific research, machines and equipment.
- Institutions in the public sector lack several equipment.
- Weak budget of the Ministry of Health.
- The need to change mentalities about the right to health and focus on prevention before treatment.

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Compliance with ethical standards

Conflict of interest

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REFERENCES

- Abd al-Rahman Ibn Khaldun,(1989) "The Introduction," Kitab al-Yusr, chapter on the outbreak of urbanization and the many deaths and famines that occur therein, Dar al-Awda, Beirut.
- Abdullah Al-Ahmadi (1997) Child Protection and Human Rights Magazine, Eng. Q. Issue 3 March.
- Abdel Sattar Al-Mawlahi (2001) Globalization and Transformations of Social Security Law, Tunisian Journal of Social Law, No. 8.
- Al-Nouri Mazid, Journal of Judiciary and Legislation (1997) Right to Health, Medicine and Human Rights Forum, Sfax December.
- Aouij Amel (1990) the public service of the Sanctuary this doctorate is in the doctor, the doctor and scientific sciences policy of Tunis.
- Al-TijaniObaid (1989 Medical Responsibility, Q.T., March.
- Betrand Kiefer (2008) the saint is the father of the Rev. Med Souisi, volume 4 n 27.
- C.Byk (1993): "The sanctuary is home - there is a publique in the colloquial acts" economic and social medicines in the direction of Yemen, eurolex, collection, records and colloqués".
- Defforges jean (1986), the droit of the santé, collectible Que-sais-je, PUF.
- Enas Al-Ayadi and Aida Caid Essebsi(2023) IN <http://www.annd.org/uploads/publications/> The right health in Tunisia facing the challenges of universal health coverage: Arab Monitor 2023 report on the right to health
- Gigis Justaert, Bart Verstraeten, Valérie van Belle and Caroline Lesire (2011) "The santé un droit for all" edition and they kiekens.
- Hanan Al-Jaridi (2002-2003) Law and Communicable Diseases, Memorandum for Obtaining a Certificate of Advanced Studies in Law, Faculty of Law and Political Science in Tunisia.
- High commissariats of nations, organizations (2008) homes, and organizations of the World Cup "Santa's World" information.

- Ibn Manzur, Dictionary of Lisan al-Arab, Volume Two, Dar Sayyad, Beirut, Lebanon.
- Imad Al-Khudairi (1997-1998) Medical Ethics, Graduation Memorandum from the Supreme Judicial Institute.
- Issam Lahmar(2005) The doctor's liability for damages to social security funds, MQT, January.
- Jacques Ghistin, (1990) civil servant trait, introduction to the generation, by Jacques Ghistin and Gilles Goubeaux, 3 editions L.G.D.J. N 177.Paris.
- Jacques Moreau and Didier Truchet, (2000) Entered the santé publique 5 years ago, today.
- Jamal Hayahi (2004-2005) Obligatory hospitalization in Tunisian law, a memorandum for obtaining a master's degree in law, Faculty of Law and Political Science in Tunis.
- Kamel essoussi (1994) the social security in the Tunisian public sector CREA –Tunis.
- Kamal Jamaï (2001-2002) The Doctor's Responsibility, Graduation Memorandum from the Supreme Judicial Institute.
- Latifa Al-Arfawi (2005) "An Analysis of Article Twenty-Five of the Universal Declaration of Human Rights," Center for Documentation in the Field of Human Rights and Center for Legal and Judicial Studies, December 10. Tunis
- Louzon Claude (1990) legislation of the mental health in Europe documentation française November.
- Muhammad Al-Saleh Al-Kassrawi (1998-1999) Criminal Protection of Public Health, a reminder to obtain a certificate of in-depth studies in law, Faculty of Law and Political Science in Tunisia.
- Muhammad Al-Saleh Bin Hussein (1996), Medical Liability in Tunisian Law, M.Q.T., March.
- Muhammad Hussein Mansour (2000): Medical Liability, Modern Society Publishing House.
- Muhammad Kamal Sharaf al-Din (2020), Civil Law, The General Theory of Law, The General Theory of Right, Third Edition, Al-Atrash Complex for Specialized Books, Tunisia.
- Referral (996) themas of medical and medical responsibility and health care in Brussels.
- Salim Al-Dandani (2006-2007) The Right to Health in Tunisian Law, a memorandum for obtaining a master's degree in law, specializing in criminal sciences, at the Faculty of Law and Political Science in Tunisia.
- The United Nations General Assembly (1966) adopted the International Covenant on Economic, Social and Cultural Rights on December 16.