

HEALTH AND HUMAN RIGHTS, ECHR AND THE CONSTITUTION OF THE PORTUGUESE REPUBLIC: AN INTERPRETATION

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Abstract

Health is a Human Right needing a permanent attention, study, and interpretation. As the conceptualization of Health is complex, the universality and legal recognition by the International Law has relevant perspectives and inherent consequences for the human beings, the States - political, economic, social, cultural – requiring a particular understanding and scientific interpretations. This research applied a qualitative method, but including an important study of statistics, so quantitative, by the Human Rights perspective, there is a health conceptual overview within the International, European Law, focus on the Portuguese legal study case. The European Convention on Human Rights (Council of Europe) has been used to tackle health as a right most different contexts, Portugal as a member is charged to protect the lives of all human beings of his jurisdiction, guaranteeing the right to health. This right is recognized by the Constitution of the Portuguese Republic (1976), there is an important National Health Care System and Portugal is growing in compliance with the right to health in accordance with international standards.

Keywords: health, human rights, Constitution of the Portuguese Republic, national health care.

JEL Classification: K33, K38, K40

1. Introduction

The present research is part of a research line about the implementation of the right to health in Portugal and analyzes the level of compliance by the State with the right to health extracted from the European Convention on Human Rights.

This research work focuses on the National Health Service and, therefore, we will initially analyze the concept of health in the context of some international treaties and conventions, looking at the interpretation that the European Court of Human Rights makes of the European Convention on Human Rights, researching on the right and the implementation of the right to health in the Constitution of the Portuguese Republic, to then study specifically at the National Health Service. On this last aspect we make a statistical approach to the work carried out by the NHS, in addition to its costs and the comparison of these with tax revenue collected in Portugal. We will also add a small comparative text on the cost of the right to health in Portugal with other OECD countries.

Concerning the methodology applied to the research and production of this research work, it is important to emphasize that we carried out theoretical research, with a legal and judicial focus, in terms of International and Portuguese Law, that is, a qualitative methodology. Complementarily, and aiming at a foundation based on concrete data, as current as possible, we researched and treated statistical data, using a predominantly quantitative methodology. In short, the present work was developed scientifically in a mixed global methodology.

Finally, we'll present our conclusions.

2. International law and the right to health

2.1. Human rights and the right to health

Considering the generational classification by Karel Vasak³, in 1977, there is three milestones in Human Rights. The first generation included the called negative rights, meaning that the State cannot interfere in the individual - civil and political - freedoms, considering the second generation

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³ VASAK, Karel, *A 30-Year Struggle – The sustained efforts to give force of law to the Universal Declaration of Human Rights*, 1977 – The Unesco Courier – 30th year. pp. 29-32.

that impose to the State actions to implement in social, economic, and cultural rights, till the third generation the solidarity rights. So, we should include the right to health as second generation of the Human Rights that force the State the duty to act to implement that right to health, meaning that is the factual social well-being. So, this is the focus of the research we'll present in this paper concerning the right to health in Portugal.

2.2. Conceptualization of health

The Preamble of the Charter of the Constitution World Health Organization – WHO, New York, 22 July 1946 – begins declaring that “health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.

The concept in question, underlying the creation of this international organization, allows for a multiple conceptualization that encompasses not only the absence of any disease, but penetrates all situations of physical, mental, and social well-being, integrating the concept of health, physical and mental, therefore not discriminating any human being, regardless of their characteristics, the socio-economic and cultural environment in which they live and their historical and cultural context in which they live.⁴

It's important to emphasize that constituent Member States of WHO, in their constituent document, took care to establish that *the right to health is one of the fundamental rights of every human being, a right that is transversal to all and any Human Being without distinction of race, religion, political creed, economic or social condition*, that is universal, the right to health becomes essential for all peoples to achieve world peace and security.

In fact, the constituent document of the WHO establishes in its article 1 the *objective of the World Health Organization will be the acquisition, by all peoples, of the highest level of health possible*, being a document that outlines a universal rule of the right to health broad meaning for each and every human being, regardless any location or condition.

2.3. Right to health and universality of the concept

WHO is a global organization but the right to health and its conceptualization is not unique to this Organization but is part of a myriad of international documents that deal with the same theme, and in this concern, the present research just aims to list some examples.

The Universal Declaration of Human Rights – UDHR – adopted by the United Nations – UN, 10 December 1948, declares in the n. 1 of the Article 25 that *everyone has the right to a standard of living sufficient to ensure their health and well-being, especially with regard to medical care and has the right to safety from illness*. So, as a universal document, it's important to understand how the right to health was considered imperative and as a structuring right of every human being.

The Charter of the United Nations, signed in San Francisco on June 26, 1945, entered into force on October 24, 1945, refers to health in several of its articles, being particularly important the fact that health alienates b) from paragraph 1 of Article 13 to impose on the General Assembly that promotes *studies and make recommendations, with a view to fostering international cooperation in the field of health*.⁵

The Convention on the Rights of the Child, adopted and opened for signature, ratification, and accession by Resolution No. 44/25 of the General Assembly of the United Nations, November 20, 1989, in Article 24, number 1, imposes that *the child has the right to enjoy the best possible state of health and to benefit from medical services* and requires States Parties to ensure that no child is

⁴ Aiming to develop the *health concept along the times*, please read SCLiar, Moacyr in *História do Conceito de Saúde*, PHYSIS: Rev. Saúde Coletiva, Rio de Janeiro, 17(1), 2007. pp. 29-41.

⁵ BOTELHO, Catarina Santos, *Os Direitos Sociais em tempo de crise*, Almedina, Coimbra, Portugal. 2015. p. 221; LEÃO, Anabela Costa, *A Carta dos Direitos Fundamentais da União Europeia – Protegendo os Direitos a um Nível Multidimensional*, in RFDUP, 2006. Número 3. p. 45.

deprived of the right to access such health services.⁶

The International Covenant on Economic, Social and Cultural Rights⁷ includes the issue of health, imposing in its Article 12 that States Parties recognize the right for all people to enjoy the best possible state of physical and mental health, adding in paragraph 2 of this Article, the various measures that States Parties must implement this objective, namely, to reduce infant mortality and mortality, promote the prophylaxis, treatment and control of epidemic, endemic, occupational diseases, to improve the hygiene aspects of the environment and promote the creation of proper conditions to ensure all people medical services and medical help in case of illness.

Within the scope of the African continent, the African Charter on Human and Peoples' Rights – ACHPR, establishes in Article 16 that *everyone has the right to enjoy the best state of physical and mental health that they are able to achieve, adding in number two of this Article that States Parties undertake to take the necessary measures to protect the health of their populations and to provide them with medical care in the event of illness*, meaning, States have an obligation to make available to their peoples the means necessary to achieve that right.^{8 9}

Thus, the right to health in international law is extensively recognized and protected for all human beings without discrimination.

2.4. Europe and the right to health

If we deep across European Law and pay attention to the European Social Charter - ESC, it's possible to observe that the issue of health is a key element protected by this European legal instrument, namely in its Article 11 when establishing the *Right to the protection of health to ensure the effective exercise of the right to health protection*, in which States undertake, to that end, *to eliminate, as far as possible, the causes of poor health and to establish consultation and education services with regard to improvement. development of a sense of individual responsibility in health matters*.

So, the Charter of Fundamental Rights of the European Union¹⁰ imposes to their Member States, in Article 35, that *all people have the right to access prevention in terms of health and to benefit from medical care, in accordance with the legislation and national practices. In the definition and the implementation of all the Union's policies and actions, a high level of human health protection is ensured*.

2.5. The European Convention on Human Rights – ECHR – and its interpretation based on European Court Human Rights – ECtHR – jurisprudence

As we can find in different international legal documents, if we analyze the ECHR we'll not find nothing that legal and specifically guarantee the health concern. This health law guaranteed absence as the multiple rights to most different health care, has been related, specially and by excellence based on ECtHR jurisprudence, to the Right to Health as an obvious corollary as the right to live, the right to privacy life and familiar life, by the prohibition of the application of torture, and degrading or inhuman punishment and the prohibition of discrimination.

⁶ To a detailed study about the need of the Stated to ratify the Convention on the Rights of the Child, please read RUTKOW, Lainie and LOZMAN, Joshua T., *Suffer the Children? A Call for United States Ratification of the United Nations Convention on the Rights of the Child*, in Harvard Human Rights Journal, Vol. 19, Spring 2006. pp. 161-190.

⁷ Aiming to understand these Articles of this Pact, please read DECAUX, Emmanuel and De SCHUTTER Olivier (dir.), *Le pacte international relatif aux droits économiques, sociaux et culturels: commentaire article par article*, 1^a ed., Paris : Economica, 2019.

⁸ VALLE, Jaime, comment to the Article 16 in JERÓNIMO Patrícia, Garrido Rui and VALE PEREIRA Maria de Assunção do (coords.), *Comentário Lusófono à Carta Africana dos Direitos Humanos e dos Povos*, Observatório Lusófono dos Direitos Humanos da Universidade do Minho (OLDHUM) e Direitos Humanos – Centro de Investigação Interdisciplinar (DH-CII), Portugal. 2018. pp. 180-185.

⁹ As a short analysis about the protection of health in Charter of Fundamental Rights of the European Union, it's important to read HOSTMAELINGEN, Njal, *Direitos Humanos num Relance*, Edições Sílabo, Lisboa, Portugal. 2016 pp. 96-97.

¹⁰ For more details: VALE, Luís Meneses, *Comentário ao 35.º - Proteção da saúde*, in Silveira, Alexandra e Canotilho, Mariana (coord.), *Carta dos Direitos Fundamentais da União Europeia comentada*, Almedina, Coimbra, Portugal. 2013. pp. 414-435.

The Article 2 of the ECHR ensure that *the right of any person to life is protected by law*, then Article 3 *adds that no one may be subjected to inhuman or degrading treatment*.

It has been, par excellence, based on this right to life, plus the interpretation of Article 3, that the ECtHR has assumed in its multiple decisions that the right to health, in its widest sense, derives from this. In fact, it is based on this right to life that national and international doctrine has integrated the right to health into this ECHR, whether from a substantive or procedural perspective.

In the health context, the States must create legislation and necessary resources to its protection, as well as a judicial system that act to their evaluation and control by the most efficient and independent way. These facts were recognized by the ECtHR in its process judgement (*Calvelli e Ciglio v. Itália*) that declared that Article n. 2 of ECHR imposed to the States the creation of a normative body that obliges hospitals to take the necessary measures to protect the lives of their patients, as well as imposed the creation of a judicial system that, in an independent and effective way, has the capacity to control them.

The right to health implies, on the part of citizens, full access to medical care, access to pharmaceutical products and clinical treatments necessary for the full restoration of health. The conclusion we can achieve, for instance, by the judgement of the case (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*). To the ECtHR there was violation in substantial and in processual perspectives, to the Article 2 of the ECHR, by the competent Romanian authorities who had in their care, from birth, a person with severe mental disability and HIV positive and did not adequately administer the necessary clinical and pharmacological treatments and, as a result, he died at the age of 18.

In the decision by the ECtHR in the case (*Panaiteescu v. Roménia*) the Court considered that Romanian authorities had procedurally violated Article 2 of the ECHR by not complying with the decisions of their courts that required them to provide them free and for life with anticancer medication necessary for its cure. The imposition on the State of the obligation of complete and free medical care until the end of life, was also imposed on Turkey in the conviction that it had in the process (*Oyal v. Turkey*) in which it was obliged to provide a newborn that because of having received blood transfusions and because of this fact that she became HIV positive - HIV positive - she needed lifelong clinical and pharmacological treatments free of charge.

The ECtHR has published the “Guide to Article 2 of the European Convention on Human Rights” where it’s presented, based on the cases decided, its interpretation of this Article of the ECHR in relation to the right to health.¹¹ So, by creating this guide, which is part of a vast set created by the ECHR, the Court wants to provide general information about its most important decisions and which, therefore, illustrate the interpretation that the ECtHR makes of the ECHR and in particular of each of its articles.¹²

The interpretation that the ECtHR has always given to Article 2 has always followed the logic that its object and purpose is the protection of human beings, a fact that leads to this interpretation

¹¹ “Guide on Article 2 of the European Convention on Human Rights”, last update: 31-08-2021, in https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf, consulted 09-11-2021

¹² See the note for readers (introduction to pp. 5) – “*Note to readers* - This Guide is part of the series of Guides on the Convention published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This Guide analyses and sums up the case-law on Article 2 of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”). Readers will find herein the key principles in this area and the relevant precedents. The case-law cited has been selected among the leading, major, and/or recent judgments and decisions. The Court’s judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016. The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020). This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a *List of keywords*, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.”

always being strictly carried out, bearing in mind that the result interpretative leads to its practical and effective application since it contains one of the structuring values on which democratic societies are based.¹³ For the ECtHR, this Article 2 contains two obligations that everyone must respect, that is, everyone has the obligation to protect life, as well as the intentional prohibition of its deprivation through the creation of legislation, and given its character fundamental and structuring, everyone must procedurally carry out the necessary investigations when there are violations of this right.¹⁴

As a result of the judgments that the ECtHR has delivered, it now assumes in its interpretation of Article 2, that entails obligations for States to protect people's lives, by imposing that they cannot intentionally and illegally take their lives people, but it is even required to take all appropriate measures to save their lives, reflecting this obligation both in the public and private context, imposing on States the obligation to protect life in the context of health protection.¹⁵

If in ECtHR we do a deep interpretation of the concept of the right to health by the Article 2 in the context of life protection through health care services to population in general, meaning that there is an obligation to the States in regulating the mandatory adoption of adequate measures to protect the lives of patients by hospitals, whether public or private. In this context, the creation by the States in legislative creation must be understood and applied in the broadest possible sense, that is, the regulatory framework created must be effective and encompass all the necessary measures to ensure the implementation, supervision, and compliance with necessary measures for the realization of the right to health.¹⁶

Considering the jurisprudence of the ECtHR, and the doctrine that we have analyzed, there is no doubt that the right to life contained in Article 2 of the ECHR logically integrates its full protection through the full observation and application of the right to health, understood as this right in its broadest possible sense.

3. Portuguese law and health

After this brief analysis of international and European law, regarding the right to health, it's important to present a brief review Portugal's internal law.

¹³ "A. Interpretation of Article 2 - 1. The Court's approach to the interpretation of Article 2 must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions must be interpreted and applied to make its safeguards practical and effective (*McCann and Others v. the United Kingdom*, § 146). 2. Article 2 ranks as one of the most fundamental provisions in the Convention, one which in peace time, admits of no derogation under Article 15. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe (*Giuliani and Gaggio v. Italy* [GC], § 174). As such, its provisions must be strictly construed (*McCann and Others v. the United Kingdom*, § 147)." p. 6.

¹⁴ "B. State obligations under Article 2 - 3. Article 2 contains two substantive obligations: the general obligation to protect by law the right to life, and the prohibition of intentional deprivation of life, delimited by a list of exceptions (*Boso v. Italy* (dec.)). Having regard to its fundamental character, Article 2 of the Convention also contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (*Armani Da Silva v. the United Kingdom* [GC], § 229)." p. 6 .

¹⁵ "A. The nature of the positive obligations of the State - 10. Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], § 130). In broad terms, this positive obligation has two aspects: (a) the duty to provide a regulatory framework; and (b) the obligation to take preventive operational measures. B. The scope of the positive obligations of the State - 11. The Court has found the positive obligation under Article 2 to take appropriate steps to safeguard the lives of those within its jurisdiction to apply in the context of any activity, whether public or not, in which the right to life may be at stake (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], § 130). 12. Thus, the Court has found positive obligations to arise under Article 2 in a number of different contexts, such as, for example: • in the context of healthcare (*Calvelli and Ciglio v. Italy* [GC]; *Vo v. France* [GC])". p. 8.

¹⁶ "4. Protection of persons in the context of healthcare - a. General population - 42. In the context of healthcare, the positive obligations require States to make regulations compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives (*Calvelli and Ciglio v. Italy* [GC], § 49; *Vo v. France* [GC], § 89; *Lopes de Sousa Fernandes v. Portugal* [GC], § 166). In this connection, the States' obligation to regulate must be understood in a broader sense which includes the duty to ensure the effective functioning of that regulatory framework. The regulatory duties thus encompass necessary measures to ensure implementation, including supervision and enforcement (*Lopes de Sousa Fernandes v. Portugal* [GC], § 190)". p. 13

3.1. Health in the Constitution of the Portuguese Republic

The *Constitution of the Portuguese Republic* – CRP – begins immediately by declaring in its Article n.º 1 that the Portuguese Republic is *based on the dignity of the human person*, that is, first and foremost, and above all values, the person, as a human being with all its dignity, which implies that it imposes that the Portuguese Republic *respect and guarantee the realization of fundamental rights and freedoms - article 2, consequently imposing itself on the State as a fundamental task to guarantee the fundamental rights and freedoms and to promote the fulfillment of social rights* – Article n.º 9, paragraphs b) and d), imposing that *the constitutional and legal provisions relating to fundamental rights must be interpreted and integrated in harmony with the Universal Declaration of Human Rights* – Article 16, n. 2.

The Article 64 of the CRP is entirely dedicated to health, and it stands out, given the norm in Article n. 2 of this social contract, that *everyone has the right to health and the duty to defend and promote it*, a fact that involves creation and implementation of a *national universal and general health service and, considering the economic and social conditions of the citizens, tending to be free*.

The Constituent Assembly, when drafting the CRP, took care to draw up this social contract, not as a disciplinary repository of the State, but rather as a country in its social dimension and that is why the Constitution presents itself as a fundamental law of the community, that is, , concerned from its inception with the community, but above all with each of the citizens that make up that community, by asserting itself as a basis for the dignity of the human person.¹⁷

This obligation imposed by the CRP to protect health imposes on the State two distinct types of behavior, that is. If, on the one hand, all people have the right to demand that the State, or any other natural or legal person, refrain from performing any act that harms health, on the other hand it imposes on all other persons, natural or legal, but above all to the State that creates the necessary conditions, normative or factual, that lead to the prevention and treatment of diseases. It is on this basis that the National Health Service – NHS – must be considered as a mandatory public service with necessary activation and irreversible existence.¹⁸ It is thus a constitutional duty of the state to create and maintain the NHS, that means prohibiting its irrevocability. In fact, the Constitutional Court in its Judgment handed down on April 11, 1984 – Judgment n. 39/84 – Process 6/83¹⁹, declared a rule that repealing the NHS was unconstitutional for violation of the Article 64º of the CRP, as the extinction of the NHS contends with the guarantee of the right to health enshrined in the Article 64 CRP. This Article 64 of the CRP, in paragraph b), n. 2, enforcing the creation of the NHS *tending to be free*, it also imposed the socialization of the costs of health care and medicines, provided by public services not supported directly by the state budget.²⁰ Obviously the costs of the NHS and included in the annual budget of the State must have as a counterpart in the revenue side of each State budget the taxes paid by all and taking into account their economic capacity.²¹

3.2. Portuguese National of Health Service – backgrounds

The National Health Service, in compliance with the constitutional imperative, was created in Portugal by the Ministerial Order, dated 20 July 1978, by the then Minister of Social Affairs – António Duarte Arnaut - and published in the *Diário da República* of 29 July 1978. It is this Order, which had the force of law, allowed all Portuguese people free access to medical-social services and hospitals,

¹⁷ CANOTILHO, J. J. Gomes; MOREIRA, Vital, *Constituição da República Portuguesa*, Anotada, 4.ª Edição revista. Coimbra Editora. Portugal. 2007. pp. 198 – 200.

¹⁸ *Idem*. pp. 825 – 831.

¹⁹ *Diário da República* – I Série, n.º 104, de 5 de maio de 1984, pp. 1455 a 1468, mainly the “Conclusion” to p. 1465 in <https://dre.pt/dre/detalhe/acordao/39-1984-384993>, consulted 09-11-2021.

²⁰ Specially the note “III” de CANOTILHO, J. J. Gomes and MOREIRA, Vital, *Constituição da República Portuguesa – Anotada* – 4.ª Edição revista - Coimbra Editora, Portugal, 2007. pp. 827 – 828.

²¹ Aiming a brief analysis of the fundamental right to health and its connection to the CRP, please read: CUNHA, Paulo Ferreira da Cunha, *Direitos Fundamentais – Fundamentos & Direitos Sociais*, Quid Juris. Lisboa. Portugal. 2014. pp. 209 – 213.

as well as reimbursement of medication. Thus, the NHS in Portugal was born.²²

The National Health Service was created by Law No. 56/79²³, of 15 September, of the Ministry of Social Affairs, as a fundamental structure for the State to ensure the right to health protection, as an imperative of the Constitution. Access to the NHS is guaranteed to all citizens, regardless of their economic and social condition, free of charge, regardless of whether user fees may be created with the purpose of rationalizing the services provided by it. All health care is integrated here, from health promotion and surveillance to disease prevention, diagnosis, treatment, and medical rehabilitation and, of course, access to medicines.

4. Portuguese National Health Service - statistical data analysis

Aiming to understand better the Portuguese NHS and the compliance of the right to health in Portugal, we will now present statistical data so that the reader of this article can have a real perception of the implementation of this right in Portugal. Obviously, to have a contextualized reading of the data it is essential to have a minimum knowledge of population data in Portugal, following presented.

The source used was “PORTDATA”, created in 2009, and which is a contemporary Portuguese database organized and developed by Fundação Francisco Manuel dos Santos.²⁴

The portrait in numbers of contemporary Portugal, taken from “PORDATA” are the following:

Year	1960	1981	2001	2011	2020
Population (Thousands)	8.865,0	9.851,3	10.362,7	10.557,6	10.297,1
Older people by 100 youngs	-	45,4	101,6	125,8	165,1
% Iliterate People	-	18,6	9,0	5,2	-
% Population with higher studies	-	-	6,8	13,2	21,2
GDP per capita at constant prices from 2016	3.682,0	9.585,5	17.442,2	17.753,4	18.126,0

Table 1 – Population in Portugal: Brief Data. Source: PORDATA

Since the beginning of this century, Portugal the population is stabilized in about 10,2 million but there is an increasingly aging, with almost no illiterates and a growing population with higher education. The next data of NHS and the realization of the right to health is based in this general portrait of Portugal.

4.1. Portuguese National Health Service by statistical data

The first element that should be highlighted is the infant mortality rate in Portugal that fell sharply between the 1960 and 2020, being currently 3229.16% lower than it was then. On the other hand, life expectancy in Portugal has been increasing, both for men – 126.35% and for women – 124.39%, which is shown in “Table 2” below.

Year	1960	1970	1981	1991	2001	2011	2020
Child mortality rate (%) -	77,5	55,5	21,8	10,8	5,0	3,1	2,4

²² To a brief study of the creation and evolution of NHS: CAMPOS, António Correia, *Administração Pública e Saúde – Ensaio de circunstância*. Almedina. Coimbra. Portugal. 2019. pp. 183 – 187.

²³ Lei n.º 56/79 could be read in: Webpágina do Diário da República Eletrónico - <https://dre.pt/dre/detalhe/lei/56-1979-369864>, consulted 09-11-2021.

²⁴ in Pordata: <https://www.pordata.pt/Home>, consulted 09-11-2021.

Deaths of children under 1 year of age per 1000 live births							
Life expectancy at birth male	60,7	64,0	68,2	70,6	73,3	76,7	-
Life expectancy at birth female	66,4	70,3	75,2	77,6	80,1	82,6	-

Table 2 – Child Mortality and life expectancy in Portugal. Source: PORDATA

To understand this positive evolution in the health of the population, we have to describe the hospital structure in Portugal, as following.

Year Number	1985	1990	1995	2000	2005	2010	2015	2019
	General Hospitals	70	81	79	79	70	80	80
Specialized Hospitals	24	43	26	31	27	31	23	23

Table 3 – General and Specialized in Portugal. Source: PORDATA²⁵

Obviously, the hospital structure is straightly connected to the availability of beds for care in hospital illnesses. So, following this is the evolution of the number of hospital beds available in Portugal:

Beds	1995	2000	2005	2010	2015	2019
	General Hospitals	22 213	22 842	22 339	20 946	19 999
Specialized Hospitals	5 258	4 358	3 454	2 916	2 063	1 862

Table 4 – Available Beds in General and Specialized in Portugal: Source: PORDATA²⁶

Understanding if there is an NHS effectively working, there is a large group of highly specialized people who provide services to the population, having a fundamental role in the prevention, diagnosis, and treatment of diseases that the population may suffer. So, it is therefore essential that we get to know the wide range of professionals who provide services in the NHS in Portugal.

Years		1995	2000	2005	2010	2015	2019
Staff service in Hospitals	Doctors	14 252	15 862	16 307	17 962	19 164	22 497
	Nursed	----	24 872	27 166	32 140	32 207	37 267
	Diagnostic and therapeutic technicians	4 226	5 536	6 276	6 843	6 705	7 609

²⁵ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824742> consulted 09-11-2021.

²⁶ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824740> consulted 09-11-2021.

	Other Staff	53 237	41 023	44 164	42 642	37 306	40 312
	Total	71 715	87 293	93 913	99 587	95 382	107 685

Table 5 – NHS: Staff service in Portuguese Hospitals. Source: PORDATA²⁷

The reality context presented by this table raises for the identification of the distribution of these professionals, considering the number of inhabitants in Portugal.

Years	1995	2000	2005	2010	2015	2019
Doctors per 100 thousand inhabitants	149,4	161,8	163,1	178,6	194,5	229,8
Nurses per 100 thousand inhabitants	-	253,7	271,6	319,5	326,8	380,7
Therapeutic and Diagnostic Technicians per 100 thousand inhabitants	44,3	56,5	62,8	68,0	68,0	77,7

Table 6 – NHS: Staff service in Portuguese Hospitals per 100 thousand inhabitants. Source: PORDATA²⁸

Given the hospital structure that the NHS has and the staff that work there, namely doctors, nurses, and diagnostic and therapeutic technicians, then, we will understand the number of consultations they provide, the hospitalizations that are made and the emergency services that are provided. To do so, we have inserted the table below with the data reported in thousands.

Hospitals \ Year	1995	2000	2005	2010	2015	2019
Medical appointments - thousands	5 473	6 621	8 898	10 998	12 063	12 445
Admissions - thousands	924,0	906,0	959,0	906,9	860,1	810,9
Emergencies - thousands	5 830	5 943	6 447	6 450	5 886	6 426

Table 7 – NHS: Medical appointments, admissions, and emergencies in Hospitals in Portugal. Source: PORDATA²⁹

Having as a start point the population living in Portugal, we are now going to present these data distributed by the number of inhabitants. If we study the chart below, two realities are stand out. While the number of admissions has remained constant over the years, medical appointments and emergencies have been constantly increasing. We believe that this reality is because the resident population is progressively aging and, as a result, needs more medical care.

Activity \ Year	Data per Thousand Inhabitants					
	1995	2000	2005	2010	2015	2019
Medical appointments	686,8	850,3	1 136,5	1 490,9	1 822,0	2 052,0
Admissions	111,4	111,6	115,6	113,2	111,3	110,5
Emergencies	--	645,2	694,6	712,7	708,6	792,8

Table 8 – NHS: Medical appointments, admissions, and emergencies in Hospitals in Portugal. Source: PORDATA³⁰

Bearing in mind this structure of the NHS, we will now analyze, through tables, the public expenditure generated by it.

Firstly, we briefly discuss the expense generated by the NHS, highlighting the expense generated by personnel, which represents around 40% of total expenses.

²⁷ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824745> consulted 09-11-2021.

²⁸ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824749> consulted 09-11-2021.

²⁹ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824746> consulted 09-11-2021.

³⁰ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824748> consulted 09-11-2021.

Years	1995	2000	2005	2010	2015	2019
Staff - Euro - Millions	1568,0	2 596,1	3 503,5	3 935,0	3 467,5	4 410,9
Remaining - Euro - Millions	1 829,9	3 381,6	5 763,9	6 336,2	5 636,0	6 621,3
Total - Euro - Millions	3397,9	5 977,7	9 267,4	10 271,2	9 103,5	11 032,2

Table 9 – NHS: Total expense and with the staff service. Source: PORDATA³¹

Then, we analyze this expense generated by the NHS and its relationship with the number of inhabitants in Portugal to know the amount that, theoretically, the NHS costs *per capita*.

Years	1990	1995	2000	2005	2010	2015	2019
NHS - costs <i>per capita</i> - Euro	181,4	356,1	609,6	926,6	1 021,1	923,8	1 127,0

Table 10 – NHS: Total expense per capita. Source: PORDATA³²

4.2. Comparison between NHS expenditure and the main taxes collected in Portugal

The right to health, as a fundamental right that structures a society, always has a cost that must be supported by the public purse when we are dealing with a Social State, as is the case in Portugal.

Bearing in mind the data we have presented regarding the expenditure generated by the NHS and the revenues generated by the main taxes levied in Portugal, we are now going to present a table in which we analyze this NHS expenditure and the public revenues collected by these taxes.

Year/Euro – Millions	Personal Tax Income IRS	Corporate Tax Income IRC	Value Added Tax IVA	NHS Total Expenditure
1995	4 587,9	1 945,8	5 611,5	3 397,9
2000	6 739,5	4 469,7	8 672,8	5 977,7
2005	7 753,3	3 721,3	11 671,6	9 267,4
2010	8 936,7	4 591,6	12 145,9	10 271,2
2015	12 695,7	5 248,3	14 844,3	9 103,5
2019	13 171,2	6 317,1	17 862,5	11 032,2

Table 11 – State Tax Revenue for some types of Taxes. Fonte: PORDATA³³

If we analyze the total expenditure generated by the NHS and compare it with the revenue generated by the main taxes, we find that this expenditure absorbs a very high amount of the revenue that the State manages to collect through these taxes, and if, for example, we take into account the year 2019, we found that expense represented 83,76% of the income from IRS (11 032.2/13 171.2), 174,64% of the income generated by the IRC (11 032.2/6 317.1) and 61,76% of the revenue collected from VAT (11 032.2/17 862.5).

If the analysis falls on the collection of direct, indirect and total taxes per capita and compared with the per capita expenditure with the NHS, we find that the expenditure on this fundamental right to health also represents a significant value in comparative terms, as for example, in 2019, in which the per capita expenditure with the NHS represented, also in per capita terms, 58,33% of direct taxes, 44,32% of indirect taxes and 25.18% of the total charged with these taxes.

Year/Euro - Racio	Direct Taxes <i>per capita</i>	Indirect Taxes <i>per capita</i>	Total Taxes <i>per capita</i>	NHS Total Expenditure <i>per capita</i>
1990	361,7	583,1	944,8	181,4
1995	658,5	1 031,5	1 689,9	356,1

³¹ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824755> consulted 09-11-2021.

³² Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824756> consulted 09-11-2021.

³³ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824760> consulted 09-11-2021.

2000	1 099,7	1 396,8	2 496,6	609,6
2005	1 096,7	1801	2 897,7	926,6
2010	1 283,4	1 770,6	3054	1 021,1
2015	1 761,5	1 989,1	3 750,6	923,8
2019	1 931,8	2 542,4	4 474,2	1 127,0

Table 12 – State fiscal revenue by different taxes. Source PORDATA³⁴

4.3. Brief comparison of health data in Portugal with OECD countries

To be possible to interpretate the expenditure with health by Portugal, comparing with the situation in different countries of the Organization for Development and Economic Cooperation – OECD – we will present just a graph taken from the publication "Health at a Glance 2021 - OECD Indicators" (Vision health 2021 - OECD Indicators) that shows the expenses incurred directly by individuals and those expenses that are borne either by the States or by other third parties, namely insurance companies.

For what interests us now, we will only highlight the graph under the designation “Health expenditure per capita, 2019” (Health expenditure per capita, 2019).

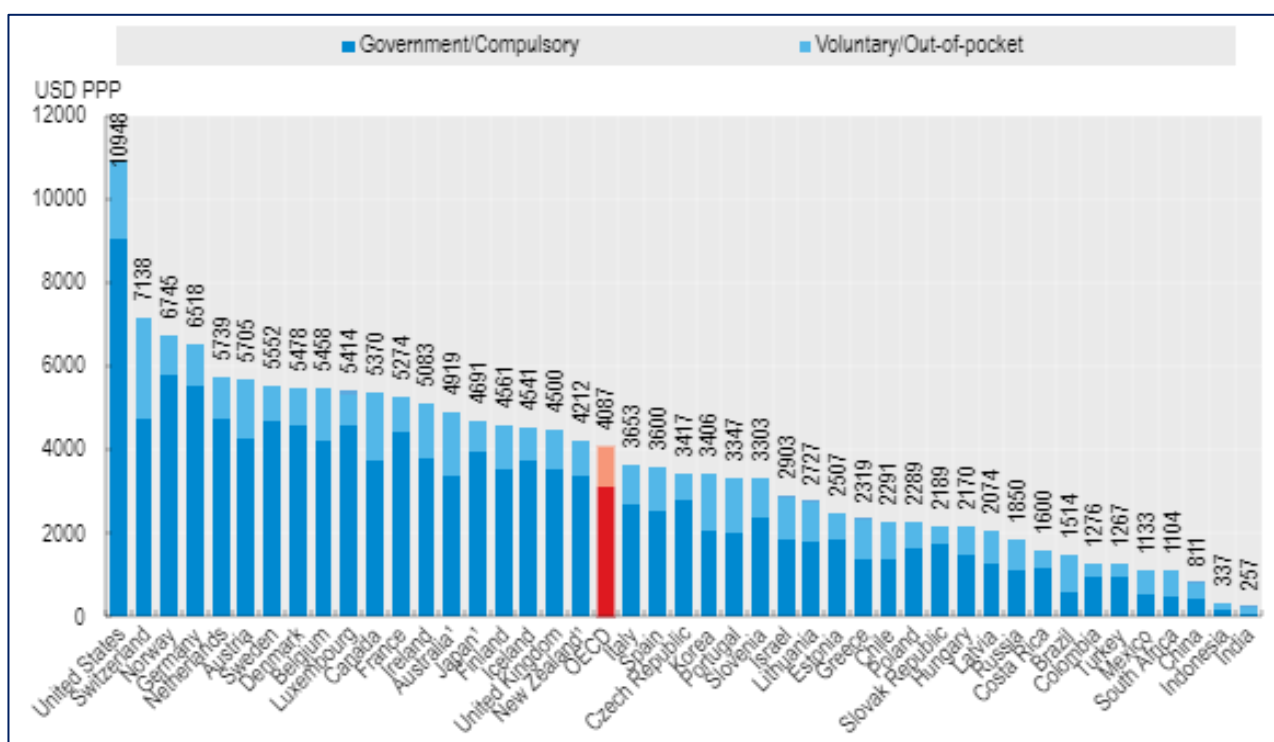


Figure 1 – Health expenditure per capita 2019. Source: OECD Health Statistics 2021, WHO Global Health Expenditure Database³⁵

The analysis of this graph shows that the country with the highest per capita expenditure on health is the United States of America, with Portugal ranking fifth below the OECD average, that is, Portugal has a total per capita expenditure on health that represents 81,89% of the OECD average or 31,88% of the value of the United States of America.

5. Conclusions

This scientific paper, as a part of a line of research on the execution of the right to health in

³⁴ Pordata: <https://www.pordata.pt/DB/Portugal/Ambiente+de+Consulta/Tabela/5824763> consulted 09-11-2021.

³⁵ Pordata: <https://stat.link/36exif>, consulted 09-11-2021.

Portugal, shows that, since the entry into force of the current Constitution of the Portuguese Republic, in 1976, the path to their effectiveness of this right has been trodden, especially with the creation of the National Health Service and its use by the entire resident population, regardless of ancestry, sex, race, language, religion, political or ideological convictions, education, economic situation, or social condition of each person, and that this right to health complies with international standards, namely the European Convention on Human Rights.

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