

## **Protecting of the patient between international instruments and the Moroccan legislation**

**Lamia Falaki**

Research student with a doctorate, the Laboratory of Law, Philosophy and the Society, the specialization of Law privet for the Faculty of Legal, Economic and Social Sciences, Sidi Mohamed Ibn Abdullah University fes morocco

**\*Corresponding Author**

LAMIA FALAKI

### **ABSTRACT**

The aim of this paper is to shed light on some laws that include the protection of patients' rights in Morocco, clarifying his rights by respecting his human dignity as well as his right to access health care services without any discrimination, his right to choose the doctor who will treat him, his right to obtain information about his health condition and his right to refuse or accept treatment. For a better understanding of the topic, one is addressed question, namely: What is the legal protection of the patient in Moroccan legislation?

We will rely on the analytical and comparative approach. This paper is going to depend on the analysis and monitoring of international agreements aimed at affirming basic human rights, the dignity and worth of the individual, and the equal rights of men and women. Moreover, indicating the conditions under which justice can be achieved and the obligations that arising from treaties and other sources of international law is respected. In addition, our result behind this paper is to come up with some points that determining patient rights in Morocco.

**Keywords:** *Patient, Doctor, International charters, Moroccan legislation, legal protection*

### **INTRODUCTION**

The patient's dignity and his human feelings are considered the basis of the relationship between the doctor and the patient. That is to say, the doctor should treat the patient with respect in terms of his feelings and health weaknesses<sup>1</sup>. In this regarded, throughout the world, we find the establishing of Legal Arsenal to Protect the Patient. This later is based on the country's responsibility to protect the rights of all persons on its territory. As well as putting international standards to take the necessary measures to protect the patient as the weak party in the medical relationship. These sources provide a set of basic criteria for the patient, and a legal framework that helps for the Advancement of the patient rights.

In this context, the patient's dignity and his human emotions are regarded the basis of the relationship between the doctor and the patient. Therefore, this relationship requires treating the patient with respect for his personality, feeling, will, and taking into account his circumstances and health weakness<sup>2</sup>.

The importance of our topic on the legal grounds is manifesting that the issue of patient rights is considered as the most debated and controversial issue at this moment among researchers because it aims to protect human health.

The importance of our topic in terms of practical point of view also lies in the monitoring of the various judicial decisions to clarify the position of the judiciary on this issue, with an indication of how the official judiciary deals with the texts regulating this profession.

Concerning the above mentioned arguments, we find that our topic raises a fundamental problem that is manifested as follows:

What is the legal protection for the patient?

The main hypotheses underlying this research is namely:

- \_ The Core International Patient Rights Instruments selected sets of International Agreements aimed at protecting the patients.
- \_ The Moroccan Legislator has determined the Crystallization of the National Legal System and its

<sup>1</sup>- Article 16 of the French Civil Code: "the law ensures the primacy of the person, prohibits any attack on the dignity of the latter and guarantees respect for the human being from the beginning of his life"

<sup>2</sup>- Ibid.

compatibility with its International counterpart to protect the patient.

Given the nature of the topic, we opted an analytical approach in order to analyze each important part of the subject matter, leading to some observations, conclusions and perceptions, then, we will try, as much as possible, to graft them with some solutions to overcome the difficulties and obstacles that surround the subject of the study.

In addition, we will clarify the situation of the Moroccan Judiciary in the light of jurisprudence on this issue.

We will also rely on the “comparative approach” in order to compare the national laws related to the practice of the medical profession. Then the Judicial jurisprudence issued by various Moroccan courts with comparative laws belonging to different legal systems.

In the present paper, our motivation is to shed light on the relationship between the doctor and the patient. That is to say, the doctor should treat the patient with respect in terms of his feelings and health weaknesses.

The paper is divided into two parts. The first part will provide protecting the patient through international conventions.

The second part will be devoted to Patient protection through national legislation and comparative systems.

#### I. Protecting the patient through international conventions.

The purpose of the International instruments at protecting human rights in general and the patient rights in particular aim at emphasizing basic human rights, the dignity, and the equal rights of men and women. It also indicates the conditions under which justice can be achieved and the obligations arising from treaties which should be respected, and other sources of international law, advancing social progress and raising the standard of life in an atmosphere of freedom, respect for human rights, Right to freedom, Right against exploitation, Right to freedom of Religion, language and sex and no difference between men and women<sup>3</sup>.

In this context, what are the general international conventions that are directly concerned at advancing with patient rights?

What are the particular international conventions that are directly concerned at advancing with patient rights?

#### 1. the general international conventions that are directly concerned at advancing with patient rights:

The most important agreements and treaties aimed at promoting the right of the patient in the health field are in the following:

The Universal Declaration of Human Rights issued by the United Nations in 1948<sup>4</sup>.

The Universal Declaration of Human Rights as an international document is adopted by the United Nations General Assembly that enshrines the rights and freedoms of all human beings. Some of these rights can be shown in the following articles:

Article 1, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”<sup>5</sup>.

Article 3, “Everyone has the right to life, liberty and security of person”<sup>6</sup>.

Article 25, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including foods, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”<sup>7</sup>.

“Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”<sup>8</sup>.

According to the above articles, we can say that the article twenty five of The Universal Declaration of Human Rights is the one that humans derive their right to health in general and the patient in particular. Therefore, it is the main international reference for laws related to the preservation and safety of human health in all countries of

<sup>3</sup>- Preamble Article 1 of the Charter of the United Nations.

<sup>4</sup> The United Nations General Assembly issued the Universal Declaration of Human Rights in its resolution No. 217 in its session

<sup>5</sup>- See Article 1 of the Universal Declaration of Human Rights.

<sup>6</sup>- See Article 3 of the Universal Declaration of Human Rights..

<sup>7</sup>- See Article 25 of the Universal Declaration of Human Rights.

<sup>8</sup>- Ibid.

the world.

It should also be noted that the Universal Declaration of Human Rights stipulates that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”<sup>9</sup>.

2. the Arab Charter on Human Rights 1945<sup>10</sup>:

According to the Arab Charter on Human Rights in Article 4 “Every individual has the right to life, liberty and security of person. These rights shall be protected by law”<sup>11</sup>.

In Article 13: “No medical or scientific experimentation shall be carried out on any person without his free consent”<sup>12</sup>.

3. Arab Charter on Human Rights 1997<sup>13</sup>

This charter was also stipulated like the previous charter every individual has the right to life, freedom, liberty and security of person.

4. The African Charter on Human and Peoples' Rights 1981<sup>14</sup>

This charter emphasizes certain ideas that Human beings are inviolable. “Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”<sup>15</sup>. Thus, this charter includes some articles that are in the field of health such in article 16 which says “Every individual shall have the right to enjoy the best attainable state of physical and mental health. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick”<sup>16</sup>. And in article 18 “the Charter awards the family protection by the state”<sup>17</sup>.

5. European Convention on Human Rights (The Convention for the Protection of Human Rights within the Council of Europe of 1950)<sup>18</sup>

This convention affirmed a set of rights, such as: in Article 2 from this convention sets “Right to life”, and in Article 5 “Right to liberty and security”.

This later article says “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition<sup>19</sup>.

And in article 9 “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others<sup>20</sup>.

This convention also considered the protection of health among the legal restrictions imposed on the freedom of persons to declare their religion or beliefs, and to peaceful meetings and to form associations.

<sup>9</sup>- See Article 5 of the Universal Declaration of Human Rights..

<sup>10</sup>-Prepared within the framework of the League of Arab States in 1945.

<sup>11</sup>-See Article 3 and Article 4/b of the 1945 Arab Charter on Human Rights.

<sup>12</sup>- Ibid.

<sup>13</sup>-Adopted and published by Arab League Council Resolution No. (5427) dated September 15, 1997.

<sup>14</sup>-Issued by the member states of the Organization of African Unity, this Charter was adopted by the Assembly of African Presidents at its 18th Ordinary Session in Nairobi (Kenya) in June 1981.

<sup>15</sup>-See Article 4 of the 1981 African Charter on Human and Peoples' Rights.

<sup>16</sup>-See Article 16 of the 1981 African Charter on Human and Peoples' Rights

<sup>17</sup>-See Article 18 of the 1981 African Charter on Human and Peoples' Rights.

<sup>18</sup>- Held in Rome on November 4, 1950, and the texts we mention are modified according to the rules of Protocol No. (3) that came into force on December 21, 1970, and Protocol No. (5) That came into force on December 20, 1971. It was reported by: Mahmoud Sharif Bassiouni: European treaties for the protection of human rights", first edition, Dar Al-Ilm for Millions, Beirut - Lebanon, year 1989, p. 15 - p. 44.

<sup>19</sup>- The African Charter on Human and Peoples' Rights 1981, Article 5.

<sup>20</sup>- The African Charter on Human and Peoples' Rights 1981, Article 9.

## 6. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION 2000:

This charter is considered one of the most important regional conventions in the field of human health and patient rights. In its Article 2 insists that:

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

And in Article 3 “Right to the integrity of the person” in paragraph 2 “ In the fields of medicine and biology, the following must be respected in particular: the free and informed consent of the person concerned, according to the procedures laid down by law, the prohibition of eugenic practices, in particular those aiming at the selection of persons, the prohibition on making the human body and its parts as such a source of financial gain, the prohibition of the reproductive cloning of human beings”<sup>21</sup>.

It is clear from this article that free consent refers to the patient’s right to be satisfied with the medical work performed for him. These paragraphs also included the protection of the human body by prohibiting making the human body and its parts a source of financial gain, which requires the obligation not to sell human organs to human organs. Except donate them for humanitarian and therapeutic purposes as stipulated by the positive laws of most countries in the world, including the Moroccan Human Organ Transplant Law No. 98-16.

Moreover, in article 35 from this charter “Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities”<sup>22</sup>.

Also in article 34 from Charter of Fundamental Rights of the European Union 2000 asserts that:

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices<sup>23</sup>.

### 7. American Declaration of the Rights and Duties of Man 1948<sup>24</sup>

Chapter 1 of the Declaration asserts that every human has the right to life, liberty and the safety of his person, and in chapter 11 of the Declaration “every person has the right to the preservation of health and to wellbeing”.

### 8. The American Convention on Human Rights of 1969<sup>25</sup>

This convention doesn’t talk about the right to health, but it talks about the right to life in general as in article 4 in paragraph 1 which asserts that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”.

However, the right to health is included in Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights<sup>26</sup>, in article 10 asserts that:

1. “Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.

2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:

a. Primary health care, that is, essential health care made available to all individuals and families in the community;

b. Extension of the benefits of health services to all individuals subject to the State’s jurisdiction;

c. Universal immunization against the principal infectious diseases;

d. Prevention and treatment of endemic, occupational and other diseases;

<sup>21</sup>- Charter of Fundamental Rights of the European Union 2000, Article 3, and paragraph 2.

<sup>22</sup>- Article 35 from Charter of Fundamental Rights of the European Union 2000.

<sup>23</sup>- Article 34 from Charter of Fundamental Rights of the European Union 2000

<sup>24</sup>-Issued by the Organization of American States pursuant to Resolution No. (30) adopted by the Ninth International Conference of American States in 1948.

<sup>25</sup>-Issued by the Organization of American States in San Jose on November 20, 1969.

<sup>26</sup>- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, 1988

e. Education of the population on the prevention and treatment of health problems, and f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

#### 9. Special international Conventions at Advancing Patient Rights Care.

The most important Special international Conventions at Advancing Patient Rights Care are:

##### 1. Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine 1997<sup>27</sup>

This convention consists of a preamble and thirty-Eight articles, its purpose is to protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine<sup>28</sup>. It gives priority and first consideration to the human being in this field, as in Articles shows that “The interests and welfare of the human being shall prevail over the sole interest of society or science”<sup>29</sup>, and “Equitable access to health care”<sup>30</sup>.

It emphasizes taking the patient's consent for the medical work performed on him, as well as protecting people who are unable to express consent<sup>31</sup>. This convention devoted Chapter IV for "Human genome", Chapter V for “Scientific research”, and Chapter VI is for “Organ and tissue removal from living donors for transplantation purposes”.

As for the eighth chapter, it is devoted to violating the provisions of this convention and providing appropriate protection to put an end to any illegal violation of the rights and principles set forth in the convention.

##### 10. The Universal Declaration on the Human Genome and Human Rights 1997<sup>32</sup>

The Universal Declaration on the Human Genome and Human Rights was adopted unanimously and by acclamation at UNESCO's 29th General Conference on 11 November 1997. Its purpose is to protect human dignity. It is the common purpose of all international and regional conventions and conferences that dealt with the protection of human rights, as in Article 2 “Everyone has a right to respect for their dignity and for their rights regardless of their genetic characteristics”.

##### 11. Declaration of the Promotion of Patient's Rights in Europe 1994<sup>33</sup>

The document of The Rights of Patients in Europe was approved as a set of principles for the promotion and implementation of patients' rights in the European Member States of the World Health Organization. The purpose behind this document is to develop possible strategies to promote patients' rights based on the principles contained in the document and translate them into practical actions, such as laws and lists that define the rights and responsibilities of patients, health professionals, health care institutions, as well as government support, conducting national seminars and conferences, educating citizens through the media about patients' rights, promoting scientific research in this field, and cooperation between the World Health Organization, the Council of Europe and the European Union to support patients' rights.

In addition to that, this document affirms the right of every person to access health care without any discrimination<sup>34</sup>. It also referred to maintaining confidentiality and privacy regarding the patient's health status at the stage of diagnosis and treatment<sup>35</sup>.

##### 12. Declaration of Lisbon on the Rights of the Patient 1981

Declaration of Lisbon on the Rights of the Patient represents some of the principal rights of the patient that the medical profession endorses and promotes. This Declaration consists of eleven articles stating the rights of the patient, such as the patient has the right to choose freely and change his/her physician and hospital or health service institution, regardless of whether they are based in the private or public sector. As well as his right to keep his secrets and the patient's right to die in an honorable manner<sup>36</sup>. We will talk in details about these rights later.

##### 13. The Nuremberg Code 1947

The Nuremberg Court issued a set of principles that must be observed in order to satisfy moral, ethical and legal concepts. These principles formed what is known as the Nuremberg Code. the basic principles that embodied in Nuremberg Code are:

27- The Convention was opened for signature on 4 April 1997 in Oviedo, Spain. It was known as the Oviedo Convention.

28- Convention on Human Rights and Biomedicine 1997, Article 1.

29- Convention on Human Rights and Biomedicine 1997, Article 2.

30- Convention on Human Rights and Biomedicine 1997, Article 3.

31- Convention on Human Rights and Biomedicine 1997, Articles 5 and 6.

32- This decision was adopted on the basis of the report of the Third Committee, at the twenty-sixth plenary session on November 11, 1997

33- This declaration was made by the World Health Organization to the Council of Europe on the rights of patients at their meeting in Amsterdam on 28-30 March 1994

34- See paragraph (5) of the Patient Rights Clause 1994.

35- See paragraph (4) of the Patient Rights Clause 1994

36- Jean- René Linet, op.cit, p : 100.

The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

The experiment should be so designed and based on the results of animal experimentation and knowledge of the natural history of the disease or other problem under study that the anticipated results justify the performance of the experiment.

The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment<sup>37</sup>.

#### 14. DECLARATION OF TOKYO 1975<sup>38</sup>

It is considered as one of the most important international convention at the global level in terms of the protection of human rights in the face of medical experiments. It includes a set of principles and rules related to conducting medical and scientific experiments on humans.

This declaration obligated the doctor to practice his profession in the service of humanity. The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife. Also, The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture, or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened<sup>39</sup>.

#### II. Patient protection through Morocco national legislation and comparative systems.

With New Moroccan Constitution that recognizes international charters, agreements and approves their highness on our internal legislation, Morocco try to establish the most important rights of the patient.

Morocco is a signatory of a number of treaties with privacy implications, including:

- the Universal Declaration on Human Rights;
- the International Covenant on Civil and Political Rights;
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- the International Covenant on Economic, Social and Cultural Rights;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Convention on the Rights of the Child;

#### 1. Constitutional dedication to patient protection

The Moroccan constitution of 2011 does not explicitly state the rights of patients, but indicates some rights from which we can derive some of the patient's rights, such as:

#### 2. The right to life :

In Article 20 of The Moroccan Constitution Of 2011 "The right to life is the first right of any human being. The law protects this right<sup>40</sup>.

<sup>37</sup>- BRITISH MEDICAL JOURNAL No 7070 Volume 313: Page 1448, 7 December 1996.

<sup>38</sup>-Declaration of Tokyo was adopted in October 1975 during the 29th General assembly of the World Medical Association.

<sup>39</sup>- For more details see :

<https://www.sahistory.org.za/sites/default/files/DC/ChMay89.1024.8196.000.026.May1989.16/ChMay89.1024.8196.000.026.May1989.16.pdf>

<sup>40</sup>-See Article 20 of the Moroccan Constitution of 2011.

The right to life is regarded as a natural rights, as it is not possible to think of exercising any other right without guaranteeing the right to life, as it is the right of survival or the inherent existence of man, and protecting it means protecting the human race from annihilation, and with it the continuity of life and the survival of the human species<sup>41</sup>.

Most of the Arab constitutions have referred to this right, such as the constitution of Djibouti<sup>42</sup>, the constitution of Sudan<sup>43</sup>, the constitution of Somalia<sup>44</sup>, and the Iraqi constitution<sup>45</sup>. Most of these constitutions affirm the right of every individual to life, security and freedom, and these rights may not be deprived or restricted except in accordance with the law, and based on a decision Issued by a competent judicial authority.

### 3. The right to the security of person:

The right to the security of person requires the country to take reasonable measures to protect a person's security (both physical and mental). The government does this through the work of the police and emergency services, for example.

Most of the world's constitutions are not free from stipulating such rights, despite their differences in content; for example, the Iraqi constitution, which prohibits all kinds of psychological and physical torture and inhumane treatment<sup>46</sup>.

It is emphasized the same principles as the Kuwaiti constitution<sup>47</sup>, the Egyptian constitution<sup>48</sup>, the Djibouti constitution<sup>49</sup>, the Mauritanian constitution<sup>50</sup>, the Algerian constitution<sup>51</sup>...

Coming back to The Moroccan Constitution Of 2011 especially in Article 21 "All have the right to the security of their person and of their kin [proches], and to the protection of their assets. The public powers assure the security of the populations and of the national territory within respect for the fundamental freedoms and rights guaranteed to all"<sup>52</sup>.

### 4. The right to the physical integrity:

We find that the Moroccan legislator has taken care of the issue of human dignity in the light of the new constitution. According to the Moroccan Constitution of 2011 "The physical or moral integrity of anyone may not be infringed, in whatever circumstance that may be, and by any party that may be, public or private. No one may inflict on others, under whatever pretext there may be, cruel, inhuman, [or] degrading treatments or infringements of human dignity. The practice of torture, under any of its forms and by anyone, is a crime punishable by the law"<sup>53</sup>.

This means that the Moroccan legislator seeks, beyond the constitutional requirement, to achieve personal security in the physical and material dimensions, because it is a requirement that is linked to all other human rights, both physical and psychological, and its ideal goal is the right to live in peace and contentment without fear or dread.

This was followed by the new law relating to the practice of medicine. In this case, we find in paragraph 2 from Article 2 that "Every physician, regardless of the sector who belongs to and the form of his practice, must respect in his professional practice... the safety, dignity and privacy of the patients he treats..."

As for the criminal law, it was concerned with the criminalization of acts affecting the integrity of the body, such as killing, beating, wounding and poisoning, so that it was not violated except for one of the reasons for permissibility when it was permissible for the doctor and his assistants within the legally and scientifically established limits<sup>54</sup>.

### 5. Right to health care :

The State, the public establishments and the territorial collectivities work for the mobilization of all the means available [disponibles] to facilitate the equal access of the citizens [feminine] and the citizens [masculine] to conditions that permit their enjoyment of the right:

To healthcare;

To social protection, to medical coverage and to the mutual or organized joint and several liability of the State;<sup>55</sup>.

<sup>41</sup>- Muhammad Nasr Muhammad: "Human Rights between Sharia, Law and Comparative Legislation", Library of Law and Economics, Riyadh, Kingdom of Saudi Arabia, first edition, year: 2013, p.: 68.

<sup>42</sup>- See Article 10 of The Djibouti Constitution 1992.

<sup>43</sup>-See Article 20 of the Interim Constitution of the Republic of Sudan 2005.

<sup>44</sup>-See Article 16/f/1 of the Constitution of the State of Somalia 1969.

<sup>45</sup>-See Article 15 of the Iraqi constitution in force 2005.

<sup>46</sup>- See Article 27 / F / C of the Iraqi constitution 2005.

<sup>47</sup>- See Article 34 of the Constitution of the State of Kuwait 1962.

<sup>48</sup>- See Article 42 of the Constitution of the Arab Republic of Egypt 1971.

<sup>49</sup>- See Article 10 of the Djibouti Constitution 1992.

<sup>50</sup>- See Article 13 of the Mauritanian Constitution 1991.

<sup>51</sup>- See Article 24 of the Algerian Constitution of 1996

<sup>52</sup>- See Article 21 of the Moroccan Constitution of 2011.

<sup>53</sup>- See Article 22 of the Moroccan Constitution of 2011.

<sup>54</sup>-Ahmed Adryush: "The medical contract: an analytical and authentic study of the legal requirements framing the relationship between a doctor and a client", second edition, p.: 100.

<sup>55</sup>- See Article 31 of the Moroccan Constitution of 2011.

The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. The right to the enjoyment of the highest attainable standard of physical and mental health, to give it its full name, is not new. Internationally, it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The preamble further states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.” The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living (art. 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights. Since then, other international human rights treaties have recognized or referred to the right to health or to elements of it, such as the right to medical care. The right to health is relevant to all States: every State has ratified at least one international human rights treaty recognizing the right to health. Moreover, States have committed themselves to protecting this right through international declarations, domestic legislation and policies, and at international conferences<sup>56</sup>.

It is clear from international charters, as well as from foreign constitutions, that there is more than one formulation of this right, the most general of which are those used by the International Covenant and the Convention on the Rights of the Child, as well as the Constitution of the World Health Organization and the recommendations issued by it and the Alma-Ata Declaration, which is "the right to enjoy the highest level of Health is attainable" or "Health is a fundamental right".

Patient protection through national legislation and comparative systems:

The fact that the Moroccan Constitution of 2011 does not expressly recognize the rights of patients, it does not necessarily mean the complete absence of this right. Rather, several legal requirements for this right are addressed, and this can be shown as follows:

1. Law No. 09-34 relating to the health system and the presentation of treatments for the year 2011

The Moroccan legislator has authorized a set of texts that affirm the right to health, as it assured us that the health system aims to achieve a set of principles, such as the preservation of health, recovery from illness, equal access to treatment and health services<sup>57</sup>.

The Moroccan legislator also assured us that the state aims in the field of health to prevent dangers to health, to health education, to encourage the adoption of healthy lifestyles, to health monitoring, and to provide preventive or curative services<sup>58</sup>.

2. Law No. 65.00 relating to the Basic Medical Coverage Code of 2002

In Morocco, preserving the patient's medical record is an ethical obligation mentioned in articles 22, 24 and 60 of the medical doctor Code<sup>59</sup> and in Article 44 of the Code of Dentists<sup>60</sup>. It became legal with the promulgation of Law 65-00 on Mandatory Health Insurance<sup>61</sup>.

In other countries like Bahrain, we find that its legislation emphasized that the state guarantees the achievement of the necessary health coverage for all citizens in the event of old age, illness, inability to work, orphanhood, and widowhood or unemployment. It also provides them with social insurance and health care services<sup>62</sup>. Also, it is the same situation in Iraqi constitution<sup>63</sup>.

3. Law 131.13 relating to the practice of medicine.

The Moroccan Legislation asserts to respect human rights as they are universally recognized. It also monitors a set of principles that aimed to protect patient's rights, such as:

\_ the patient has the right to choose freely and change his/her physician who will treat him/her.

\_ Respecting patients' privacy, safety and dignity.

\_ The right of the patient, or when necessary, his legal representative, to obtain information related to the diagnosis of his disease and the possible treatments, as well as the prescribed treatment, its possible and expected effects, and the consequences of refusing treatment.

With reference to the need for the doctor to take into account the particularities of people with special needs<sup>64</sup>.

Moreover, The Moroccan legislator also obligated the doctor, while practicing his/her work in the cabinet, to a set of things that must be followed, which are embodied as follows:

1\_ Patient safety is an essential principle of health care.

2\_ the patient has the right to choose his/her physician who will treat him/her.

<sup>56</sup> - The Right to Health Office of the United Nations High Commissioner for Human Rights and World Health Organization, Fact Sheet No. 31, p. 5.

<sup>57</sup> - See Article 2 of Law No. 34.09 relating to the health system and the presentation of treatments for the year 2011, Dahir No. 1.11.83 issued on Rajab 29, 1432

<sup>58</sup> - See Article 3 of Law No. 34.09 relating to the health system and the presentation of treatments.

<sup>59</sup> - Kingdom of Morocco. Medical Association of Morocco. Code of Ethics Official Bulletin of 19 June 1953. p. 828.

<sup>60</sup> - Kingdom of Morocco. Order of Dental Surgeons. Code of Ethics Official Bulletin No. 3364 of 1st July 1397 (April 20, 1977) p. P523.

<sup>61</sup> - Ibid.

<sup>62</sup> - Article 5/c of the Bahraini constitution 2002.

<sup>63</sup> - Article 30 of the Iraqi constitution 2005.

<sup>64</sup> - See paragraphs 2 and 3 of Article 2 of Law No. 131.13 relating to the practice of Medicine.

3\_ Verifying the qualifications of the treatment used by the doctor while complying with the rules of professional ethics and morals, especially the confidentiality of information and medical records of patients that he may see during the exercise of his duties<sup>65</sup>.

Concerning the above mentioned arguments, we can say that the Moroccan legislator have been worked hard to advance the rights of patients, in contrast to some comparative Arab legislation, such as Iraq and Jordan, which did not stipulate in the public health law the rights of the patient directly, but only stipulated how to organize the opening of private clinics and hospitals.

#### 4. Law No. 16.98. Human Organ and Tissue Donation, Taking and Transplantation:

The Moroccan legislator has surrounded the process of taking organs and tissues from the human body, living and dead, in preparation for transplanting them into another living body, with a set of measures and conditions that must be met and available before the transplantation stage.

Most of the comparative Arab legislation has followed the direction of Moroccan legislation, for example, the Iraqi legislation, through Article 2 of the Human Organ Transplant Law<sup>66</sup>. As well as Jordanian legislation through the law of the use of human body organs<sup>67</sup>.

Significant advances have been made in improving health care in Morocco in recent years, but it does not including patient rights legislation except some laws that have been mentioned before. However, there are other countries that take into consideration the rights of the patient, such as the U.S.A which makes a special list showing the rights and duties of patients<sup>68</sup>.

In addition, for the Arab countries, we did not find charters on patients' rights and duties, except for the Palestinian Patient's Rights Charter<sup>69</sup>.

## CONCLUSION

Therefore, all those laws that have been covered in this present paper aimed to protect patient's rights through respecting his human dignity, his right to access health care services without any discrimination, his right to choose the doctor who will treat him, his right to get enough information about his health status and informed consent or denial of treatment...

In brief, the situation of the patient in Morocco still faces a big problem due to the lack of law that protects this category in terms of its rights. That's way; we come up with such points that can lead to create a law that may help this category in the future. These points are namely:

- \_ Everyone has the right to a standard of living adequate for the health and well-being of himself.
- \_ Everyone has the right to be treated with respect and dignity.
- \_ The patient has the right to choose freely his/her physician.
- \_ The patient has the right to choose freely and change his/her physician and hospital or health service institution, regardless of whether they are based in the private or public sector.
- \_ All patients have right to access their records and obtain copy of those records.
- \_ Every person has the right to refuse to participate in any medical research suggested to him by doctors.

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<sup>65</sup>- Article 43 of Law No. 131.13 relating to the practice of Medicine

<sup>66</sup>-See Article 2 of the Human Organ Transplant Law No. 85 of 1986.

<sup>67</sup>-Law No. 23 of 1977 on the Use of Human Body Organs.

<sup>68</sup>- Statement on patient Bill of rights, American hospital Association, Afrimed by the edge of trustees, November 17, 1972.

Article published on the following website:

<http://www.aha.org> consulted on: (24/02/2021) at 14:00

<sup>69</sup>- Article published on the following website:

[Ahr.org.tn/Arabic/](http://Ahr.org.tn/Arabic/) Arabic review. Consulted on: (24/02/2021), at 18:00