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Science and technology as fundamental rights: an analysis in times of the Covid-19 pandemic

Ciência e tecnologia como direitos fundamentais: uma análise em tempos de pandemia de Covid-19

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ABSTRACT: Covid-19 pandemic has put humanity in check, forcing the entire world to implement social distancing and isolation measures, affecting the planet's economy and public health. Big pharma financed, on many occasions, with public money, got involved in a runaway race to get a vaccine that could return the planet to the long-awaited normality, leaving their coffers full in the process. This paper analyzes the consequences of preventing the release of the patent for this vaccine in relation to the human right to use advances in science and technology. Using a qualitative methodology, with a descriptive scope, based on the bibliographical review, the contrast that occurs between the rights of peoples to receive the vaccine against Covid-19, as part of the right to the use of advances in science and technology as a third generation human right, and the interests of large pharmaceutical companies and private business conglomerates, in the light of Law, ethics and public health, discerning on a controversial issue that has humanity in suspense. Concluded that what is at stake goes beyond economic interests, since those who own and maintain ownership of patents will have an advantage in terms of geopolitics and, incidentally, greater control over biopolitics.

KEYWORDS: Pandemic. Right to health. Patent. Vaccination.



RESUMO: A pandemia de Covid-19 colocou a humanidade em xeque, obrigando o mundo inteiro a adotar medidas de distanciamento e isolamento social, afetando a economia e a saúde pública do planeta. As grandes farmacêuticas financiadas, muitas vezes, com dinheiro público, se envolveram em uma corrida desenfreada para conseguir uma vacina que pudesse devolver o planeta à tão esperada normalidade, deixando seus cofres cheios no processo. Este artigo analisa as consequências de impedir a liberação da patente dessa vacina em relação ao direito humano de usar os avanços da ciência e da tecnologia. Utilizando uma metodologia qualitativa, com escopo descritivo, com base na revisão bibliográfica, o contraste que ocorre entre os direitos dos povos de receber a vacina contra a Covid-19, como parte do direito ao uso dos avanços da ciência e tecnologia como um direito humano de terceira geração, e os interesses de grandes empresas farmacêuticas e conglomerados empresariais privados, à luz do Direito, da ética e da saúde pública, discernindo sobre um tema polêmico que deixa a humanidade em suspenso. Concluiu que o que está em jogo vai além dos interesses econômicos, pois quem possui e mantém a titularidade de patentes terá uma vantagem em termos geopolíticos e, aliás, maior controle sobre a biopolítica.

PALAVRAS-CHAVE: Pandemia. Direito à saúde. Patentes. Vacinação.

1. INTRODUCTION

At the end of the Second World War in the face of a bleak panorama and when verifying that all kinds of insults and abominable acts had been committed in said confrontation, the General Assembly of the United Nations approved the Universal Declaration of Human Rights (UN, 1948), with a genealogy of historical milestones such as the United States Declaration of Independence (1776) and the Declaration of the Rights of Man (1789). This Declaration was the first legal document to establish the universal protection of fundamental human rights, that is, the basic and fundamental rights that every person holds by the simple fact of being human, such as the right to life, liberty, to equality before the law, to name a few.

As time has passed, the list of these Human Rights (civil and political, known as first generation Human Rights) has grown to include two additional groups of rights, first, rights of a collective

nature (social, economic and so-called second generation) that seek better living conditions for people and, more recently, the so-called Rights of Peoples or Solidarity (peace, development, and environment), which respond to the urgent need for countries and peoples cooperate with each other to claim individual and collective guarantees, which are increasingly necessary for a dignified life for human beings (FISCHER-LESCANO, MÖLLER, 2012).

Within this latest generation of human rights is, for example, the right to peace, the environment, and the use of advances in science and technology, among others. The latter is of great relevance in the present case since immersed in it is the theme that gives reason to this investigation, since within the rights that peoples have is the right to make use of the advances in science and technology that the humanity is achieving, especially when it comes to a public health situation that affects the bulk of the population, as is the case of the Covid-19 pandemic, which puts millions of human beings in imminent danger of death.

Despite the fact that vaccines are currently being produced with very high efficacy rates (in some cases 90-95%), however, due to bureaucracy, greed and an unwillingness to release their patents, thousands are allowed to die people per day (JHU, 2021). In this regard, a train wreck is presented between the purely legal and ethical aspects, on the one hand defending gigantic economic interests and on the other defending life itself, with valid arguments on both sides as will be analyzed in the development of this work, while the virus continues to hang like the sword of Damocles over the fate of humanity, as variants and mutations of it have already appeared.

In addition to the current economic crisis that has curbed the momentum of rampant capitalism, leaving thousands on the streets and ruining large, medium and small businesses, the world has been experiencing enormous economic inequality for some time, easily evidenced when considering that the 1% of the world's population owns more wealth than the remaining 99% (Oxfam International,

2020), separating the world into two groups: one made up of a handful of solvent countries and another made up of many countries with a precarious economy with serious problems and great deficiencies. The foregoing results in the current situation in which the great powers have purchased batches of vaccines sufficient to immunize their entire population three, four and even five times and are negotiating even more vaccines, while the countries euphemistically called “in developing countries” cannot be made to them (ONU, 2021), either because they do not have the economic resources or because the laboratories already have them set aside and negotiated and there is a lack.

Added to the previous tragedy is the fact that the vaccine producers, despite having been financed with huge amounts of public money, do not allow the release of vaccine patents, putting economic interest before public health and ignoring the third generation human right to use advances in science and technology (GARCÍA, REYES, 2014; GARCÍA, 2012; GONÇALVES, 2020). If vaccine patents are not released, millions more lives will be lost, violating a third-generation human right and global health will be threatened, since as the Organization of American States (OAS, 2021, p. 5) reminds us: “no country will be safe until everyone is safe”.

This research work shows the contrast that arises between the rights of peoples to receive the vaccine against Covid-19, especially those with major sociopolitical and political problems, among which are Africans and Latin Americans, in particular, and the interests of large pharmaceutical companies and private business conglomerates, in light of Law, ethics and public health.

2. DISCUSSION HUMAN RIGHTS AND THEIR CLASSIFICATION BY GENERATIONS

In the first place, it is convenient to make a conceptual approach with reference to third generation human rights. It can be considered

that what is currently called human rights have their first origins in the heyday of the first great world empire, the Persians or also called the Medo people, and it is Cyrus II, the Great, who gave the first signs of recognition of some connatural rights to the human being that should not be taken from him, this is how it was recorded in the annals of history when the conquest by him and his armies of Babylon is mentioned, where he freed the Babylonian slaves until then, telling them that they were free of choosing the religious creed they wanted and establishing a racial semi-equity, very interesting and unique situations if we consider that we are talking about events that occurred more than 2,500 years ago, being recorded by cuneiform writing on the clay tablets that have survived to this day. , allowing their knowledge (MOYN, JÁCOME, 2015).

It must be said that it is really unheard of that before this time of transition between the modern and contemporary ages, humanity had not agreed to establish basic and fundamental rights that would cover the entire population and dignify their daily lives. However, it is true that it was not until then that a small French elite, including Diderot, D'alembert, Marat, Montesquieu and others, took on the task of claiming a dignified existence for their fellow men with basic standards. that everyone should abide by and respect (Menezes, 2016); giving rise, incidentally, to novel concepts at that time and now considered fundamental in democratic countries, such as division of powers and freedom of worship, laying the foundations for the birth of administrative law and protecting individuals from excesses that may be committed the State, and proposed to end feudalism and the prerogatives of the clergy and nobility, among many other things

This proclamation and vindication of the rights of men and citizens was also the source from which the organization that is currently called the United Nations Organization (UN) drank in 1948, shortly after the end of World War II, publish the Universal Declaration of Human Rights, then made up of 30 articles, pointing out in its preamble:

We the peoples of the United Nations resolved: To save succeeding generations from the scourge of war which twice during our lifetime has inflicted untold suffering on Humanity, To reaffirm faith in fundamental human rights, in dignity and value of the human person, in the equal rights of men and women and of large and small nations, To create conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, To promote social progress and raise the standard of living within a broader concept of freedom (ONU, 1945, p. 1).

Recognizing in this introduction that humanity had been in arrears for a long time to compensate and vindicate rights that are inherent to it by the mere fact of being born human and that equalize it in dignity with all its peers. These rights, as their name indicates, have the quality of being universal as well as inalienable, interdependent, promoting equality, equity, and non-discrimination, while encouraging participation and inclusion. This Declaration of Human Rights also echoed the pain and horror that two world wars had produced in less than half a century with millions of human casualties and the direct suffering of all the countries involved.

It should be noted that these human rights are currently recognized and have been signed by the majority of countries in the world, however, respect for them is largely optional for the countries and, at this point, it is pertinent to distinguish between rights human rights and fundamental rights, terms with which ambiguity has arisen and which, despite being used as synonyms, are not synonymous because they have a different scope. While it has been granted that human rights are attributable to all people by virtue of being human, thus having a universal scope, fundamental rights are recognized by the Constitution of a country, thus reaching a regional scope. Thus, for example, the human right to health is recognized by international instruments, while it is not a fundamental right as it can vary depending on the country.

So, although they coincide on many occasions, the main scale to differentiate them would be the territory of application, being universal in the first case and linked to the national constitution of each country in the second case. Despite the fact that in the mass media one frequently hears about the violation of human rights, these continue to be the last bastion of dignity and respect for humans on the part of themselves.

Now, with the passage of time, the need to recognize additional rights to those first that had a purely political and civil nature has arisen, appearing then the valuation of other rights of an economic, social and cultural nature, and more recently in accordance with the times that are lived, the recognition of ecological rights and solidarity. Thus, a classification of human rights has been presented in three generations based on the progress of the coverage they have had. Each of these is discussed below.

2.1 First generation rights

As already mentioned, the first recognized human rights corresponded to fundamental civil and political liberties and correspond to the individual before the State or before any authority, they are the so-called First Generation Human Rights, which have their philosophical, political and social support. both in the Declaration of Independence of the United States of America, in 1776, and the Bill of Rights of 1791, as in the French Revolution of 1789 and had as main objectives to limit the power of the State over its citizens and ensure their participation in the politics of their countries.

These first generation rights have to do directly with the possibilities of the human being to enjoy attributions such as, firstly, life, and, secondly: *“la propiedad, la libertad, la igualdad, la seguridad, la capacidad para expresar su opinión, organizarse políticamente, designar a sus gobernantes por medio del voto, etcétera”* (BAILÓN, 2009, p. 109).

Some authors, among them Gómez (2004) and Sánchez (2001) propose a subdivision of this first generation into individual civil rights

(right to life, liberty, property and security) and political or collective exercise rights. (right to vote, to freedom of assembly and of the press). Notwithstanding the foregoing, from a historical perspective these two groups of rights correspond to the liberal rule of law.

2.2 Second generation rights

Second generation human rights were conceived from the end of the 19th century and throughout the 20th century, while those of the first generation mainly defended the value of freedom, those of the second generation focus more on equality between people as a condition for they can develop their capacities and lead a dignified life, in accordance with the historical situation that the world was going through at this time; they cover economic, social and cultural rights and the responsibility of the State to ensure that all citizens have access to them.

Among the second generation rights, we can mention the right to health, to education, to decent housing, to work, among others. Its official recognition occurred in the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations Organization in 1966, entering into force ten years later, in 1976.

With them it is intended to help build a society that is not so unequal while reducing the gap between rich and poor, situations that lead to inequality, lack of opportunities, dissatisfaction, among others; It must be made clear that it is not intended that everyone have the same goods, since it would be utopian, but rather, to create the conditions so that the vast majority of human beings can have basic socioeconomic and cultural rights for decent personal development, helping their once first generation human rights are fulfilled. In other words, and summarizing what has been stated, second generation human rights have as their holder the community that decides to group together to defend their legitimate aspirations in terms of providing services and satisfying needs.

From jurisprudence, these rights can be considered positive to the extent that they require actions such as, in this case, the satisfaction of needs and the provision of services.

2.3 Third generation rights

These rights emerged from the end of the 20th century and the beginning of the 21st, as in previous cases responding to the needs that were emerging or that became more pressing during this time, seeking to vindicate the rights to justice, peace and Solidarity, through the promotion of constructive and peaceful relationships that make it possible to face the challenges, both new and those that have become more acute over time, that human beings must face for their subsistence in the planet and for the well-being of future generations.

They are known as peoples' rights, collective rights, emerging rights or solidarity rights (CASSAGNE, 2019) because they represent a common interest of a community and include peace, development and the environment, being considered from the Law as positive rights. to the extent that they demand to do something and also negative to the extent that they imply the inaction of certain facts or activities.

These third generation human rights arise as a result of the need to face global problems based on cooperation between peoples, and within them we can cite: the right to peace, to national and cultural identity, to self-determination, the environment, the common heritage of humanity, privacy, among others. Some scholars on the subject consider that they are not really a new generation of human rights but are simply the validation and vindication of first and second generation human rights, such as the case of the right to privacy (MENDOZA, et al., 2021).

Here it is worth noting that recently it has been proposed to include a fourth generation of human rights that involve the development of technology and information and access to them, being able to mention within these the right to information, pluralism and democracy. However, it is currently still just a proposal under consideration.

At this point, it is opportune to draw attention to an issue that is essential in the case of the second and third generation of human rights and that is the lack of binding nature that they present; It turns out that civil and political human rights have been given priority over second-generation ones (economic, social, and cultural) and these have been given priority over third-generation ones (justice, peace, and solidarity), so that greater importance is given and abides to a greater extent to those who promulgate the fundamental right to freedom over those who represent equality and solidarity.

Thus, greater respect for individual rights prevails over collective ones and this schism is not only nominal, it was marked by two separate treaties promulgated by the UN, the first was called the Covenant on Civil and Political Rights, the second, the Covenant on Economic, Social and Cultural, both in 1966. This fact, although it served to vindicate rights that were previously overlooked, also gave way to the separation between civil rights, on the one hand, and social rights, on the other, and to the undervaluation of some fronts. Others that have been mentioned.

This system of values that has been installed, moreover customarily, has resulted in States giving greater priority to the commitment and fulfillment of some rights over others, which are equally important in today's society, such as the right to health, education, peace, a healthy environment, to name a few. As has been mentioned, those that have been given lower priority are precisely third generation human rights and in a certain way it is curious that they are currently extraordinarily valid and are more than ever necessary in moments of multiple crises at the global level. We are talking about rights that seem to be of a barely basic logical nature and which every human being should also have for the simple fact of being such, for example: having the right to self-determination, to peaceful coexistence, to international and regional cooperation, to the use of advances in science and technology, this last reason for the present work.

However, as can be seen just by looking outside, the reality is far from what is written, a large part of the world population does not have the usufruct of these rights and, on many occasions, cannot claim them or, worse still, cannot You know you are entitled to them. In this case, it is necessary to point out, as Bidart (1996) does, that from the point of view of the Law, first generation Human Rights are given a negative character, that is, the State is only asked with respect to them to does not interfere negatively in their compliance, so that they are applied directly and that their compliance can be enforced by the courts. While second and third generation human rights are given a positive character as they need the positive participation of the State for their compliance and, in this order of ideas, it becomes very difficult for them to be directly demanded (Bonet, 2016). In the case of Covid-19, the right to health is a social right that requires a “duty to do” on the part of the State in order for the necessary conditions to be fulfilled (ALÉ, 2021).

Here, the relevance of separating Human Rights into generations and their division into civil-political, economic-social-cultural, and into rights of peoples or solidarity, would even be questioned, since this segregation would go against the principles of Human Rights such as indivisibility and interdependence, recognized in Article 5 of the Vienna Declaration and Program of Action, signed in 1993 at the World Conference on Human Rights (ACNUDH, 2013), since the nature of indivisibility would prevent this discrimination and that of interdependence would force the fulfillment of one to lead to the fulfillment of the other rights, thus presenting a clear inconsistency.

The response given by the field of jurisprudence and legality was to subsume the second and third generation within the first generation. This was done by proposing that both social, economic, and cultural rights, as well as the rights of peoples, be conceived as part of civil and political rights, that is, as annexes or accessories to them, so that by covering civil and political rights, they safeguarded, incidentally, all the others; this fixed the legal and nominal problem.

However, in practice, it washed its hands of state responsibility and left those considered minor rights without coverage: social rights and those of the people, limiting itself to demanding from States the duties of respecting, protecting and guaranteeing greater rights.

This being the case, a kind of *aporia* arises because some conditions are indicated on paper and others are met in practice, since in the case of second and third generation human rights, to a large extent, compliance is optional for each State. and discretionary, depending on multiple variables such as finances, political will, the prevailing government system, this at the local level, but there are also international circumstances such as the organizations that the country belongs to, the regulations to which it is subject and , consequently, the consequences of breaching treaties or agréments.

However, as a possible solution to this theoretical-practical dilemma, some viable options have emerged, among which we can highlight, first from the Law, the option of what is known as the justiciability of human rights and with justiciability the Inter-American Institute Human Rights IIHR (2009) refers to doing justice, and that in a model of legality it is achieved through an institutional channel, particularly through judicial mechanisms.

In the case of this writing, the justiciability for the fulfillment of the human right to use the advances of science and technology would allow recourse to the judicial system in search of protection of the unfulfilled right, determining, at the same time, responsibilities and responsible, through of due process, seeking the fulfillment of the right and the reparation to which there is place.

The second option is the one initially proposed by Van Hoof in 1984 and corresponds to the creation of a single generation of human rights, eliminating the division into generations and, rather, classifying the obligations of the State in line with the totality of these rights, independent whether they are civil, social or solidarity, so that the State would be obliged to respect, protect, fulfill and promote all rights in the same way (NIKKEN, 2010).

However, the option of justiciability and the uniqueness of human rights are still under debate and continue to be the subject of analysis, criticism and debate by international institutions legally in charge, by legal professionals and by academia who closely follow the possible future of these proposals.

Recently, with the rise of information and communication technologies and technology in general, a fourth generation has been considered that would correspond to human rights linked to technological development, cyberspace and communication. It is important to note that this classification does not correspond to a hierarchy or prevalence of some over others and the countries are under an obligation to enforce and enforce them in the same way.

3. THE VACCINE FOR COVID-19

Basically from the second industrial revolution, with the advent of electricity, and during the third industrial revolution with the birth and rise of computer systems, the world witnessed the amazing development that science and technology had, allowing to improve the quality of life of the population and predicting an anthropocentric future in the short term in which man prevailed on the planet and dominated the environment and nature. This was how, for example, with the discovery of penicillin in 1928 by Fleming, millions of lives could be saved (and continue to be saved) by being able to treat diseases of infectious origin, medicine had a prodigious advance by being able to treat many previously lethal diseases and the human being thought they had succeeded in this field (LOLAS, 2020; CASTRO, et al., 2020).

However, viruses continue to surprise us and this is how coronaviruses appeared at the dawn of the 21st century, especially Covid-19, wreaking havoc and leading the world to a pandemic and returning it to previous times of social isolation and quarantine, negatively affecting economic, social, cultural life, etc.

Within third-generation human rights, the right to use advances in science and technology was mentioned, among which could be medicines that make it possible to deal with pandemics that put the health of all humanity at risk. , a situation that until less than a year and a half ago was purely hypothetical and was the only reason for apocalyptic movie scripts, suddenly materialized and became the daily life of millions of people with the appearance of the SARS coronavirus -CoV-2, better known worldwide as Covid-19.

Looking back a bit, the situation was not totally untimely as the coronavirus family had previously given notice of its appearance with less aggressive and widespread strains, such as the Severe Acute Respiratory Syndrome (SARS) and the Middle East Respiratory Syndrome (MERS), both dangerous but did not evolve into a pandemic.

In response, the large pharmaceutical corporations undertook the task of designing and manufacturing a vaccine that could stop the virus and the resulting deaths. This is how several laboratories have managed to produce various highly effective vaccines in the shortest possible time and as the enemy It was not only the virus that had to be overcome, but also time. The research has been financed with large contributions from the treasury of several countries since it is a global public health emergency (BONILLA, 2020).

However, when the vaccines are finally available, the laboratories which belong to large pharmaceutical companies claim their ownership of the vaccine patents, turning a global public health issue into a purely economic issue. Without taking into account the public contributions made during the investigation and ethical issues (we are talking about multinational corporations with annual income of billions of dollars without counting income from this vaccine) and affecting Human Rights, including especially the right to science, technology and scientific knowledge, which guarantees access to scientific, technological and humanistic knowledge, and to benefit from the results (INSTITUTO DE DRETS HUMANS DE CATALUNYA, 2009).

It must be remembered that patents are exclusive rights that are granted by States or international organizations for the protection of an invention, therefore, they protect a product so that it cannot be copied and no one else can manufacture it (MENEZES et al., 2021). This, which is absolutely legal from the perspective of international law, runs the risk of ending up lending itself to a price monopoly and an increase in product prices, if it is not handled and regulated properly.

Despite international initiatives through specific programs led by the World Health Organization-WHO such as Covax to bring free vaccines to the most disadvantaged countries, this program is not working and the great world powers are hoarding vaccines for itself, causing a shortage of these and drastically decreasing the possibility of the rest of the countries to obtain them.

This lack of attention to this third-generation human right is more outrageous when considering that barely 16% of the world's population lives in the great powers, despite which more than 60% of vaccine doses have been administered (MARCUS, 2021; TWOHEY ET AL., 2020) and 75% of the vaccines produced are directed at ten countries, all developed and with high income. For their part, pharmaceutical companies hide behind international law and await the opinion of international organizations such as the World Trade Organization-WTO and the European Patent Office-OEP, preventing the manufacture of the vaccine from being carried out in a democratic manner, global and low cost.

In this case, pharmaceutical companies are supported by the governments of rich countries such as the United States, England and Switzerland (precisely where most of the big pharmaceutical companies are based) who argue that the intellectual property rights of medicines must be respected since they the money thus collected is what allows research to continue to develop more drugs; All of this happens while thousands of people die every day from the virus in the world and many others are abroad getting infected, and, although production continues, its scope is far from reaching a large part of the population.

This scenario would be different if third-generation human rights were binding and it was mandatory to release the patent for vaccines against Covid-19 to respond to the right to health and also to the right to use the advances of science and technology. However, we enter the world of assumptions and hypotheses due to the current segregation due to the importance given to some rights over others. So what could be done? As mentioned, it would be necessary to positivize the second and third generations of human rights, so that when their consecrated nature is recognized, they can be demanded by their holders, either individually or collectively, with worldwide recognition but also with binding nature in the legal systems of each State.

However, although the road to travel to move from non-binding norms to binding rights is long and full of complications, since it would require a general consensus and commitments and support from all States, mainly at the economic level, but also at the political, legal and social, it is necessary to go through it and the sooner the better, to respond to the urgent needs of humanity that allow a dignified life with an increasing need to be based on solidarity, to the extent that this is, as the poet Gioconda Belli declared, sample of the tenderness of the towns and one of the last loopholes in which to seek protection and refuge.

In this journey towards the recognition of third-generation human rights as fundamental rights, there are countries in South America that have made notable progress, at least nominally, by incorporating them into their national constitutions, such as Nicaragua in 1987, recognizing, for example, the right to development and to the self-determination of the peoples; Venezuela in 1999 by recognizing the right to protect the cultural and artistic heritage of humanity, Brazil in 1988 with the defense of peace and cooperation between peoples, Argentina in 1994 recognized the right to protect the environment, among others (DOMÍNGUEZ, 2005).

For the benefit of objectivity, the other side of the coin must be considered, in this case the right that pharmaceutical companies, and

companies in general, have as patent holders, covered by International Commercial Law and by Private International Law, within the canons of free trade, as well as by the right to intellectual property; In the case of patent rights, the organizations in charge of regulating them are the Trade Related Aspects of Intellectual Property Rights-TRIP and the World Trade Organization-WTO, since 1995 (PEIRÓ at al., 2021).

Similarly, big pharma argues that the problem is not so much releasing patents as exclusive exploitation rights to protect and encourage innovation, but that the fact is that there is not enough production capacity, so there is no It would be worth sharing patents if there are not enough laboratories to produce them, this statement being somewhat biased since countries like Canada, Mexico and Brazil have sufficient and adequate facilities and infrastructure for this task (OPS, 2021).

Currently, only those countries that have the patents for the 10 vaccines that currently exist (with a cutoff at the end of March 2021) can produce vaccines against Covid-19, preventing their equitable access and distribution, against which the WHO asked the UN safety council to remove, at least temporarily, the intellectual property of the vaccine so that it can be produced by other laboratories that have the capacity to do so. The answer was a resounding no from the most developed countries, who say that lifting patents would discourage private investment in innovation in an industry that, long before the appearance of Covid-19, already had multimillion-dollar profits, and ignoring that Much of the research that has been carried out on vaccines against Covid-19 is sponsored and financed with money from the public sector, mainly from the United States and Europe, in exchange for which they had access to sufficient doses to vaccinate their entire population, even up to six and seven times.

We are at this point at a crossroads where there are solid arguments that validate both positions, on the one hand: the general interest, the common good, global health, third-generation human rights, the primacy of the value of life over business; on the other:

the right that protects legal commercial activities, the right to develop science and technology, the right to industrial and intellectual property, among others. From an ethical and moral perspective, of course, there is no greater good than life and any legal action should be taken to protect it, just as common sense dictates that the general good prevails over the individual and that the achievement of a good greater, such as the protection of human life and avoiding millions of deaths from Covid-19, should come before economic gains, however the economic interests at stake are enormous, for example Pfizer has won with the vaccine against Covid-19 close to 3.5 billion dollars, and Moderna reports net benefits of 1.733 billion dollars for the vaccine for the first quarter of this year (HOOKER, PALUMBO, 2021) and, although it may sound loaded with cynicism in this case, It should not be forgotten that money moves the world and allows society to continue its march.

To conclude, some considerations are raised that allow us to have a broader panorama about the possibility of releasing the patent of the vaccines against Covid-19. To begin with, it is urgent to positivize third generation human rights in general, and in the particular case that corresponds to this work, the human right to use the advances of science and technology so that social rights are given equal weight as civilians and politicians, thus allowing the entire population of the planet to be vaccinated quickly and free of charge, through said positivization the existing gap between doctrinal theory and the binding documents that allow such a right to be claimed will be closed,

In the same way, the need for an agreed pact led by international organizations that have global recognition, such as the UN and the WHO, should be considered, which proposes a road map in the cases of lethal global pandemics and diseases that have the capacity to Should it affect large populations, said protocol could be applied to scientific discoveries, freeing them from patents seeking the achievement of a greater good, such as the well-being of humanity.

If it is considered from an economic point of view, it must be understood that the cost of treating pandemics is greater, in the medium and long term, than the cost of releasing patents. In addition, the world will not be able to feel some relief from Covid-19 and its variants and mutations until the entire world population has been immunized, establishing the herd immunity effect, that is, no one will be safe until everyone be safe, as Imperial College researcher Charlie Whittaker told BBC News (PASSARINHO, 2021).

A different hypothetical possibility would be to create a kind of cooperative pool to which higher-income nations contribute resources, similar to the current Covax initiative but with a much greater level of outreach, today Covax delivers vaccines for as little as 20 % of the most disadvantaged population (UNICEF, 2021), it would also be necessary to solve serious logistical problems such as delivery delays, access to anywhere in the world and, of course, the existence of a Sufficient stock of vaccines. A variant of this possibility could be that the costs of Research and Development, and those of production for vaccines are borne by the States in such a way that national and international capacities in these fields are strengthened and positive results are achieved more quickly and at a lower cost.

There is hope that as a species we will soon be able to recognize the invaluableity of human life and reach an agreement to value, accept and abide equally by all the rights that are recognized to man, regardless of their classification by generations, and settle the differences between the different branches of Law, reaching an agreement that benefits everyone, in the short term, and facilitates the continuity of men on the planet in the medium and long term.

CONCLUSIONS

The Covid-19 pandemic changed the world in various ways and made clear the precariousness of the existing health system,

both internationally and nationally, the vaccination process that is being carried out in the world is advancing very slowly and there is no security that the entire population can be vaccinated, largely due to the refusal to release patents for vaccines against the virus by big pharmaceutical companies and the World Trade Organization, since, on the one hand, the economic gains are fabulous and, on the other, there are legal commitments that cannot be evaded.

The foregoing despite the fact that there are some Human Rights that have to do with the right to use the advances of science and technology, let us remember that Human Rights have been refined and become more specific in response to the changes that societies experience, occurring then a classification of human rights in generations: the first generation covers civil and political rights, the second concerns economic, social and cultural rights, and the third deals with the rights of peoples, also called solidarity; these generations correspond chronologically to the XV-XVII, XVIII-XIX, and XX-XXI centuries, respectively.

Within the third generation Human Rights, which claim the rights of peoples and solidarity, is the aforementioned right to enjoy advances in science and technology, however, second and third generation Human Rights are not binding. In a way, there are questions about their ownership, since it is not entirely clear if they are individual or collective rights or who owns them. In general lines, greater legal and juridical consideration is given to individual human rights, that is, to civil and political rights, than to collective human rights, such as social and solidarity rights.

Despite the attempts to correct these anomalies, such as the justiciability of Human Rights or the search for a generational uniqueness of them, these Human Rights have not been made positive, being reflected on paper but without real actions that materialize them. This is the case with the agreement to release the vaccine patents, in a fight that for now is won by the pharmaceutical companies backed by the countries that refuse said release, either for economic, political, geopolitical and biopolitical reasons.

This gap between what is proposed on third-generation human rights and its real applicability affects the world population in general, with the most affected by the current pandemic being precisely the most vulnerable groups who require greater solidarity and support, thus, for the year 2021 the The World Bank (2020) predicts that Covid-19 and the economic recession caused by the virus will lead to poverty for nearly 150 million people, that is, they will have to live on less than two dollars a day; the justiciability and positivization of third-generation human rights, including the right to enjoy scientific and technological advances, would not be a panacea, however it would greatly improve the conditions and quality of life that many of the most vulnerable endure in the planet (Anunção et al., 2021).

The task of reaching consensus remains, then, of a long juridical, legal, social, political and cultural battle to make second and third generation human rights positive, in search of human rights really being what their name indicates, that have the quality of universal, indivisible, interrelated rights for all humanity.

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