PROTECTING THE RIGHT TO LIFE – A FUNDAMENTAL HUMAN RIGHT – BY NORMS UNDER CRIMINAL LAW

Lecturer **Ruxandra Răducanu**, PhD
University of Craiova
Faculty of Law and Administrative Sciences

The right to life represents a fundamental human right, which, due to its importance, goes beyond personal interest, being relevant for the whole society. Therefore, this fundamental right acquires a social dimension, so it is necessary to guarantee it by international treaties and conventions, as well as norms of domestic law. It is interesting to establish the moment when the protection of the right to life begins, an aspect which entails in different legislations the incrimination or not of abortion. It is also important to determine the content of this right, namely to establish whether it includes the right of a person to death.

Protecting the right to life by internal and international norms constitutes a requirement and a necessity at the same time, since it represents a fundamental attribute of the person, whose protection is strongly connected with and determines the protection of the other attributes of the person: bodily integrity, health, liberty, etc. As previously shown\(^1\), human life as social value protected by legal norms appears not only as an absolute right to life of the individual, as opposed to all citizens, but also as a social value which the objective law protects for the interest of the whole society.

The protection of the right to life is first of all consecrated by international norms, but also internal norms under criminal law, taking into account the importance the life of a person has, not only for him or her, but also for the whole society. Thus, in art. 3 of the Universal Declaration of Human Rights, it is stipulated that “Everyone has the right to life, liberty and security of person.”. In art. 6 of the International Covenant on Civil and Political Rights, it is specified that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

The European Convention on Human Rights\(^2\) guarantees the right to life of any person, but it concurrently regulates the cases when it can be prejudiced. In art. 1, it is specified that “Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. The provisions of art. 2 complete it, showing that: “Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

---


\(^2\) The Convention was ratified by Romania by Law 30 of May 18, 1994, published in Monitorul Oficial (the Official Record) no. 135 of May 31, 1994.
(b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

The European Convention on Human Rights also imposes on the states the obligation to take all necessary measures in order to ensure the effective protection of the right to life. It was considered⁴ that this obligation exceeds the primary obligation of the states to adopt an effective criminal legislation to discourage the commission of acts jeopardizing the life of a person, legislation doubled by the mechanism which should ensure its enforcement, for the purpose of preventing, combating and sanctioning the non-observance of its provisions; this obligation includes under certain, clearly stated circumstances, a positive obligation of the authorities to take preventive, practical measures, in order to protect the individual whose life is threatened by the criminal acts of another individual.

The Romanian Constitution, under art. 22, paragraph 1, stipulates that “The right to life, as well as the right to physical and mental integrity of person are guaranteed.”. As for the circumstances under which it is permitted to intentionally inflict the death of a person, our legislation excludes the execution of a capital punishment sentenced by a court, since the death penalty was repealed⁴, and the Romanian Constitution, under art. 22, paragraph 3, prohibits the death penalty.

The Penal Code in force incriminates the acts which prejudice the right to life under Title II, Chapter I, Section I entitled “Homicide”. Thus, the following acts are regarded as offences against life: homicide (art. 174), with the variants qualified homicide (art. 175), and aggravated homicide (art. 176), infanticide (art. 177), involuntary manslaughter (art. 178), and causing or aiding suicide (art. 179).

In order to determine these acts and their correct legal categorization, it is necessary to establish the moment when the right of a person to life begins to be protected, but also the moment when the protection of this right is terminated, namely the moment of death.

Taking into account the fact that the Romanian legislation incriminated only the act of illegally causing abortion⁵, fact by which are protected the social relations concerning the life, health and bodily integrity of the pregnant woman, we consider that the right to life enjoys protection under criminal law from the very moment of the person’s birth. This conclusion is also supported by placing this offence after the offences against bodily integrity and health of a person, not under the category of offences against life. Another argument would be brought by the analysis of the constitutive content of the offence of infanticide which incriminates as a mitigating form of homicide the act of the mother to kill her newly born baby immediately after birth.

So the moment of a person’s birth represents the moment from which the act of ending one’s life falls under the offence of homicide; until this moment the mother has the right to renounce the life of her foetus by abortion, without entailing consequences under criminal law. Yet, these are incidental in the situation when the abortion is not committed under the conditions and circumstances stipulated by the law, case in which the legal term is that of unlawful causing of abortion.

As a matter of fact, the European Commission of Human Rights considered that the term “any person” used in the text of the Convention cannot be applied to a child who has not been born yet. The provisions of the Convention do not recognize and guarantee the absolute right of the foetus to life, because his life is intimately connected with the life of the carrying mother and could not be perceived separately. If considered that art. 2 is applied to the foetus as well and that his protection under this

---

⁵ By Law-Decree 1/1990.
⁶ In accordance with the provisions of art. 185 of the Penal Code, it constitutes an offence of unlawfully causing abortion “the interruption of the pregnancy, by any means, committed under any of the following circumstances:
   a) outside the medical institutions or medical offices authorized for the purpose,
   b) by a person who has not the qualification of a specialized doctor;
   c) if the age of the pregnancy exceeded fourteen weeks.”
article should, in the absence of some special limitations, be considered as absolute, then one should infer that abortion is prohibited even if the pregnancy jeopardized the mother’s life. This would mean that the life of the foetus would be considered as more precious than the life of the pregnant mother.

In fact, the European Court of Human Rights did not offer a clear solution for this issue, trying to avoid an answer from which it would result whether the norms of the Convention guarantee a right to abortion or if the right to life guaranteed by these norms is also applicable for the foetus. A recent judgment decided that the starting point of the right to life depends on the assessment made by states, leaving to the national legislations the role of establishing the conditions and limits within which the right to abortion is allowed.

The final moment when a person’s life ends is the moment when the cerebral activity has ceased. This is the border between the offence of homicide and that of corpse profanation.

Another way of attempting to a person’s life is the offence of causing or aiding someone to commit suicide. This act is also homicide and it cannot be defined as a form of participation in suicide, as suggested by norms under criminal law., since suicide is not an offence. In this case, homicide is not committed directly on the victim, but the activity of the doer consists of assisting or persuading the victim to commit suicide, which means intrusion in the sphere of the social values protected by law, namely the life of the person, an aspect that cannot be ignored by criminal laws.

A justification for the incrimination of this act is that, from the point of view of the guilt of commission of the act, causing or aiding to commit suicide is an intentional act, either directly or indirectly; therefore it would be unjust for such an act to escape coercion under criminal law, whereas involuntary manslaughter is punished. It is the case of manslaughter, as well as of bodily injury causing death, act based on an intentional activity of inflicting bodily injury, having as a result the intentionally causing death of the person.

Another issue connected with the necessity of protecting the right to life is the controversy regarding euthanasia, taking into account the fact that there are countries where euthanasia is not punished under criminal law (for instance, Holland), or is not only permitted, but also regulated in detail, benefiting from medical assistance (Australia).

The European Court of Human Rights stated that the right to life cannot be regarded from a twofold perspective: the right to live and the right to die. The dispositions of art. 2 of the European Convention on Human Rights cannot be interpreted without risking a language distortion, in the sense that it would confer a right which is opposed to the right to life, namely the right to death; they cannot create a right to self-determination according to which an individual could choose death rather than life. So, it is not allowed to cause death, with the victim’s consent, either by another person or by being assisted by a public authority.

In accordance with the action or non-action of the person who performs euthanasia, it can be classified into:

- active euthanasia referring to the situation when a person is assisted to die by a third person or authority;
- passive euthanasia referring to the circumstance under which a person refuses to receive food or medication for the prolongation of his life.

---

7 The European Court of Human Rights, no. 53924/2000, Vo. V.France.
Relating to the Romanian legislation, active euthanasia fits in the frame of the provisions incriminating the act of causing or aiding suicide, thus entailing a sanction under criminal law, whereas passive euthanasia represents a means of suicide. Yet, if aiding the victim to end his life is absolutely necessary in order to reach this result and goes beyond the assistance given to the victim to put into practice the decision to end his life, the active subject falls under the category of homicide.

Criminal law protects the right to life as a social value, and not the right to the quality of life, therefore euthanasia does not find a legal justification, regardless of the conditions in which a person lives. Although the aid given to a person so as to end his life falls under the category of a criminal act, we consider that in this situation one should take into account mitigating circumstances such as the victim’s consent, but also the humanitarian reasons lying at the basis of the doer’s act.

The European Court of Human Rights enlarges the sphere of the protection of the right to life, including the acts of ending one’s life, but under extraordinary circumstances, the acts of prejudicing the bodily integrity of a person as well, acts performed under conditions jeopardizing the life of the person, even if his death did not occur11.

In conclusion, the state is the one detaining the instruments which can ensure the effective protection of the right to life, and its obligations include not only to adopt the proper legislation, but also to take the necessary measures for the protection of life.

Bibliografie

5. The European Convention on Human Rights
6. The Penal Code
7. The Jurisprudence of the European Court of Human Rights

---