

Short Considerations on The Right to Life

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ABSTRACT: It is unanimously accepted that life is the most important social value. Without respecting it, the other rights would no longer be useful. Maslow's Hierarchy of Needs reinforces this idea, with survival being the basic level in the hierarchy of human needs. Throughout history, the lack of categorical regulations at the international level has led to the tolerance of violations of this right. This paper intends to nuance some historical and current regulations on the protection of the right to life, both nationally and internationally.

KEYWORDS: human, fundamental, right, life, history, Europe, Romania

Introduction

If a century ago the normative acts regulating the right to life were not taken seriously, today, non-compliance with legal provisions can lead to sanctions both for the person who infringes this right and for the state, if it is found, following a thorough analysis, that he passively witnessed this violation.

The society fully felt the effects of war crimes, the repression of totalitarian political regimes and, with the establishment of democracy, demanded that *demos kratos* (translated *the power of the people*) be materialized not only by the right to elect the head of state, but also by establishing a mechanism of protection of the people who make up the *demos* - the citizens. The protection of the right to life is enshrined in international norms as well as in domestic norms, especially criminal law, given the importance that a person's life has not only for him but also for society as a whole (Buzatu 2013, 134; also see Corlăţean 2013, 215-220).

Although the right to life is a fundamental right, its violation can take various and complex forms: with direct or indirect intent, if the perpetrator foresaw the result of his act and pursued or only accepted the production of the result; through fault with or without foresight, if the perpetrator considered, without reason, that the result will not occur, respectively if he did not foresee it, although he had to foresee it; with exceeded intention, if the result produced is more serious than the one pursued; by omission, if there is a legal or contractual obligation to act or if the perpetrator of the omission, by a previous action or inaction, created for the protected social value a state of danger that facilitated the production of the result.

Historical aspects of the right to life

In the pre-state period, the deeds directed against social values were followed by the reaction of the injured person, a reaction that took the form of revenge. Initially, revenge was unlimited, but as it led to the perpetuation of conflicts and the weakening of the collective, the first code of laws, the Code of Hammurabi, imposed the application of the law of retaliation, symbolized by the expression "An eye for an eye, a tooth for a tooth". Thus, the injured person was obliged to retaliate in proportion to the injury suffered.

Later, however, the composition replaced this rule, because the application of the law of retaliation encouraged the doubling of social losses. The composition consisted in the agreement reached between the parties, based on which the victim received an indemnity for the harm suffered. The composition was optional, then became mandatory. After the appearance of the state, the indemnity returned to it (Mitrache 2016, 27).

In the local historical criminal regulation, the Law of Country (*ius valachicum*) tried to make difficult the anachronistic practice of the law of retaliation, by applying a fine to those who would have dared to resort to revenge. At the same time, there were situations in which relatives paid for compensation to the victims. Homicide was punishable by death, and in case of non-discovery of the perpetrator of the murder, *dușegubina* (ransom, in cash or cattle, levied in Moldova and Wallachia for murdering, adultery or abduction of a girl) was applied on the owner of the place where the deed was committed or on the village if the place of the deed was on the territory of the village. In some cases, the culprits were redeemed through money and estates. Wounds, called blood, and blows were punished with *gloabe* (a fine that is imposed on someone as a result of committing crimes or offenses), and if they caused the death of the victim, the attacker was punished with death or imprisonment and loss of estates.

The composition had a much wider application, even those punished with death having the opportunity to redeem their “head”, “neck”. The prosecution of criminals and the execution of punishments were carried out through the existence of an apparatus of special servants, usually named after their functions: *dușegubinari*, *osluhari*, *pripășari* (Cernea 2013, 152).

At national level, the right to life was regulated for the first time in the Constitution of Cărvunars, this being "the first political and legal document of the Romanians in which a system of human and citizen rights and freedoms is regulated". Subsequently, several normative acts on human rights were adopted, namely: the Organic Regulation, the Wishes of the National Party of Moldova, the Blaj Motion and the Romanian Constitutions of 1866, 1923, 1948, 1952 and 1965 (Manasia 2019).

Abortion and euthanasia

In Romania, abortion was banned by Decree no. 770 of September 29, 1966, as a measure of population growth. Exceptionally, abortion was allowed only in a few extreme situations, such as: endangering the mother's life, serious or hereditary diseases, severe physical or mental disability, the mother's age of over 45 years or if the pregnancy was the result of a rape or incest. Performing termination of pregnancy in other circumstances was punishable by law. Abortion was legalized in Romania at the end of 1989, following the Revolution.

The legalization of abortion, respectively its non-criminalization in the states where it was not forbidden, led to some controversies. In Romanian Criminal Law, it is not possible to speak at present about the recognition of the child who has not yet been born as having a right to life similar to a subject already born, who enjoys the fullness of his rights. Likewise, in the criminal doctrine there are different opinions about the moment of birth - one part considers that one can talk about birth from the moment of conception, and the other part claims that birth involves the expulsion of the fetus and the beginning of extrauterine life (Ciobanu n.d. 3).

Although, as previously mentioned, abortion is not prohibited in Romania, the Romanian Criminal Code provides for criminal penalties for those who terminate pregnancy under certain conditions, prohibited by law. For example, Article 201 provides that termination of pregnancy is punishable by imprisonment from 6 months to 3 years or a fine and a prohibition on the exercise of certain rights if it has been committed outside medical institutions or medical offices authorized for that purpose; by a person who does not have the quality of obstetrician-gynecologist and the right of free medical practice in this specialty; if the age of pregnancy has exceeded fourteen weeks. Also, the interruption of the pregnancy, committed under any conditions, without the consent of the pregnant woman, is punishable by imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights. If the deeds mentioned above caused the pregnant woman a bodily injury, the punishment is imprisonment from 3 to 10 years and the prohibition of exercising certain rights, and if the deed resulted in the death of the pregnant woman, the punishment is imprisonment from 6 to 12 years and the prohibition of exercising certain rights. The last paragraph of this article provides that it is not an offense to terminate a pregnancy for therapeutic purposes by an

obstetrician-gynecologist until the age of twenty-four weeks of pregnancy, or to subsequently terminate the pregnancy for therapeutic purposes, in the interest of mother or fetus. Also, the pregnant woman who interrupts her pregnancy is not punished.

In Malta, abortion is prohibited, and in Northern Ireland and Poland only if the woman became pregnant as a result of rape, incest, if the fetus is seriously ill or in a situation where the mother's life is endangered, and in other states abortion is prohibited if a certain number of weeks are exceeded from conception.

Euthanasia, illegal in Romania, is allowed, subject to certain conditions, in other states, such as: the Netherlands, The United States of America, Mexico, Japan, Belgium. The Romanian Criminal Code imposes, however, a reduced punishment, Article 190 providing that the killing committed at the explicit, serious, conscious and repeated request of the victim suffering from an incurable disease or a serious illness certified medically, causing permanent and unbearable suffering, shall be punished by imprisonment from 1 to 5.

At European level, contrary to the expectations, the lack of opportunity to decide on life has led to apparition of requests to the European Court of Human Rights. For example, in *Pretty vs. United Kingdom* case (ECHR 2019, 1), the applicant, who was in the terminal stages of amyotrophic lateral sclerosis, a degenerative muscle disease that is incurable, painful and unworthy, wanted to be able to control how and when she would die. Due to her illness, the applicant could not commit suicide without help, which she wanted to receive from her husband. But, although suicide was not considered a crime under English law, the facilitation of suicide was considered as such. As the authorities rejected her request, the applicant complained that her husband had not been guaranteed he would not suffer a criminal prosecution if he had helped her die. According to the summary of the judgment, the Court ruled that the right to life was not violated, stating that the right to life cannot be interpreted, without distorting language, as ensuring the diametrically opposed right, ie the right to die.

The right to life in Romania

The primacy of the right to life is also the reason why, at present, normative acts regulate this right before others. For example, Chapter II of Romania's fundamental law, the Constitution, entitled "Fundamental rights and freedoms", begins with Article 22 - The right to life and physical and mental integrity: "The right to life and the right to physical and mental integrity of the person are guaranteed. No one shall be subjected to torture or to inhuman or degrading treatment or punishment. The death punishment is forbidden." Also, the first offenses provided in the Special Part of the Criminal Code of Romania are the offenses against life, the commission of which attracts the application of the harshest punishments provided by the Romanian legislator. For example, aggravated murder, ie the intentional killing of a person, in certain circumstances expressly provided by law, is punishable by life imprisonment or imprisonment from 15 to 25 years and the prohibition of the exercise of certain rights.

The criminal code provides by art. 153 para. (3) lit. b) that the prescription does not remove the criminal liability in the case of the offenses provided in art. 188 (murder) and art. 189 (aggravated murder) and intentional offenses followed by the death of the victim. Through this article, the legislator considered that the one who, through fault, infringes the right to life of other persons, can be "forgiven" if the crime was not discovered in time.

However, as I mentioned before, punishments are also provided for those who, under certain conditions, infringe the right to life of the fetus or for those who, with exceeded intent, violate this right of other persons.

Protection of human rights at international level

Important chronological highlights on the protection of human rights at the international level include the enactment of the Magna Carta Libertatum in 1215, the ratification of the

Declaration of Independence by The United States of America in 1776, the promulgation in France of the Declaration of the Rights of Man and of the Citizen of 1789.

However, the protection of human rights was effectively addressed as an imperative of the international community after the end of the Second World War, as a result of a society reaction against the atrocities committed in the war. Thus, the Universal Declaration of Human Rights was adopted by The United Nations General Assembly on December 10, 1948, the document containing 30 articles on human rights (Corlăţean 2015, 10).

At European level, the most important moment is the signing, in 1950, of the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights, ratified by Romania by Law no. 30 of May 18, 1994, published in the Official Gazette no. 135 of May 31, 1994.

The right to life – ECHR

The European Convention on Human Rights states in the first paragraph of Article 2 that “the right to life of every person is protected by law and that death cannot be intentionally caused to anyone except in the execution of a death sentence handed down by a court when the crime is sanctioned. with this punishment by law”. As is well known, the second sentence of this paragraph has fallen into disuse as all member states of the European Union have abolished the death penalty. Belarus is the only country on the European continent that continues to serve the death penalty, while in Russia there is a moratorium.

The following paragraph sets out the situations in which member states may infringe these social values by providing that “death shall not be deemed to have been caused by a breach of this article in cases where it would result from an absolute use of force:

- a. to ensure the protection of any person against unlawful violence;
- b. to make a lawful arrest or to prevent the escape of a lawfully detained person;
- c. to repress, in accordance with the law, violent disturbances or insurrection”.

As stated in European case law, paragraph 2 does not designate “the cases where the intentional killing of a person is permitted, but describes situations where the “use of force” is permitted which may, as an unintentional result, result in death. However, the use of force must be “absolutely necessary” for the purpose of achieving the purposes of points a, b or c” (McCann and Others, paragraph 148).

It is no coincidence that I chose to emphasize the word “absolute”. The jurisprudence of the European Court of Human Rights reveals a high level of exigency on this issue. For example, in *McCann and Others vs. United Kingdom*, the European Court held that the shooting of persons who were reported to be detonating a bomb was a violation of Article 2 in the event that the danger could be removed without necessary to kill suspects.

Obligations of states

The authority overseeing compliance with the Convention and the additional protocols by the signatory states is called the European Court of Human Rights. It intervenes when it is notified and finds that the obligations assumed have not been complied with.

In the event that the applicant's application fulfills the conditions of admissibility, the Court will rule on Article 2 of the Convention by examining two aspects:

- substantially: regarding the observance of the positive duty of care by the claimed state;
- procedural: regarding the observance of the procedural obligation to carry out an effective investigation regarding the death of a person.

In any criminal case which has resulted in death - it has been revealed by the Court's practice - Member States have a procedural obligation to carry out an effective investigation into the death of a person. An investigation is effective if it meets certain standards, among which I mention: to be suitable to lead to the discovery of the facts and the discovery of the

perpetrator, to be prompt, to be initiated *ex officio*, the investigators to be independent, the evidence to be preserved.

As regards the ability of an investigation to lead to the discovery of the facts and to the finding of the perpetrator, it should be noted that this is not an obligation of result, but an obligation of means. In this regard, the Court will examine whether the authorities of that State have taken the necessary steps to find out the truth.

The positive duty

With regard to this obligation, the Court examines whether the State against which the application was made would have been able to prevent and prevent the death of a person. In this regard, the European court considers that “states are not only obliged to refrain from causing death voluntarily and illegally, but also to take the necessary measures to protect the lives of persons under their jurisdiction, in particular by establishing an efficient criminal law supported by a mechanism for enforcing this legislation.”

It can be observed, therefore, that, by making a more or less appropriate analogy with domestic criminal law, the judgment finding a breach of this obligation is equivalent to pronouncing a solution to the conviction for committing an offense against life by omission. In order to avoid such a ruling, states must not only enact effective domestic law to effectively protect the right to life, but must also minimize any risk to that right when there are indications that a person’s life “is threatened by a real and imminent risk due to the criminal acts of a third party.”

Quantitatively, Article 2 of the Convention does not impose on the authorities an impossible or excessive task, but a reasonable one, with the complainant having to prove on the basis of evidence that the authorities knew or should have known that the victim’s life could have been in danger. Unlike the principle of necessity, which requires compliance with strict requirements between certain parameters, the positive obligation is not exhaustively defined, this flaw leading to the issuance of criticizable decisions and the emergence of controversy in the judiciary environment.

One of the most controversial rulings of the European Court of Human Rights is the *Osman vs. United Kingdom* case. The plaintiffs Mulkiye and Ahmet Osman, the wife and son of the late Ali Osman, invoked non-compliance with art. 2 substantially, since, in their view, the latter's death could have been avoided by complying with the duty of care.

Osman vs. United Kingdom

According to the summary of the judgment, Mr. Paget-Lewis, a teaching staff member and perpetrator, admitted that he had developed an obsession with student Ahmet Osman, manifesting deviant behavior. Although the psychiatrist who examined Paget-Lewis did not consider the concerns justified, he mentions that “his way of forming a friendship with a student is suspicious and reprehensible.” The same doctor later found that Paget-Lewis “should be kept away from Homerton House” and declared him temporarily incapable of work, recommending that “his patient should be excluded from the teaching staff at Homerton House and transferred as soon as possible for medical reasons.”

The evidence and suspicions about Paget-Lewis's involvement in the denigratory inscriptions on the friendship of Ahmet Osman and Leslie Green, the attacks and acts of vandalism on the property of the Osman family, the collision between the cars in which Leslie Green and Paget-Lewis were, were not considered by to the authorities’ good reasons for his arrest, although he himself stated that he was going to commit a crime. Although the police stated that “families will get protection from the police”, this promise did not materialize, for unknown reasons. This was also Paget-Lewis's perplexity after he wounded Ahmet Osman and Mr. Perkins, the school principal, with a pistol, and killed Ali Osman and Mr. Perkins’

son, at the time of his arrest, asking the authorities why they had not arrested him before killing, claiming that he provided all the necessary preventive clues.

Although I am not sure that the summary of the judgment fully contains the data on which the Court based its solution, I have tried to read the government's defenses with deep empathy. Despite this effort, I still consider that the court's decision was erroneous and that it erred in finding that there had not been a substantial violation of Article 2 of the Convention. I fully agree with the divergent views that the authorities underestimated the danger posed by Paget-Lewis and had sufficient data to outline the possibility of committing such serious acts, as I find it difficult to appreciate that the latter's assertions were not sufficient for the application of a penalty. This purpose leads me to wonder what the solution of the European court would have been if it should have ruled on a recent incident in Romania - the murder by a man of his concubine and stepson shortly after the couple appeared on a TV show, during which the woman stated that he repeatedly assaulted her and threatened to kill her.

Conclusions

Despite the recent desire to adopt uniform legislation at the international level, I believe that laws must be compliant, adapted to social reality, as the mentality, customs, traditions and values of one state will never completely coincide with those of another state.

Although, treating the issue of abortion with deep empathy, I can say that I oppose it, I believe that studies and statistics that reveal the lack of sex education among young people, the number of births as a result of sexual acts without consent, the minimum wage in some countries and the real possibility for young mothers to raise a child, taking into account existing shortages, should be taken into account.

However, with regard to the duty of care and with regard to the cases of *McCann and Others vs. United Kingdom* and *Osman vs. United Kingdom*, we reiterate that the ECHR shows a high level of tolerance and that, in issuing such decisions, it may encourage the lack of a prompt response from the authorities, discouraging necessary measures for the protection of life.

References

- Buzatu, Nicoleta-Elena. 2013. *Forensics*. Bucharest: Pro Universitaria Publishing House.
- Cernea, Emil and Emil Molcuț. 2013. *History of The Romanian State and Law. Terminology of The Old Romanian Law*. Bucharest: Universul Juridic Publishing House.
- Ciobanu, Valentin. n.d. "Aggressions against the fetus – reality and perspectives." Available at https://drept.unibuc.ro/dyn_doc/publicatii/revista-stiintifica/Valentin%20Ciobanu.pdf.
- Corlățean, Titus. 2013. "Protection of Human Rights Through International Treaties in the Non-European Regional Systems." In *Dreptul* no. 5: 215-220.
- Corlățean, Titus. 2015. *European and International Protection of Human Rights*. Bucharest: Universul Juridic Publishing House.
- ECHR. 2019. *The End of Life and The European Convention on Human Rights*. Available at https://www.echr.coe.int/documents/fs_euthanasia_eng.pdf.
- ECHR. *McCann and Others vs. United Kingdom* (no. 18983/91) judgment. Strasbourg. 27 September 1995. www.asylumlawdatabase.eu.
- ECHR. *Osman vs. United Kingdom and Northern Ireland* (no. 87/1997/1083) judgment. Strasbourg. 28 October 1998. www.hudoc.echr.coe.int.
- European Convention of Human Rights, ratified by Romania by Law no. 30 of May 18, 1994, published in the Official Gazette no. 135 of May 31, 1994. Available at https://www.echr.coe.int/documents/convention_eng.pdf.
- Key information on the death penalty in Europe and in the world. www.europarl.europa.eu.
- Law no. 286/2009 on the *Romanian Criminal Code*, with subsequent amendments.
- Manasia, Mihaela. 2019. *Legal Aspects Regarding Right to Life*. Bucharest: Universul Juridic Premium Journal, no. 7/2019.
- Mitrache, Constantin and Cristian Mitrache. 2016. *Romanian Criminal Law. The General Part*. Bucharest: Universul Juridic Publishing House.