

# THE RIGHT TO LIFE FROM THE PERSPECTIVE OF SOCIAL, LEGAL AND MEDICAL APPROACHES

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## **Abstract**

*The legal-social-medical issues addressed in this article contain a series of approaches in the field of the supreme law – the right to life of the human being. In this bipolar world, the individual as a biological being lives in the dimension of two existential plans, namely a real world and a virtual new world, created as a consequence of technological progress. There still remains a series of controversies for which the doctrines of law will find the legal-regulatory formulas of the modernity current that mankind lives in today.*

**Keywords:** *Criminal law, right to life, society, fetus, euthanasia, end of life.*

## **1. INTRODUCTION**

Criminal law is called upon to provide the appropriate legal framework for the defense of fundamental social values within any rule of law.

Being a significant component of the system of law, criminal law “encompasses the fundamental requirements for the behavior of citizens and for the social values to be protected by applying the legal constraint in its most serious forms (punishment)” [1].

Moreover, being about a real progress of the society that “in its pluralism and diversity creates not only factors that respect and protect the fundamental values of society, but also negative factors that challenge these values”, the criminal law has the task of organizing a legislative framework that does not have gaps so those who seek to penetrate this criminal realm cannot do it and, at the same time, it has the task to take action against those who hinder the social life of other individuals. However, this need for a continuous reform of the criminal legislative framework must be based on two important factors, namely: on the one hand, “the need to respect the fundamental rights of both the victim and the aggressor”, and, on the other hand, “the need to avoid the abuse of those in charge with combating criminal behavior, so that the society’s riposte to combine efficiency with the legality and impartiality of the organs that exercise it, the only ways in which modern society conceives the fight against crime” [2].

Considering the primary objective of the criminal reforms that has as a starting point the observance of human rights, we consider that it is up to the member states of the Council of Europe in the process of their own reforms to adapt, in the first place, their criminal legislation to the requirements of the European Convention, “the provisions of the Convention also becoming European standards for national legislation” [3].

Among the social principles and values protected by the criminal procedural law, ensuring the protection of the human beings and their rights has a special place. This protection can only be achieved by establishing a well-defined, legally reinforced legal framework, on the basis of which the unlawful acts infringing the rights or interests of the human being are severely penalized.

As a result of shaping a legal framework that protects the rights and interests of the human being, we notice that in the contemporary society, are incriminated both the facts that are directed against life, body integrity and health, freedom, sexual inviolability and dignity of an individual, and other types of facts which may affect an individual's interests.

## **2. Principles**

We believe that the right to life can be seen and analyzed as the most important sacred right of the human being. It is appreciated by the Romanian doctrine, not only as an absolute right, opposing erga omnes, the entire social body being compelled to respect it and also to refrain from any action or inaction that would, whether willingly or not, harm or even jeopardize this supreme social value. As we know, this fundamental right, looked upon at the rank of a fundamental principle, has been protected since former times and in all laws.

The right to life is a fundamental principle, because it is the very condition of exercising the other guaranteed rights. However, it should be made clear that this fundamental right has a double limitation, namely: the first, stipulated in art. 2 of the European Convention and the second, in art. 15 of the same document.

The Universal Declaration of Human Rights provided in Art. 3 that “every human being has the right to their own life, liberty and security” and the International Covenant on Civil and Political Rights provided in Part III Art. 6 point 1 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”.

### **3. The content of the right to life. The beginning of life**

A problem that we face today, from a practical and doctrinal point of view, is highlighted by the moment when the right to life begins and the one when it ends. The specialized literature stated that, “The moment when life begins and ends, other than in the natural way, as a subject of criminal protection, has for some time been the subject of controversy in the criminal doctrine. Paradoxically, the right to life (...) does not enjoy the stability of well-defined borders” [4].

In the doctrine there were concerns for a conceptual delimitation of the beginning of the life of the human being, which according to some authors begins from birth, while others have also taken into account the period of conception.

With the exception of the United States Convention on Human Rights (adopted on 22nd November 1969 in San Jose), which states in art. 4 that the right to life must be protected “generally at the moment of conception”, the most part of the international texts refer to a right that protects the living being and not the being to be born. [5]

A thorough analysis of the initial moment of life was carried out by international bodies highlighted in the international context in the case law on abortion and the rights of the unborn child.

In Case X against the United Kingdom [6], the European Commission considered that art. 2 of the European Convention did not give the fetus an absolute right to life. The life of the fetus is intimately linked to the life of the woman wearing it, and it cannot be considered separately. If it were considered that art. 2 also applied to the fetus and that the protection afforded by this article should, in the absence of certain express limitations, be regarded as absolute, it should be deduced from this that abortion is forbidden, even when the pregnancy would endanger the mother’s life. This would mean that the life of the fetus would be considered more precious than the pregnant mother’s life.

Surprisingly, in our country, the problem of the human embryo is not addressed in any legal way, so it is extremely difficult for the competent bodies confronted with limit

situations to determine the moment of human being's onset of the right to life and implicitly if one can speak about a possible violation of the norms of the criminal law.

Criminal jurisprudence and doctrine in Romania, due to the legislative vacuum, could not make decisions in a unitary sense, for example, the criminalization of the murder deed occasioned the expression of several points of view. The majority opinion considers that the moment of appearance of a person protected by the criminalization of the act of murder is that of the complete detachment of the fetus from the mother's umbilical cord, that is, when the product of conception is no longer a fetus but a newborn, having a life independent of that of its mother. [7] Thus, we appreciate that, through such a perspective, the fetus is not seen as a human being, not having the right to be subject to the law on the protection of the right to life.

However, we know that the Romanian legislator offers a degree of protection to the fetus by criminalizing the crime of qualified murder on a pregnant woman. Thus, we believe that protection is granted to the fetus under art. 2 of the European Convention because, although the active subject of the crime of qualified murder on a pregnant woman is about killing a pregnant woman, it is inevitable that the fetus's life is inevitably affected by the material element.

From a doctrinal point of view [8], Stănoiu appreciated that, "the increase in the worsening for this circumstance is justified by the fact that the killing of the pregnant woman also involves killing the fruit of the conception (the fetus), which, although it is not the equivalent of a plurality of victims, it nevertheless means a double touch to human life". Last but not least, it was rightly assumed that this form of extraordinary homicide recognizes additional criminal protection for the still unborn being, similar to the murder committed on two or more individuals" [9].

#### **4. The end of life. Euthanasia**

Concerning the end of life, it is questionable whether the right of the same person to die correlates with the right to life enjoyed by any human being, referring here to the active or passive euthanasia [10] or even to assisted medical suicide.

By active euthanasia we understand the action of a person to end a patient's life, with or without their consent (for example, the action of the doctor administering the patient in the terminal phase of the disease a lethal injection). On the other hand, through passive (indirect) euthanasia, we understand causing the death of a sick person through the passivity of the one obliged to ensure that an act is accomplished or even through the interruption of an act thereby causing the willful death of a person.

This distinction between the two denominations has provoked a series of controversies in doctrine, being harshly criticized [11], asserting that the notion of passive euthanasia is nonsense, as it is in fact the absence of a therapeutic intervention. It is thus appreciated that the term passive is not the most appropriate and correctly used because the discontinuation of treatment often involves an act and therefore presupposes an active attitude and not a passive one as it was defined.

In the case of *Pretty v. The United Kingdom* [12], the European Court found that art. 2 is drafted in other terms than, for example, art. 11 of the European Convention, which regulates not only the right to free association, but also its negative aspect – the right not to be forced to associate. Article 2 has nothing to do with the quality of life or with what a person chooses to do with his or her life. These aspects are recognized as fundamental to the human condition, so they require protection from state interference, which can be found in other articles of the European Convention or other international instruments. Article 2 cannot, without risking a distortion of language, be interpreted as conferring a right diametrically opposed to the right to life, namely the right to die; it cannot create a right to self-determination, according to which an individual could choose death, rather than life. The European Court has held that it cannot be deduced from art. 2 of the European Convention the right to die, either with the help of a third party or with the help of a public authority.

According to the Romanian criminal doctrine [13], life, as a biological attribute of an individual, is the synthetic and fundamental attribute without which none of the other attributes of the individual could exist. It is thus appreciated that life from a biological value becomes a social and legal value. The criminal doctrine states that the endpoint of life coincides with cerebral death by reference to the vital functions of the body (respiratory, cardio-circulatory and cerebral) [14].

From a legal point of view, the final moment of life is of particular importance in determining the legal framing of the act by which a bodily injury occurs to a person who, due to the injuries he has, is in a vegetative state for a long time without, however, taking into account a possible brain death, and in respect of which the medical opinions clearly indicate the lack of a chance to survive. Taking into account the advances of medicine in conjunction with the state of the technology used in this field, we note that it is possible to keep a person in a vegetative state alive for an even longer period of time, as long as there is no definitive diagnosis of brain death. Current criminal doctrine and jurisprudence is of the opinion that, until the time of brain death, criminal prosecution or trial can only involve an attempt of those offenses that inherently affect the right to life, even if the medical opinions would indicate the certainty of death in the near future.

## 5. Short conclusions

We believe that, in the future, the issue of the time of death should be more compulsive taking into consideration the particular development of medical technology in the world. In this respect, those in charged with enforcing certain normative acts must take into account the changes that occur globally at all levels of the social and technological sphere in order to avoid certain legal situations caused by a possible legislative vacuum which could only lead to controversy and to the lack of some truly practical solutions for the points of beginning and end of the most important right attributed to the human being, namely the right to life.

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