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The Right to Life

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Abstract: In the present study, we set ourselves to analyze a subject, which, due to its importance and extreme complexity, generated many discussions and controversies both at national and international level: the right to life. The great evolution of the contemporary society and the progress registered in various fields brought into the attention of the states, international organizations, specialists in the field and public opinion the pressing problem of interpreting the content and limits of the human fundamental rights and liberties. We set ourselves to analyze the main international instruments regulating the right to life and to identify the situations where determining the content of this fundamental right is necessary. Without the intent of a complete work, we understand, throughout this study, to highline the great importance of the right to life respecting for the entire humanity.

Keywords: rights and liberties; the right to death; human dignity

1. Introduction

The human being, the supreme value of the humanity, benefits from rights, coming from its quality of human being, wherever, no matter the state or region where he was borne, lives, no matter the nationality, race, sex, religious and philosophical beliefs, material status. All these elements are the foundation of the equal and inalienable rights, a corollary of liberty, justice, security and world peace.

In the contemporary society, characterized by fast progress in fields like medicine, biology, chemistry, and most of all informatics, the problem of respecting the fundamental human rights is often invoked. The interest aroused by this problem is the indisputable acknowledgement of the importance of fundamental rights and liberties, extremely complex institution (Maftai, 2010, p. 113), without which we can't talk about a really democratic society, fundamental element – in order to promote the human dignity at national and international level.

Between the fundamental human rights regulated in different national and international documents, a special place is taken by the right to life. This way, the Universal Declaration of Human rights, provides the right of every human being to life, liberty and person's inviolability (art.3). Also, the human right to life health, interdiction of torture and of degrading and inhuman treatment, as well as the respect for private life (art. 2, 3, 7, 8) are provided by the European Convention of Human Rights. At national level, the Romanian Constitution by the art. 22, regulates the right to life, to physical and mental health of the person, in art.26, align. 2, it provides the right of every person to dispose of its own person, without prejudicing the rights and liberties of others, the public order or the morals, art. 34 of the fundamental law guarantee the right to health care.

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The special evolution of science and technique generated more than once situations when it was proved that the legislative system cannot keep up with the technical progress. Instead of giving answers to many unknown facts, the researches in medical, chemical, biological field generated other new questions, drawing the attention of the specialists from various fields both on national and international level. In the last years the controversies regarding the human euthanasia and of its legal regulation in various states grew. Also, the progress registered in medical research generated heated debates regarding the human cloning, the medically assisted reproduction, and the organs removal. These aspects, to which we may add the legal regulation of abortion, are poses of the right to life, aspects that generated special reaction both inside social groups at national and international level, and between specialists in different fields.

More and more often, the public opinion raises questions like: Can the right to die be considered correlative to the right to life? Is it or is it not a problem regarding “the help given in order to end suffering” of an incurable ill person? Is there a justification for ending a life if it is done with the intention to stop someone from suffering? Why abortion can be accepted by law and euthanasia not? Is there a warranty that taking the life of an unborn child is less serious than stop and incurable ill person from suffering (Pavel, Coman, & Boroi, 2011, pg. 771-775)? Which is the moment when we can talk about the existence of the person as subject of law? Must we recognize the quality of „potential human being” to a fetus (Ungureanu & Munteanu, 2011, p. 40)?

2. The Main International Instruments Ensuring the Protection of the Right to Life

2.1. Universal Declaration of Human Rights (10 December 1945)

In the attempt to fulfill the common wish to limit the human exploitation and violence, of eradication of racism and discrimination as well as of inequality between people, the preoccupation for promoting and defending the human rights and liberties extended at international level (Drăganu, 1998, p. 205).

The Universal Declaration of Human Rights, document with emblematic value, proposes in the Preamble a common ideal, which should be the target of all nations “*for all the persons and all the society’s organisms, taking permanently into consideration this declaration, to make efforts, by study and education to develop the respect for which these rights and liberties to ensure, by progressive national and international measures, their universal and effective recognition and enforcement both in the member states and in the territories under their jurisdiction*” (Maftai, 2010, p. 117).

The Universal Declaration of Human rights is the first international document with vocation of universality in the matter of human rights. The starting point is the necessity to acknowledge a minimum level of human rights, its respecting at universal level and the identification of a unitary opinion regarding the human rights and liberties (Udroiu & Predescu, 2008, p. 5).

This international document acknowledges principle of great importance, from which we mention:

- art. 1: „*All the human beings born free and equal in dignity and rights*”.
- art. 2: „*Each human is entitled to all rights and liberties proclaimed by the present declaration with no differences, race, colour, sex, language, religion, political opinion or any other opinion or any other circumstances*”
- art. 3: „*Any human being has the right to life, liberty and security of its own person*”.
- art. 4: „*Nobody shall be kept into slavery, or easement, the slavery and the commerce with slaves are forbidden in all their forms*”
- art. 5: „*Nobody shall be subjected to torture, or to cruel, inhuman, degrading punishment or treatment*”¹.

By stating these principles, the declaration recognizes the main character of the right to life as

¹ http://www.onuinfo.ro/documente_fundamentale/declaratia_drepturilor_omului/.

inalienable and indispensable right in order to warranty all the human rights and fundamental liberties, “the supreme value in the international hierarchy of human rights” (Sudre, 2006, p. 213).

Even if it’s not legally binding, because it isn’t a treaty, the Universal Declaration of Human Rights imposes by the value of the principles it recommends to the states. The Romanian constitution, in art 20, says: “*The constitutional dispositions regarding the citizens’ rights and liberties are to be interpreted and enforced according to The Universal declaration of Human Rights, with the Pacts and other treaties Romani is part*”. (s.n.)

2.2. *The international Pact regarding the civil and political rights*

In December 1966, the General Meeting of UNO adopted two pacts regarding the human civil and political rights, which Romania ratified on 9 December 1974.

This international document has the juridical force of a treaty, generating juridical obligations for the signatory states. The international Pact regarding the civil and political rights acknowledges in the Third part the right to life.

This way, the article 6 from the Pact provides the compulsory care of the right to life by establishing a legal system, which will acknowledge the rule stating that no human being is to be deprived arbitrary by its life (point.1). Far more, is provided that the national legislations regulating the death penalty must be consistent with the dispositions of this Pact and with the ones in the Convention for preventing and suppression of the genocide crime (point 2).

From the quoted texts, it results that the provisions of this Pact states in the signatory states’ obligations to develop a legislative system at national level, to ensure the absolute respecting of the human rights and fundamental freedoms.

2.3. *The European Convention for the Human Rights and Fundamental Freedoms’ Protection*

The European Convention for the human rights and fundamental freedoms’ protection (Rome 4.11.1950) is the fundamental document developed at the European Union’s Council in the matter of human rights. (Udroiu & Predescu, 2008, p. 10) With the merit of being the first instrument to organize the protection of the individual towards the state of nationality, this convention provides the states’ obligation to respect the right to life, to prohibit torture even when there is a danger threatening the life of the nation. (art. 15).

The right to life is regulated in article 2 from the Convention, according to which „*The right to life of any person is protected by law. Death cannot be caused with intention, except the death penalty given by the court of law when the crime is sanctioned with this penalty by law*”.

Analyzing in detail the cases where there is no violation of the right to life, in the line 2 of the same article, the Convention provides that „*death is not considered to be caused by the violation of this article in case it results from force proven to be absolutely necessary*”:

- a) *in order to ensure the protection of any person against illegal violence (self-defence);*
- b) *in order to make a legal arrest or to prevent the escape of a person lawfully detained;*
- c) *in order to suppress, according to the law, a riot or an insurrection”.*

According to this regulation, it results that the right to life is “*intangible*”. By adopting the Protocol 6 of the European Convention of Human Rights, the European Council gave a special attention to death penalty, stating the rule according to which “*nobody can be convicted to such a penalty, nor executes*”, excepting the cases when, at national level is provided the death penalty for exceptional situations (crimes of war or of imminent danger of war). The Protocol 13 of the same convention, signed at 3 May 2002, solves this problem in a radical way by determining the member states of the European

Council to eliminate the death penalty in any circumstances, eliminating any derogation from this rule.

The jurisprudence of the European Court of Human Rights was a fundamental element in the research of the content regarding the right to life, confronting with cases where there was asked to identify the limits of the right to life in cases of euthanasia, and regarding the right to life of the fetus.

In the jurisprudence of the Court there are various cases regarding the protection of the right to life including cases regarding euthanasia, the right to life of the fetus, and situations where there was asked for the conviction of the states for breaking the right to life by the lack of investigations in cases of missing or suspect death (Selejan-Guțan & Rusu, 2006, p. 136)¹.

Taking into consideration the existing regulations in the field, the great evolution of the society and of technical and scientific development registered in some fields, the existence of the human being and implicitly, the human rights raised a great interest at international level. This way, there were discovered techniques of medically assisted procreation, which helped to find an answer to sterility and infertility, and gave the right to be parents to persons suffering from this problem. But, at the same time, new questions raised. In many states there was no specific legislation and even if the vitro fertilization techniques were used to give birth to children.

A subject generating great debates was the one referring to the determination of the moment when the human being exists as person (Turcu, 2010, pg. 423-449.). There were formulated more hypotheses, from which we mention the response of the European Commission of Human Rights, who, in 1979, decided that „person” can be considered only the borne child, not the conceived one. There were other points of view starting from the principle *infans conceptus* and according to which, the right to life must be recognized event o the embryo (Ungureanu & Munteanu, 2011, pg. 39-40).

A special case deducted to the settlement of the European Court of Human Rights is *The case of Evans v. the United Kingdom* (2007).

Also, the European Court was asked to solve a recognition request of the right to death, as a component of the right to life (Selejan-Guțan & Rusu, 2006)². In Europe, only a few states, Belgium, Holland, Luxemburg and Switzerland allow the assisted suicide, but only in the case of severely ill patients and in certain conditions.

At present there is a cause where the Romanian state is defendant, ECHR being asked to judge the situation of some embryos (a number of 16) which were taken from the Sabyc clinic after an investigation and gave into custody to the National Institute of Forensic Medicine.

3. Conclusion

The international society, scene of profound legislative changes, is confronting with a problem which always attracted the interest of the specialists, and not only, the matter regarding the respect of the fundamental human rights and liberties. At international level, a special attention is given to the juridical protection of the human rights, specialists being permanently looking for efficient solutions in order to protect the human being against any form of abuse.

Even if there are many national and international regulations, though, none of these texts gives a clear definition of this right. The existing controversies generated many questions regarding the concept of „life” in the context of the technical and scientific progress generated a great number of questions regarding the content of the right to life, the „frontiers” of this right, the European Court of Human Rights being asked to decide many times regarding the violation of these limits

¹ ECHR - Timutas Cicek și Akdeniz. v. Turkey 2000-2001.

² ECHR - Pretty. v. United Kingdom 2002

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