

The right to life and criminal-law protection of the human person in the Western Balkans

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Abstract

The basic principle for which a democratic governance stands, are expressed in the "Declaration of Independence of the United States of America with the words of *Thomas Jefferson*:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed"

The government of a democratic state does not exist to recognize the basic human rights, but to respect and guarantee the protection of these rights that any person possesses and benefits due to his existence starting from the most important right: The right to life, which is faced against the duty of the state for the protection of the human person's life! In this sense this article analyzes the criminal-law protection of life in the Western Balkans.

Keywords: *The right to life, the criminal-law protection of life, Western Balkans.*

Introduction

The process of the democratization of a state and society passes unquestionably by the recognition and respecting of human rights and fundamental freedoms, and above all by guaranteeing these rights. Historically, in the name of democracy, there have been numerous efforts to respect human rights and fundamental freedoms. As widely known, the origin of the word democracy is derived from the words: "demos" = people, "cratos" = power and is defined as "the power of the people" or as "the governance of the people by the people" being characterized as a particular form of the government accomplished in the name and on behalf of the majority. The level of democracy increases in direct proportion to the extension of a greater participation of the citizens in the selection of the state government bodies and in the governance of the country. Therefore, it is logical that, in this case, for the full recognition and implementation of democracy, the guarantee of the human rights and fundamental freedoms is of a firsthand importance. However, often, arbitrary positions and infringements of human rights and fundamental freedoms, the non establishment of the appropriate institutional mechanisms by the states in order to protect these rights have led to the outrage of human dignity and to the creation of serious obstacles for the implementation of real democracy (Zaganjori, 2002, 18). For this reason, it is necessary and essential to take the necessary precautionary measures in order to guarantee the continuous development and consolidation of democracy. Such duty is charged on the democratic state itself, which provides various measures in the Constitution or other laws in order to inhibit and stop the occurrences that harm or risk

the democracy.

Since the moment of birth, every human person has a number of rights and freedoms such as the right to life, the right to liberty and security, the right to a fair trial, the right to respect for the private and family life, the prohibition of torture etc ... Undoubtedly, in front of any right that a human person has, it stands an obligation of the democratic state and state bodies for the guarantee of such right. Namely, in front of the right to life, it stands the state's obligation for the protection of life, in front of the right to liberty and security, it stands the state's obligation for the protection of the freedom and personal security, in front of the prohibition of torture, it stands the state's obligation to take all the measures in order to guarantee the prohibition of torture by the state bodies and so on, for each other right and freedoms that everyone has thanks to his existence as human being regardless of race, language, origin or gender. One of the principal obligations of any democratic state is without doubt not just the recognition, but the guarantee and respect of human rights and fundamental freedoms of its citizens. The attitude of the state against this obligation consists in itself of the main dividing line between democratic and dictatorial regimes states bringing consequently the sanctioning and constitutionally guarantee of these rights and fundamental freedoms, as well as these rights and freedoms are provided in the international important instruments and acts.

In this article I will focus precisely on one of the principle rights of the human person, or more precisely to the basic right of the human person in a democratic society: The right to life.

The right to life

Of course that any right and freedom has its specific importance and no right can be underestimated in relation to each other, but the right to life constitutes the fundamental human right where without a full and rigorous protection of the human life, it would be infringed even the essence of the existence of the society. Today, all the democratic systems are built and based on a system of values that have in center the human person and that require more and more the expanding of the fundamental freedoms and human rights, as well as the creation of a convenient and effective legal system in order to respond to the full recognition and protection of these rights and fundamental freedoms. Therefore, states have the obligation not just to recognize, but to guarantee the protection of the life for their citizens including the protection of life for all the persons comprising the persons who are placed under their direct control as in the case of prisoners. Among other things, the obligation of the states to protect the life of the human beings includes the obligation of the states for the creation of an effective and precautionary criminal law focusing particularly on preventing and penalizing of criminal offences (Pradel & Corstens & Vermeulen, 2009, 285). The democratic states are obliged to prosecute any unlawful behavior provided in criminal law resulting in the denial of the right to life.

Indisputably, the right to life is first sanctioned in the most important international

instrument for human rights and fundamental freedoms: the European Convention of Human Rights and Fundamental Freedoms, a Convention that has been ratified by all the states of the Council of Europe (including the Western Balkans countries). Specifically, Article 2 (*right to life*) of the Convention provides:

1. *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.*
2. *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 defense of any person from unlawful violence;*
 - (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) *in action lawfully taken for the purpose of quelling a riot or insurrection.*

The further development of the society accompanied by the democratization and humanization of the legislation of the states brought the following results:

- Initially, the signing of the Protocol No. 6 of the Convention for the Protection of the Human Rights and Fundamental Freedoms concerning the abolition of the death penalty and limiting its application only to acts committed in time of war or imminent threat of war in the cases provided by the legislation;¹
- And then, secondly, the further signing of the Protocol No. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances where the member States of the Council of Europe, signatory hereto, considering the right of everyone to life as a fundamental value in a democratic society and that the abolition of the death penalty is essential for the protection of this right, agreed and predicted that the death penalty will be removed and it will not be accepted any derogation or reservation about it.²

The abolition of the death penalty is undoubtedly one of the victories of democracy in respect of the human rights and fundamental freedoms that any human being has, namely

¹*Article 1: Abolition of the death penalty.* The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2: Death penalty in time of war. A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

²*Article 1: Abolition of the death penalty.* The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2: Prohibitions of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3: Prohibitions of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

the fundamental right that everyone has: the right to life. However, the Convention provides three situations in which it can be justified the infringement of the right to life, but it sets as a general condition that is closely connected with the absolute necessity for the use of force in respect of the undisputed principles of subsidiary and proportionality. These three situations include respectively:

- 1- the legitimate protection of any person from unlawful violence;
- 2- the arrest and prevent of the escape of a prisoner of a person lawfully detained where the deprivation of the right to life can only come as a result of involuntary use of force;
- 3- the quelling of a riot or insurrection under the provided legislative provisions.

The Universal Declaration of Human Rights adopted by the General Assembly of the UN on 10-th of December 1948 is also another international instrument of a particular importance that in its Article 3 provides the right to life by underlying that everyone has the right to life, liberty and security of person.³

In addition to the Universal Declaration of Human Rights and the European Convention of Human Rights and Fundamental Freedoms which were ratified by all the member states of the Council of Europe becoming part of their internal systems (including the countries of the Western Balkans), the obligation to protect the human person life contains the obligation of the states to create an effective and precautionary criminal law including the prediction and sanctioning in the criminal law of all the socially dangerous and illegal actions/inactions performed intentionally or negligently directed against the human life. Over the democratic states, it stands the obligation to criminally prosecute any conduct that is inconsistent with the right to life. The further social developments have caused a change even on the legislations, which they are further cultivated with a democratic spirit and character, especially in guaranteeing the human rights and fundamental freedoms. Such spirit has influenced the Criminal Codes of the Western Balkans countries by pointing out the democratization and modernization of these Criminal Codes on the criminal law protection that they reserve to the important social relationships regarding the right to life. As a consequence, the right to life is a fundamental, inalienable and undeniable right that everyone has by virtue of his existence and such right cannot be infringed by anyone. Following their obligation and in function of the guarantee of the right to life, the states have provided in their criminal law the relevant categories of illegal behavior which are punishable as criminal offenses directed against the life of the human person.

In this context, below are presented the constitutional and criminal law protection that some of the Western Balkans countries dedicate to the right to life.

The Republic of Albania and the right to life

The right to life of the person is sanctioned in the principal document of the Albanian state: the Constitution of the Republic of Albania, which in Article 21 provides that the life of a person is protected by law.⁴ Furthermore, Article 15 of the Constitution provides that

³Article 3: Everyone has the right to life, liberty and security of person.

⁴Article 21: The life of a person is protected by law.

the rights and fundamental freedoms are indivisible, inalienable and inviolable and stand on the base of all the judiciary system and also provide that the organs of the public power, in fulfillment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization.⁵ In this way, one of the duties of a democratic state is the criminal law protection of the human life through the penalization and sanctioning the criminal law offenses directed against the human person's life. Specifically, these offenses are found in Chapter II of the Criminal Code of the Republic of Albania, immediately after the crimes against humanity, and they are constructed under the group object being divided into two sections:

Section 1- Crimes against life committed intentionally (Articles 76-83)

- Murder with intent;
- Murder with intent connected to another crime;
- Premeditated homicide;
- Homicides committed in other specific circumstances;
- Infanticide;
- Homicide committed in a state of profound psychiatric distress;
- Homicide committed through transcending the use of excessive force for self- defense.

Section 2 - Crimes against life caused by negligence (Article 85)
(Manslaughter)

The Republic of Kosovo and the right to life

The Constitution of the Republic of Kosovo dedicates a special protection to the right to life containing a specific provision (Article 25) entitled "*Right to Life*" where expressly provided that:

- *Every individual has the right to life.*
- *The death penalty is prohibited.*

Additionally, the protection of the right to human life is provided through the criminalization of the acts directed against the life of the human person included in Chapter XVI of the Criminal Code of the Republic of Kosovo: "*Crimes against life and body*":

- Murder (Section 178);
- Aggravated murder (Article 179);

⁵Article 15:

1. The fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order.
2. The organs of public power, in fulfillment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization.

- Murder committed in a state of severe mental distress (180);
- Negligent murder (Article 181);
- Murder of infants during birth (Article 182);
- Inciting suicide and assisting in suicide (Article 183).

The Republic of Macedonia and the right to life

The right to life is first sanctioned in Article 10 of the Constitution of the Republic of Macedonia, whereby it is expressly provided that the right to life is inviolable and that the death penalty shall not be imposed on any grounds whatsoever in the Republic of Macedonia.⁶

The protection of the right to life is provided among other things, as also in the other democratic countries of the region and Europe, through the criminal law sanctioning of the criminal acts directed against human person's life, namely the offenses set forth in the Chapter "*Crimes against life and body*" founded in a special section of the Criminal Code that includes:

- Murder (Article 123);
- Murder with noble motives (Article 124);
- Momentary murder (Article 125);
- Murder from negligence (Article 126);
- Murder of a child at birth (Article 127);
- Instigation to suicide and helping in suicide (Article 128).

The Republic of Montenegro and the right to life

In Article 26 of the Constitution of the Republic of Montenegro is provided expressly that the death penalty shall be prohibited in Montenegro⁷, while the criminal law protection of the human person's life is provided through the provisions in the Criminal Code of the offenses directed against the right to life of everyone, provisions which are found in the Chapter XIV of the Criminal Code of the Republic of Montenegro including:

- Murder (Article 143);
- Grave types of murder (Article 144);
- Manslaughter committed while in the state of strong excitation (Article 145);
- Infanticide (Article 146);
- Deprivation of life from compassion (Article 147);
- Deprivation of life by negligence (Article 148);
- Incitement to suicide and aid in the commission of suicide (Article 149).

⁶ Article 10: The human right to life is irrevocable. The death penalty shall not be imposed on any grounds whatsoever in the Republic of Macedonia.

⁷Article 26: The death penalty shall be prohibited in Montenegro.

The legal comparison of the criminal law-protection of the life of the human person between the countries of the Western Balkans

Taking into consideration the Constitution and Criminal Codes of the democratic states in general and some of the Western Balkans countries in particular, the duty of a democratic state, and then, the objective of the criminal law in democracy is the protection of the important social relationships from socially dangerous offenses. The acts of murder of the human person affect those social relationships that protect the fundamental human right: the right to life. Every democratic state responds to the right to life of every person with the obligation to provide the protection of his life by sanctioning by law the right to life and by sentencing any act/action resulting in the denial of this right. Thus, the Constitutions of some of the Western Balkans countries such as the Republic of Albania, the Republic of Kosovo, the Republic of Macedonia and the Republic of Montenegro contain a democratic spirit that is reflected not only in recognizing and in the guarantee of the rights and fundamental freedoms, but even in the rigorous and straight provision of the right to life and prohibition of the death penalty. The democratic character of the legislation of these states appears also in their criminal legislation where there are provided sanctions and penalties, mainly severe penalties, for any person who with his acts or omissions violates the right to life of another person. In all the Criminal Codes of the Republics of Albania, Kosovo, Macedonia and Montenegro, there are provided respectively the criminal sanctions for the murder, murder of a child at birth, murder from negligence, murder in specific circumstances or directed to certain categories of persons (for example murder directed to minors, persons with physical or mental disabilities when these qualities are known or obvious, murder because of the duty, murder more than one time, etc) that are categorized as aggravate types of murder (and consequently, the criminal legislations provide sanctions with a higher degree of severity due to the nature of these types of murders), the inciting suicide and assisting in suicide (We should mention the fact that in the Republic of Albania such offense is not included in the section of the criminal acts directed against human life, but in the special section of "*Criminal acts endangering the life and health because of interruption of pregnancy or refraining from providing help*"), the murder committed in a state of severe mental distress (as expressly provided in the Republic of Albania and Kosovo, and that corresponds to the qualification, respectively, as manslaughter committed while in the state of strong excitation in the Criminal Code of the Republic of Montenegro or momentary murder in the Criminal Code of the Republic of Macedonia). In the meantime, another feature that results from the comparing of the aforementioned legislations is the fact that the Criminal Code of the Republic of Montenegro in contrast to the Criminal Codes of some other countries of the Western Balkans such as the Republic of Albania, the Republic of Kosovo, and the Republic of Macedonia, provides in an explicit manner in the chapter of offenses against life and health the "*Deprivation of life with compassion*" as a crime directed against human life (Article 147 of the Criminal Code) by providing that "*Anyone who deprives of life an adult person from compassion due to his serious health condition, or at his serious and explicit request, shall be sentenced to six months to five years of imprisonment.*"

Conclusions

In conclusion, the recognition and above all the guarantee of the human rights and fundamental freedoms play undoubtedly a key role for the full recognition and implement of the democracy. Today, all the democratic systems are built and based on a system of values that have in center the human person and that require more and more the extension of such fundamental freedoms and human rights. The right to life as one of the fundamental human rights, as one of the most fundamental rights of the human person, reserves a special protection in the international legal instruments of the main and most important matters (such as the Universal Declaration of Human Rights and the European Convention of Human Rights and Fundamental Freedoms), in the Constitutions of all the democratic states including those of the Western Balkans countries, as well as in their national legislations underlying in particular the democratization of the societies and states of the Western Balkans. The right to life is a fundamental, inalienable and undeniable right that everyone has by virtue of his existence and such right cannot be infringed by anyone. As a consequence, emphasizing the importance of the obligation on which the democratic government stands and taking into account the criminal law of the Republic of Albania, the Republic of Kosovo, the Republic of Macedonia and the Republic of Montenegro regarding the right to life, it is obvious that the first of all, the national law enforcement agencies of each country should prosecute any illegal and socially dangerous action / inaction which is performed intentionally or negligently and is directed against human life. Thus, by comparing the criminal law-protection of the life of the human, despite of the minor differences in the Criminal Codes provisions and despite of the minimum and maximum sanctions provided in such Codes, it resulted that all the Criminal Codes of the Western Balkans countries in general, and especially the Criminal Codes of the Republic of Albania, the Republic of Kosovo, the Republic of Macedonia and the Republic of Montenegro, give an huge importance to the criminal law protection of the right to life. Furthermore, the Republic of Kosovo, the Republic of Macedonia and the Republic of Montenegro provides explicitly in their respective Constitutions that the right to life is inviolable and that the death penalty is prohibited. In contrast to the referenced Constitutions, the Constitution of the Republic of Albania contains only a sole provision whereby it is stated that the life of a person is protected by law without providing in an explicit manner the prohibition of the death penalty. However, the protection of the human person's life provided in the legislations of the Western Balkans countries (in particular in the respective national Criminal Codes) is complete and does not present major problems. Therefore, it is very important the fact that there should be done a straight and fair interpretation in practice regarding the criminal offences directed against the life of the human person in order to not have errors consisting in the legal qualifications of such offences. For such reason, an efficient work performed by the judiciary organs including the criminal investigation bodies, the Prosecutor and the court bodies would help in fighting against the diffusion of these criminal offenses and in the prevention thereof.

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