

THE LEGISLATION OF THE NON- PATRIMONIAL CIVIL RIGHTS ACCORDING TO THE NEW CIVIL CODE - THE RIGHT TO LIFE

M. Chebeleu

Mircea Chebeleu

Faculty of Law, University Titu Maiorescu, Bucharest, Romania

*Correspondence: M. Chebeleu, Doctoral School, Faculty of Law, Calea Văcărești nr.187, Sector 4, Bucharest, Romania

E-mail: chebeleumircea@yahoo.co.uk

Abstract

The right to life is a supreme attribute of the human being, whose compliance is the very condition for exercising other rights. The right to life has two essential forms, a personal interest of the human being and the interest of the society, extremely dangerous.

Keywords: *non-patrimonial civil rights, the right to life, lethal force*

Introduction

There are two different interests regarding the protection of the human being: the personal right to life and the detached right to life. The personal right is the one which has a real bound to the specific person, the one which is protected from the very moment of birth of that person and the moment of death. The detached right of life represents the right of the society to have members, to protect their life in order to evolve and at the same time to survive.

Book I, Title II, Chapter II, and 2nd Section of the New Civil Code of Romania includes provisions on the right of life, the right of health and integrity of the human being.

According to art.61 (1) from the New Civil Code of Romania “Life, health, physical and mental integrity of any person are guaranteed and protected by law”. Paragraph 2 of the same article provides that “the interest and the good of the human being should prevail over the sole interest of the society or of the science”.

The provisions of the new civil code regarding the right to life, health and integrity of the human being have as related legislation:

- Art.22 paragraph (1) from the Romanian Constitution;
- Art.2-3 from the European Convention on Human Rights;
- Art.2-4 from the Charter of Fundamental Rights of the European Union;
- Art. 6 paragraph 1 from the International Covenant on Civil and Political Rights;
- Paragraph (2) resumes the provisions of the art.2 from the European Convention on Human Rights to the application of biology and medicine, the Convention of human rights and biomedicine signed at Oviedo on 1977, ratified by Law 17/2001;

The right to life is a supreme attribute of the human being, whose compliance is the real condition for exercising other rights.¹

The right to life has two essential forms, a personal interest of the human being and the interest of the society, generally extremely powerful. Therefore, there are two different interests regarding the protection of the human life: the personal right to life and the detached right to life. The personal right is the one which has a direct relation to the person, the one which is protected from the very moment of birth of that person and the moment of death. The

¹ Noul Cod civil al României - *Comentarii, doctrina și jurisprudență*, Hamangiu Publishing, Bucharest, 2012.

detached right of life represents the right of the society to have members, to protect their life in order to evolve and survive.²

This right has the protection from the moment of conception because the embryo cannot be seen as “a thing” but as “a possible person”.³

On the right to life it is known that the states have both the negative and the positive duties. They have to take the necessary measures in order to offer the protection of life and they must refrain from causing death intentionally.⁴

The right to life is enshrined “expressis verbis” also by the International Covenant of civil and political rights. According to this document “The right to life is inherent to human life. This right has to be protected by law. No one shall be deprived of his life arbitrarily”. It is to the guarantee of the right to life and the duty of the State to ensure the minimum conditions of existence and of decent life that is, the protection of the environment in which the individual lives.

According to a work⁵ the right of life has complex consequences in the legislation, which are seen in the attitude which has to be adopted against the eugenics, conviction of genocide, abortion, the regulation of transplant of organs, euthanasia.

The right of life would have no concrete and effective effect if the duty of the state wouldn't be completed by a second condition: the protection of health and the protection of physical and moral integrity of the person.

The content of the legal text materialize the idea that both the protection of health and the protection of physical and moral integrity of the person are guaranteed not only against the harm of the authorities but also by against the other persons. In concrete, the state has not only the duty of not applying torture or bad treatments but also the duty to accuse those actions and to prosecute those who do them.

Taking into consideration that the right to life represents “above all an uncertainty”⁶ the identification of the borders of this right implies many difficulties which are identified also when we ask ourselves if some parts of life, such as euthanasia, the legal situation of the fetus, cloning, transplant of organs and tissues are covered or not by the protection of right to life and of course if the states have duties regarding their protection.

The identification of the borders of the guaranteed right through the art.2 is not easy at all and the difficulties increase when we ask ourselves about the beginning, the end of life and the evolution of biomedicine.

According to the interpretation given by the European Court of Human Rights, regarding the protection of the right of life of the citizen there were mentioned more distinct obligations of the state. In one article recently published, an author enumerated the obligations of the state concerning people, in terms of respecting the right to life.⁷ There were the following obligations identified with direct reference to the jurisprudence of ECHR.

The obligation of not using lethal force excessively

In the case of *Nachova and others vs. Bulgaria*, ECHR punished the Bulgarian law which provided the possibility of using lethal force by the state agencies against those who evaded arrest or escaped, without taking into consideration the particularities of each case.

² Radu Chirita, *Conventia Europeana a Drepturilor Omului, Comentarii si explicatii*, 2nd edition, Bucharest 2008.

³ ECHR, *Evans v. Great Britain*, Decision from 07.03.2006.

⁴ B. Selejan-Gutan, *Protectia europeana a drepturilor omului*, C.H. Beck Publishing, Bucharest, 2008.

⁵ G. M. Preduca, *Drepturile omului-valente juridice si canonice*, C.H. Beck Publishing, Bucharest, 2011.

⁶ ECHR, *Osman v. Great Britain*, Decision from October 28, 1998.

⁷ The Right of Life. Which are the obligations of the state to us from this point of view? www.avocatnet.ro 13.03.2012.

As long as those persons were unarmed or did not present a real danger to other citizens, using the gun only their simply avoidance was considered excessive.

By the interpretation of this decision the conclusion is that ECHR doesn't express a total refusal for using the guns, but it states a condition that of the real social danger, the fugitives represent for the other citizens.

The obligation to make a concrete and effective investigation into homicide case

It is mentioned the case of Ramsahai and others vs. Holland. A person was deadly shot after a fight with the Police. Because the life of the policemen was in danger the use of guns was considered as necessary and as a consequence it was appreciated that there was no violation of art. 2.

But from the procedural point of view, it was considered that the investigation didn't accomplish the unbiased and objective conditions because it was done by the colleagues of the involved officers. According to another decision of ECHR (De Cubber) it was mentioned that the justice shouldn't be only done but it should be also seen as done.

The obligation of the state to prevent killing by lack of diligent

This means that the dangerous offenders should receive imprisonment so that they are no longer a threat for the other citizens.⁸

Conclusion

The right of life has been recognized even before it was mentioned in the New Civil Code of Romania. For example, The Criminal Code of Romania incriminates the acts that affect the right of life, within the Title II, chapter I, section I, called "murder". The offenses against life are: murder (art.174) with the variants of qualified murder (art.175) and the degree murder (art.176), infanticide, involuntary manslaughter (art.178) and the causing or aiding suicide (art.179).

But, the criminal law defends the right of life as a social value and not the right of the quality of life.

The state is the one which has the instruments to assure the effective protection of the right of life and its obligations include not only the regulation in terms but also the need to take measures in order to protect the quality of life.

The legislation of the guarantee of the right of life included also through the Civil Code of Romania is of a great benefit and it seems to complete the existent regulation regarding the quality of life.

Bibliography

Case Maiorano v. Italy, 15.12.2009, 28634/2006

Chirita, R., *Conventia Europeana a Drepturilor Omului, Comentarii si explicatii*, 2nd edition, Bucharest 2008

ECHR, Osman v. Great Britain, Decision from October 28, 1998

ECHR, Evans v. Great Britan, Decision from 07.03.2006

Noul Cod civil al Romaniei- *Comentarii, doctrina si jurisprudenta*, Hamangiu Publishing, Bucharest, 2012

Preduca, G.M., *Drepturile omului-valente juridice si canonice*, C.H. Beck Publishing, Bucharest, 2011

Selejan-Gutan, B., *Protectia europeana a drepturilor omului*, C.H. Beck Publishing, Bucharest, 2008

The Right of Life. Which are the obligations of the state to us from this point of view? www.avocatnet.ro, 13.03.2011.

⁸ Case Maiorano v. Italy, 15.12.2009, 28634/2006.