The Legal Nature of the Right to Life. The Consequences of Voluntary Interference with Life

Radu Chiriță
Faculty of Law,
Babeş-Bolyai University, Cluj-Napoca

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Abstract
The legal nature of the right to life is a fundamental aspect of any discussion regarding the exercitation of this right by any human being. Therefore the State must respect a person's right to life, if this right has a correlation in the person's right to choose death can only be explained juridically by determining first the legal nature of the right to life. The thesis this article argues for is that the right to life contains two elements: a personal right to life, which appears as soon as a person is conceived, and a detached right to life, which belongs to society in general beginning with the moment when the foetus is viable. The first element which forms the right to life ceases at the moment when the person dies, while, sometimes, the detached right ceases or appears as a diminished social interest beginning with a moment anterior to death. Under these conditions, the legal nature of the right to life is situated during most of a person's life at the confluence of the notions right and liberty. The paper argues for that, in principle, the right to life is not a liberty, therefore one cannot give it up in a valid way. However, in certain situations, the detached right to life may be diminished to such an extent that the right to life can pass as a liberty, composed in fact of the personal and subjective right to live which anyone may give up in a valid way. Consequently, as regards the voluntary interference with the right to life, the state cannot be obliged to give assistance to suicide, but it can be compelled to accept the impunity of euthanasia in certain conditions analyzed in the study.

E-mail: radu@raduchirita.ro

1. Introduction

1. The right to life regards the prerogative of any human being to exist as such, once he was born.[1] Over the centuries, the majority of the religious and philosophic movements from all over the world firmly condemned any act that touches a human being's life. The international law of human rights has also tried to find effective modalities for granting the observation of this sacrosanct right by several treaties and practices aimed at the protection of human life against the arbitrary actions of the states.

2. The right to life which protects human value, on which all the other fundamental rights and liberties are based, is "the most fundamental" personal right according to the formulation of the Human Rights Committee of the UN[2] or, to repeat the Court's expression, the supreme value on the scale of the human rights on an international level.[3] It is consecrated by any modern constitution, and its protection is the object of the most exhaustive regulation from any penal code. Therefore, it is not surprising the fact that the first right acknowledged by the Convention, in its 2nd article, is each person's right to live, the Court sanctioning its pre-eminence within the dispositions of the Convention.[4]

3. In spite of this incontestable valorisation, the right to life remains uncertain in its content, since, though the international texts state the right to life, they do not define life.[5] It is uncertain which is the moment when life begins, it is uncertain the concrete content of this right, it is uncertain its force, under the conditions that, in certain cases, the states can deprive the persons of their life, without the international law imposing any sanction. Death penalty is only one example. The laws referring to human rights usually do not forbid the use of capital punishment for serious offences, but encourage its abolition and try to limit its applicability. On the other hand, the use of force which causes a person's death is tolerated in case of justifiable defence. The killing of

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[1] M. L. Balanda, Le droit de vivre, in D. Prémont (ed.), *Essais sur le concept de „droit de vivre"*, Bruxelles, Bruylant Publishing House, 1988, p. 31.

[2] Dec. Suarez de Guerrero from 31 March 1982, RUDH 1982, p. 341.

[3] ECHR (European Court of Human Rights), judgements in the case Streletz, Kessler and Krenz v. Germany from March 22 , 2001.

[4] ECHR, judgements in the case Pretty v. Great Britain from April 29, 2002.

[5] F. Sudre, *Drept european şi internaţional al drepturilor omului* (The European and International Law of Human Rights), Bucharest, Editura Polirom, 2006, p. 213.

some – civil or military – persons is permitted under certain conditions, in wartime. Consequently, the legislation regarding human rights must meet a multitude of ethical and juridical dilemmas related to the exercising of the right to life, to the interdictions which weigh on the state and to the ways in which this right can be protected.

4. In what follows I shall try to offer solutions to some of these problems, starting with the discussion of the concrete content of the right to life which has already been suggested many times, but never plainly stated. Determining precisely the interests which are protected by these dispositions may help to resolve the litigations which arise related to the touching of a person's life, as well as to determine as precisely as possible the positive and negative obligations of the state.

II. The legal nature of the right to life

II. 1. General observations

5. Therefore, before determining the obligations of the state and examining the problem of touching the right to life, one must determine the legal nature of this. Firstly, one must determine what those international and internal law acts protect, which have as an objective to grant the right to life, being necessary to determine the interest aimed at by this dispositions. Secondly, one must find an answer to the question whether the protected social value is a right or a liberty, in other words, whether a person is free to choose to exercise or not, and how to exercise his protected interest to life. The answers to these questions do not lack practical import, as we shall see in the following sections, as they determine the logic of the entire protective system of the right to life.

6. In my opinion, the exercising of the right to life exceeds, as an interest, the person's sphere of interest or that of those who are close to him. Actually, I think that anyone's right to life has an interest, besides the respective person and those close to him/her, for society in general in a greater measure than any other personal right.[1] If society can survive the lack of the right to privacy, of the freedom of speech or of the presumption of innocence, not exercising the right to life endangers the existence of humankind. When any other right is not respected, the quality of life is diminished, however, entire societies can survive their

[1] It has been stated, to this effect, that the right consecrated by art. 2 of the Convention and by all the internal constitutional acts refers both to the individual's right to life and the right to live which belongs both to the individual and to society in general. See M. L. Balanda, *op. cit.*, pp. 33–36.

lack. On the other hand, without a respect for the right to life human society as a social form dies. Therefore, I consider that the right to life has two essential components: a personal interest, that of the protected being and a general social interest, extremely powerful.[1] Thus there are two different interests with respect to the protection of human life. The first of these, which we shall call *personal interest*, aims at the protection of the rights and interests which the respective person himself would have supposedly. The second one, the *detached interest*, is materialized in the protection of human life as a sacred, intrinsic value, beyond the implied personal value. According to this hypothesis, the penal legislation regarding the infractions against life serves both interests, not being necessary to create separate laws to protect these distinct aspects of the right to life.[2] The two distinct interests that form the right to life

[1] B. Mathieu, "La vie en droit constitutionnel comparé. Eléments de réflections sur un droit incertain", in *Revue International de Droit Comparé*, 1998, p. 1040. According to an opinion there is a third type of protected interest, which belongs to a person's relatives and friends and which arises after the person's death. It is stated that this is why in the majority of legal systems to try to kill a person who has already died from other causes, unknown to the culprit it is considered an attempted murder (H. Thorndtedt, "The Beginning and the End of Life from the Perspective of Swedish Criminal Law", in *Scandinavian Studies in Law* 1970, p. 236). It could also be stated that this type of interest imposes to the state the positive obligations which devolve upon this after a person's death, mainly the obligation to hold an effective inquiry into the circumstances of the decease. It can be said that while the European Court of Human Rights admits that some relations and friends of the deceased person are victims of the violation of Article 2, these would have an interest of their own protected by the dispositions of Article 2, which guarantee the right to life, therefore this would include, as a constitutive element, an interest of a person's relations as well. I personally think that such an interpretation cannot be accepted (to the same effect see B. Maurer, *Le principe de respect de la dignité humaine et la Convention européenne des droits de l'homme*, Paris, La documentation française, 1999, pp. 389–390). According to the first presented situation, other motives impose the sanctioning of the person and not a right of the deceased one's relations who are not victims of that offence. According to the second situation, the obligation of the state does not originate from the necessity to respect the deceased person's right to life, but from the general obligation imposed by Article 2 to respect every person's life and the imperatives of Article 13; the person's successors only have the moral interest to lodge the complaint, without having a right that originates from another person's death.

[2] R. Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*, New York, Vintage Books, 1994, p. 108.

result in some mutual obligations of the human being and society, the two subjects whose right to life is protected. Thus, society has the obligation to protect life by legal and administrative acts, as we shall see in what follows, while the individual has the obligation to live his life in the interest of society.[1]

7. There are countless legal arguments in favour of this point of view. Firstly, the states which forbid abortion or wish to do this use the argument according to which they protect human life, since the foetus is a person who has the right to life, and the state has the *right* and, at the same time, the obligation to protect this right.[2] The affirmation holds true also with respect to persons already born. Even if suicide is not a crime in a secular state, the state intervenes each time, having the obligation to do so. The most obvious example is the case of the persons engaged in a hunger-strike, the state having the obligation to intervene in order to protect their life even against their will by subjecting them to force-feeding.[3]

8. Secondly, the existence of this public interest is shown by the fact that the acts of killing a great number of persons are incriminated as crimes against humanity. This may explain why the protection of life refers also to that interest detached of the respective human person. In the case of such infractions, of crimes against humanity the protected legal object is humanity in general. Or, while this infraction means the murder of a great number of people, it is evident that their life is an interest which does not concern only them, but implies a higher interest.

9. Legal acts also admit implicitly the existence of a public interest, detached from the personal one, related to the protection of human life. Thus, all the international conventions regarding biomedicine, aim at the protection of the human embryo in all its forms.[4] This means that the state has an interest even when there is not even question of the existence of a human life or person. It can be said, under these conditions, that the

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[1] M. L. Balanda, *op. cit.*, p. 37 et seq.

[2] R. Dworkin, *op. cit.*, p. 109.

[3] Spanish Constitutional Court, decision no. 137 from July 19, 1990 in J. Sanchez-Junco Mans, Del homicido y sus formas, in I. S. Butragueno (ed.), *Codigo penal de 1995 – Comentarios y jurisprudencia*, Granada, Comares Publishing House, 1999, pp. 959–962.

[4] R. Brownsword, "An interest in Human Dignity as the Basis for Genomic Torts**"**, in *Washburn Law Journal* no. 42, p. 415; S. R. Benatar, "Human rights in the biotechenology era I", in *BMC International Health and Human Rights*, 2002, p. 3.

detached interest in the protection of life appears before the person's appearance, in the largest possible definition, while the embryo is protected even before being introduced into the mother's uterus. The best examples are the recommendations 1046 from 1986 and 1100 from 1989 of the Parliamentary Assembly of the European Council, which talk about the necessity of treating the human embryos and foetuses with the respect due to human *dignity*.[1] Moreover, the second recommendation mentioned afore differentiates between the implanted embryo and that in a previous stage, establishing the guarantees due to the respect of human dignity only for the first category. This confirms what we have said above, that the embryo which has not yet been implanted into the womb cannot be qualified as being the object of the protection related to the right to life, since its potentiality is far to reduced to involve a detached interest strong enough to impose the necessity of protection.[2]

10. Even the former Committee and the Court admit this point of view, while, as I am going to indicate in what follows, they think that the foetus cannot be assimilated to a person, but it has a certain protection by the application of Article 2 of the Convention.[3] Or, it is evident that this protection refers to the detached interest I have been speaking about above.[4]

11. It should also be specified the fact that, in spite of some attempts to justify such an opinion, I do not think that the right to life includes also the right to give life to a person.[5] In other words, even if a person's life is protected, it is protected from the moment of his conception. This protection cannot be extended towards guaranteeing a possibility of conceiving a human being. Therefore, to sterilize a person does not

[1] B. Maurer, *op. cit.*, p. 81.

[2] This was the conclusion of the French Constitutional Council as well, in a decision discussed at a great length by the French doctrine. For details see B. Maurer, *op. cit.*, pp. 369–370.

[3] European Commission of Human Rights, Decision from May 13, 1980, app. no. 8416/1979 DR 19, p. 262.

[4] To the same effect it has been stated that "to declare that Article 2 can be applied to the child that is to be born is not equivalent to declaring that this is a person" (F. Sudre, *op. cit.*, p. 214). See also T. Goldman, "Vo v. France and Fetal Rights. The Decision not to Decide", in *Harvard Human Rights Journal*, no. 18, p. 277.

[5] J. F. Renucci, *Droit européen des droits de l'homme,* LGDJ, Paris, 2001, p. 64.

concern his right to life, but his right of not being subjected to inhuman or degrading treatments, guaranteed by Article 3 of the Convention.[1]

II.2. The personal right to life

12. The personal interest, which concerns the person at issue strictly, is the interest protected between the moment of the person's appearance and the moment of his death. This protected interest is born evidently at the point when the human being appears as a person. In my opinion, this moment should not be mistaken for the person's birth, but it is situated somewhere previous to this point, being the moment when the foetus can survive independently from the mother who is carrying him. In comparative law there are different solutions according to my knowledge, but the evolution is to the effect I have indicated. Three theories have been created in order to determine the moment when the personal right to life is born:

– *The theory of entity*, which considers the foetus the mother's integrant part and not a separate person.

– *The theory of viability*, which is based on the premise that the foetus is a person from the moment when it becomes viable, being able to live independently outside the uterus.[2]

– *The biological theory*, which dates a person's existence already from the moment of fertilization.[3]

13. In the United States, usually, the theory of viability has been adopted, in many states the unborn child being considered a person.[1] For example,

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[1] P. Van Dijk; G. J. H. Van Hoof, *Theory and practice of the European Convention on Human Rights*, Deventer, Kluwer Publishing House, 1990, p. 220; Committee, Decision Naddaf v. Germany from October 10, 1986, DR 50, p. 259. The contrary of this has also been affirmed, claiming that a person's sterilization may be the violation of the general obligation to protect life, established by the first phrase of the Article 2 of the Convention (B. Maurer, *op. cit.*, p. 378.). I personally think that such an interpretation is at least forced, while the text of Article 2 speaks clearly about the obligation to protect life and not the obligation to protect procreation. Therefore, all the more as such an act falls under the acts prohibited by Article 3, being anyway illicit according to the dispositions of the Convention, I consider that the applicability of Article 2 in this matter is out of question.

[2] Ohio Hight Court, decision in re Ruiz (1986) apud E. Sylvester, "Chenault v. Huie: Denying the Existence of A Legal Duty between A Mother and Her Unborn Child", in *Akron Law Review*, 1999.

[3] Court of Appeal of New York, decision Smith v. Brennan (1960) apud E. Sylvester, *op. cit.*

after it had been decided by the verdict in the case Keeler v. Superior Court[2] that the killing of a foetus with a knife was not murder because the law did not clearly identify the passive subjects with the human embryo, the Californian legislator amended Section 187 of the Penal Code to include the killing of a foetus into the definition of murder too, with the exception of voluntary abortion.[3] There are similar dispositions in Arizona, Illinois, Louisiana, Minnesota, North Dakota and Utah.[4] Further conclusions can be drawn by analyzing the famous decision Roe v. Wade,[5] repeated shortly afterwards in the decision Doe v. Bolton[6] of the Supreme Law Court of the United States.[7] According to these

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[1] J. Parness, "Crimes Against the Unborn: Protecting and Respecting the Potentiality of Human Life", in *Harvard Law Journal*, 1985, p. 144; H. L. King, "A Proposal for Legal Protection of the Unborn", in *Michigan Law Review*, 1979, p. 1647.

[2] Supreme Court of California, decision Keeler v. Superior Court (1970) in S. H. Kadish, S. J. Schulhofer, *Criminal Law and its processes – Cases and materials*, Boston, Little, Brown & Co Publishing House, 1995, pp. 298–303.

[3] P. E. Johnson, *Criminal Law. Law, Material and Text*, 5th edition, St. Paul, West Publishing Co, 1995, p. 234. The viability of the foetus is not a compulsory condition for this to be the passive subject of the crime of murder (Supreme Court of California, decision People v. Davis (1994) in P. E. Johnson, *op. cit.*, pp. 234–236).

[4] P. E. Johnson, *op. cit.*, p. 237.

[5] Supreme Court of the United States, decision Roe v. Wade (1976). For the integral text of the decision see W. B. Lockhart, Y. Kamisar, J. H. Choper, S. H. Shiffrin, R. H. Fallon Jr., *Constitutional Law – Cases – Comments – Questions*, 8th edition, St. Paul, West Publishing Co, 1996, pp. 409–416.

[6] Supreme Court of the United States, decision Doe v. Bolton (1976) in W. B. Lockhart, Y. Kamisar, J. H. Choper, S. H. Shiffrin, R. H. Fallon, Jr., *op. cit.*, pp. 416–417.

[7] L. H. Tribe, *American Constitutional Law*, Mineola, The Foundation Press Inc., 1998, pp. 1341–1342. These decisions were followed by others, in the same line, which stated, for example, that the law prescribing that a minor must have her parent's consent for an abortion (Supreme Court of the United States, decision Hodgson v. Minnesota (1990) in J. A. Barron, C. T. Dienes, *Constitutional Law*, St. Paul, West Publishing Co, 1990, pp. 173–174), a law regarding birth control (Supreme Court of the United States, decision Griswold v. Connecticut (1965) in J. M. Shafritz, *Dictionary of American Government and Politics*, Chicago, Dorsey Press, 1988, p. 257) etc. were unconstitutional. The legislative bodies also reacted promptly putting into practice the constitutional principles outlined by the Supreme Court (G. L. Mc Dowell, *Curbing the Court. The Constitution and the Limits of Judicial Power*, Baton Rouge, Louisiana State University Press, 1988, pp. 162–165).

decisions, beginning with the 28th week, when the foetus becomes viable, this can be considered to be a person, thus any kind of abortion, in any circumstance can be forbidden by penal law.[1] A distinction has also been made between viability and pre-viability.[2] The human embryo and foetus are differentiated according to the development of the organism from the moment of conception to approximately the end of the second month, when the embryo becomes foetus.[3] The great majority of the states only consider the act which leads to a person's death to be illicit from the moment of viability, with the exception of Louisiana where the human being is acknowledged as a person from the moment of conception.

14. In Great Britain, although the law admits abortion till the limit of viability, the foetus has not the same status as a child already born.[4] To this effect it has been decided twice that viability, on which the protection accorded to life depends, does not only require the possibility to live, but also that to survive independently.[5] Almost identically, the Federal Constitutional Court of Germany decided that penal law must protect human life in the course of formation, at least until this protection does not affect excessively the mother's physical and mental health, the state having the obligation to establish a fragile equilibrium between the mother's fundamental rights and those of the being to be born.[6]

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[1] Supreme Court of the United States, decision Plannet Parenthood v. Daforth (1976) in W. B. Lockhart, Y. Kamisar, J. H. Choper, S. H. Shiffrin, R. H. Fallon Jr., *op. cit.*, p. 439 et seq.

[2] Supreme Court of Minnesota, decision Werkennes v. Corniea (1949) apud. D. M. Marks, "Person v. Potential: Judicial Struggles to Decide Claims Arising from the Death of An Embryo or Fetus and Michigan's Struggle to Settle the Question", in *Akron Law Review*, 2004, p. 44.

[3] D. M. Marks, *op. cit.*, p. 41.

[4] D. Morgan, "Abortion: the Unexamined Ground", in *Criminal Law Review*, 1990, p. 690. For example, it has been decided that the foetus cannot be the third person at threatening (Court of Appeal, decision R. v. Fait (1989) apud D. Morgan, *op. cit.*, p. 692).

[5] Thus, abortion is permitted when the child suffers from a sever form of hydranencephaly and his brain is underdeveloped (Court of Appeal, decision Re C (1989) apud D. Morgan, *op. cit.*, p. 690) or when his life would be so terrible – and it is certain that it is impossible to discover a cure – that it is in his interest not to be born (Court of Appeal, Re B (1981) apud D. Morgan, *op. cit.*, p. 690).

[6] Decision from February 25, 1975 apud M. Fromont, "Le juge constitutionnel et le droit pénal en République Fédérale d'Allemagne", in *Revue des Sciences Criminelles et de droit pénal comparé*, 1985, pp. 752–753.

15. In other states, however, Spain, Italy or Portugal, for example, it was acknowledged explicitly, and not only implicitly, that the unborn child has a right to life from the moment of conception.[1] For example, in Spain, the Constitutional Court decided that the right to life is not recognized from the moment of birth, but from the moment of conception,[2] in this way the human foetus can be the passive subject of an offence such as hitting.[3]

16. The situation in France is extremely interesting. In a decision repeated afterwards,[4] the Court of Cassation decided that the involuntary interruption of pregnancy is second degree murder on the condition that the foetus was viable.[5] This solution was determined, first of all, by the realization of the fact that one should not accept the opinion that a living entity must be considered a person to benefit from the protection of life. Because the respect of life is due to any human being from the beginning of his life, since life is, on account of its essence, the support of humankind, and it is not important what kind of person or personality will be built on it. In addition, the condition of viability must be imposed because, from the moment when the foetus is able to live alone, to survive independently of her who carries it, it is no longer *pars viscerum matris*, but a human existence protected by penal law. On the contrary,

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[1] B. Mathieu, *op. cit.*, p. 1037.

[2] Decision no. 304 from 28 October 1996 in R. R. Fernandez, *Derechos fundamentales y garantias individuales en el proceso penal*, Granada, Comares Publishing House, 2000, p. 113.

[3] J. Sanchez-Junco Mans, *De las lesiones al feto*, in I. S. Butragueno (ed.), *Codigo penal de 1995 – Comentarios y jurisprudencia*, Granada, Comares Publishing House, 1999, p. 989. There are also states in which the view remained the traditional one, thus the unborn person is not and cannot be considered a person. The best example is Austria, where the Constitutional Court made a decision to this effect (decision from October 11, 1974 in *Constitutional Case Law*, Vienna, Scholffer Publishing House, 1975, p. 149). The situation is the same in Belgium too (Belgian Court of Cassation, decision from February 5, 1985, apud. J. Velu, R. Ergec, *La Convention européenne des droits de l'homme*, Brussels, Bruylant Publishing House, 1990, p. 278.). On the other hand, in Ireland the unborn child's right to life was recognized by a constitutional disposition in 1983 (N. Nesseir, *Le droit à la vie et la controverse de l'avortement en Irlande*, thesis, Poitiers, 2005, p. 7).

[4] For example, Court of Appeal of Reims, decision from February 3, 2000, in *Studia Universitatis Babeş-Bolyai. Seria Jurisprudentia*, no. 1/2002, p. 106.

[5] Decision from June 30, 1999 in *Revue des Sciences Criminelles et de droit pénal comparé*, 1999, p. 813.

when this reality has not yet been stated, the child was the part of the mother's humanity, and its life was not independent, therefore it could not claim separate protection.[1]

17. These latter arguments seem to me convincing enough to affirm that the personal right to life appears together with the human person at a moment anterior to birth and posterior to conception. We could situate this moment, according to the criteria of viability, to the beginning of the third trimester of the pregnancy.[2] Consequently, between the moment of conception and the moment when the person appears there is no personal right to life, only a detached right, which belongs to society in general, which is protected. After the second trimester of pregnancy, the personal right to life also appears which must be protected by the legislative body and the judicial organs.[3]

18. Consequently, I consider that the theory of viability is, on the one hand, the most often used implicitly or explicitly for determining the moment when a person becomes a legal entity. The moment when the foetus becomes viable is the earliest moment when it can have interests of its own, and from that moment on it has inherent human value.[4] On the other hand, if the unborn human being were considered a person from the moment of conception, the right to abortion would have no justification.[5]

II.3. The detached right to life

19. The detached right to life consists in the interest of society, represented by the state, to have members, to protect their life, in order to

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[1] Y. Mayaud, "Entre vie et mort, la protection pénale du fœtus", in *Revue des Sciences Criminelles et de droit pénal comparé*, 1999, pp. 815–819.

[2] To this effect an American court decided that if a person gives birth due to an accident, interrupting a 5 month pregnancy, the child's death cannot be considered the death of a person, since the child has been the part of the mother's body as yet (Superior Court of Massachusetts, decision Dietrich v. North Hampton (1884) apud E. Sylvester, *op. cit.*).

[3] R. Dworkin, *op. cit.*, p. 169. It has been thought that beginning with that moment the right to procreation ceases, since the woman had enough time to decide whether she wants to exercise that right or not. In addition, sometimes around that moment the cerebral activity of the foetus appears, which could thus claim special protection.

[4] R. Dworkin, *op. cit.*, p. 170.

[5] *Ibid*., p. 157.

refresh itself, in order to develop and in order to survive.[1] This right appears, naturally, together with the human embryo. Because of this the detached right to life is protected already from the moment of conception. Those decisions which do not recognize the foetus' status of person, at least in the first stages of the pregnancy, but admit the applicability of the Convention's Article 2 in this matter or of the penal dispositions of internal law must be interpreted to this effect. The object of this protection in the initial phase is the human embryo. This cannot be deprived of juridical protection of its own, separate of the protection accorded to the woman who carries it, as it cannot be considered "a thing", but rather a "potential person".[2] Otherwise it has been acknowledged for a long time that, even anterior to the point where the foetus becomes viable, the state has a strong interest to protect the life in formation, and any interference with this interest must be made by a law.[3]

20. The fact that in the first three months of pregnancy abortion is, usually, permitted, but the experiments with the embryo and the foetus are forbidden cannot be used as an argument for the lack of a detached interest.[4] Neither can be an argument the substitute mother for the lack of the parents' right over the child or the existence of a right of the state.[5]

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[1] It has been affirmed the fact that this interest of the state can have two forms: a special form, which refers to the fact that the state focuses on protecting the life of a certain individual, and a general form, which aims at the protection of life in general, referring to the life of society seen as a whole (M. P. Allen, "The Constitution at the Threshold of Life and Death: A Suggested Approach to Accommodate an Interest in Life and the Right to Die", in *American University Law Review*, 2004, pp. 989–990). In my opinion, the second form is specific to the right to life, since the first one is specific to any guaranteed fundamental right. Therefore, the first form is, as a rule, also an obligation of the state connected with the exercising of the personal right to life. Consequently, by detached interest of life I mean the second, general form presented above.

[2] J. Rubellin-Devichi, "Le droit et l'interruption de grossesse", in *Petites Affiches,* June 7, 1996, p. 23.

[3] E. P. Foley, "The Constitutional Implications of the Human Cloning", in *Ethics*, 2006, p. 1246.

[4] M. Delmas-Marty, L'homme des droits de l'homme n'est pas celui du biologiste, apud B. Maurer, *op. cit.*, p. 375.

[5] B. A. Ray, "Embryo Adoptions: Thawing Inactive Legislatures with A Proposed Uniform Law", in *Southern Illinois University Law Journal*, no. 28, p. 434.

21. The existence of this detached right to life is, in some measure, contested by those who militate for the recognition of a correlative right to die. To accept this idea would lead to the conclusion that the right to life is only personal, therefore the person may give it up, if he wishes.[1] In comparative law, according to my knowledge, the situation is far from being clarified.

22. Only the American case-law is sufficiently precise in this respect. There are two main decisions in this matter. By the famous decision of the Supreme Court of the United States in the case Cruzan v. Director, Missouri Department of Health from 1989,[2] the high court stated the fact that suicide as an element of private life is one of the rights protected by the Constitution. Nevertheless, suicide is only protected by constitutional values as an affirmative action, and not as a passive one, thus the removal of an incurable person from the life support machines without his express and valid consent is not protected by the Constitution.[3] It was also decided that the state may lawfully impose some restrictive conditions as regards the exercising of the right to suicide in order to avoid abuses.[4] The second determinative decision in this matter is a decision of the Supreme Court of Washington in the case Compassion in Dying v. Washington,[5] confirmed later by the decision of the Federal Court of Appeal from the 9th circuit from 1996.[6] Essentially it has been decided that *abortion raises more difficulties related to competing interests and rights than the suicide of an incurable invalid. In the cases regarding the reproductive right not only the interest of the pregnant woman wishing to have an abortion exists, but also the interest of the potential life which cannot speak for itself. On the contrary, in the case*

[1] Thus it has been stated that by prolonging one's life against one's will, the right to life is transformed into the obligation to live (H. H. Cohn, On the meaning of human dignity, apud B. Maurer, *op. cit.*, p. 375).

[2] For the integral text of the decision see W. B. Lockhart, Y. Kamisar, J. H. Choper, S. H. Shiffrin, R. H. Fallon, Jr., *op. cit.*, pp. 531–539.

[3] S. H. Kadish, S. J. Schulhofer, *op. cit.*, pp. 881–884.

[4] J. A. Barron, C. T. Dienes, *op. cit.*, p. 184.

[5] See S. H. Kadish, S. J. Schulhofer, *op. cit.*, p. 886.

[6] See W. B. Lockhart, Y. Kamisar, J. H. Choper, S. H. Shiffrin, R. H. Fallon, Jr., *op. cit.*, pp. 542–548. There was a decision to the opposite effect made by the Supreme Court of Michigan in the case People v. Kevorkian (1994), in which it was stated that the right to suicide neither does belong among the acknowledged rights of the human person, nor is it part of the American nation's tradition (S. H. Kadish, S. J. Schulhofer, *op. cit.*, pp. 884–886), but it remained an isolated decision in the context of the principles stated in the Cruzan decision.

of assisted suicide only one life is involved, and that person can express its wishes. Consequently, the suffering of an incurable invalid cannot be considered less intimate or personal or closer to the interference of the state than that of pregnant woman. Thus, such a decision – that n. n. would commit suicide – belongs to the field of constitutional freedoms protected by Amendment XIV. British law has similar tendencies. The decision of the supreme law organ, the House of Lords, in 1993 in the Bland-case stated that there is a right to suicide as an element of private life, but only in the case of incurable invalids who have great physical and psychical sufferings which cannot be averted.[1] On the other hand, in Spain, in the lack of legal dispositions in this matter, the case-law had to formulate solutions regarding the right to die. The constitutional court determined, first of all, that there is no such thing as a right to die, not even a subjective one, but simply that suicide is not sanctioned[2] and that the right to life has a positive content which makes impossible to configure it as a freedom which includes one's own death.[3]

23. The legislations of the states which permit euthanasia are not arguments against the existence of a detached right of society regarding a person's life, since this detached right ceases or, at least, its force diminishes considerably at a moment anterior to a person's death. While this social interest is protected because of the necessity to ensure the species' survival through the social benefit of a person's activity in society, however unorthodox it may sound, this right disappears the moment when the respective person is afflicted by a terminal disease which causes him great sufferings.[4] According to such a theory, society in general has nothing to profit from the respective person, thus the detached right to life disappears, and the protection given to the person's right to life refers strictly to the protection of the personal right to life. As the holder of this right can dispose of it, a legislation which permits euthanasia does not deny the existence of a detached right of the state.[5]

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[1] B. Mathieu, *op. cit.*, p. 1045.

[2] Constitutional Court, decision no. 137 from July 19, 1990, in J. Sanchez-Junco Mans, Del homicido y sus formas, in I. S. Butragueno (ed.), *Codigo penal de 1995 – Comentarios y jurisprudencia*, Granada, Comares Publishing House, 1999, pp. 959–962.

[3] Constitutional Court, decision no. 11 from January 17, 1991, in J. Sanchez-Junco Mans, *op. cit.*, pp. 962–963.

[4] M. P. Allen, *op. cit.*, p. 995.

[5] See the examples given in B. Py, *La mort et le droit*, Paris, PUF, 1997, p. 49 et seq.

On the contrary, since everywhere in the world, euthanasia and the assistance to suicide are permitted only in the case of persons afflicted by terminal diseases, and who are in the final stage of the illness, suffering severely because this malady, but are not permitted for healthy persons, the legislations which admit euthanasia are an argument for the existence of a detached right to life, which ceases when a lethal disease occurs. Otherwise it could not be explained why the law permits the right to die only in such situations.

II.4. Conclusions

24. Consequently, I consider that the right to life implies two components: a personal interest, which is strictly bound to the human person and which appears and is protected from the moment the human person appears and ceases when this dies, and a detached interest, which does not belong to the human person and ceases before the person's death.[1] The strength of the detached interest, closely bound to the level of protection accorded to this, is situated on a sinusoidal graphic. It increases from the moment the human embryo appears, being much reduced at the beginning, as the potentiality of life is yet small, and it increases in intensity gradually until the moment of birth, when the potentiality of life is sure. The strength of this social interest decreases beginning with the moment when the person's life is endangered by a terminal disease, in which situation is only protected by the personal interest. On the other hand, the personal interest appears in the third trimester of the pregnancy[2] and disappears with the person's death.[3]

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[1] A part of the doctrine which has, even implicitly, such a point of view prefers to use the notions right to live, to designate the personal interest, and right to life, to designate the detached interest (for example H. G. Espiell, The Right To Life and the Right to Live, in D. Prémont (ed.), *Essais sur le concept de „droit de vivre"*, Brussels, Bruylant Publishing House, 1988, p. 46). Though, these being after all problems of form and not of essence, it is of little importance which form one chooses, I prefer to use the terms personal interest and detached interest in order to avoid confusion which might arise from the use of the other terms.

[2] It is obvious that this is not always the exact moment when the pregnancy can be detached from the mother without major risks, however, while this moment is established with regard to penal law, as we shall see in what follows, this requires that a precise moment should be established, and the beginning of the third trimester of pregnancy can be considered an appropriate moment in this respect.

[3] By the person's death I mean the termination of all the vital functions (H. Thorndtedt, *op. cit.*, pp. 237–240). Even a person in a vegetative state of life is

25. Therefore, starting from an extremely simplistic distinction between rights and freedoms,[1] according to which rights are those protected interests that the person they belong to cannot give up,[2] while freedoms are attributes belonging to the human being who is free to decide whether he will exercise them or not,[3] the right to life is usually a right.[4] This conclusion imposes itself because the existence of the detached right to life, which can permit only to its holder – which is society in general – to exercise it or not. Exceptionally however, when the detached right disappears before the person's death, the right to life becomes a freedom, as it has a strictly personal character, thus the person in question may decide freely whether he wishes to exercise it or not. To recognize the juridical consequences of this freedom is, however, the states' choice which may or may not confer juridical effects to the respective freedom.
26. The two interests can be interfered with in two ways: voluntary and non-voluntary interference, as the person whose right to life is recognized does or does not consent to this interference. In what follows I shall indicate which are, in my opinion, the consequences of the theory presented above on the voluntary interferences with the right to life.

III. Voluntary interferences with the right to life

III. 1. Introductory considerations

27. In my opinion, personal suicide, physician unassisted, as well as euthanasia and physician assisted suicide belong to the category of voluntary interferences with the right to life. Voluntary abortion does not fall into this category, though in this case there is also an accord, since that accord expresses, as we shall see in what follows, a consent related to the fact that the pregnant woman exercises her right to dispose of her

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protected, as not all his organs have stopped to function (J.-F. Seuvic, *op. cit.*, p. 367).

[1] The problem of differentiating rights and freedoms is much wider. I have used one of the criteria formulated by H. Roberts, Les notion des droits et libértés fondamentales, in *Mélanges R. Cassin*, Paris 1987, p. 23.

[2] For example the procedural rights: any person has the right to be tried by a competent court, but cannot give up this right. There is also the right to the legality of punishment and incrimination.

[3] The classic example is the freedom of expression, any person having the possibility to express his opinions and ideas, but also the possibility to give this up at any time. There is also the freedom of religion, the inviolability of correspondence etc.

[4] H. G. Espiell, *op. cit.*, p. 45.

own body, as an element of her private life. The pregnant woman's consent to the abortion is not a consent coming from the holder of the right to life. The holders of this right are the unborn child in what regards the personal right, as far as this exists, and society, represented by the state, with respect to the detached interest. Even if the mother in question may represent the child in juridical matters, she can give up none of her child's rights, thus abortion will be discussed in the category of non voluntary interferences with the right to life.

III.2. Physician unassisted suicide

28. Physician unassisted suicide represents a person's voluntary act by which this puts an end to his life either by an action or by an omission. Although morally and religiously sanctioned, the act is nowhere in the world condemned penally or administratively. There is a simple reason why this act, which interferes with the detached interest I have been discussing above, is not condemned. If the suicidal act is "successful", the guilty person to be sanctioned, no longer exists.[1] If the suicide does not die, the lack of a sanction can be explained, first of all, by the fact that such situations impose, as we shall see below, instead of a penal sanction rather an obligation of psychiatric treatment from the part of the state, which can in this way protect its detached interest. On the other hand, the interference with the detached interest of society made under such conditions is minimal, thus a sanction is not imposed when the main holder of the protected social value manifested his personal interest by the suicidal act.

29. The fact that the person who commits suicide is not sanctioned for his act does not mean that the physician unassisted suicide does not raise certain legal problems. First of all, in order that the act could be called suicide, the suicidal act has to result from the free will of the person in question.[2] On the other hand, it must be specified that when the act is the

[1] For this same reason, as I shall demonstrate below, the non medical aid to suicide is sanctioned existing in this case a guilty person who can be made responsible for the death of the suicide.

[2] This is not the place for repeating the discussions regarding the distinction between certain crimes, but I would like to mention that when the act does not result from the suicide's free will, the act of the person who determined this deed is considered murder in all the legislations I am familiar with. It is difficult to distinguish between non voluntary and voluntary suicide, which is influenced however by a third party. It is easy to offer typical examples, but for an exact

result of the suicide's free will, however his decision was determined or encouraged by another person, the majority of the legal systems impose the penal sanctioning of the third party. This is a modality for protecting the society's detached interest in the case when the personal interest was not infringed the suicide having given his consent.

30. As I have said before, the lack of sanctioning for this act is not determined by the lack of a protected interest, while at least the detached interest of the society is evidently infringed by such a deed. Exactly for this reason, as I have said above, a person's violent intervention against a person attempting suicide in order to prevent the act is an action committed under the conditions of legal self-defence.[1]

31. The suicidal tendency or previous attempts of suicide lead to certain specific obligations from the part of the different states, which fall under the general category of the obligation to protect the life of the persons being under their jurisdiction.

III.3. Euthanasia and physician assisted suicide[2]

32. Etymologically euthanasia is the medical intervention having for its aim the interruption of a patient's life at his request. It can be *active*, when the physician administers certain lethal substances or lethal doses, *passive*, when the physician withholds a certain treatment which should prolong the patient's life, or *indirect*, when death occurs due to the physician's administering some medicaments indispensable to the patient, but which cause fatal side-effects in the patient's situation.[3] Physician assisted suicide is the medical assistance given to a person in taking his life by offering him the means by which to terminate his life. Intensely and passionately discussed from moral, religious, social, legal and medical points of view,[4] the situation of euthanasia and of physician

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delimitation one must resort to a special work of penal law, since the discussion of this issue is not the main aim of my study.

[1] Nevertheless, contrary to the quoted author, I consider that the justification of lawful self-defence in such a case would be the protection of a public interest and not the personal interest of the person who tries to commit suicide.

[2] The two expressions refer to different situations, but I am going to discuss them together, as the legal considerations connected to them are mainly the same. Where there is a need for their separate discussion, I shall mention it.

[3] B. Maurer***, op. cit.***, p. 395. Indirect euthanasia is, in reality, a state of necessity, this being the reason why no legal system in the world sanctions it. Therefore, I shall not insist upon it here.

[4] A simple search on the Internet for the word euthanasia gives more than 100 000 links to sites dedicated to this subject.

assisted suicide makes possible, in my opinion, a quite easy solution if we start from the definition of the right to life as the sum of personal interest and detached interest. However, before stating my point of view, I think that it is natural and useful to present quickly the legislation and practice regarding these procedures in the different states of the world.

33. In the United States, in consequence of the case-law I presented above and which stated that the right to private life acknowledged by the Constitution implies a right to dispose freely of one's own life, some American states organized referendums for legalizing physician assisted suicide and active euthanasia, but this proposal was rejected by Washington (1991) and California (1992).[1] They were legalized for the first time in Oregon, also in consequence of a referendum.

34. Spanish case-law has stated that euthanasia, considering the right to private life, is not condemned, if two conditions are fulfilled: a serious, express, unequivocal request of the person in question; this must suffer from a serious, undoubtedly lethal disease which also causes great, permanent sufferings difficult to support.[2] A decision of the Spanish Supreme Court regarding the rejection of transfusions from motives of conscience follows the same line. Mentioning that this is a case when the two fundamental rights, the right to life and the freedom of conscience, come into conflict, the court tried to find a solution to this conflict deciding that in the case of adults the freedom of conscience prevails over the right to life, while in the case of minors the parents' objections of conscience cannot preponderate the minor's right to life.[3] In the penal code of 1994 euthanasia is condemned, but it falls into a separate category than murder.[4]

35. In Italy the different forms of euthanasia are distinguished. Thus, in the case of passive euthanasia, if the patient is able to make sound judgements, he has the right to undergo or to refuse the medicinal treatment, the physician having the obligation to respect the patient's

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[1] S. H. Kadish, "Letting Patiens Die: Legal and Moral Reflections", in *California Law Review*, 1995, p. 867 et seq.

[2] J. Sanchez-Junco Mans, *op. cit.*, p. 965.

[3] Supreme Court, 2nd section, decision from June 27, 1997, in R. R. Fernandez, *Derechos fundamentales y garantias individuales en el proceso penal*, Granada, Comares Publishing House, 2000, pp. 109–110.

[4] B. del Rosal Blasco, El tratamiento juridico-penal y doctrinal de la eutanasia en Espana, in J. L. Diez Ripollés, J. M. Sanchey (eds.), *El tramiento juridico de la eutanasia. Una perspectiva comparada*, Valencia, Tirant Lo Blanch Publishing House, 1996, p. 43.

decision. In the case when the patient is not able to make decisions the physician must treat him, according to the principle of *in dubio pro vita*, till the moment when brain death supervenes. As regards indirect euthanasia, the physician's act is considered lawful. Active euthanasia, however, is condemned by Article 579 of the penal code carrying the same penalty as second degree murder. Assisted suicide is considered a crime and punished according to Article 580 of the penal code.[1] The situation is the same in Switzerland[2] and Germany.[3] In Japan there is a novelty, a new type of punishable active euthanasia, introduced in 1991: the case of a physician who administers to a patient in the terminal phase a lethal injection at the relatives' request.[4]

30. The first country in the world to legalize euthanasia by a normative act is Holland. The law referring to euthanasia, issued in 1994, had been anticipated however for a long time by the jurisprudence, which stated, that the problem consists in the attempt to reconcile the protection of life with the respect of the patient's wish to die with dignity. Not having the competence to create a state of balance in this conflict of interests, the Dutch legislators found another solution, acquitting the physicians tried for practicing euthanasia on the grounds that they had a state of emergency. Thus, the Supreme Court decided that *when not even the physician is able to fulfil his obligation of fighting against, eradicating or relieving the patient's suffering, he is in a state of emergency*.[5] Moreover, the idea was accepted even for the cases when the sufferings were not physical but mental.[6] According to the law which came to effect in 1994, euthanasia is legal, being defined as the active medical intervention having as an aim the interruption of the patient's life when

[1] S. Semeira, La eutanasia en Italia**,** in J. L. Diez Ripollés, J. M. Sanchey (eds.), *op. cit.*, p. 77.

[2] N. Queloz, Cuestiones éticas y legale sen relacion con la eutanasia en Suiza, in J. L. Diez Ripollés, J. M. Sanchey (eds.), *op. cit.*, p. 227.

[3] H.-G. Koch, La ayuda a morir como problema legal en Alemania, in J. L. Diez Ripollés, J. M. Sanchey (eds.), *op. cit.*, p. 235.

[4] K. Nakayama, La eutanasia en Japon, in J. L. Diez Ripollés, J. M. Sanchey (eds.), *op. cit.*, p. 451.

[5] The Dutch Court of Cassation, decision from November 27, 1984 and from October 21, 1986 apud P. J. P. Tak, G. A. van Eikema Hommes, "La rèalisation de la législation relative à l'euthanasie aux Pays Bas en résumé", in *Revue des Sciences Criminelles et de droit pénal comparé*, 1994, p. 163.

[6] Court of Appeal of The Hague, decision from September 25, 1993, Leewarden Court of Appeal, decision from September 30, 1993, apud P. J. P. Tak, G. A. van Eikema Hommes, *op. cit.*, p. 166.

this, and not other persons, requests it; the patient must have *compos mentis*.[1] Assisting suicide under different circumstances remains a crime and is sanctioned with imprisonment up to 12 years.[2]

37. This law served as a model for Australia too, where the practice of euthanasia was legalized in 1995.[3] Belgium also adopted a similar law in 2002.

38. In France, the situation is less clear. Though there is an express disposition in Article 20 of the code of medical deontology, according to which *the physician has no right to deliberately provoke death*, it is admitted that there is a veritable right to die with dignity, and the physicians who in certain – relatively few –cases practiced euthanasia were not charged, though there was no serious reason for this, under the condition that the victim's consent is not accepted as a justifying cause,[4] and the act is even qualified as aggravated murder due to the victim's state.[5]

39. Most states, however, adopted a completely different penal policy, condemning euthanasia and assisted suicide. This is the situation in Romania too, where euthanasia is considered to be murder,[6] and the assistance to suicide aid and abet to suicide (Article 179 of the Penal Code), with the sole observation that, the special circumstances determined by the victim's state of health being given, legal mitigating circumstances can be taken into consideration.[7] I consider, however, that even under the conditions of the present legislation, it is possible to promote another solution based on several arguments. One of them refers to the physician's non-responsibility, and the other refers to the person's right to the respect of private life, based on which, in our opinion, the

[1] P. J. P. Tak, G. A. van Eikema Hommes, *op. cit.*, p. 163.
[2] *Ibid*., p. 163.
[3] B. Mathieu, *op. cit.*, p. 1045.
[4] Ph. Salvage, "Le consentement en droit pénal", in *Revue des Sciences Criminelles et de droit pénal comparé*, 1991, pp. 709–710.
[5] J.-F. Seuvic, *op. cit.*, p. 368.
[6] Active euthanasia is murder committed by action, while the passive one would be murder committed by omission, because the physician has the legal obligation to prolong the patient's life, acting as a guarantor.
[7] A. Boroi, "Eutanasia – concept, controverse, reglementare" (Euthanasia – Concepts, Controversies, Reglementaion), in *Revista de Drept Penal*, 2/1995, p. 81.

state has the positive obligation to establish a system which would permit the individual to choose the moment of his death.[1]

40. Thus, as I have said above, when a person reaches the terminal phase of an incurable disease, which causes him severe pain, the detached interest disappears from the structure of the right to life. Only the personal interest remains to be protected, which the protected person is free to give up. Therefore, I consider that in such a situation, the victim's consent may be considered as a defence for the physician's deed who accomplishes the act in question.[2] Nevertheless, in order that the person in question might dispose over his personal right, the detached interest must be extinguished. Consequently, some conditions ought to be fulfilled before admitting such a point of view: it must be certain that the disease the person in question suffers from is incurable; the person must suffer sever pain which cannot be eased. In addition, the patient's consent must be given freely in order to function as a justificatory cause

[1] I have already expounded these arguments in detail starting from an idea slightly complementary to the one I am going to build my present argumentation on (R. Chiriță, "Dreptul constituțional la viață şi dreptul penal" (The Constitutional Right to Life and Penal Law), in *Studia Universitatis Babeş-Bolyai. Seria Jurisprudentia*, no. 2/2002). Essentially, I said then that the right to die is an element of the person's private life, which includes the power to dispose over one's own body. I think, however, that, as I have stated from the beginning of this study, this right is rather an element of the personal interest which enters into the structure of the right to life, which essentially does not change the data of the problem.

[2] I perfectly agree that, usually, a person cannot dispose of his right to life. I believe, however, that what justifies this is the fact that, when the person in question does not suffer from a disease in the terminal phase, which might produce serious physical effects on him, the person is not the sole holder of his right to life, since the detached interest component of this right does not belong to him. Consequently, the person in question cannot dispose over his right. However, in the contrary case, if such an illness would indeed occur, the detached interest disappears, and only the personal interest remains, over which the person in question is free to dispose. In my former study I came to the same conclusion – the existence of a justificatory cause which would justify the physician's act –, but there I referred to the state of necessity. Though I neither consider this conclusion utterly mistaken in the present moment, I prefer to it the argument presented above. Nevertheless, at the present stage of the legislation on the matter one can also opt for the argumentation I expounded in the former study, as the victim's consent is not accepted as a justificatory cause by the law and as there is no express legal disposition to this effect.

for the physician's task. Consequently, I think that the state should permit the exercising of this freedom.

41. On the other hand, another problem occurs here: to know whether the person who wishes to be submitted to euthanasia or to have a physician's assistance in suicide can oblige the state to offer him these services through a medical institution. In other words, the question is whether the freedom to die, in such circumstances, imposes a positive obligation on the state to guarantee the exercising of this interest. Though previously my point of view was the opposite,[1] in the present I think that a positive answer to this question would be a rash conclusion. I think that the sole existence of the personal interest in the structure of the right to life, the *sine qua non* condition of the possibility to dispose over one's own life, is too weak a motive to oblige the state to take some measures which would facilitate the exercising of the right in question. It seems to me obvious that the state can do this, as the legislations which permit euthanasia and physician assisted suicide show this, but I do not think that the state has any legal obligation resulting from the necessity of protecting the right to life.[2]

42. In this respect I totally agree with the decision of the Court which stated that *it is impossible that Article 2 should be interpreted to the effect that it would grant a recognized right, diametrically opposed, no matter whether this would be exercised through the assistance of a public authority. The Court is not convinced that the right to life implies a negative aspect as well, including also the right to die or the right to determine the moment when a person chooses to die. The Court thinks that Article 2 does not guarantee to anyone the right to die or to obtain medical assistance to suicide from the part of a third party or of the state, unless the text of the article were modified, since this enounces the states' obligation to protect life. Even if it were admitted that the states which permit the assistance to suicide do not violate Article 2,*

[1] R. Chiriță, *op. cit.*, p. 17.

[2] Analyzing the dispositions of Article 8 referring to the right to private life, I thought before that the state has an obligation not only to permit, but also to guarantee the exercising of this right. I think that at that time I was too hasty in drawing this conclusion, since the positive obligations the states have are determined by the necessity to protect a right in the relationships of the person in question with third parties. But, in the case when a person wishes to exercise his personal interest from the structure of the right to life, giving it up, there is no relationship between that person and a third party which should impose the intervention of the state.

nevertheless it cannot be accepted that this text creates an obligation for the state to permit the assistance to suicide.[1] Initially, the legal organs instituted by the Convention which proclaims the right to life in Article 2, avoided expressing their opinion clearly. In its decision in the case Widmer v. Switzerland,[2] the former Committee declared that *Article 2 obliges the states not only to refrain from willingly causing death, but also to take the adequate measures for ensuring the protection of life.* Nevertheless, it has been decided that the fact that the Swiss state does not condemn passive euthanasia does not violate the Convention, since the accused state respected its obligation to incriminate murder committed without the victim's consent.

43. Consequently, in my opinion, in the case when all the conditions are fulfilled which lead to the disappearance of the state's detached interest, the person can freely give up the exercising of his right to life, and the state cannot sanction this option. However, I think that there being no particular law to this effect, the state cannot be obliged to assist in exercising this option.[3] Besides, this is the general European tendency as well, beyond the above presented cases, a resolution having also been moved to this effect by the Committee on the Environment, Public Health and Food Safety of the European Parliament.[4]

44. In reality, if we regard the right to life from the angle of its two components, the person's wish to die leads to a situation in which two rights will come into conflict: the personal right to life, which contains as an element the right to die too, and the detached right of the state. States must find the balance between these two rights when they are not convergent, but this state of balance cannot consist of a legislation which has as its aim to make impossible to exercise the personal right to life.[5] Since it is evident that some limitations to this right are admissible, but none of the fundamental rights can be the object of a restriction which would cancel it. Consequently, I think that states are obliged at least to

[1] ECHR, judgement Pretty v. Great Britain from April 29, 2002.

[2] European Commission of Human Rights, decision from February 10, 1993 apud B. Maurer, *op. cit.*, p. 397.

[3] The former Commission also declared this in its decision in the case Widmer v. Switzerland apud B. Maurer, *op. cit.*, p. 397.

[4] Ph. Salvage, *op. cit.*, pp. 709–710. See also note 37 regarding the public debate in France and the bill referring to the legalization of the declarations of will expressing the wish to die with dignity.

[5] M. P. Allen, *op.cit.*, p. 995.

permit a person not to live, if they cannot be obliged to give him assistance to suicide.[1]

Translated by Ágnes Korondi

[1] Supreme Court of New Jersey, decision in re Quinlan (1976) apud R. Dresser, "Precommitment: A Misguided Strategy for Securing Death with Dignity", in *Texas Law Review*, 2003, p. 1824.