

**Vlado Kambovski\***

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## **THE RIGHT TO BODILY INTEGRITY AND BODILY AUTONOMY**

*Respect for the natural and inviolable right to bodily integrity, understood as the right against significant, non-consensual interference with one's body, faces new challenges, which are related to the dynamic nature of human rights and the social environment for their embodiment. The debate about this right takes on new dimensions with the extensive development of sciences about the nature of the human being, such as bioethics or neuroscience, which extend bodily integrity to physical, biological or neurological implants embedded in the body. Man is more than a socialized individual and an individualized "socius", a biopsychological entity, so bodily integrity is necessarily connected to the state of his mental health as a condition of physical health and bodily integrity. This is the reason why criminal law is increasingly permeated by an attitude that calls for enhanced protection of mental integrity as a complementary element of the right to bodily integrity. In this context, the right to bodily integrity is a complex right, the content of which primarily includes the prohibition of inflicting physical or mental injuries, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of eugenic practices, in particular those aiming at the selection of persons the prohibition of slavery and forced labour, the prohibition on making the human body and its parts as such a source of financial gain, the prohibition of the reproductive cloning of human beings. But as a negative right, which implies all these prohibitions, it also suffers legal restrictions, such as forced castration in some legislations, physical injury in necessary defense, compulsory vaccination and other measures in case of a pandemic, etc. All limitations of this right require an indisputable justification, which often conflicts with hidden forms of its violation, especially when it comes to violations of mental integrity. As a positive right, the right to bodily integrity*

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\* Academician, Member of the Macedonian Academy of Sciences and Arts,  
e mail: [vladok@manu.edu.ma](mailto:vladok@manu.edu.ma)

*implies the right to bodily autonomy of the individual to make decisions about his body, and its interference means interfering with and limiting his free decisions. In modern criminal law, setting limits for bodily autonomy faces more complex questions, which have wider axiological implications: whether and to what extent acts of self-harm or destruction of personality, such as drug addiction, abortion should be banned, selling organs, selling one's own body, such as prostitution or hard manual labor, or to prohibit gender reassignment. Starting from the fact that the concept of the basic right to bodily integrity is not monolithic, answers to those questions should be sought starting from the higher postulate of human dignity, which is alien to the respect of this right as a property right.*

**Keywords:** *the body, right to bodily integrity, bodily autonomy.*

## **1. The body**

The body is precondition of human existence and reference point of many legal norms. But the law only rarely asks what the body is more precisely. According to the most basic definition, the body is the entire structure of a human being, composed of many different types of cells that together create tissues and subsequently organs and then organ systems. This definition implies the definition of the human body as a functional whole of parts that have a vital function, i.e. maintain human life. Therefore, when we talk about the right to bodily integrity, we mean first of all about the integrity of the body of a living person. In other words, the right to bodily integrity is a pendant to the right to life. But what is life?

The definition of the life actually is varies much more than is exhausted by the legal approach, according to which life begins from the moment of birth, or from a particular legal aspect - pregnancy, and lasts until the moment of brain death. More than 100 definitions of life have been counted that lead to rather concise and inclusive definition, made by *Darwin*: “life is self-reproduction with variations” (Ćorić, 2021: 55). Life in the medical sense is different from life in the legal sense, or life in the biological or biochemical or ecosystem sense. Even after heart failure and brain death, the cells of the body are still alive and can remain that way for hours, which is what makes organ donation possible. These complications point out something fundamental about what “life” is in the biological sense. In addition to the right to real life, the concept of the “right to virtual life” also appears (Stănilă, 2021: 118).

Fluid understandings of the concept of life have a direct impact on the international human rights documents that declare the right to life as a fundamental, natural and inalienable right, but do not define its content. Thus, the Universal Declaration of Human Rights mentions in its Article 3 stating that “Everyone has the right to life, liberty and security of person”, but it does not define the content of that right. The European Convention on Human Rights distinguishes four basic rights, which are considered central rights: the right to life (Article 2), the prohibition of torture, inhuman and degrading treatment or punishment (Article 3), the prohibition of slavery (Article 4) and the right to freedom (Article 5). But the right to life is not provided as an absolutely protected non-derogable right, and is

considered an absolutely protected but derogable right (Omejec,2014: 844). In article 2, paragraph 1, the Convention provides that: “Everyone’s right to life shall be protected by law”, but paragraph 2 contains exceptions in which deprivation of life will not be considered in conflict with this article. The Convention complicates the definition of life with the provision from Article 8, paragraph 1, which stipulates that “every person has the right to respect for his private and family life, home and correspondence”. The question arises: what is “life” and what is “private and family life”? It is obvious that the definition of life in Article 2 implies its biological determinism, while private life in Article 8 includes the social status and relations of the individual with his social environment.

Other international documents on human rights do not go further; so the Universal Declaration of Human Rights (Article 3: “Everyone has the right to life, liberty and the security of person”); the International Covenant on Civil and Political Rights (Article 6 paragraph 1: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”, but provides exceptions in paragraph 2 (s. Bačić, 2021: 30). The vagueness of the concept of life has implications for determining the content of the right to the body, as well as the degree of its derogability.

In the absence of a generally accepted definition of life, from the legal and cultural point of view, the label “life” is an artificial binary construct invented by human culture that does not describe what is actually going on at the biological and biochemical level (Bublitz,2022:2). This approach leads to the observation of life as a biopsychological function of the human body, made possible by its integrity. The legal concept of life deviates from the biological concept in defining the right to life, considering the unborn child as alive, from the aspect of inheritance rights, or the occurrence of death by the cessation of all biological functions of the body. This applies primarily to those areas of the legal system that concern personal rights. But in certain areas of bioethics, medical law, even criminal and civil law, parts of the human body at the cellular biological or biochemical level become the subject of legal regulation (transplantation of body parts, changes in the structure of the genome, etc.). On the other hand, there are also legal rules that refer to the treatment of the human body even after the end of life (for example, penal codes provide for penalties for digging up a grave, or trade in vital organs removed from the body of a deceased person etc.).

Today, the generally accepted definition, which actually views the body as a biological framework for life, is the subject of numerous disputes, coming from the ranks of feminists, artists and disability theorists, who propose its post-human reconceptualization with potential legal implications. In addition to the views that support the expansion of the concept of the body, from the aspect of enhanced protection of cyborg bodies, some legal scholars suggest redefining or even dismissing the right to bodily integrity because of its uncertain foundations. Of particular importance is the question of the boundaries of the body because the legal treatment of prostheses and assistive devices depends on whether they are part of it.

The body has its upper boundary, which implies the existence of all organs of a human being with all their functions, while its lower boundary is the existence of vital organs and their functions, without which life ceases. The body exists, and thus life, even if there are no limbs, kidneys, eyes, or they don't work, etc. But in that case the question arises whether prostheses, and under what conditions, can be considered body parts. This issue is of key importance for legal, and especially criminal law considerations, in the light of the fundamental legal distinction between persons and things, and therefore human rights in relation to them. The difference in law between persons and things originates from Roman law (Gaius, *Institutiones* 1.8: *Omne autem ius quo utimur, vel ad personas pertinet vel ad res vel ad actiones*: All the law that we use refers either to persons or to things or to lawsuits). This division (persons, things, lawsuits) has traditionally entered the framework of large civil codifications from the 19th century, according to *Guy's* systematization.

The law must thus draw normative boundaries, which cannot go beyond the biological integrity of the body, but cannot descend below the boundary of the existence of the identity of the person residing in that body. In other words, a new artificial sapient creature cannot be created by replacing all body parts with things (*Frankenstein*). Between these extremes, there remains a large margin of evaluation and design of legal bases for the development of new legal rules in the field of bioethics, medical, civil and, especially, criminal law.

3. The concept of the body has become problematic today due to the development of medicine, bioethics, neuroscience and technological development in general, which has produced revolutionary advances in solving the problems

of various diseases and physical or mental disabilities of people. They made it possible not only to replace biological parts of the body (tissues and organs) through transplantation, but also to implant things that replace or supplement the functions of certain organs. Biohybrid artificial organs are of such nature, which include all devices that replace the function of organs or tissues and contain both synthetic materials and living cells (Colton, 1995: 415). But in addition to biohybrid organs, medicine has developed a wide variety of organs made of different artificial materials (synthetic membranes, titanium and cobalt-chromium for prostheses, polymeric components etc.<sup>1</sup>). Possibilities of organ replacement, such as heart, liver, kidneys, etc. with the help of organ transplantation or artificial implants, open numerous, first of all, ethical dilemmas, such as the question of the “bionic man”, a man whose many organs have been replaced by artificial ones, and the principle and ethical limitations inherent in this process. Ethical justification is found in the knowledge that man has always used objects from nature and technological progress to facilitate life without ethical concerns, so when technology and medical technique allowed these objects to replace parts of his body, medicine incorporated them into practice by adopting just the simple utilitarian principle of “help but do no harm.” (Roumeliotis, 2021: 56).

The legal regulation of body and neuro implants is at the very beginning of the formation of legal standards and norms on various aspects of the use and protection of body and neuro implants. The reason for this is that the establishment of the relevant legal regime is faced with very rapid scientific and technological progress in this area, which is at a higher level in relation to certain artificial organs, while for others it is in a lower, early stage (eg neuro implants). Likewise, clinical trials with brain computer interfaces and advanced prosthetics are a particular problem, as well as a clear division of rules that would apply to treatment and enhancements with different types of body implants, in terms of rules to be followed and limitations to be set (Palmerini, 2015: 226).

Human implants have numerous implications not only for bioethics and medical law, but also for other areas of law, especially criminal and civil law. The starting point for considering the legal consequences is the answer to the question: are implants part of the human body in the legal sense and to what extent do they

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<sup>1</sup> Hench, Jones, (eds.) (2005)

affect the right to bodily integrity. And while in relation to biotech implants, which are functionally connected to other organs in the body by transplantation, there are no major problems, in the focus of the legal debate are other, non-living implants, nanotechnology implants and information carriers (Roosendaal, 2012: 81). All implants are things, so if the point of view that they are part of the body is accepted, they should move to another legal regime of personal rights (*ius quod ad personas pertinet*). It is an indisputable fact that we use artifacts every day to expand our physical abilities or to overcome our physical deficiencies. For example, we use microscopes and telescopes to see things beyond the natural range of our visual system. Several twentieth-century philosophers have pointed out that when people use artifacts and technologies, they often tend to become extensions of their bodies: they become embedded in the user's body schema (Van den Berg, 2012: 159).

Today, that opinion is taking on very serious proportions, due to the rapid development of new technologies and achievements in creating "cyborg-assisted-life" and "cyborgization", terms that refer to the use of tomorrow's computer processors in a body embedded in today's relatively unchanged anatomy. The prediction that over time populations in developed countries will increasingly resort to implant technologies, not only for critical life-saving devices such as pacemakers, which are currently used for several dozen medical therapeutic interventions, has been confirmed. Unprecedented progress has been made in the development and use of internally integrated technologies such as nanobio-information-cogno and silicon-based platforms, platforms for nanotechnology materials (e.g. thin graphene (carbon) with MoS<sub>2</sub> (molybdenum disulfide) and biotechnological platforms (eg synthetic DNA), communicating via telemetry within a framework of an interior intranet to an exterior Internet. In the next stage of advancement, the functions performed by these devices will be down-sized through progress in synthetic DNA, molecular computational devices, and nano-sized processors, deployed alongside, and within cells and organs as permanent non-organic, internal adjuncts to our anatomy. The important driver behind electrical control implantation is the development of the substrates, that is the material part of the computer, measured in nanometers, just a few atoms wide. We might anticipate that traditional medicine, even the ever-improving pharmacology, will be replaced or

augmented by implanted/telemetry bio sensors, organ stimulators and pumps, utilizing the materials, electronics, computer processors and inter/intra-body communication networks to enhance or replace failed human organs. The development of “cyborgization” is going so fast, that it is increasingly plausible to predict that homo sapiens born today, who carry genes and anatomical structures introduced 3.5 billion years ago, thanks to new technologies that overcome historical biological limitations, will be considered in less than a century inferior and unchanged (unmagnified) creature (Carvalko, 2013: 9).

The establishment of an appropriate framework for these changes, which open numerous ethical, cultural, identity and other issues, lags behind the increasingly massive application of artificial modifications of the human body, and thus of the human personality. It also has no answer in relation to the possibility of criminal abuse of their application, which can take different forms: violent changes in personality and its psychological characteristics, introduction of viruses, hacking through internal intranet telemetry, endangering health through intentional damage to implants, etc.

One of the categorical terms, around which a system of rules relevant to the basic human right to bodily integrity should be created, is “the body”: whether and under what conditions artificial organs are considered parts of the body. The starting point for determining that term must be the general understanding of the human body, which is also adhered to by the humanities, as a functional system of organs that sustains human life. This system includes biological and non-biological implants, which replace or complement the functions of vital and other organs. The condition for considering a physical, chemical, hybrid or other non-biological implant as part of the body is that it is permanently connected to other organs and that it is in continuous functional connection with them. So, for example, a built-in pacemaker, but also an attached mechanical limb, an eye implant, etc. From the point of view of criminal law, any damage to such an implant or prosthesis should be considered a bodily injury. This is not the case with prostheses and other devices that help a person to function normally (crutches, wheelchairs, etc.), but are not permanently and functionally connected to other organs. Their destruction can be qualified as damage to other people’s property.



This principle should also apply to implanted/telemetry biosensors, organ stimulators and pumps, which use computer processors and inter/intrabody communication networks to improve or replace damaged human organs. Processors and networks located outside the body cannot be considered part of it, but cases of their damage may fall under the legal definition of bodily injury, which in all criminal laws includes bodily harm as well as health impairment. It should be pointed out, however, that the complexity of the problems of new technologies requires many times more engaged legal minds in the search for an appropriate legal framework, harmonized with the absolute ideas and principles of law, faced with the increasing challenges of the future of humanity.

## **2. The right to bodily integrity**

The right to the bodily integrity is important, because it determines the crossroads, where certain directions of the development of law branch off, especially the law on human rights, bioethics, medical, criminal and civil law. But, contrary to the frequent repetition that it is a pendant of the right to life and that it is a fundamental right, the determination of its content and scope is left to the very nebulous area of human rights and their protection. First of all, the right is not explicitly declared natural and inviolable in the basic international human rights documents, with the exception of the Convention on the Rights of Persons with Disabilities (Article 17: every person with disabilities has the right to respect for their physical and mental integrity on an equal basis with others (See: Lavazza, Giorgi, 2023: 6). Thus, the European Convention on Human Rights does not mention this right, determining its negative content through other provisions: prohibition of torture (Article 3), the freedom from slavery and forced labor (Article 4), right to freedom and security of person (Article 5), the right to respect for private and family life, home and correspondence (Article 9) and the freedom from discrimination (Article 15; s. Akandji-Kombe, 2007: 20). As all these articles cover in a very fragmentary way various aspects of rights that have a personal character, it remains unclear whether the right to bodily integrity is considered a separate right, whether it is synonymous with the right to personal integrity, which includes the integrity of the human being as a biological, psychological and social entity.

On the other hand, it is completely unclear which negative and positive obligations arise from the right to bodily integrity. While other provisions set numerous exceptions, which give them the character of derogable rights, as an absolute and non-derogable negative right, the Convention declares only the prohibition of torture and inhuman or degrading treatment or punishment (Article 3). Article 3 does not contain another paragraph that would determine the circumstances that allow the limitation of this right. Accordingly, it can be concluded that in terms of this provision there is no room for restrictions given by law (Simović, 2010: 36). Is the prohibition of torture really absolute and non-derogable? Article 3 of the ECHR does not define torture, nor inhuman or degrading treatment or punishment. Accordingly, the European Court of Human Rights and, prior to November 1999, the European Commission of Human Rights have developed a complex and extensive body of jurisprudence to determine the constituent elements of these forms of abuse. In the case *Ireland v. UK* European Court of Human Rights drew a distinction between torture, inhuman treatment, and degrading treatment, holding that such a distinction was necessary because of the “special stigma” attached to torture. An act must cause “serious and cruel suffering” to constitute torture. In this instance, the Court held that “the five techniques” caused “if not actual bodily injury, at least intense physical and mental suffering... and also led to psychiatric disturbances during the interrogation,” and therefore constituted inhuman treatment, but did not “occasion suffering of the particular intensity and cruelty implied by the word torture.” The Court thereby effectively replaced the distinction based on the purpose of the act with a subjective assessment of the severity of the pain and suffering caused by the act. According to such a distinction, degrading treatment that reaches a certain severity can be reclassified as inhumane treatment, which in turn, if severe enough, can be reclassified as torture.<sup>2</sup>

As the most explicit emanation of the right to bodily integrity, the prohibition of torture is an absolute and peremptory norm (*jus cogens*) of international law and can be enforced even against a state that has not ratified any of the relevant treaties. Despite this, the use of torture remains widespread and many governments, as well as insurgent groups that control territory (such as Boko Haram

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<sup>2</sup> Association for the Prevention of Torture, (2008: 57).

in Nigeria, regimes in Sri Lanka, Iran, Afghanistan and other countries), continue to use torture to oppress and persecute people to this day. In addition, in the search for an adequate response to the spread of international terrorism, discussions on deviating from the prohibition of torture and its use as a last resort in the event of preventing a terrorist attack are revived. That view is linked to the rejection of the prohibition against self-incrimination and the question of the admissibility of the evidence obtained in an illegal manner (torture; See: Thienel, 2006: 350). The rule of necessary defense is used as the main argument for that position. This rule is accepted in the European Convention on Human Rights as a permissible deviation from the absolute right to life: if it is permissible to take the life of another in the case of necessary defense, all the more (“argumentum a majore ad minus”, “from the greater to the smaller”- if something is allowed for a more serious case, it should also be valid for a lighter one) torture or inhumane treatment should be allowed if there is an actual attack on the lives of others (planted bomb in a school with many children), so that the terrorist would be forced through self-incrimination to detect it and thus prevent it.

International conventions on the prevention and punishment of terrorism firmly stand on the international community’s view on the absolute prohibition of terrorism and the inadmissibility of evidence obtained by coercion. The spirit of international conventions is such that ‘torture’ and any form of cruel, inhuman or degrading treatment is an aberration of international human rights law. The right not to be tortured is absolute, unqualified and non-derogable. But some national anti-terrorist legislations do not always follow those *jus cogens* prohibitions of international law. In this case too, double standards are manifested in the attitude of those states towards international criminal law: that they accept and apply its norms and standards when they consider it to be in their interest. Consequently, traditional legal limits on the use of force had to make way for a new perception of national security in the war against terror. Most nations of the world have responded to domestic and international obligations following the 9/11 incident in the US by passing specific laws to prevent terrorism. After P.A.T.R.I.O.T. Act of October 26, 2001 USA, such laws have been adopted by the United Kingdom, Canada, New Zealand and Australia, while in other Western countries reforms of penal legislation have been carried out (Anwukah, 2016: 16). Emphasizing the reason for security in “the war against terror” above the interest

of protecting rights, the anti-terrorist legislation makes its way to the position that torture, albeit in a covert form, is a necessary strategy for obtaining direct intelligence about terrorist attacks or terrorist networks through confessions. Deviations from international law in national legislations take the form of various measures, such as indefinite detention without trial, trial of terrorists before a special court, abolition of the right to remain silent and legal representation, wiretapping of lawyer-client communications, use of torture and drugs to force confessions, or increased surveillance and reduced privacy protection. Finally, above the legislative level of prevention of torture as a criminal offense regulated in the main criminal laws, there always remains an open question - what if acts of torture are carried out by state authorities, and how to overcome the practice of their impunity.

If this (long) story about the prohibition of torture leads to the conclusion that the right to bodily integrity stands on very slippery foundations, we can agree that this right on the international and national level has not been established in a concise manner and with all the necessary guarantees of its inviolability. According to the possible restrictions, such as: compulsory vaccination, taking alcohol from the blood in the case of a misdemeanor, deprivation of liberty based on broad legal grounds, etc., it seems that it is a non-absolute, derogable right, and that the only absolute element that gives that right the character of natural rights, it is the individual's right to control and preserve one's body<sup>3</sup>

A step forward in clarifying the right to bodily integrity is made by the EU Charter of fundamental rights, which Chapter 1 on dignity contains the right to the integrity of the person (Article 3): 1. Everyone has the right to respect for his or her physical and mental integrity. 2. In the fields of medicine and biology, the following must be respected in particular:

(a) the free and informed consent of the person concerned, according to the procedures laid down by law; (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons; (c) the prohibition on making the human body and its parts as such a source of financial gain; (d) the prohibition of the reproductive cloning of human beings. In its judgment of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council* (2001), the

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<sup>3</sup> Association for the Prevention of Torture, (2008: 57).

Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.

For the approach of the European Charter contained in this provision, it is significant that this right connects the physical and mental integrity of the person into a single subjective right that protects both inseparable components. In times of violence of all kinds, especially psychological, the right to personal integrity becomes more and more important. Man is exposed to terrible pressures, which cause individual and collective reactions - from extreme apathy to extreme anger and aggressiveness that can be attributed to the most brutal forms of violence, senseless killings “from sports”, etc. Today, people are mercilessly exposed to hate speech that spreads on the Internet, mass manipulations, intimidation with war, mass diseases, etc. The connection between such traumatic effects on the personality and its not only psychological, but also mental health, has been confirmed by numerous scientific researches and the life experience of each of us. Medicine deals with the psychosomatic causes of numerous diseases. Psychological injuries or psychological torture can reach the level of severe physical injuries and even lead to death (Herring, Wall, 2017: 566). The right to the integrity of the person is a natural synthetic construct that combines the right to bodily integrity and the right to mental integrity. It protects man as a physical, psychological and moral being. The mental structure of the human personality is part of his bodily integrity. The body is not only the physical but also the mental substrate of human life

The integral approach to conceiving the right to the integrity of the person is based on the philosophical tradition, related to the teachings of *John Locke* and *J. S. Mill* about “our ownership of ourselves” - our rights to our own property. Property primarily includes the right over our body, which excludes any physical touching of others. However, our selves do not consist only of our bodies. Our minds are certainly also a part of ourselves, which implies ownership of the mind as well as of the body (*Mill*: “Over himself, over his own body and mind, the individual is sovereign.” *Locke* even considered ownership of the mind to be primary, because he thought that we gain ownership of ourselves originally through the mental act of taking responsibility for our actions. Of course, there is great disagreement about the relationship between mind and body. On some views -

physicalist views - our minds are just a part of our bodies, or are reducible to our brains, or parts of our brains. But on other views, minds are not just parts of the body. For example, according to one widely held view in philosophy, our minds are distinct from, although completely determined by our brains, the same way that a statue differs from a lump of clay from which it is entirely determined. According to *Neal Levy*, our mind as a set of mechanisms and resources that are not limited to internal resources composed of neurons and neurotransmitters is not completely contained in the skull, but instead spills into the world (Douglas, 2020: 382). According to this thesis of the extended mind, if someone interferes with my smartphone or diary, it interferes with my mind, and thus with me, and thus violates my rights to self-property. Or, for example, violation of the right to the integrity of the person represents well-known forms of brainwashing, such as hypnosis and aversion therapy, which clearly interfere with the mind and impact on the body: they affect a person's brain states.

The nature of the right to personal integrity, in its complex meanings a cluster of heterogeneous constituent rights, enables the opening of an endless area of its operationalization through the development of international norms and standards, its constitutionalization in national constitutions and, especially, creative reforms of criminal legislation. The main reform direction, stimulated by recent conventions (on gender equality, bioethics, computer crime, environmental protection, etc.), is precisely the strengthened protection of the bodily and mental integrity of the individual. The result of that orientation, especially in criminal legislation, is the expansion of the zone of criminal protection against human trafficking, family violence, violence against children and women, discrimination on all grounds, hate speech, computer violence, harassment, stalking, psychological intimidation, sexual violence, illegal genetic, biopsychological and similar interventions in the human body.

### **3. The bodily autonomy**

The concept of personal autonomy is an essential part of modern human rights. Man is an autonomous, conscious and responsible being, an independent and self-sustaining entity that develops individually in the open space of human rights. The European Court of Human Rights has defined personal autonomy as

“the ability of everyone to lead his life as he wishes”, which includes “the possibility of engaging in activities that are considered physically and morally harmful or dangerous to his personality” (Hurpy, 2018: 38). Of course, we cannot underestimate the role of society, because an individual’s life is not isolated and is always influenced by many external factors, so that his autonomous decision-making will often collide with the necessary limitations of the environment in which he lives, with the equal freedom of decision of other individuals, as well as the power the state and its coercion. Bodily integrity and autonomy refer to a human right that everyone should enjoy and consists in free decision-making about their body and their life. While bodily integrity and autonomy are themselves human rights, they are also central to the enjoyment of other human rights principles that fulfill the content of human dignity as the highest value.

Unlike the right to bodily integrity as the right that allows a person to have his body whole and undamaged and without physical interference and violent interference from others, bodily autonomy is defined as the right to make decisions about his own body and life without coercion or violence. Bodily integrity refers to the integration of the self and the rest of the objective world, so violating it is significantly different from interfering with decisions about one’s body. An individual is free to decide whether to undertake physical work, go to the doctor, have sex, give birth to children, etc. From this basic difference arises the difference of possible justification for interference in the first or second right. The right to bodily integrity is basically a negative right, which creates prohibitions for violent interference with the body, as well as positive obligations for the state to take measures to preserve and protect bodily integrity (the right to health, to a healthy environment, protection of disabled persons, protection and providing conditions for children’s development, etc.). The right to autonomy is basically a positive right, which includes obligations to respect autonomous decisions through the creation of legal, economic, social and other conditions for their adoption and implementation. Likewise, while every person has the right to bodily integrity, the realization of bodily autonomy is not equally accessible to all individuals, such as children, persons with physical or mental disabilities, but also persons whose decision-making autonomy is limited by legal restrictions (prisoners in prison, soldiers in barracks, persons limited by professional obligations, etc.). Bodily autonomy presupposes not only independent decision-making about

one's body, but also the ability to execute that decision, which again depends on bodily integrity.

There are different explanations about the content of the right to bodily autonomy, depending on how the meaning of the right to the body is explained by lawyers. There are those who claim that bodies should be viewed as property, which can be owned and transferred; those who reject access to property and instead argue that rights such as 'the right to bodily integrity', 'the right to privacy' or 'the right to autonomy' should be used to protect the special status of the body, and a third group who believe that there is something that can say for both views, and the ideal solution lies in finding the appropriate combination of property access and integrity/privacy. The significance of this dispute can be seen in the context of various legal issues: when considering the issue of living organ donation, should organs be treated as property that can be bought or sold like any other thing, or does the unique status of the human body mean that it should not be commercialized by treating it as property; or should confidential medical information about someone be considered proprietary or should it be protected through the right to privacy (Herring, Chau, 2007: 34).

Nevertheless, to a large extent, the discussion about the content of the right to bodily autonomy rests on the *Lockean* tradition of considering one's own body in terms of ownership: "My body, my property"! (Kall, Zeiler, 2014: 106). According to this thesis, the right of property over the body protects against all corporeal and non-corporeal forms of interference in the free decision-making of the subject of this right. A similar claim applies to other types of rights from autonomy ("rights to autonomy") and rights arising from privacy ("rights to privacy").

Contrary to such a narrowing of the freedom of autonomy towards a derivative of the right of ownership of the body, it should be considered that its content is more determined by the idea of individual freedom as a necessary condition for autonomy, emphasizing that freedom is always situated relationally and that it becomes meaningful only as freedom in relation to its factuality social and cultural dimension. Autonomous decisions are made in the midst of social relations, in interaction with others and in the context of the equal rights and freedoms of others.



As a fundamental right, guaranteeing bodily autonomy is a basic condition for equality of human rights, especially rights that affect the person and its physical and mental integrity (right to privacy, gender equality, right to health, etc.). It is of key importance for realizing the right to non-discrimination. Acts of violence, coercion, lack of respect for consent, denial of sexual and reproductive health information and service, all represent violations of this right and remain pervasive around the world. This right is about more than individual rights and requires more systemic change involving more fundamental legislative processes - at least, until structural systems of oppression are challenged and broken away with and new dynamics put in place. Respect for the integrity of the body and the integrity of the person and its autonomy implies a critical attitude towards the question - whether the state can dictate the choice of an individual about his body about things that do not harm others or offend the dignity of the human species. Consistent respect for this right imposes the attitude that state intervention of private bodily choices should only be permitted if based on *Mill's* harm principle, or where the dignity of the human species as a whole suffices to justify public intervention.

10. The implications of bodily autonomy in the comprehensive meaning of free decision-making about one's physical and mental integrity are very broad and relate to several areas of human rights and their protection: from the right to procreation and the permissibility of abortion, sexual freedom, donation of human organs, etc., to suicide, self-harm and the right to die with dignity. A special problem is respecting the bodily autonomy of persons who have a limited ability to form their will and make decisions, such as children. The right of parents to make irrevocable non-therapeutic decisions on behalf of their children is particularly controversial, especially when it comes to irreversible decisions about surgical modifications of their children's bodies (Fox, Thomson, 2017: 501).

However, bodily autonomy is often prevented by legal, social, religious, and institutional norms that prevent personal decisions over own body. Examples of these norms include "marry your rapist" laws in some legislations that allow perpetrators to escape punishment if they marry their victims, denying autonomy experienced by survivors of rape. Some of these legal, social, religious, and institutional norms directly or indirectly threaten physical and mental health, or even life. As an emanation of individual freedom, respect for bodily autonomy as

a fundamental right in convergence with other rights, especially the right to privacy, inspires legal reforms in numerous legal fields. Today, the changes related to sexual freedom, protection of children, its facilitation for persons with disabilities, and especially the achievement of gender equality, are particularly topical. These are areas in which numerous studies point to the extremely worrying status of bodily autonomy. Thus, the 2021 *State of World Population* report, titled *My Body is My Own*, marks the first time a UN report focuses on the power and agency of individuals to make choices about their bodies without fear, violence or coercion. The report examines data on women's decision-making power and on laws supportive of sexual and reproductive health and rights. Tragically, only 55 per cent of women have bodily autonomy, according to measurements of their ability to make their own decisions on issues relating to health care, contraception and whether to have sex. The innovations necessary to overcome such a situation are particularly related to the reforms of the criminal legislation, encouraged by the adoption of new international conventions that are on the line of strengthening the right to bodily autonomy (European Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), UN Convention on the rights of persons with disabilities, European Convention on action against trafficking in human beings, UN Basic Principles for the treatment of prisoners, and others international documents).

Starting from the position that there is no right to bodily autonomy without social justice and liberation, this right acquires the character of a permanent postulate for the overall transformation of today's society, in which the paradox of individual freedom still reigns (*Rousseau*: "man is born free and everywhere he is in shackles").

#### **4. Conclusion**

The rights to the body, bodily integrity and bodily autonomy are increasingly important rights, which confront the human personality with all its values with more and more challenges of the modern age. They are at the crossroads of existential rights, such as individual freedom, personal integrity, rights to privacy and other subjective rights, which presuppose respect for the human being and the elementary conditions of his existence, faced with the possibilities offered by

modern technologies and knowledge about human life. There is no doubt that these rights are natural and inalienable, because they are related to the right to life, but the determination of their content in international human rights documents, with some exceptions, such as the absolute prohibition of torture, is too fluid and leaves a number of ambiguities: what is the human body and what are its boundaries, in the light of the development of new technologies that enable the use of various implants and prostheses and other devices that help a person to function normally (“bionic man”); the understanding of bodily integrity as a symbiosis of the biological and mental components of the person and on that basis connecting of these rights with similar personal rights; and, finally, bodily autonomy and its transformation of its basis from the ownership right (“my body my property”) to the freedom of choice (“my body my choice”).

All these aspects of the right to the body are not consistently regulated in the international conventions on human rights, so it remains to be viewed as a fundamental right to be regulated by national legislation. The aim of this paper is to clarify theoretical positions that can serve as suggestions for determining a basic approach to respect and protection of the right to the body and related rights in criminal and other areas of law.

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