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Original Scientific Paper
DOI: 10.47152/ns2024.10

THE RIGHT TO LIFE: HUMAN RIGHTS APPROACH IN CRIMINAL LAW[**]

In this paper, the author considers the right to life within the relationship between criminal law and human rights paradigm, especially the role and importance of human rights doctrine in criminal law. The penetration of human rights into criminal law contributed to the strengthening of the criminal law protection of the right to life, both directly and indirectly. In the first case, certain norms and criminal law institutes that primarily protect the right to life have been redacted in terms of providing more comprehensive protection. Hence, when it comes to the protection of the life within criminal justice system it should be stated that criminal law becomes first instead of last resort. Mirroring the fact that life is a kind of "good" that is necessary condition for the enjoyment of all the other goods and rights, many criminal law norms that primarily protect other rights also need to be viewed in that sense. In general, there is a tendency to protect right to life not just in pure physical (bodily) sense but with the certain quality. However, based on the fact that human rights have both a defensive and an offensive role within criminal law it could be easily stated that the making criminal law norms and creating criminal justice system is in a certain way the art of balancing between an effective protection of the fundamental values which are endangered by criminal acts and protection of the fundamental values which can be endangered while that goal is being achieved.

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[**] This work is the result of the engagement of the authors in accordance with the Plan and program of work of the Institute for Criminological and Sociological Research for 2024 (on the basis of contract no. 451-03-66/2024- 03/200039) with the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

In order to confirm the hypothesis regarding the influence of the human rights on criminal law when it comes to the protection of the right to life, the paper will provide the relevant and prominent jurisprudence as well as the analysis of the certain changes regarding the criminal law institutes on a comparative level.

***Keywords**: life, right to life, criminal law, human rights.*

1. Introductory remarks

The law as a social category with dynamic character, has changed over the centuries. Not to mention that the criminal law has evolved significantly over the past millennials. Most of those changes are related to enhancing the position of the citizen in front of the state power. It is often said in the relevant literature that today the role of human rights concept in criminal law is to ensure criminal accountability for those individuals who have violated international human rights or humanitarian law (Engle, 2014: 1070). However, in the earlier stages of the development of the criminal law, the application of the human rights paradigm within the criminal law system was related to the promotion and guarantee of the protection of basic human rights against state coercion. Having that in mind, it is safe to claim that human rights element in the criminal justice system has evolved in terms of expanding its scope and reach which process is still ongoing with more or less success depending on current socio-political pattern.

So far, human rights become a matter of common agreement and are shaping the way in which we relate to each other and to state and local authorities (Amatrudo, Blake, 2015:1). Since the achieved level of human rights in a legal system indicates the civilizational level of development of one society and is a frequently used criterion for certain diplomatic activities towards countries that ignore the achieved standards of human rights, today, almost no one denies the importance of human rights, both the state representatives, and citizens.[1] Despite this, we are witnessing massive human rights violations all around the world, there are many cases in which authorities are abusing their power and seriously violating human rights or ignoring the necessity to fulfill its positive obligation and ensure the protection of basic human rights within their jurisdiction.

When it comes to the human rights discussion in terms of impact on criminal law and criminal justice system, the fact is that the *revolving door* phenomenon is particularly present. In other words, the more massive the violation of human rights is, the stronger is the need to implement effective ways and mechanisms to protect human rights. For instance, after the Second World War which

[1] Statement that human rights ideal "unites left and right, the pulpit and the state, the Minister and the rebel, the developing world and the liberals of Hampstead and Manhattan" is illustrative example of this. See: (Douzinas, 2002:445).

is remembered as among the most brutal period of violation of the basic human rights, the biggest step towards protection of human rights was made regarding the adoption of human rights codifications at the international and regional level and establishment of the international/regional bodies for monitoring the implementation of adopted standards and their further development.

There can be no doubt that human rights approach in criminal law played a dominant role in making what we today call modern criminal law. The core of contemporary criminal law principles are made of human rights paradigm since the most of the modern criminal codes proclaim that protection of a human being and other fundamental social values constitute the main *raison d'exister* of criminal law. While striving to protect the basic human beings and social values, criminal law mechanisms are often in such position to endanger the same values in order to be more effective. Therefore, it could be argued that human rights have both a defensive and an offensive role within criminal law (Tulkens, 2011). For that reason, it could be easily stated that the making criminal law norms and creating criminal justice system is in a certain way *the art of balancing* between an effective protection of the fundamental values which are endangered by criminal acts and protection of the fundamental values which can be endangered while that goal is being achieved. Having that in mind, it could be claimed that the sole nature of criminal law is based around human rights idea. Their symbiotic relationship is starting point when thinking about the essence of both criminal law and human rights concept. In general, conceptualization and systematization of the human rights idea should be the place where the criminal law must look for the answers on the at least two basic questions: *What are the values (human rights) that need to be protect within criminal law*? *To what extent the chosen values should be protected?* On the other hand, taking into account the fact that the criminal law mechanism are at the highest level of the state coercion, there can be no better system to promote and protect chosen values and rights than the criminal law is.

Among the many rights and values, right to life is the most important one since it is a prerequsite for realizing all the other rights and freedoms. Furthermore, law is a social creation that aims to enable life, i.e. common life at the certain space and time. It can be said that the sole notion of the right to life has changed its meaning and scope from epoch to epoch. Those changes went towards

spreading the term, from protecting life in a pure physical (bodily) sense to protecting life with a certain quality, such as dignity for instance.

2. General remarks on the right to life and its legal nature

The idea about the necessity to protect a life of every single human being on equal level and way was born in the doctrine of natural law (*lex naturalis*). In contrast to Ancient Greece legal thought where the state was understood as an absolute powerful entity, the legal heritage of Ancient Rome gave rise to the idea of the state as the embodiment of benefits for its citizens (Sredojević, 2014:474). Not everything in terms of the protection of the right to life has always been indisputable, i.e. at the level of understanding that is at least declaratively present in public discourse today. Not to mention entire categories of people whose lives were considered an object in the hands of the powerful in relation to the prevailing and generally accepted understanding of human life as a fundamental human right (Đ. Đorđević, M. Đorđević, 2021:76). Additionally, during the reign of King *Milutin* at the beginning of the 14th century, there was the possibility to impose a fine for the murder according to the Serbian medieval law (Vuković, 2022:10), what is unimaginable today, considering the importance of life on the hierarchical scale of goods protected by the criminal law.

In the development of the normative aspect of human rights three phases are noticeable, with the first referring to *institutionalization*, the second to *constitutionalization*, and the third one to the *internationalization* of development (Sredojević, 2014). The first phase was embodied in the *Magnum Carta Libertatum* from 1215. while the process of constitutionalization was spawned in the framework of the American and French revolutions at the end of the 18th century. From that point in history of legal and political life, most of the states around the world explicitly set out in their constitutions the protection of the right to life as a fundamental principle.[2] Finally, the process of internationalization began after the end of the Second World War, with adoption of the Universal Declaration of

[2]There are a few constitutions in which the protection of the right to life is not prescribed explicitly, but the existence of that protection is indisputably concluded on the basis of other rights and prohibitions. See for example the Constitution of the Republic of Montenegro.

Human Rights (UDHR)[3] and consequently other international legal acts adopted at international and regional level.

Further development of the right to life legal protection was around the deepening the meaning of the term what leads to the more comprehensive protection. Since the very beginning of the legal, particularly constitutional and conventional protection of the right to life, the main goal was to protect life in physical sense and to ensure that no one can be deprived of his life intentionally without rules governing when life may be taken based on a sentence of the court. Interdisciplinary scholastic thought developed the notion all the way to the extent that judicial bodies both at the national and international/regional level, need to address the issue of right to life of unborn child[4], euthanasia, abortion etc. in the context of right to life when interpreting this fundamental right. When considering violation of Article 2. of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHRF)[5] European Court of Human Rights (ECHR) expanded the meaning of the term, so in the context of the right to life the Court has addressed issues such as forced disappearances, extradition of foreigners to countries where their lives are in danger, compulsory measures to prevent suicide, the right to die, social protection etc. [6]

As we explained above, a new tendency regarding theoretical and practical approach to the right to life is to ensure more comprehensive and purposeful protection what means that life without certain quality is not what it must be. Today, it is a common place that right to life must be followed with and is closely related to some other protected rights and freedoms, at the first place right to

[3] Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948).

[4] The question of when the right to life protection begins was deeply addressed by the ECHR. The Court in general left the issue to be solved on the national level according to the principle of margin of appreciation. There is a different normative position in the American Convention on Human Rights which in Art. 4. states that every person has the right to have his life respected from the moment of conception.

[5] European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 04 Nov. 1950), 312 E.T.S. 5, as amended by Protocol No. 3, E.T.S. 45; Protocol No. 5, E.T.S. 55; Protocol No. 8, E.T.S. 118; and Protocol No. 11, E.T.S. 155; entered into force 03 Sept. 1953 (Protocol No. 3 on 21 Sept. 1970, Protocol No. 5 on 20 Dec. 1971, Protocol No. 8 on 1 Jan 1990, Protocol 11 on 11 Jan 1998).

[6] Interrights, *Manual For Lawyers: The Right to Life under the European Convention on Human Rights (Article 2)*, Interrights, London, 2011, p. 1.

liberty and security, right to respect for private and family law, prohibition of torture, prohibition of slavery and forced labour. It could be said that such an approach is also recognized in UDHR since the same provision (Art. 3) guarantees protection of the right to life, liberty and security of person. In the American Convention on Human Rights (ACHR)[7] the interesting and arguably correct legal position was taken in terms that the right to *juridical personality* as a precondition for the enjoyment the right to life was mentioned before the right to life. Some scholars went even further and analyze the right to life in the context of the right to work and the right to a healthy environment. In the first case, the fact is that the right to life is the most important human right, however, it can be only completely enjoyed if there is a proclaimed right that protects against hunger, which in most cases is the right to (dignified) work (Stevanović, 2022: 418). In the ECHR practice, the question arose whether the right to life includes in its scope the right to social protection and security (Beširević, et. al, 2017: 36). [8] When it comes to the right to life in the light of the healthy environment, it is the result of the tendency to protect the life with the certain quality - in an appropriate environment (Kambovski, 2021; Orlović, 2014). In some prominent decisions of the ECHR (For example Öneryıldız v. Turkey - *Application no. 48939/99*) such approach was uphold when the Court stated that the positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. Furthermore, the Court underlined that this positive obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives and that they must govern the licensing, setting up, operation, security

[7] American Convention on Human Rights (San Jose, Costa Rica, 22 Nov. 1969), 9 I.L.M. 673 (1970)

[8] Such a legal approach is not just a a matter of vision for the future since there are few constitutional courts which already affirmed it (Beširević, et. al, 2017: 36).

and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.[9]

Finally, the right to life is closely related not only in theory, but also in constitutional practice and normative framework to the issues of bio-medicine and bio-ethics. For instance, Constitution of the Republic of Serbia[10] in the provision guaranteeing the inviolability of the right to life, prescribes the prohibition of cloning a human being.

It should be mentioned that new technologies come with the further necessity of rethinking right to life with taking into account the new technologies. At first place, we should think about virtual cyber space and the digital normative framework which was developed in order to protect human rights while dealing with the internet and "online world" (Stănilă, 2021).

When it comes to the legal nature of the right to life protection, there is still ongoing academic debate on the issue whether the right to life is an absolute or relative human right. In the light of this legal dilemma, the right to life should be consider as a crucial and fundamental right since no other rights and freedoms cannot exist when there is no right to life. This statement is a distinctive feature of the right to life which must be take into consideration when it comes to the legal interpretation. Nevertheless, it still does not mean that the right to life has an absolute character since even the most impactful international/regional conventions proscribe the possibilities and circumstances in which life can be taken.[11] On the other hand, it could be claimed that right *not to be subjected to the arbitrary deprivation of life*[12] (*prohibition of arbitrary deprivation of life)* is so called *ius cogens* norm and belongs to the legal category of absolute rights. When it comes to the jurisdictions of member states of the Council of Europe, that statement arises from the ECHRF and its Art. 2. where it is stated that "…no one shall be deprived of his life intentionally save in the execution of a sentence of a court

[9] See Öneryıldız v. Turkey para. 89-90.

[10] "Official Herald of the Republic of Serbia", Nos. 98/2006 and 115/2021.

[11] See also: (Beširević, et. al, 2017: 36; Paunović, et. al, 2014: 142).

[12] The United Nations has defined the deprivation of life as involving a "deliberate or foreseeable and preventable life-terminating harm or injury, caused by an act or omission. See: Human Rights Committee General Comment No. 36, 2017, para. 13.2).

following his conviction of a crime for which this penalty is provided by law."[13] Other prescribed exceptions to the "absolute protection of the right to life" from the same article are also contrary to the possibility of arbitrary deprivation of life.

There is the difference between *abstract* and *concrete* protection of the right to life (Orlović, 2014: 163). The first one is provided by the international and regional conventions as well as by the national constitutions. Further concretization of that protection belongs above all to the criminal law and criminal justice system. However, the dynamic interpretations of the right to life, at first place within the jurisprudence of the ECHR "showed the way" for the national legislations regarding the protection of the right to life in terms that it provided certain obligations of the state in this regard, which are classified as a *negative*, *positive* and *procedural* obligations. In the first case, it is an obligation with an absolute legal nature and refers to the prohibition of arbitrary deprivation of life. The obligation to take the necessary measures to protect the life of a person who is at risk is marked as positive obligation, while the state's obligation to conduct an effective investigation when arbitrary deprivation of life occurs, especially if there is an appropriate degree of suspicion that an unlawful deprivation of life has happened, is procedural state obligation. In this regard, it has to mentioned that the ECHR took the legal position that for the violation of Art. 2. of the ECHRF it is necessary to prove that the state and its organs were aware of the potential risk for an individual's life or they had to be, without undertaking all the necessary actions to prevent it.[14] However, the vast majority of addressed issue regarding the right to life and state violation of this right in front of the ECHR and also

[13] Protocol No. 6 on ECHRF which was adopted in 1983, abolished the death penalty in peacetime, what practically in certain way changed Article 2 of the ECHRF which allows the death penalty if it is based on the law and a court ruling. Furthermore the ECHR in the case Öcalan v. Turkey (*Application no. 46221/99*) stated that on the territory of the member states of the Council of Europe, the death penalty is not legally acceptable, regardless of Article 2 of the ECHRF. However, the death penalty exists and is legally acceptable in wartime but only as a consequence of lawful war activities.

[14] See Gongadze v. Ukraine (*Application no. 34056/02).* In the mentioned case, a well-known journalist even informed the prosecutor's office about threats to his life that he received for criticizing the government and asked for the protection. The practice of the ECHR went even further in terms that violation of the state positive obligation regarding protection of the right to life are violated if the persons at risk for his life did not ask for a protection (Beširević, 2017:59).

ACHR related to the state failure to undertake an effective investigation according to the law when there is grounded suspicion on arbitrary deprivation of life.

3. Human rights doctrine in criminal law

Human rights doctrine has had a major influence on the development and conceptualization of criminal law. That influence can be recognized on at least four levels: *conceptualization of crime*, *principles of criminal law*, *institutes of substantive criminal law*, as well as *criminal procedure*.[15]

3.1. Human rights approach in defining the notion of crime

The relationship between human rights and criminal law is prominent and gives the meaningful structure to the both legal concepts. Dissatisfied with the legalistic approach to defining crime as a pillar of criminal law, the concept according to which a crime is explained not as a violation of the norms of the criminal code, but as a violation of the human rights of the victim has entered the scholar discourse and has gained considerable attention (See: Milovanovic, 2005: 82; Henry, Milovanovic, 2000: 273). According to that constitutive approach in defining crime (harm) two basic forms of crime (harm) can be identified: *harms of reduction* and *harms of repression.* The first refers to the situation "when an offended party experiences a loss of some quality relative to their present standing" and the second one "occurs when an offended party experiences a limit or restriction preventing them from achieving a desired position or standing" (Milovanovic, 2005:83). Scholars who advocate such approach are defining crime as a denial of the others humanity (Milovanovic, 2005:83) or it could be said that victims of crime are rendered a non-person or less complete being (Henry, Milovanovic, 2000:274).

Regardless of the many scholars statements that such human rights oriented approach in crime defining is ineffective in practice, it is undeniable fact that this approach influenced the modern criminal law a lot through the redesigning of the existing institutes and the implementation of the new crimes. Nevertheless, human rights doctrine affected theoretical considerations on crime and

[15] See also (Tulkens, van de Kerchove, 2013) who analysed that influence on three levels: classification of offences, sentences and procedure.

criminal law and due process (procedural) rights as well as international/regional jurisprudence of the judicial bodies which are controlling the normative framework of human rights. This symbiotic relationship between human rights doctrine and criminal law is deeply rooted in the idea of the rule of law which principle is inherent to the all modern legal systems. Regardless of the fact that the scope of human rights is flexible and unframed, life as a value is indispensable issue of all considerations on human rights and all the other human rights are attached to the right to life as a fundamental right and connective tissue.

3.2. Human rights and criminal law principles

Although all the principles of criminal law limit the power of the state in the use of force within criminal justice system, *the principle of humanity* is the most obvious product of the relationship between human rights and criminal law, particularly international criminal law. The scope of the principle influence can be viewed in two aspects (Stojanović, 2017:27). The first one is focused on the issue of the basic values protected by the criminal law. According to the principle of humanity, one criminal law system can be recognized as a humane only if it protects the human being and other fundamental social values (Stojanović, 2017:27). The second aspect refers to the criminal sanctions and their execution (Stojanović, 2017:27; Jovašević, Stevanović, 2011:41). In general, the principle is implemeted in the criminal law and procedure when during the execution of the prison sentence the convict person is treated humanely without inflicting physical and psychological suffering, pain and discomfort, and when his dignity is not injured by the authorities responsible for the execution of criminal sanction (Jovašević, Stevanović, 2011:41). In that sense, regarding the violation of right to life, the ECHR stated in the case of Tomašić and others v. Croatia (*Application number 46598/06*) that inadequate psychiatric treatment of a person convicted for repeatedly threatening of using a bomb and state failure to examine the risk i.e. in order to assess whether he had posed a risk of carrying out his death threats against others immediately before his release from prison, is violation of right to life. Undoubtly, the most prominent product of human rights doctrine when it comes to the criminal sanctions is cancellation of the death penalty. Based on

political tendency the ECHR stated in the case of Öcalan v. Turkey that the Council of Europe is zone without death penalty despite the Art. 2. of the ECHRF which affirms death penalty if it is provided by the law.

Principles based on fairness and humanity, which is based on the protection of the right to life, were used for example by the German courts in the trials against the officers of the Third Reich, when the courts did not recognize as a basis of justification and ground for excluding criminal responsibility the authority of every soldier to freely kill a deserter (Vuković, 2022:120).

3.3 Human rights and substantive criminal law

When it comes to the institutes of substantive criminal law in terms of how much they are influenced by idea and human rights doctrine, such influence is present both in the general and special part of criminal law regulation. Within the most of the contemporary criminal codes the human being and other fundamental social values are protected as the only value that deserves that kind of protection, and as such constitute the basis and scope for defining of criminal acts, imposing of criminal sanctions and their enforcement to a degree necessary for suppression of these offences.

Crimes that primarily provide protection for life can be considered traditional *mala in se* crimes that are common place regarding the criminal law protection all over the world when it comes to the contemporary period and from the comparative point of view. Today, it is typical for criminal codes to contain special chapter of criminal offenses where the main object of protection is life and bodily integrity. It is not a rare situation regarding modern criminal laws, that the so-called special part where the list of criminal offenses is given, begins with that criminal offenses. Such a nomotechnical approach indicates the importance of this group of criminal acts which provides *direct protection* of the life and bodily integrity within criminal law mechanisms since the criminal offenses contained in that group primarily and exclusively protect life and bodily integrity in the physical-biological sense regardless of the desired quality of life and regardless of the context (work environment, traffic accidents, medical procedures etc.). It derives from that fact that such kind of protection provided by the most of the criminal offences from that group has a primary character when it comes to the protection of life and bodily integrity and criminal offences from that group such

as *Murder*, *Aggravated Murder, Manslaughter in a Heat of Passion, Infanticide, Negligent Homicide, Serious Bodily Harm* are the common place for a prototype of the modern criminal code.

The importance of criminal law protection of life can also be reflected when it comes to the institution of *release on parole* in the way that the many criminal codes prohibit the possibility for the court to release on parole a convicted person for some specific crimes against life. For instance, in the Criminal Code of the Republic of Serbia, the court may not release on parole a person convicted for the aggravated murder (Article 114, paragraph 1, item 9 - caused death of a child or pregnant woman) what also indicates particular importance of the specific crimes against life.

The institute of *self-defence* and extreme *necessity* are grounds for excluding criminal responsibility i.e justification or excuses depending on the basic conception of the crime given in the general part of the criminal code. Those institutes are mentioned in the literature as the reason why the protection of the right to life is not of an absolute character, however it can be argued that they are actually one of the main barriers to arbitrary and intentional deprivation of life and in that sense strong guarantee of protection of the right to life. Basically similar grounds for excluding criminal responsibility (i.e justification or excuses) exist not only in almost all criminal codes, but also in the important regional human rights documents.[16] To say, ECHRF in Art.2 paragraph 2 stipulates that deprivation of life shall not be regarded as inflicted in contravention of mentioned Article when it results from the use of force which is no more than absolutely necessary in defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained and in action lawfully taken for the purpose of quelling a riot or insurrection. Under the war circumstances the scope of goods that are under protection are wider when it comes to the application of the grounds for excluding criminal responsibility. Therefore, according to the Rome Statute of the International Criminal Court[17] the perpetrator shall not

[16] According to some authors, the origin of the institute of necessary self-defense should not be sought in laws created by humans, but in natural law, since it is the purest of all laws, and therefore it could not be created by lawyers (Sangero, 2006:6).

[17] UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), UN General Assembly, 17 July 1998.

be criminally responsible if among the others grounds, he acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this ground; or his conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided.

Mirroring the fact that the purpose of human rights is to regulate behavior of the state i.e. to ensure position of the citizen in front of the state power, mentioned grounds for excluding criminal responsibility (i.e justification or excuses) given in ECHRF were designed and adopted to the situation when state agents is/are about to use the force which is no more than absolutely necessary and likely to lead to the deprivation of life. On the other hand, when it comes to the self-defence and extreme necessity on the national level within criminal codes, those institutes as a grounds for excluding criminal responsibility i.e justification or excuses are made in order to govern the behavior of private individuals[18] when they are in the situation to defend their own goods and at first place their lives. When it comes to the scope of goods that are under protection of self-defence and extreme necessity institutes, one path is about narrower position according to which self -defence is such defence as necessary for the perpetrator to repel a concurrent unlawful attack on himself or on someone else and extreme necessity exists when an act is committed by the perpetrator to repel from himself or someone else a concurrent unprovoked danger that could not be otherwise repelled, and the damage inflicted does not exceed the damage threatened.[19] The solution

[18] For instance, there are such solutions (likewise in the Criminal Code of the Republic of Serbia) according to which there is no extreme necessity if the offender was under obligation to expose himself to imminent danger.

[19] For example, such narrower solution was applied in the Croatian Crimianl Code.

that allows wider scope of goods that are under protection of self-defence and extreme necessity institutes is based on defending/protecting personal goods or another persons goods.[20] However the principle of *necessary defence* and *proportionality of goods* are applied in order to prevent the perpetrator to take a life in order to defend his insignificant property right.

The fact is that the above mentioned institutes of self-defence and extreme necessity are contained in criminal codes to be the last resort action of private individuals when the state is not in the position to protect their lives due to the imminent danger or failed to act in accordance with the positive obligation to ensure right to life and undertake necessary actions. Therefore, it could be argued that those institutes are step forward in the protection of right to life although a big abuses are enabled by them.

The criminal law protection of life is equally provided for all human beings. However, numerous criminal codes provide in certain circumstances and for certain categories of people the stronger criminal law protection of their lives. This fact is not the result of the desire to privilege and protect only those categories, but on the contrary, it is an expression of the desire to ensure the protection of their lives in an adequate way. That stronger protection refers to the certain categories of people who are under specific circumstances or in a specific psycho-physical condition or perform certain jobs or duties that involve exposure to higher risk of life and as a result are far more vulnerable compared to the average situations. Hence, the criminal codes contain criminal offences which consequence is causing death of a child, a pregnant woman, an official while performing duty, a family member, etc. or they are contained in the criminal offence aggravated murder as its specific forms. For such offences severe sanctions are proscribed than it is the case with the murder as a typical offence of causing death what should be additional deterrent factor for potential perpetrators. However, it has to be mentioned that the structure of categories of people under the stronger criminal law protection of their lives varies according to socio-political changes. Thus, the campaign with the outline of moral panic led to the appearance of a new criminal offense of Femicide in numerous criminal codes, based on gender as a criterion for distinguishing.

[20] This is the position taken in the Criminal Code of the Republic of Serbia. See Art. 19-20.

Negligence is punishable when it comes to the causing death of another, so in order to cover socially unacceptable commission or omission that caused death of another, in most of the contemporary criminal codes proscribe negligent homicide as a criminal offence.

There is no doubt that the implementation of human rights standards at the national level is largely influenced by historical, cultural and political determinants. Therefore, it should not be surprising that there is a range of crimes whose main object of protection is life, and on which there is no consensus at the level of the international community. The most illustrative example of this thesis is the different normative practices at the national level regarding the criminalization of mercy killing. There is also a different comparative approach regarding the issue whether the mercy killing has to be a privileged form of murder what would leads to the lenient sanctions.[21] The so called privileged forms of murder are showing the strict legislator position when it comes to the situations in which murder occurs under some mitigating circumstances, such as provoked attack by the victim, disorders caused by childbirth etc. In other words, protection of life is positioned so high at the scale of protected values that mentioned ways of taking lives are still prohibited and criminalized. However, mirroring the mitigating circumstances, proscribed sanctions are milder.

The set of criminal offences that in general criminalize a failure to rescue someone in immediate danger if one can do it without any risk to oneself is another issue that is not regulated in the same way on comparative level, in terms of criminal law life protection. In general, national jurisdiction under Anglo-Saxon law tradition have refused to impose such liability while on the other hand criminal codes that have developed under continental legal tradition mostly imposed it. In the Criminal Code of the Republic of Serbia criminal offences such as *Endangerment, Abandonment of a Helpless Person, Failure to Render Aid and Failure to Render Aid to Person Injured in Traffic Accident* are the result of *principle od solidarity* that prevailed and by criminal law mechanism force people to act in order to save the lives of other people who are at risk without any risk to oneself.

[21] When it comes to the criminal offence of Incitement to Suicide and Aiding in Suicide, it should be mentioned that many important legal system do not proscribe it as a criminal offence.

International criminal law is a traditional meeting place of criminal law and human rights doctrine. Every modern criminal code contains the special chapter within crimes against humanity and other rights guaranteed by the international law are proscribed. The main protective object of those crimes are life and so it belong to a category of direct protection of life in criminal law. The main characteristic of crimes from that group is that through them lives are endangered and destroyed in a massive (collective) way due to strategic intent and use of military weapons under the war circumstances.

Direct protection of life in above mentioned sense could be found in other crimes out of the group of criminal offences that protects life and bodily integrity. For instance, Constitution of the Republic of Serbia within the same provision (Art. 24) in which guarantees that the life is inviolable, stated that cloning of human beings shall be prohibited. Indeed, cloning of human beings is criminalized but was put in the group of criminal offences against human health.

On the other hand, indirect life protection within criminal law is quite wider and could be seen as contribution to a life with a certain quality principle when it comes to the criminal law life protection. In general, indirect life protection in criminal law is placed on two ways. The first one refers to a situation when some criminalized act (commission or omisson) caused death, but due to the principle of specialty that act is defined as a criminal offence other than murder. In that situation causing death is a graver consequence of the criminal offence. Such offences that contain that graver consequence of causing death are numerous and placed in almost every single group of crimes classified according to the main protective object. When that graver consequence is completed sanctions are severe or a part of the range that gravitates towards the maximum must be applied. This is for example the case with the criminal offences such as *Unlawful Depriving of Liberty, Abduction, Coercion, Rape, Domestic Violence, Violation of Family Duty, Transmitting HIV Infection, Failure to Provide Medical Assistance, Failure to Render Aid to Person Injured in Traffic Accident* etc.

Secondly, there are numerous criminal offences through which the life protection is provided but without explicitly mentioning causing death as a consequence. Take for example basic criminal offences from labor relations, ecology and road traffic safety. Although the criminalization of acts against labor relations is a legitimate aspiration of the legislator to provide protection to work as a socio-

economic category of vital importance for the functioning of every state (Stevanović, 2021: 167), only certain situations that deserve criminal protection have been selected and proscribed as a criminal offences. When it comes to the all of those selected situations of violating labor rights it is noticeable that criminal law protection is provided only when the worker's life is threatened. Non-payment of solidarity aid or jubilee award will certainly not lead to this, but non-payment of salaries or performing work without prescribed rest can potentially endanger an individual's life. Hence, it is justified that many criminal codes contain criminal offences that cover deliberately violation of "first level" labor and social security rights. In general, the same could be say for the crimes against ecology and road traffic safety. Violating of the rules governing that fields are the object of interest for the criminal law when an important value such as life, is endangered. The principle that the protection of a human being and other fundamental social values constitute the main *raison d'exister* of criminal law is well presented through those crimes. Not every nature endangered is the matter of criminal law protection of the environment, but when it comes to the violating the regulations on protection, preservation and improvement of the environment pollutes air, water or soil to larger extent or over a wider area, than the criminal law protection is required, in order to protect eco-system and also to protect humans lives since such unlawful actions inherently endanger human lives. It could be argued that when it comes to that hybrid group of crimes, endangering human lives at least does not seem like an impossible and remote consequence, although as such it is not set forth as an element of the criminal offence. However, the distinction between the *direct* and *indirect* life protection within the criminal law is not of a great particular usage although it could be useful while interpreting a certain offence, when it comes to the sentencing, or could be useful as a legislative motive to go for reconceptualization of some offences, group of criminal offences or to implement a new offences.

3.4. Human rights and criminal procedure

It could be said that today dominant concept (in the member states of the Council of Europe) of criminal procedure is aimed at protecting the human rights of the person against whom the proceedings are being conducted rather than at protecting the same rights when it comes to the victim regardless of the fact that

in the 1960s, the movement for the protection of victims' rights began, what was supposed to shed more light on the protection of victims in criminal procedure (Ilić, 2010:138). This primarily refers to those codes which as a subject matter define the aim to establish the rules to prevent the conviction of any innocent person before enabling a perpetrator of a criminal offense to be sanctioned in accordance with conditions envisaged by the criminal law, based on lawfully and fairly conducted proceedings.

Due to above mentioned position of the person charged with a criminal offence under the criminal procedure, the concept of a *fair trial* was developed and is still developing, which includes specific rights such as right to be presumed innocent until proved guilty according to law and *in dubio pro reo* concept without which the right to life of a person charged with a criminal offence in the context of criminal procedure is unthinkable.

However, when it comes to the protection of the right to life of a person charged with a criminal offence, the most prominent guarantee is reflected in the *prohibition of torture or cruel, inhuman or degrading treatment or punishment* (Art. 5. of the UDHR; Art. 3. of the ECHRF etc.). It is not just a kind of natural law legal product since the confession of the defendant was considered a *regina probandi* over a long period in the history of criminal procedure which was routinely extorted by the state agents (Škulić, 2022).[22] However, the same aim was the leading motive to implement *exlusionary rule* or the concept of *unlawful evidence* when it comes to the European legal tradition, in the criminal procedure.

There are also some limitations of the process of obtaining evidence related to the protection of the right to life, since for example in Criminal Procedure Code of the Republic of Serbia the obtaining of samples of biological origin and performance of other medical actions which are under the rules of the medical profession required for the purpose of analysing and establishing facts in proceedings may be conducted even without the consent of the defendant, *except if*

[22] That is why Criminal Procedure Code of the Republic of Serbia proscribes that when a defendant confesses to having committed a criminal offence, the authority conducting proceedings shall be required to continue collecting evidence about the perpetrator and the criminal offence only where grounded suspicion exists about the veracity of the confession or if the confession is incomplete, contradictory or unclear and contrary to other evidence. Such solution relativizes centuries-old supremacy of the confession of the defendant as a *regina probandi*.

it would cause harm to his /her health in some way. The same could be said when it comes to the strict reasons for ordering detention (although numerous abuses occur in practice) or the right of detainee to be visited by the doctor etc.

4. Conclusion

There is no doubt that the contemporary criminal law is centered around the human right doctrine although there is a lot of room for further improvement of the current state of affairs. In light of this, further effort is necessary to answer some open questions regarding right to life such as the very moment when this right needs to be applied for the first time in humans life (right to life of unborn child), mercy killings, right to death within right to life etc. Additionally, there are many issue related to right to life that must be take into consideration in the time to come. This at first place refers to the issue of artificial intelligence and other similar technologies regarding the life protection. The process of developing the human rights concept has changed from the right to life in a physical (bodily) sense towards the concept of the right to life with a certain quality. In this regard, many issues are open and "are waiting" to be considered as a potential part of the right to life. This is for example the case when it comes to the right to work and social security, the right to a healthy environment etc.

However, it seems that most of the problems regarding the protection of the life within criminal law arise when it comes to the selective implementation of the human rights idea in criminal law and calling upon human rights protection when they are most brutally violated. Therefore, although we are living in a time of principled supremacy of the idea of human rights, unimaginable violations of human rights, both on a collective and individual level, routinely occur every day. Regardless of this, symbiotic relationship between human rights doctrine and criminal law is deeply rooted and have a huge impact on the development of both, human rights law, and criminal law. Human rights doctrine has had a major influence on the development and conceptualization of criminal law. That influence can be recognized on at least four levels: *conceptualization of crime*, *principles of criminal law*, *institutes of substantive criminal law*, as well as *criminal procedure.* On the other hand, criminal law is the best and the most suitable "platform" for promoting human right idea and for effective protection of the selected rights

and freedoms. Finally, based on the fact that human rights have both a defensive and an offensive role within criminal law it could be easily stated that the making criminal law norms and creating criminal justice system is in a certain way the art of balancing between an effective protection of the fundamental values which are endangered by criminal acts and protection of the fundamental values which can be endangered while that goal is being achieved.

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