

Jurisdiction of courts with a focus on the Special Chamber of the Supreme Court of Kosovo

Stavri Sinjari, Rezana Balla

Abstract

The right to life constitutes one of the main human rights and freedoms, foreseen by article 21 of the Albanian Constitution and article 2 of European Human Rights Convention. No democratic or totalitarian society can function without guarantees and protection of the human right to life.

We intend to address these issues on our article: What is life. What we legally understand with life. When the life starts and finish. How this right has evolved. Which is the state interest on protecting the life. Should we consider that the life is the same for all. Should the state interfere at any cost to protect the life. Is there any criminal charge for responsible persons to the violation of this right. Is this issue treated by European Human Rights Court. What are the Albanian legal provisions on protection of this right.

This research is performed mainly according to a comparative and analytical methodology. Comparative analysis will be present almost throughout the paper. Treatment of issues of this research will be achieved through a system comparable with international standards in particular and the most advanced legislation in this area. At the same time, this research is conducted by analytical and statistical data processing. We believe that our research will make a modest contribution, not only to the legal literature, but also to criminal policy makers, law makers, lawyers and attorneys.

Keywords: *the right to life; death penalty; fundamental rights; human rights; humanitarian and justice principles, etc.*

1. Introduction

The right to life stands at the top of human rights and freedoms pyramid. Placed in this way this right require the best protection

from all human rights and freedoms. The enjoyment of the right to life is a prerequisite for the enjoyment of other rights. Since 1215 with *Magna Carta*¹, *Universal Declaration on Human Rights*², *International Pact on Civil and Political Rights*³, *European Human Rights Convention*⁴ and *Children Rights Convention* the right to life is declared as one of the most important right.

“The right to life” is a phrase that means to believe that every human being has the main right to life. Especially it means that every human being has the right to not be killed by another human being.

The **concept** of a right to life is central to debates on the issues of **euthanasia, capital punishment, abortion, self defence** and **war**. The main argument on debates on all these issues is the right to life. Historically, human beings are confronted with violations of the most macabre inhuman. We would like to let you know different wars especially the First and the Second World War. According to historians it is considered that these wars have caused the biggest number of victims in the entire human’s history.

Another way of deprivation of the right to life is euthanasia. This process refers to intentionally ending life by relieving from pain and suffering.

Usually, it is understood when a patient require it to his doctor, in order to escape from pain and suffer and this is called “good death”. There are cases like this sponsored by state, the Nazis State in Germany that decided to kill all disabled persons so they killed about 300,000 persons which have physical or mental disabilities⁵.

But there are some other cases when the state itself punishes a person with a death penalty so; this individual is deprived of his life. Capital punishment or death penalty often is given for serious crimes. It is presented previously by the Code of Hit on century XIV BC., by Dracon Code at Athens on century VII BC and at Roman Law on Twelve Tables on century V. Executions by that time were applied by drowning, hanging on the cross, torture, burning alive, etc. Application of the death penalty dates back to the eighteenth century BC.

¹ Magna Carta also called Magna Carta Libertatum or The Great Charter of the Liberties of England <http://www.salisburycathedral.org.uk/history.magnacarta.php> (visited on May 25th 2013)

² Approved by United Nations General Assembly on 1948, article 3 declares: “Everyone has the right to life, liberty and security of person”.

³ Approved by United Nations General Assembly on 1966, article 6 declares: “Everyone has the right to life...”

⁴ Approved by Council of Europe article 2 declares “Every human being has the right to life...”, by Protocol 6 is abolished the death penalty.

⁵ Kohl, M (1974). *The Morality of Killing*. New York: Humanities Press. p.94., quoted in Beauchamp & Davidson (1979), p 294. A similar definition is offered by Blackburn (1994) with "the action of causing the quick and painless death of a person, or not acting to prevent it when prevention was within the agent's powers."

Firstly the capital punishment is used by the Code of King Hammurabi of Babylonia where was determined the death penalty for about 25 serious crimes. In our country the death penalty has always been existed in our criminal codes historically. It is abolished by Constitutional Court Decision only on 1999⁶.

One of the reasons of developing international criminal law has been exactly violation of the right of life. Principles on bases of which was founded the criminal international law are humanitarian and justice principal. The establishment of the International Criminal Court, the International Criminal Court for crimes on ex- Yugoslavia and other international criminal courts was made possible only because of the need of protection of human freedoms and rights, the right to life, from persecution exercised by states representatives.

When we speak about the right to life one of the questions raised is when the life starts. All international legal instruments determine that the right to life is a natural right. Being a natural right it starts at the conception moment. The same logic is followed by other legal acts as well as the constitutional law, criminal law, and civil law when they determine rights related to the right to life. For example the right of a child to inherit parent goods, if he is conceived before the death of his parent. Is abortion right and should the state allow the termination of life. Could it be considered as a deprivation of the right to live⁷.

Human Rights European Court have determined that the right of foetus to live is not absolute. So the abortion can be used for health reasons, etc. Senator Barack Obama took the idea of legal abortion on 2008 elections⁸. While Senator Joe Biden took the idea that they have their view on abortion but they don't want to put them on law.

Throughout this article we would like to address these issues: death penalty; abortion; euthanasia; killing in times of war and we will try to give our opinion on resolving these issues which are fundamental for the right to life in Albania. The methodology will be mainly historical and juridical analyze of facts.

2. Respect of the Constitutional Right to Life

Our Constitution determines all the fundamental principles of international law. All states as subject of international law are obliged to fulfil all commitments that they have undertaken to achieve. Otherwise, in case of failure to comply with these obligations and international commitments, respective countries will not be able to avoid responsibility, which usually

⁶ The Constitutional Court Decision no. 65, date 10.12.1999 has abolished the death penalty from the criminal code, as incompatible with the Constitution.

⁷ Abortion in Albania is regulated by the law on reproductive health.

⁸ Barone M., and Cohen R., "Almanac of American Politics" (2008). **National Journal**, p. 538.

appears at multilevel, but the greatest impact will be mainly in the political, legal, economic and social aspect.

Fundamental principles of the protection of human life are determined in our constitutional provisions. Life is a right, a fundamental attribute of the human being and when it is removed, or taken from one state at the same time the human being is eliminated, as bearers of rights and obligations. Human life is an indisputable value and is subject to constitutional protection⁹. But this does not mean that the protection of human life, at every moment and in all circumstances must be the same, as it is influenced by a number of factors of different nature, which is the lawmaker the person that foresee this factors by law. Legislator is only authorized to make exceptions by law, when as a result of the protection of an important constitutional right, is required to terminate a person's life.

The essence of the constitutional provisions is to extract the most out of those basic guidelines as the primary orientation is to respect the value of life and human dignity. The superior value to the state is the man and his life. This right is basically the most important right of all other human rights and its denial brings the elimination of other human rights. Human life, such being considered, since its inception, become a value above all other values which is protected by Constitution. This is the purpose of our constitution, which emerges in its preamble, and in many other provisions.

Thereby sanctioning the right to life by placing it as one of the main rights and freedoms of human being is not sufficient to guarantee this right. Obligation of all states under international acts to abolish the death penalty¹⁰ is the constitutional guarantee to respect and ensure effective protection of the right to life. The request for proclamation of this right as inalienable would remain a simple statement, if the state will be left to the exclusivity of the death penalty.

The main argument against the death penalty is the right to life every person has the right to life as a natural and inalienable one. The death penalty does not respond even the purpose of criminal punishment, which includes many important moments that generally affect the convicted person, such as rehabilitation, isolation, trying to integrate in society, etc, other measures determined by criminal code starting by fines, imprisonment up to 25 years, or life imprisonment as an alternative to the death penalty, are fully appropriate which is not only better fulfil the purposes of criminal punishment, but when they are applied rigorously by the judicial system, they exert undisputable

⁹ Omari, L., and Anastasi, A., "Constitutional Law", Publishing, ABC, Tirane, 2010, p.122.

¹⁰ Elezi, I., Kaçupi, S., and Haxhia, M., "Criminal Code Commentary", Publishing PEGI, Tiranë, 2009, p. 259.

influence to punish the perpetrators and for an effective fight against criminality. The existence of criminality on this scale that it is today, as well as the ongoing struggle to reduce it are not inseparably linked to the presence of the death penalty than the fact that weaknesses is still observed in the activity of the relevant bodies in terms of detecting crimes, catching and putting forward authors' responsibilities, as well as the application of appropriate sanctions against them. The execution of the death sentence carried out against a particular individual, thus even a subjective error becomes irreversible for him, and as such, the individual unjustly becomes a victim of this error.

3. International Standards

According Universal Declaration on Human Rights, International Pact on Political and Civil Rights and Human Rights European Convention all these bidding international instruments based on their juridical character of their provisions they protect and respect the right to life by placing giving the quality as the most important right of human freedoms and rights. All these international acts determine in their content that the right to life is a natural right which is born with man, and is closely related to the human being and his dignity. The highest international standard is to protect and respect the right to life.

The European Court of Human Rights on the issue Application no. 76512/11, GENGOUX against Belgium, which was required to protect the right of the life of a sick person, who during chemotherapy sessions is arrested and by the prison authorities are not provided his medicines so he dies. The court accepted the request made by his son, defining that it is violated Article 2 of the European Convention on Human Rights.

The fight against terrorism is now a matter of self-defense, this right is recognized by the Charter of the United Nations¹¹. Taking into consideration recent international terrorist events, in some cases, the right of self-defense can take advantages to target legally criminal objective and may require the use of armed force unless or instead of criminal proceeding measurements. Underlying obligation, but also a challenge for the entire international community remains to adjust policy to make an effective fight against the new threat to humanity, keeping in mind the fundamental values and civil liberties. These policies should be directed at combating the financing of terrorism, civil defense, prosecution against terrorists and bringing them before justice.

So, the most recent initiatives of the European Union, to develop further the contribution of military forces in the fight against terrorism show the attitude

¹¹ Article 51 of the United Nations Charter foresees the right of self-defense.

and commitment of Europe, in the pursuit of anti-terrorist goals through comprehensive policies, ie the legitimacy of the use of military forces.

One of the conventions which aims to expand the efforts of States in preventing and combating terrorism¹² and its negative effects on the full enjoyment of human rights and in particular the right to life, which sets out measures to national level and through international cooperation, the Council of Europe Convention on the Prevention of Terrorism¹³, opened for signature in Warsaw on 16.05.2005. In addition to this Convention, there are opened for signature other Conventions of the Council of Europe, in the framework of the fight against organized crime. Such as the Council of Europe Convention on Action against Human Beings Trafficking¹⁴ and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism¹⁵.

Our efforts to prevent and combat terrorism must take account of human rights that terrorists aim to destroy. Respect for human rights, human rights and fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism¹⁶, no right can be sacrificed in times of tension:- "Says Kofi Annan to the Security Council in March 2003".

But even the most developed democracies have difficulty in finding the balance between fighting terrorism and protecting human rights and fundamental freedoms. In the fight against terrorism, there is a dark side. Amnesty International recently asked the European Union¹⁷ to set a minimum standard for gathering evidence through torture, as one of the most important steps to improve the protection of human rights. At the same time the organization emphasizes that the attitude of some Member States in the fight against terrorism, weaken or undermine the goals of the European Union for the protection of human rights. This fact is evident in Part IV of the Act of 2001

¹² Joutsen M, "The European Union and Cooperation in Criminal Matters: The Search for balance, no. 25, 2006, p. 41.

¹³ This Convention is signed by Republic of Albania on 22.12.2005.

¹⁴ Treaty Office, 2005, Council of Europe Convention on Action against Trafficking in Human Beings, CETS No.: 197. Available at <http://conventions.coe.int> (visited on May 25, 2013).

¹⁵ Treaty Office, Available from: <http://conventions.coe.int> (visited on May 25, 2013).

¹⁶ **"Iraq war illegal, says Annan"**. *BBC News*. 16 September 2004. Retrieved 12 December 2006. "When pressed on whether he viewed the invasion of Iraq as illegal, he said: 'Yes, if you wish. I have indicated it was not in conformity with the UN charter from our point of view, from the charter point of view, it was illegal.'"

¹⁷ Independent experts of the European Commission (CFR-CDF) prepared a paper on 31 March 2003 entitled "Balance between Freedom Security in response to the European Union and its Member States, to the terrorist attacks" <http://ec.europa.eu/justice/fundamental-rights> (visited on May 20, 2013).

on Counter-Terrorism Crime and Security in the United Kingdom¹⁸, which requires derogation from Article 5 of the European Convention on Human Rights, in order to punish foreign terrorists eventually without trial. This is an issue that deserves the supervision of the Member States which share a collective responsibility on the respect of human rights, as defined in Article 6 of the Treaty on European Union¹⁹. Moreover the United Kingdom although it says it condemns the use of torture, the courts in Britain know the information extracted through torture. But all states should maintain a balance between fighting terrorism and securing the rights and fundamental freedoms.

More than half of the states have abolished or limited the death penalty from which 30 countries²⁰ have abolished after years 1900. One of which is Albania, which abolished the death penalty in 1999. But it should be noted that 90 countries still retain the death penalty in their criminal systems, we can mention China, India, USA, etc. Moreover, it is worth to note is that after the 1990 death penalty is applied to juveniles as SH.B.A, Nigeria, Saudi Arabia, Yemen, etc.

4. The Right to Life in Albania

The Constitution²¹ of the People's Republic of Albania approved by the Constituent Assembly on 14 March 1946 sanctioned that state and social organization will be according to monist concept, which prolonged for 45 years until his overthrow and the establishment of political pluralism in 1990. It is worth to mention the treatment of deputy status and that of human rights and fundamental freedoms. Revocation principle deputy, was designated as the Constitution of 1946-s, as well as that of the 1976-s. This principle was used as a tool of repression against those deputies whom for various reasons are eliminated politically, even physically.

Rights and fundamental freedoms found in two constitutions, albeit with many restrictions, were quite formal, while stipulates "the dictatorship of the proletariat" and the absolute leading role of the Communist Party²². These

¹⁸ <http://www.legislation.gov.uk>. (visited on May 16, 2013).

¹⁹ European Union, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: <http://www.refworld.org/docid/3ae6b39218.html> [visited May 25 2013]

²⁰ According to International Amnesty Progress Report 2000 Amnesty International, Amnesty International Annual Report 2000 ... Progress www.refworld.org. (Visited on May 20, 2013)..

²¹ See Constitution of the People's Republic of Albania, 1946, approved by the Constitutional Assembly on 14.03.1946 and promulgated by the Presidium of the Constituent Assembly by the Decree no. 24 dated 15.03.1946.

²² According to the Constitution of the People's Republic of Albania, 1946.

principles were explicitly sanctioned by the Constitution of 1976²³-s. In Albania establishment of an autocratic rule in 1925, spent the years of Nazi fascist occupation and then during the period of totalitarianism, as says Prof. L. Omari, we can say that for 65 years, Albania has undergone an experience that can't be compared with that of the countries of the region, despite the presence of autocratic or totalitarian regimes they knew a great space for human rights and fundamental²⁴ freedoms.

4.1 Law no. 382, date 24.12.1946 "On General Criminal Dispositions"

In 1946 after the liberation adopted Law no. 382, dated 24.12.1946 "On the general criminal provisions²⁵." Penal Code of this period was characterized by very severe penalties contents. The penal code²⁶ was changed by law passed by the National Assembly in 1977. A special and very important place in this undoubtedly provisions on crimes against the state which mainly apply the death penalty. Individuals convicted on the basis of these provisions constituted the majority of the perpetrators in the prisons of People's Socialist Republic of Albania. So it is worth mentioning acts such as adultery against the fatherland, espionage, sabotage, agitation and propaganda against the state²⁷.

4.2 Law no. 599 date 13.05.1948 "On Criminal Code General Part"

In 1948 the Law no. 599 dated 13.05.1948 "On the Penal Code General Part" was adopted the new Criminal Code which remained in force until the entry into force of the Criminal Code on September 1, 1952. Under this law are provided the principles of non-application of the death penalty. This definition even in law, based on the facts and circumstances that were later discovered and documented with archival documents issued by the Ministry of Internal Affairs is paradoxical. According to Law no. 9831, dated 12.11.2007 "On the Compensation of Former Political Prisoners of the Communist Regime" as amended, and the statements of relatives of people shot or killed without a trial resulting in a large number of persons who have not been convicted by the Albanian courts.

It was in the years 1943 to 1950, maybe even later, by the communist regime destroyed all those people who have had different political persuasion from communist regime. There were these people who are not openly engage in

²³ See Constitution of the People's Socialist Republic of Albania, 1976.

²⁴ Omari, L., "The rule of law", Tirana, 2003.

²⁵ This law was promulgated by Decree no. 253 dated 24.12.1946 of the Presidium of the National Assembly. Official Gazette, 17, Kallnor 1947, No. 4.

²⁶ See Criminal Code, 1977.

²⁷ See Crimes against the State under Penal/1977 Code, Sections 47, 53, 55.

political movements, but because they enjoyed social positions or their affiliation as a representative of feudal or classes, and only those facts not only have been seized any property but also were shot. This problem is determined by the Ministry of Justice²⁸ in 2008 - following in the moments when are calculated the compensations for politically persecuted. Given the large number of individuals that seeking damages to persons executed without trial and tremendous pressure from the Association of Politically Persecuted who testified to facts disappearance of these persons, the Ministry of Justice undertook legislative initiative to change the law for politically persecuted and to extend the circle of persons who benefit indemnity executed persons without trial.

Under the Criminal Code of 1948 did not apply as punishment by deprivation of liberty for life with forced labor or civil rights loss penalty²⁹. If we analyze these provisions by a lawyer who has not heard of the reality of the communist regime in Albania, it will be expressed to the Criminal Code as a corpus of the most democratic provisions even for nowadays. Given that in accordance with the European Convention on Human Rights was abolished the death penalty in Albania. But these provisions of the Criminal Code of that time were very formal they existed only on paper. Starting from the communist era court decisions we have found that individuals at that time even for performing a simple offense that can be theft were punished with severe penalties that exceeded the amount of the penalty prescribed by the Criminal Code. Indeed, in some cases, individuals who once entered in the prisons systems appear that they never got out of prisons. They were charged based on false events as if they had committed other offenses in the prison system, when it is known that the prison regime at that time was of the harshness, at all times of humanity, even considered the worst system also than the period of the Inquisition.

4.3 Criminal Code 1977

Criminal Code was approved by Law no. 5591 dated 15.06.1977. The Criminal Code not only based on our opinion but, in general, all the researchers who have been able to comment on this code along with the changes that were made to it is constitute the more regressive legal act in the science of criminal law and jurisprudence Albanian.

²⁸ Archive documents referred to the Ministry of Justice and Court Decisions years from 1944 - 1990 the communist regime, in the great work that the Ministry of Justice has performed and continues to perform for the indemnification of former politically persecuted.

²⁹ Article 9/1 of Criminal Code, 1948.

As the legislator himself says this code was indeed a powerful weapon in the hands of the dictatorship of the proletariat. Under this provision, it was not at all to ensure minimum constitutional guarantees such as the right to life, liberty and personal security, non-discrimination, equality, etc. So, in short, this was a law only for the working class and as belonging to the other classes of society, where we naturally raise the question whether there were indeed other classes of society who could require by that regime their rights.

Dear reader brings to mind that this code has been in force from 1977 until 1993. If we think for a moment will state that we are many years away from the Declaration of the Rights of Man and Citizen in 1789 the Universal Declaration of Human Rights in the U.S. in 1787 and from the definition of the right to life as one of the natural human rights by Jean-Jacques Rousseau³⁰, John Locke, Voltaire and other philosophers. Moreover in 1950, has adopted the European Convention on Human Rights and in our country in the year of 80s we had such laws have been manifestly contrary to the fundamental rights and freedoms of the individual accepted already by the entire world.

According to this law in the first degree were established socialist state protection and no rights and fundamental freedoms interests of the citizens of People's Socialist Republic of Albania. In terms of the Criminal Proceeding Code adopted in 1979 we can mention the special role of the investigators³¹ who had very broad powers, such as to establish security measures, among which the arrest³² measure.

4.4 Constitution 1998

In the political life of our country, an event of great historical importance is the entry into force of the Constitution³³ of the Republic of Albania, on 22 November 1998. The Constitution contains the fundamental principles and basic elements of a democratic state of law. The second part of the Constitution represents the essential element of constitutional democracy, which is to establish specific limitations on the powers of the state against the individual. Presented here guarantees rights that any Albanian or foreign individual has to state from intervention in his life. Restrictions on these rights are permitted only when they are in the public interest or for the protection of the rights of others. Any limitation must be proportionate to the circumstances that have conditioned and must not exceed in any case, the accepted limits in the European Convention of Human Rights.

³⁰ Themistocle M, "Diritto Costituzionale", Publishing Giuffre Editore, Milano, p.71.

³¹ Islami H., Hoxha A., Panda I., "Criminal Proceeding Law", Morava, Tirane, 2010, p. 154.

³² See the Security Measures Criminal Proceeding Code 1979, Sections 47-50

³³ See the Albanian Constitutional, 1998.

According to the law No. 7959, date 11.07.1995 "On Accession of the Republic of Albania in the Statute of the Council of Europe", the National Assembly has decided the accession of the Republic of Albania in the Statute of the Council of Europe. Its membership with full representation in the Council, the Republic of Albania was conducted along with developments in political, economic, social and legal field and had arrived the gradual transition towards a free and democratic society, but also against certain liabilities and commitments with international legal character, which she took to meet within certain deadlines under Resolution no. 189 of 1995 adopted by the Parliamentary Assembly of the Council of Europe, accompanied by the decision of the Committee of Ministers No. (95) Dated July 10, 1995, which acts according to the Statute of the Council of Europe and the European Convention on Human Rights, are required to be implemented.

Republic of Albania according to these international commitments owed to ratify the European Convention on Human Rights together with Protocols 1, 2, 4, 7 and 11 within a period of one year, and to sign, ratify and implement the Protocol No. 6 of the Convention, concerning the abolition of the death penalty in peacetime, within a period of three years from the time of its accession to the Council of Europe, following a moratorium on executions until the abolition of the death penalty.

On the basis of these international commitments and within the time specified, the Republic of Albania signed and ratified the European Convention on Human Rights and its Protocols 1, 2, 4, 7, and 11, as well as meet many other obligations imposed by Parliamentary Assembly and the Committee of Ministers of the Council of Europe. It also correctly implemented a moratorium on executions of death sentences, because since 1995 there has been any person executed, to which is applied to this kind of punishment by the courts. However, the Republic of Albania had not formally meet legal and political obligation of signing, ratification and implementation of the Protocol No. 6, which in Article 1 provides for the abolition of the death penalty.

The above treatment of the problem, in terms of international relations and political and legal obligations that the Republic of Albania has taken over, serve as arguments, which together with the analysis of specific constitutional provisions, the Constitutional Court established the possibility to conclude on or non-compliance with the Constitution of the provisions of the Penal Code which provided for the death penalty.

The Constitution of the Republic of Albania in its Article 21 provides that: "The life of a person protected by law". This provision expresses directly the protection of human life, which is a constitutional value. The concept of life and human dignity set out in the provisions of the Constitution as very important values, which are considered as the source from which all other rights flow as

an absolute fundamental right. Chapter of the rights and fundamental freedoms is characterized from the start by the concept of the inviolable of these rights and freedoms. Rights and fundamental freedoms, in accordance with Article 15 of the Constitution, are indivisible, inalienable and inviolable and underlie all the legal order, so there is a primary constitutional obligation of the state, through its institutions, to respect and protect these rights.

Article 21 of the Constitution which provides for the protection by law of the person's life not explicitly forbids the death penalty, but that does not mean that allows, it, at the same time, creates ground other view than person's life is not protected by the Constitution, but it is the law that must be expressed to its protection. The above provisions being an affirmative rate for the protection of life, it constitutes a denial of her and lets neither alternative in this regard.

In some constitutional provisions of the Charter of fundamental rights and freedoms, the legislator has provided only general rule, without exception. Lack clearly this exception appears in many constitutional provisions, namely Articles 15, 17, 19, 20, 22, 23, 24, 25, 28, 30, 31 etc. In this group of provisions is included in Article 21 of the Constitution, which is not provided for the exemption may not allow the removal of the right to life through the death penalty.

Therefore to understand to the wording of article 21 of the Constitution, according to which a person's life is protected by law, it is necessary that it be analyzed in this regard.

Article 21 of the Constitution would not be fully understood and interpreted correctly, if not analyzed in the spirit of the European Convention on Human Rights. Convention in Article 2, paragraph 2 provides that: "Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force, if such a thing is absolutely necessary:

- To provide protection against unlawful violence;
- To carry out a lawful arrest or to prevent the escape of a person lawfully detained;
- To oppose, in accordance with the law, a riot or insurrection. "

Under this provision of the Convention, human life can be removed³⁴ and this type of death that caused him, even by the state, through its institutions, there is nothing to do, and it can't be the same with the death penalty, as a punishment given by the court, but is connected with those exceptional cases, expressly cited above.

In this sense, should interpret it legal regulation of protection of human life required by article 21 of the Constitution. The law is the one who is given the right, in exceptional cases and related deaths, in the sense of Article 2,

³⁴ Elezi, I., and Hysi, V., "Criminal Policy", PEGI, Tiranë, 2006, p. 78.

paragraph 2 of the Convention allow the removal of life for man. Specifically these cases have found their legal regulation in the general provisions of the Criminal Code that provide necessary judicial institution, or the law nr.8290, dated 24.02.1998 "On the use of firearms", which gives the right to the Albanian armed forces, police, armed civil guards to use firearms in the above cases

It is this legal arrangement made to the removal of human life, in the case of protection of the rights of others, or to a value much greater and important constitutional, has found its expression in the Constitution, in Article 17, paragraph 1 stating: "Limitations of the rights and freedoms stipulated in this constitution may be established only by law in the public interest or for the protection of the rights of others."

So, the restrictions established by the Constitution, according to the first paragraph of Article 17 should be understood only to those cases where the legislator has the right to predict the removal of life for the protection of the rights of others, without implying the removal of life through a judicial decision, since the death penalty applied by the court, there is no exception or limitation permitted by the Constitution.

Our Constitution at many provisions and mainly in the chapter of fundamental rights and freedoms refers basically to the European Convention on Human Rights. Convention respecting the maximum rights and fundamental freedoms, as well as considering the right to life and human dignity as inviolable and unlimited rights and that is at the core of every other human right, not accept, but prohibits the existence of the death penalty to its member states.

It is therefore important that the interpretation of Article 21 of the Constitution must be considered closely related in particular to Article 17, paragraph 2, which provides: "These limitations may not infringe the essence of freedoms and rights, and in any case can't exceed the limitations provided by European Convention on Human Rights."

The Constitution has admitted at Article 5, 116 and 122 that the Republic of Albania applies international law binding on, listed ratified international agreements, which form part of the internal legal system in normative acts hierarchy that are effective above the law. European Convention on Human Rights is one of those international agreements to which Albania has signed and ratified. According to Article 1 of Protocol No. 6, "The death penalty is removed. No one can be punished with a sentence like that, or executed ". Analyzing the spirit of the Constitution and the European Convention on Human Rights, the death penalty is incompatible with the essence of those rights and freedoms. It is a denial of the right to life itself is an inhuman and cruel punishment, the state realizes the power of his trial. Capital punishment is not related to the restriction, but eventually eliminating the subject from

society. It is just a way of depriving a person's life, which in this case is the state itself as executor.

By analyzing this constitutional provision regarding the matter under review shows that restrictions on the right to life, as in the case of the death penalty can't be done, because in this case not only affected, but totally denied its essence. On the other hand limits foreseen in the European Convention on Human Rights does not have to do with the death penalty as a criminal punishment.

5. Conclusions

Civil democracy is established between the universal values of the right to life, human dignity, freedom, equality and solidarity and the principles of the rule of law. European Union and the United Nations have adopted a number of conventions and other international acts to guarantee the right to life. Given these we recommend the conclusions that:

Must be secured and respected real effectively and the rights and fundamental freedoms as set out in international binding legal instruments for the protection of fundamental human rights and freedoms.

The government should take the necessary legal and institutional measures in order not to be abused with the exception made to the right to life under Article 17/2 of the Constitution. So, the restriction must be made by law to protect the public interest and the right of others to live.

During armed conflicts, States should take stock of the use of armed forces in accordance with international humanitarian acts. Deprivation of the right to life should be a measure of last resort if there is effective use of other coercive measures.

The international community has taken steps both at the multilateral relations, and the domestic law of individual states to train and put in the criminal and civil justice systems efficiency for the prosecution and punishment of terrorist threat and terrorist activity in general. However, the use and continuous improvement of the criminal justice system for prosecution of terrorism will demonstrate that civilian democratic institutions are willing and able to engage against the most serious risks to civilian democracy.

Bibliography

Amnesty International, *Amnesty International Annual Report 2000*, ... Progress, Available at: www.refworld.org, (visited on May 20, 2013)..

"Balance between Freedom Security in response to the European Union and its Member States, to the terrorist attacks"(2003). Available at: <http://ec.europa.eu/justice/fundamental-rights>. (Visited on May 25, 2013)..

Elezi, I. and Hysi, V. (2006) *Criminal Policy*. Tiranë, Publishing PEGI.

Elezi, I., Kaçupi, S., and Haxhia, M. (2009) "*Criminal Code Commentary*". Tiranë, Publishing PEGI

Haken, J., (2011), "Transnational Crime In The Developing World". *Global Financial Integrity*.

Islami, H., Hoxha A., and Panda, I., (2010) *Criminal Proceeding Law*. Tirane, Publishing House Morava.

Joutsen M, (2006) "The European Union and cooperation in Criminal Matters: The Search for balance, no. 25.

Kohl, M (1974). *The Morality of Killing*. New York: Humanities Press.

Omari, L., and Anastasi, A., (2010) *Constitutional Law*. Tiranë, Publishing, ABC.

Omari, L., (2003) *The rule of law*. Tirana, Geer.

Paul R. Pillar (2001) "Terrorism and U.S Foreign Policy", *Brookings Institute Press*: Washington DC.

Maksimilien, R. (1794) *Justification of the use of Terror*" Paris, Maximilien de Robespierre.

Barone M. and Cohen R. *Almanac of American Politics* (2008). **National Journal**.

Magna Carta Libertatum or The Great Charter of the Liberties of England <http://www.salisburycathedral.org.uk/history/magnacarta.php>, (visited on May 25th 2013)

Themistocle, M., (1977) *Diritto Costituzionale*. Publishing Giuffre Editore Milano,

Xhafo, J., (2009) "International Criminal Law", Publishing, "Geer", Tirane,

Legislation

Act of 2001 on Counter-Terrorism Crime and Security in the United Kingdom Available at: <http://www.legislation.gov.uk>. (visited on May 25th 2013).

Albanian Constitutional, 1998, Published at Official Journal in Albania

Children Rights Convention. UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org> (visited on May 25th 2013)

Criminal Code, 1948 Published at Official Journal in Albania.

Criminal Code, 1977 Published at Official Journal in Albania.

Criminal Proceeding Code 1979 Published at Official Journal in Albania.

Constitution of the People's Republic of Albania, 1946, approved by the Constitutional Assembly on 14.03.1946 and promulgated by the Presidium of the Constituent Assembly by the Decree no. 24 dated 15.03.1946.

Constitution of the People's Socialist Republic of Albania, 1976 Published at Official Journal in Albania.

Constitutional Court Decision no. 65, date 10.12.1999, published at Official Journal in Albania.

Declaration of the Right of Man and the Citizen [France], 26 August 1789, available at: <http://www.refworld.org> (visited on May 25th 2013)

European Human Rights Convention Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org> (visited on May 25th 2013)

International Pact on Civil and Political Rights UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org> (visited on May 25th 2013)

Law no. 9831, dated 12.11.2007 "On the Compensation of Former Political Prisoners of the Communist Regime" Published at Official Journal in Albania.

Law No. 7959, date 11.07.1995 "On Accession of the Republic of Albania in the Statute of the Council of Europe" Published at Official Journal in Albania.

Law no. 5591 dated 15.06.1977 on Criminal Code Published at Official Journal in Albania.

Law no. 7905 dated 21.03.1995 Criminal Proceeding Code Published at Official Journal in Albania.

Law nr.8290, dated 24.02.1998 "On the use of firearms" Published at Official Journal in Albania.

The law no 10107 dated 30.03.2009 "On Reproductive Health on Republic of Albania" Published at Official Journal in Albania.

The law no. 253 dated 24.12.1946. Official Gazette, 17, Kallnor 1947, No. 4.

European Union, *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: <http://www.refworld.org/docid/3ae6b39218.html> [accessed 25 May 2013]

Resolution no. 189 of 1995 adopted by the Parliamentary Assembly of the Council of Europe, Decision of the Committee of Ministers No. (95) Dated July 10, 1995, which acts according to the Statute of the Council of Europe and the European Convention on Human Rights

The Terrorism Act 2000 [United Kingdom of Great Britain and Northern Ireland], 2000 Chapter 11, 20 July 2000, available at: <http://www.refworld.org> (visited on May 25th 2013)

United States of America Terrorism Act 2000, National Legislation, October 2001, available at: <http://www.refworld.org> (visited on May 25th 2013)

Universal Declaration on Human Rights. UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org> (visited on May 25th 2013)