

CRIMES AGAINST HUMAN LIFE IN TURKISH PENAL CODE

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Abstract Human life is one of the most important values protected by law. Crimes and punishments are legitimate and essential tools necessary to protect such values. Although most crimes concerned with the protection of human life are organized in the Turkish Penal Code, other regulations serving the same purpose do exist as well in other codes. It is not open to discussion that intentional crimes require heavier penalty than negligent ones and damage-causing crimes than life-threatening ones. According to the Turkish Penal Code, life exists when a person is born healthy and alive and perishes with that person's death. Although birth and death have their own proof procedures and means in separate private law rules, no such rules are in fact regulated in Criminal Law. In Turkish Law the embryo and fetus are not considered as a human entity. The crime of killing a newborn baby within the frame of honor killing does not exist in Turkish law. Furthermore, killing people in the name of customs or vendetta is a crime frequently encountered in Turkey. Turkish legislation punishes all kinds of aid to suicide as well. Finally, death penalty does not exist in the Turkish legal system.

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1 Introduction

Human life is one of the most important subjects addressed by law. Crimes and punishments resulting therefrom, are legitimate and substantive tools for the protection of human life. Despite the fact that most of the legislation designed to protect human life exists in the Turkish Penal Code (hereinafter: TPC) (Tacir, 2013: 1302), there are other Turkish regulations that exist in treaties and other branches of the law that are designed to protect human life. Countries are obliged to protect human life, not only through different branches of law, but particularly through the wordings of the TPC itself.

The European Convention on Human Rights, following Article 90/5 of the Turkish Constitution, along with being considered so important in relation to the TPC and of the utmost importance, is considered a superior domestic regulation. According to Article 2 of the International Convention, protecting the right to life by laws should be given the highest priority. Article 2 states that no one's life can be deliberately terminated, except for the execution of the death penalty imposed by the court and for a crime punished with the death penalty by the law. In some cases, specified in paragraph 2 of Article 2, deaths occurring during the protection of a person against violence, the arrest of a suspect, preventing a detainee from escaping, or the lawful suppression of a riot or mutiny, shall not be considered unlawful so long as the rule of proportionality is observed. Parallel regulations to these rules are also observed both in the Turkish Constitution and the TPC.

Article 17 of the Turkish Constitution regulates the immunity of the person and the protection of his material and spiritual existence. Accordingly, everyone has the right not only to life but to protect and develop their material and spiritual existence. The integrity of a person's body cannot be violated, except in case of medical necessities and in such circumstances only in compliance with written words of the law; also, a person's body cannot be subjected to scientific and medical experiments without the person's consent. No one will be subjected to torture or torment or to punishment or treatment incompatible with human dignity. However, certain defined situations are excluded from the provision of the first paragraph of Article 17. Such situations include acting in legitimate cases of self-defense, the execution of arrest and detention orders, preventing a prisoner or convict from escaping, suppression of an uprising or an insurgency, or in cases where death execution by using a weapon

permitted by law during the execution of orders given by the competent authority in a state of emergency

Regulations in the TPC in parallel with the rules of the European Convention on Human Rights and Turkish Constitution will be discussed in detail later in this article.

In accordance with Article 90/5 of the Turkish Constitution, the domestic law regulation, which supercedes the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, did not explicitly in its text recognize the concept of human birth and death. Although some concepts are defined in the TPC, the concepts of the beginning and end of human life are not defined. Furthermore, the crimes related to organ and tissue transplantation defined in the TPC also failed to recognize the concepts of the beginning and end of human life. The subject of 'death' in relation with Organ and Tissue Transplantation mentioned below within the two restricted regulation, also being taken into account in terms of criminal law, but remains uncertain in the implementation of this law. Again as will be mentioned below, the articles contained within the TPC that address the illegal termination of pregnancy, accept the embryo or fetus (in the mother's womb) as a part of the mother's body until the end of 10 weeks of pregnancy; After 10 weeks, these articles accept and protect the embryo as an 'emerging life' independent from the human (the pregnant mother).

According to Article 82/1 of the Turkish Civil Code (hereinafter: TCC), the person's personality begins when the baby is born healthy and fully detached from his mother and ends with death. No matter how many methods and means related to the proof of birth and death and the presumption of death are regulated in Articles 29, 30, and 31 of the TCC that are considered valid in relation with Private Law branches, these rules are not considered to be valid in criminal procedures.

According to Article 99 of the TPC, if the mother's pregnancy has not exceeded ten weeks, it can be terminated with her consent, even in where there is no medical necessity. According to Article 6/2 of the Law on Population Planning, if the woman is married, the consent of the spouse is also required for the evacuation of the uterus. If the pregnant woman is a minor (a child), under guardianship or is mentally ill, although the permission of the legal representative or the court is required to

terminate the life of the fetus if the child's parent or peace court requires time to grant permission and the life of the concerned mother or one of her vital organs is under threat and requires immediate intervention then the upper mentioned permission renders void (Law on Population Planning Article 6/1-3). In case the pregnancy period exceeds 10 weeks, ending the pregnancy, even with the permission of the mother, is considered a crime (TPC Article 100). In case of medical necessity (within the boundaries of the diseases related to the mother or fetus that are listed in Article 5 of the Law on population Planning), the pregnancy can always be terminated, with the consent of the pregnant mother, regardless of the duration of the pregnancy (TPC Article 99). If the woman becomes pregnant as a result of being a victim of a crime, and she intended to terminate her pregnancy, the person who terminates the pregnancy (and the mother) will not be punished provided that the pregnancy term is not more than twenty weeks (TPC Article 99/6).

In addition to the controversy whether the beginning of human life begins with the embryo or fetus, concerning positive norms, there is a need for a new set of regulations for the embryo or fetus to be considered human and for their legal status to be determined (Tacir, 2013: 1303 & so on & 1317).

In case it becomes necessary to save the lives of either the pregnant mother or the fetus, and since the mother is a living person and the fetus is in the mother's womb (unlike the duration of pregnancy condition), and since the mother's body cannot be touched unless she gives her consent, if the mother desires to stay alive she will be given the priority to live. The opposite is also true: if the mother asks for a life-threatening abortion to save the fetus, the mother's wish must be honored, despite the possibility of the mother losing her life in the process. The existing norms stress that the pregnant mother is a human being and that she enjoys the full right not to allow any interference regarding her own body and to determine her own destiny. From this we can conclude that the life of the embryo and/or fetus is given fewer legal protections when compared to that of humans'.

Devising a definition of the concept of 'death' is a difficult task and has led to a good deal of controversy. Another issue is whether it will be applied in the field of all crimes or only in organ and tissue transplantation. According to Article 11 of the Law on Organ and Tissue Removal, Preservation, Vaccination, and Transplantation (hereinafter: OTTL), '*medical death*' is considered to have occurred when a unanimous decision is taken, in accordance with evidence-based medicine rules, by one

neurologist or neurosurgeon, one anaesthesiology and reanimation or two intensive care specialist physicians (doctors). The meaning of the concept of medical death, since there is no consensus around it, must be understood within the context of the controversy that presently exists among both medical and legal professionals. Apart from the doctrines of medical death, the Turkish Medical Association, in its 1968 decision, adopted the view, that the death of the concerned person will be accepted if all human reflexes end, in addition to brain death. The High Health Council adopted the brain death criterion in its 1969 decision. The Turkish Neurological Association adopted the criteria for brain death during the process of preparing a '*brain death diagnostic guide*' in 2014 (Hakeri, 2020: 513). Except for the "*medical death*" concept mentioned in this article, there is no other related regulation and clarification in this Law. On the other hand, the Supplementary Article of the Organ and Tissue Transplantation Services Regulation, considered at length a '*brain death*' diagnosis and listed some procedures and criteria in connection therewith. The Supplementary Article, as it relates to the detection of death, indirectly regulates that, at least in situations involving organ and tissue transplants, it utilizes the '*brain death*' criterion. Although in the context of organ and tissue transplantations Article 11 has caused a certain amount of uncertainty and objections, both in practice and doctrine, the concept of "*brain death*" as legally defining the occurrence of death is of crucial importance.

There is no specific Embryo Protection Law in Turkish law. However, the Regulation on Assisted Reproductive Treatment Practices and Assisted Reproductive Treatment Centres, prohibits (by administrative sanctions) many behaviors such as illegal in vitro fertilization, excess embryo production, experimentation on an embryo, illegal embryo production, storage or negligence, and actions of embryo production for in vitro fertilization for unmarried people (without technical criminal law enforcement) (see Regulation Article 52 & others).

Pursuant to the annexed Article 15/2, which was added to the OTTL in 2018, those who donate, vaccinate, keep, use, store and transport embryos and reproductive cells in violation of this law, and those who purchase and sell them, and those who mediate their purchase and sale, or those who act as brokers, or encourage or facilitates such acts, or anyone who advertises or publishes an advertisement, is sentenced to imprisonment from three to five years and a judicial fine from one thousand to two thousand days, on a condition that the act does not constitute a crime requiring a heavier penalty.

According to the Annexed Article 1 added to the OTTL in 2018, in cases involving either unnatural childbearing or of medical necessity, the reproductive cells of women and/or men, made available for fertilization by medical methods and reproductive cells or embryos, whether applied inside or outside of the body, are introduced to expectant mothers. This method is only used with married spouses. It is forbidden to have a child and to be a surrogate mother through the administration of reproductive cells taken from one or both spouses and the embryo obtained from these cells. Donation using someone else's reproductive cell and/or embryo and donating, selling, keeping, using, storing, transporting, importing, exporting, and mediating these transactions are prohibited.

In situations in compliance with the law and with the existence of reasons for fault elimination and sometimes for the sake of protecting human life or any other right, the rights and freedoms of others, including the right to life, can be harmed or endangered (TPC Articles 24-30). In such cases, sometimes a penalty elimination, and penalty reduction is possible. On the other hand, in cases that eliminate or reduce the ability to commit fault (TPC Articles 31-34), security measures and/or mitigated penalties can be applied to the perpetrator against violation of the right to life. Attempted crime, voluntary renunciation (TPC Articles 35-36), complicity (TPC Articles 37-41) compound crime and conceptual aggregation (TPC Articles 42 and 44), are organized as general provisions. Therefore, these rules also indirectly contribute to the protection of the right to life. On the other hand, the chain crime (joint crime) rules cannot be applied to the crime of murder. Due to the importance, the lawmaker gives to human life, in case more than one person is killed within the same plan taken under one decision, the lawmaker tends not to apply the rules of the chain crime thus applying one increased, the punishment of one committed crime, instead, the lawmaker accepts the existence of many crimes, whether the action is a murder and/or attempted murder, thus punishing each crime separately (see TPC Article 43/3).

The Turkish Penal Code tends, in an attempt to shed more importance on human life, and in case the crime is committed outside of Turkey but being investigated as an introduction to being prosecuted in Turkey, tends to activate, besides the territoriality rules, and based on the personality of the perpetrator and the victim, the fairness and universality rules (Articles 9-19). Likewise, in addition to the rules mentioned in Article 7 and the articles that follow it in The Law on International Judicial Cooperation in Criminal Matters article, there are detailed provisions in

terms of investigating and prosecuting related to many crimes, including the crime of ending human life under certain conditions. Also. The European Convention on Extradition and the European Convention on the Value of Criminal Judgments are also the sources used in this field.

2 Human Life as Legal Value Protected by Crimes

Besides the crimes related to harm and danger which aim to protect the legal value of human life, intentional and negligent crimes and even crimes aggravated by the consequences (and acts of killing which exceeds the perpetrator intent) are classified as crimes.

Article 81 of the Turkish Penal Code has stated the sentence of life imprisonment for the simple version of the crime of deliberate manslaughter.¹ The conditions of the crime of deliberate manslaughter (where the punishment of the crime is aggravated), is regulated in Article 81 of the Turkish Penal Code as follows: when the crime of deliberate manslaughter is committed

- a) deliberately;
- b) due to monstrous feeling or torment;
- c) by fire, flood, ravage, sinking or bombing, or using nuclear, biological or chemical weapons;
- d) against either an ancestor or a descendant a spouse or sibling;
- e) against a child or a person who is unable to defend himself due to disability in body or spirit;
- f) against a woman known to be pregnant,
- g) against on duty public officer;
- h) in an attempt to conceal a crime, remove an evidence or facilitating the commitment or evasion of the crime;
- i) because of outrage due to inability to commit a crime;
- j) with the motive of blood killing;
- k) motivated by custom, the perpetrator is sentenced to aggravated life imprisonment.

¹ For more details on the elements and character of this crime see Hakeri, 2007; Polat, 1999; Ekinci & Özcan, 2004.

According to Article 83 of the Turkish Penal Code, if the crime of deliberate manslaughter is committed due to an act of negligence, the penalty of the perpetrator is reduced by a serious amount of rates specified in this article. According to Article 85 of TPC, the penalty of causing the death of a person due to negligence is lighter than deliberate manslaughter. If the act that caused death by negligence caused the death of more than one person or the death of one or more persons and injuries to one or more persons, the perpetrator's punishment is increased (the perpetrator is given a single but aggravated punishment = special aggregation state).

Article 84 of TPC has organized the crime of aiding a person's suicide, the context of this crime aims to protect human life as well as to prohibit active euthanasia acts. In literature, in terms of the prohibition of active euthanasia acts, it can be benefited from the content of Article 26/2 of TPC. According to Article 26/2, for the consent of the person concerned to have a civil effect in compliance with the law, the subject of that consent must be "an absolutely disposable right". According to the doctrine, persons have no absolute disposable right over the right to life. Article 84 of TPC regulates that the person who instigates or encourages someone else to commit suicide, supports the suicide decision of another person or helps someone else's suicide in any way, in case the person's suicide happens, the perpetrator of such actions will be subject to aggravated penalty. Public incitement to suicide is also a reason to increase the punishment. On the other hand, those who did not develop the ability to perceive the meaning and consequences of their actions or those who have encouraged the suicidal action of the dead person and those who use force and threat to push people to commit suicide, are held responsible for deliberate killing.

Active euthanasia should also be regulated as a right in Turkish law. Essentially, in addition to the necessity of the abolition of Article 84 of TPC and the ending of all argument related to it, there should be a clear statement addressing that the phrase "absolute right to be disposed of", which is mentioned in Article 26/2 of TPC, regulating the effect of the consent of the person concerned, does not include the "right to life".²

² For the arguments in Turkish Law and the reasons for our view that active euthanasia should be explicitly allowed see Ünver, 2011b: 27-69.

Since there is no such explicit regulation, it is also advocated that when an active euthanasia action is carried out, considering the motive of the perpetrator, this will be deemed a discretionary reason in favor of the perpetrator and the punishment will be reduced (Centel, Zafer & Çakmut, 2017: 36). It is not explained though by the authors who support this opinion, in a situation where the law prohibits and does not allow the right of life's owner himself from committing such an action, grants the perpetrator of such a crime against the owner of that right a reason for the reduction of the sentence.

Due to the important role of presidents in the country, historically, the assassination of heads of a country is often specifically regulated in criminal laws. The Turkish Penal Code has opted a different penalty for the assassination of the Turkish president and any crime committed against the head of state. Pursuant to Article 310/1 of the TPC, the person who assassinates the President is punished with aggravated life imprisonment. If the act of assassination stopped as an attempted crime, the penalty is imposed as if the crime was completed. On the other hand, and pursuant to Article 340/1 of TPC, the punishment to be imposed on a person who commits an offense against the president of a foreign state is increased by one eighth. If the crime's punishment requires life imprisonment, aggravated life imprisonment is imposed. Despite the different approaches, in the event of ending human life or attempting to do so, the fact that the victim is a Turkish or foreign heads of state did not make a difference in the amount of punishment.

Whether in the form of a criminal organization, a single person, or complicity, encouraging or persuading the convicts or detainees to go on hunger strike or death fast (TPC Article 298/2) is punished as "the crime of preventing nutrition". In addition, if death has occurred due to the prevention of nutrition, the perpetrator is also punished according to the provisions regarding the crimes of deliberate manslaughter (TPC Article 298/3). This provision aims to protect the lives of other people, especially by preventing others from forcing someone else to go on a death or hunger strike for political purposes. Another complementary part of this provision is regulated in Article 82 of the Law on the Execution of Penalties and Security Measures (EPSML), accordingly, if convicts constantly refuse food and drink given to them for whatever reason; they are informed by the prison facility doctor about the bad consequences of their actions and the physical and mental damages that will occur accordingly. The psychosocial service unit also works to help the involved person to give up these actions, and in case of reaching no result, their

nutrition is started in a suitable environment according to the regime determined by the institution doctor. Among the convicts who are on hunger strike or death fast and who refuse to be fed, thus reaches a life-threatening situation or whose consciousness is impaired despite the measures and studies carried out following the first paragraph, regardless of their wishes, immediate hospitalization is carried out for the purpose of medical research, treatment and measures such as nutrition are applied provided that they do not pose a danger to their health and lives. Apart from the cases mentioned above, the provisions of the second paragraph are also applied in the event that convicts suffering from previous health problem-posing a severe threat to their health or life, or to the health and lives of the other facility convicts by refusing examination and treatment. The measures foreseen in this article are applied under the advice and management of the institution doctor. However, if the inability of the institution physician to intervene on time or the delay may pose a life-threatening situation to the convict, these measures are applied without seeking the conditions specified in the second paragraph. Under this article, coercive measures for the protection of the convicts' health and assuring their treatment are applied provided that they are not degrading. It is worth noting, that both Article 298 and Article 82 scope of application is in terms of convicts and detainees, due to their status and for the aim of protection of their right of life, such scope does not extend to the protection of individuals who want to commit suicide willingly and are not convicted or detained.

3 Human Life as a Tool of Crimes

While some crimes aim to protect different legal values, they also protect human life in cases where the material subject of the crime is human life as well. Whereas some crimes aim to protect more than one legal value, one of these legal values is human life. Article 76 of TPC regulates genocide crimes. The crime of genocide can be committed with the murder of a single person or with the murder of more than one person: as long as the other elements of this crime exist as well. Undoubtedly, the crime of genocide is not only committed by deliberate manslaughter; In addition to deliberate manslaughter, this crime may be committed by performing any of the other stated actions mentioned in this article. Without prejudice to the provisions on compound crime and chain crimes described earlier, if one or more than one person is killed due to genocide, this crime will be seriously punished. According to Article 76/2 of TPC, the perpetrator of the genocide crime is sentenced to aggravated life imprisonment. However, in terms of the crimes related to deliberate

manslaughter and wounding committed within the scope of genocide, actual aggregation provisions are applied in accordance with the number of victims. In addition, regarding genocides committed by legal entities security measures are imposed and the statute of limitations shall not be activated. Any crime group similar to genocide crime is regulated under Article 77 of TPC titled Crimes against Humanity. In this crime too, deliberate manslaughter is punished under certain additional conditions. As optional crimes are considered a mobile crime, deliberate manslaughter is considered an optional crime. In addition, in terms of the crimes of deliberate manslaughter committed within the scope of genocide, the actual aggregation provisions are applied according to the determined number of victims, the legislator, in an attempt to increase the punishment given, neither wanted to apply one punishment in accordance with Article 77 nor to apply the rules of a chain crime (Article 43 of TPC); instead, the legislator connected the number of punishments with the number of victims of genocide. Again, the act of those who establish, manage, or become a member of an organization for the purpose of committing genocide are punished independently. Security precautions are also imposed on legal entities related to genocide crime and it is clearly stated that the statute of limitations will not be activated.

Another crime of similar nature, the crime of Immigrant Smuggling and Human Trafficking organized in Article 79 of TPC. Paragraph 2 of this article states that the stated crime, aimed at preventing the endangerment of human life by considering the situation that posed a danger to the victims' life as a reason to increase the punishment. According to this crime; the punishment to be imposed is increased by one half if it is committed in cooperation of more than one person, and from half, to one fold if it is committed within the framework of the activities of an organization. Again, if this crime is committed within the framework of the activity of a legal entity, in addition to the security measures specific to impose on the legal entity there is an attempt to impose increased protection measures as well.

Finally, Article 213 of TPC has considered, creating anxiety, fear, and panic among the people, by making public life threats as a crime for the purpose of preventing human life from being subject to threat. On one hand, for protecting the peace and security of the people, on the other hand, for assuring that it is not acceptable to cause unrest to human life through threatening. The threat that this article aims to avoid is that people do not risk their lives, and the criminals do not achieve their

unjust goals, although people might not bow to the threat, their lives will be at risk. The crime is organized to prevent both cases.

4 Human Life as the Unwanted Consequence of Crimes

Even if some human behaviors are directed to eliminate human life, such behaviors, for different reasons, can also lead to the end of it. The same can be said in terms of damage crimes and danger crimes. The most prominent of these possibilities, is the possibility of killing a person by transcending the intention to injure, is the crime aggravated due to the final result. In such cases, the special conditions brought by Article 23 of TPC is needed in order to punish the perpetrator due to a more severe or different consequence. Undoubtedly, in this possibility, often the perpetrator is punished with a heavier penalty. According to this provision, if an action causes the formation of a heavier or other consequence than intended, the person must be proven to have acted negligently the least, in order to be held responsible for such a result.

In the Turkish Penal Code, and in various cases where the crime resulting in injury has become aggravated, either the death of a person or the termination of the fetus (the human life that is being formed) is regulated as the aggravating cause of the punishment (crime nature condition). For example, if death has occurred as a result of deliberate injury committed by a person, Pursuant to Article 87/4 of TPC, the punishment of the perpetrator is determined by the legislator to be more severe than that of intentional injury. Likewise, if the crime of deliberate injury was committed against a pregnant woman and caused her child to be born prematurely (IPC Article 87/1-e) or if it was committed against a pregnant woman and caused the miscarriage of her child (TPC Article 87/2-e), these situations are also aggravating reasons for crime's penalty. (Also cf. TPC Articles 89/2-f, 89/3-g, 95/1-e, and 95/2-e). On the other hand, if the victim dies as a result of the crime of intentional injury, the provisions regarding the crime of deliberate manslaughter will be applied to the perpetrator (TPC Article 91/8).

According to Article 3 of ECHR, no one can be subjected to torture or to inhuman or degrading treatment or punishment.³ No matter how much the act of torture aims to violate fundamental values such as dignity, body and psychological health, and fair trial, as a result of such action, the human right to life is often violated as well, special arrangements are required for avoiding such undesirable consequences. There has been special regulation in terms of torture crime regulated in The Turkish Penal Code and the aggravated situation due to the consequence in terms of criminal law. For example, if an act of torture puts the life of the victim in a dangerous situation, the punishment of the perpetrator will be increased (TPC Article 95/1-d). Likewise, if death occurs as a result of torture, the perpetrator will be sentenced to aggravated life imprisonment (TPC Article 95/4).

In accordance to the social solidarity principle and the state's imposition of duties on individuals in the society, special exceptional cases necessitate a regulation that prevents the violation of the right to life committed by simpler crimes. For example, if a person, responsible for the protection and supervision of another person who is unable to manage himself due to his age or due to a certain illness, leaves that person alone, thus causing in this person's death or injury, the perpetrator shall be aggravatingly punished in relation to his action's result. (TPC Article 97/1). The purpose of such obligation (not to abandon) set by the criminal law aims at preventing the unwanted violation of the right to life (Article 97/2 of the TPC).

The lawmaker also wanted to prevent the violation of the right to life with other similar criminal law duties through acts that are aggravated due to the action's consequence: Indeed, the person who is unable to manage himself due to his age, illness or injury or for any other reason, while another person fails to help or notify the relevant authorities immediately, to the extent permitted by the circumstances, that person who fails to notify the relevant authorities immediately will be punished (TPC Article 98/1), and if the person dies due to failure to fulfill the obligation of assistance or notification, the punishment to be imposed on the perpetrator will be a heavier penalty than that stipulated in the law (TPC Article 98/2).

³ For additional ECHR decisions see *S.Ç. application*, application number: 2016/58121, decision date: 09.06.2020 & *Feride Kaya application* (2), application number: 2016/13985, decision date: 9/6/2020; *Davut Yıldız application*(2), application number: 2017/39073, decision date: 01.07.2020; *Castellani v. France*, application no. 43207/16, decision date: 30.04.2020 ve *Z. v. Bulgaria*, application no.: 39257/17, decision date: 28.05.2020; *S.Ç. application*, application number: 2016/3594, decision date: 26/2/2020; *Barış Toylak application*, application number: 2016/10047, decision date: 15.01.2020; *Salih Şahin application*, application number: 2016/13964, decision date: 28.01.2020.

Likewise, the punishment of the perpetrator will be subject to aggravation if the victim of sexual assault crime (TPC Article 102/5) or a sexual abuse of a child crime (TPC Article 103/6) results in that person's or death as a result of sexual assault crime or sexual abuse of the child.

Finally, the Organ and Tissue Collection, Storage, Vaccination and Transplantation Law, and especially in terms of legal organ and tissue transplants done according to Articles 91-93 has introduced regulations that prevent violation of the right to life. According to Article 8 of Organ and Tissue Collection, Storage, Vaccination, and Transplantation Law, it is legally forbidden to conduct organs and tissue operations that will end or endanger the life of the organ or tissue donor. Violating this prohibition is considered a crime punished in accordance with Article 15/1 of the Organ and Tissue Collection, Storage, Vaccination, and Transplantation Law as well as according to the provisions of Article 91 of the TPC.

5 Human Life as the Subject Prevention Rules in the Constitution, Substantive Criminal Law, Criminal Procedure Law, Health Law or Police Law

Starting with the Constitution, the regulations aim to prevent the violation of human life directly or indirectly, sometimes through the type of crime, sometimes through a criminal procedure measure, sometimes through an amnesty, other times through a penal execution rule, and sometimes through a police-prevention law. There are clear examples to this in Turkish law. To mention a few:

The special right to grant amnesty given to The President in order to prevent any negative consequences, including future death. The President of the Republic mitigates or abolishes the sentences of persons due to permanent illness, disability and old age (Article 104/15 of the Constitution). Likewise, according to Article 16 of the Law on the Execution of Criminal and Security Measures, if there is a vital risk to the convict due to some diseases, under certain conditions, the convict punishment period is executed in the section of health institutions reserved for convicts or the execution of the sentence is delayed. Again, the General Health Law Articles 29-281, regulated in detail the measures to be taken against epidemic diseases, as well as the provisions of Articles 282-302, have technically regulated the crime penalties and misdemeanor penalties to be applied to those who act against the regulated measures. In addition, any person who does not comply with the

measures taken by the competent authorities to quarantine the place where a person has contracted or died of one of infectious diseases is sentenced to imprisonment from two months to one year (TPC Article 195).

If a person has been injured or died as a result of being a subject of human experimentation, the provisions regarding the crime of deliberate manslaughter are applied (TPC Article 90/5). The perpetrators who commit actions in a way that could be dangerous for the lives of people or in a way that could create fear, anxiety, or panic in people through: a) incendiary b) landslide, avalanche, inundation, or flood, c) use of a gun, or explosives are punished with imprisonment from six months to three years (TPC Article 170). The person who, by leaving the atomic energy unsupervised, causes an explosion and thereby considerably endangers someone else's life, is punished with not less than imprisonment (TPC Article 173); By changing any sign placed in order to ensure the safe passage on land, sea, air or railway transportation, making the sign unusable, removing the sign from its place, giving false signs, placing a barrier on the transit, arrival, departure or landing routes or interfering with the technical operating system, thus endangering the life of others due to such actions, is sentenced to imprisonment from one year to six years (TPC m. 179/1); Any person who negligently causes a danger in terms of the life of persons in sea, air or railway transportation, is sentenced to imprisonment from three months to three years (TPC Article 180/1); Any person who endangers the lives of people by adding poison to the drinking water or food or anything suitable to be eaten or used or consumed or adding poison to any other material or by causing damage to such things by other means, is sentenced to imprisonment from two to fifteen years (TPC Article 185/1). In the event that the acts specified in the above paragraph are committed against the obligation of attention and care, the sentence is imposed from three months to one year (TPC Article 185/2); Anyone who sells, supplies, or stores all kinds of foods or drugs that are spoiled or changed in such a way as to endanger the lives of persons are sentenced to imprisonment from one year to five years and a judicial fine up to one thousand five hundred days (TPC Article 186/1); Anyone who produces or sells drugs in a way that endangers the life and health of people is sentenced to imprisonment from one to five years and a judicial fine (TPC Article 187); Any person who produces, possesses, sells or transfers a substance that contains poison and whose production, possession or sale is subject to permission, is punished with imprisonment from two months to one year (TPC Article 193/1). Any person who delivers substances that may pose a health hazard to children, mentally ill or volatile substance users or offers them to

such people for consumption is punished with imprisonment from six months to one year (IPC Article 194) and also crimes related to drugs and stimulants regulated by very different actions (IPC Article 188-192) also indirectly protects the right to life (besides the right to health).

Although not only specific to the protection of the right to life, and due to the indirect effect of both general prevention and special prevention purposes of the penal sanction, the following provisions also indirectly contribute to the protection of the right to life: the offenses of not reporting the crime to the competent authorities by civilians (IPC Article 278), public officers (IPC Article 279), and healthcare professionals (IPC Article 280). Moreover, it should be admitted that many of the crimes against the court mentioned in the Turkish Penal Code (IPC Articles 267-297), along with other crimes, also enlighten the crimes that put an end to life and punish their perpetrators, and have an indirect prevention function.

Undoubtedly, although indirectly, the right to life is also protected by criminal procedure law. For example, in the context of Criminal Procedural law, in the process of medical examination and or body sample collection conducted on a suspect or an accused person, the intervention should danger of harm the health of that person, or in order to perform an internal physical examination or to take a blood or similar biological samples from the body the health of the person concerned should not be subjected to danger (CPL Article 75/2); in order to be able to perform an external or internal body examination on the body of the victim for the purpose of evidence collection from a crime scene, or to take samples such as hair, saliva and nails, or to take a blood or similar biological samples; the competent authority's permission is required, such a permission is granted provided that it does not endanger the person's health and does not require surgical intervention (CPL Article 76/1).

Finally, if the subject is examined in terms of law enforcement (Police, Gendarmerie etc.) law, provisions that indirectly protect the right to life are applied in this legal field. In particular; the necessity for using weapons by the police to perform their duties is subject to very strict conditions in terms of purpose, subject, and principle of proportionality (See Article 16 of the Police Duties and Authority Law). In addition, the Police, where regulated by law, must address the person, in a hearable voice, to "stop" before using a weapon. If the person does not obey the stop order and continues to flee, the polis officer must fire a warning shot first, despite this, if

the person continues to flee making it impossible for the police officer to seize him, the polis officer has the right to fire directly towards the person in an attempt to make his stop. While the police use their authority to use force or weapons in order to stop resistance or capture a person, if an attack against the police is attempted using a weapon, the police may fire with a weapon to the extent of inactivating the danger of the attack attempted by the attacker⁴. As it is noticed, in the line of duty the police attempt to protect the lives of others from attacks or dangers, they do not have the right to kill suspects, accused or convicts with a gun, rather they may shoot, in accordance with certain rules, in order to catch and/or prevent attack-danger.

6 Conclusion

In cases involving both murder and other violent crimes, some judges regrettably reduce severe penalties on cultural, customary, religious, moral, or other arbitrary grounds. While reducing the penalty, not based on legal conditions, and according to "unjust provocation" institution or "on the grounds of discretionary reduction" articles may be abused. In such cases, Judges tend to put themselves in the position of a lawmaker and reduce the punishment, especially if the victim is a woman or a child, in a way that is incompatible with the law and the case file.

In addition to the negligence in the investigation and prosecution that surround these crimes, people's right to security is not properly protected, also it cannot be said that the measures taken are also adequately implemented. In this regard, a special law (Law on Protection of Family and Prevention of Violence Against Women) that allows many measures to be taken, such as suspension (Prohibition of approaching to a certain distance or coming to the residence), especially for people with the potential of conducting violence against others, and whether they are married or not, is not implemented in practice and even those who demand protection from the police cannot be protected and are killed in most of the cases. On the contrary, even the Council of Europe Convention on the Prevention and Combating of Violence Against Women and Domestic Violence (the Istanbul Convention), which gives duties to the state to safeguard women's right to life and protect them, has been brought up for debate, and it is currently subject to withdrawal from this convention or to subject to legal studies in order to put reservations regarding certain articles.

⁴ Regarding bazaar and neighborhood guards, the Police Duties and Authority Law Article 16 gave them the authority to use guns and power (see 11.06.2020 date and 7245 numbered Bazaar and Neighborhood Guards Law Article 9).

Such attempts, are scary even to be considered in the rule of law country, to view women and children as a 'human' are unfortunately due to the absence of legal culture or the complete loss of such culture in recent years. Individuals feel that they are on their own and do not have trust in their country. Especially women and children are generally considered as indistinguishable from an 'object'. Continuous brutal murders are being committed, some are not put under the spotlight, others are finalized with simple sanctions, and amnesty laws (protecting the criminal) often form a shield for such crimes perpetrators. Sometimes, the aforementioned crimes are accompanied by serious sexual crimes and other form of crimes.

Moreover, similar mistakes have been frequently made by the lawmaker for the last 15 years. For example, if the deliberately manslaughter crime is committed intentionally, pursuant to article 21/2 of TPC, according to rates specified the punishment of the perpetrator is compulsorily reduced. However, in this case, the possible intent is after all a type of intent and what is violated is the legal value of life, for this reason, there can be no theoretical and justification for such penalty reduction.⁵

Likewise, the reduction of the penalty for negligence is not justified. On the contrary, besides the similarity of the legal value harmed by the committed crime, although the perpetrator is under private legal obligation, he might also neglect another legal duty arising from different legal sources while committing the crime, so that the negligence of the act might cause much more pain and suffering for the victim (sometimes the death process takes longer, for these reasons the penalty should not have been reduced. If a different regulation was to be made in terms of the amount of the penalty, the penalty should have been increased rather than reduced.⁶

If the consequence caused by the negligent act, exclusively with regard to the personal and family situation of the perpetrator, caused the perpetrator to suffer as well to such an extent that it is no longer necessary to impose a penalty, the crime punished is not imposed. The penalty to be given in case of deliberate negligence

⁵ The definition and exemplification of the possible intent, and the separation of deliberate negligence with the possible intent, are controversial in doctrine and practice due to legal definitions, and there is no consensus around them (see Düzgün & Elmaci, 2009: 42 & so on).

⁶ In the event that the crime of manslaughter is committed as a partnership (complicity), if the perpetrator or the joint perpetrator or the aiding perpetrator acts negligently, it is very controversial among the authors whether there will be a penalty reduction for all perpetrators due to the negligent act and its justification (see Palut, 2019: 650-656).

can be reduced from half to one-sixth (TPC Article 22/6). The result of such regulation and its implementation and application to real cases in courts are also problematic and contradictory. It is a necessity to rearrange the article content in every aspect (for article's interpretation see Kaymaz & Gökcan, 2006: 119 & so on).

Murder for the motive of vendetta (blood feud) is a reason to increase the punishment in terms of both the abolished and the new Turkish Penal Code. In judicial precedents, taking in consideration the perpetrator's motive, even though a long time has passed since the crime has been committed, if the perpetrator, is motivated by the pain and suffering caused by the previously committed crime, killed someone to take revenge this aggravating reason should be applied (Yargıtay CGK (Ceza Genel Kurulu). 19.02.1990., E. 2, K. 29).

The crime of committing killing due to society pressure where the perpetrator believes that his honor has been contaminated and with the motive of protecting his honor in accordance is also considered manslaughter. Such crimes are common in feudal family structure and in the eastern and southeaster regions of Turkey. Although there is no distinction in the text of the article such crime is generally committed against women. According to doctrine that the way to prevent these actions is to remove the feudal society and its traces, rather than imposing heavy penalties (Hafizogullari & Özen, 2016: 55).

It has been noticed that in the judicial application, taking into consideration the motives of the crime (customs and traditions) as reasons for aggravating manslaughter, specifically, crime plotting (killing by planning), blood feud, and motivation affected by social pressure, such application is found to be extremely erroneous and in favor of the criminal. The rule of law countries have turned the law clauses into mere paper covers, criminals are neither intimidated by the rule of law nor ordinary citizens have trust for the law. This situation tends to lead any person for the purpose of protecting their right or for the purpose of arbitrarily activating the punishment of a crime perpetrator, to resort to the mafia, or to use their political relations. Failure to encounter these (and other) crimes against human beings with proper legal reactions renders the rule of law meaningless and massacres the legal culture. Unfortunately, such actions lead to the rapid destruction of the last 100 years of legal accumulation (Yurtcan, 2015: 11-331).

Another practical problem in this field is the question of whether in a factual circumstance, whether autopsy or organ transplantation should be prioritized. There is no clear legal regulation regulating this issue. Part of legal literature and judicial practice gives priority to autopsy over organ transplantation. On the other hand, another opinion in legal literature, including the author of these lines, oppose this opinion and stress on the fact that the right to life has the ultimate importance of all, supporting such opinion by stating that the compulsory provisions in favor of the third person require organ transplantation, in addition to the fact that autopsy can be done after organ harvesting, stressing on its uncertainty in collecting evidence (Ünver, 2011a: 79-93; Hakeri, 2020: 525-530).

Many violations of the law are also experienced in abortion actions. First of all, article (Article 99/6) "*In case the woman becomes pregnant as a result of a crime she is the victim of, the action of abortion is not penalized if the pregnancy term does not exceed twenty weeks and in case of victim consent*" of the Turkish Penal Code shockingly regulated in favor of the abuse, such criminal actions are ignored as if they were in accordance with the law.

On the other hand, in multiple pregnancies (twins or triplets, quadruplets), no criminal investigation or prosecution is initiated, when an operation is conducted in an attempt to keep one fetus in the mother's womb while the others are killed and removed from the womb without, although there has been no compliance with the legal terms and conditions or even the term of pregnancy. Even in cases of explicit notice and in flagrante delicto, and despite the number of killed embryos the penalty for one crime (light penalty) is given. While, after the embryo is born alive an act of active or negligent (passive) killing is considered to consist a crime of manslaughter not a crime of miscarriage. However, in some abortion acts, although the embryo is born alive, he is left to die of starvation, while the abortion procedure is either treated as if it was a legal abortion or the crime of abortion is considered as a minor offense thus the perpetrator is given a penalty less than that stated for manslaughter.

The fact that the parliament (which is, in reality, consisted of only one political party) frequently enacts amnesty laws, just as it eliminated the culture of law, eliminates the general and specific preventive purposes of crimes and punishments as well. Unfortunately, the law is sacrificed for political vote hunting. Even those convicted of the most serious crime of manslaughter are released with the amnesty law enacted soon after. Disregarding that the recurrence rates of these prisoners being very high.

Even those convicted of manslaughter who go out of prison for a short period of time due to special reasons, due to not being put under surveillance tend to commit murders again. The arrangements brought about in the recent years by the Law on the Execution of Criminal and Security Measures regarding semi-open and fully open prison institutions are deemed to be meaningless in addition to the arbitral arrangement and application of the 'conditional release' which also provides a ground for committing many murders later on.

According to a special law (Law No. 4483 on the Trial of Civil Servants and Other Public Officials), it is obligatory to obtain permission from administrative institutions in order to be able to open an investigation for most crimes where law enforcement officers (especially police and gendarmerie), and public officials (judges, prosecutors, intelligence members, etc.) are involved. Since this permission, in most cases, is not granted by the administrative authorities (and even if it granted by such institutions, the administrative courts subsequently approved the denial of this permission, mostly in a protective manner in favor of the public official), many public officials allegedly involved in killing crimes cannot be investigated and prosecuted. These results, which are against both the effective investigation and fair trial principle, cause the crimes to be included in the "dark field - black numbers" field due to this illegal permission mechanism. In addition, the relevant provisions of the Law on Police Duties and Powers (see also supplementary Article 9 of the PDPL), together with this law no 4483, prevent the proper implementation of the Criminal Procedural Law. In such cases, the right to life is not properly protected and police state instead of rule of law practices are applied.⁷

Another example of significant inconvenience practices is the inability to prosecute and give a convict in many cases due to the statute of limitations, where investigations and lawsuits take many years and often due to the statute of limitations, thus the judicial process cannot be completed properly.

The failure of judicial practice to apply the rules of proof in accordance with the law and the use of evidence unlawfully and against clear legal conditions also weaken the fight against these crimes.

⁷ For ECHR decisions see: *Baran v. Turkey*, app. no. 4370/02, decision date: 15.05.2018; *Vatandaş v. Turkey*, app. no. 37869/08, decision date: 15.05.2018.

Furthermore, there is no article to be applied, in case a deceased woman happened to be pregnant before she dies, and in order to save the life of the embryo, the dead mother must be kept artificially alive till the baby is born. Referring to the German legal sources, if the fetus has an opportunity to be born alive, the mother's body should be kept alive artificially and all necessary procedures must be provided to assure that the baby is born alive. There are also those who defend such opinion by referring to the provision regulating the patient's consent in the Patient Rights Regulation (Hakeri, 2020: 1191). In my opinion, in accordance with both the article of the Council of Europe Biomedicine Convention on the opinion of the patient (Article 9) and the general rules regarding the patient's will, unless there is a will stating the contrary, it is appropriate and legal to keep the mother's corpse artificially alive for a while in order to save the life of the fetus.

The institution is obliged, in favor of the third person (TPC Article 25/2) to support this result as well (although the mother while being connected to the device, constitutes no difference from a corpse or an object).

Another argument is whether it would be unlawful for a person to be subjected to treatment by force and against his will. In my opinion, this is both illegal and constitutes a crime of human injury (Ünver, 2019: 53-61).

It is controversial in Turkish law whether a terminally ill patient should be told openly about his illness or hide this fact from him so that it does not demoralize or interrupt his treatment. Although there are opinions in both directions, I believe that the fact about his health condition should not be hidden from the patient, and should be told to him immediately without delay, in accordance with the legislation and the patient's consent (and the right to determine his own future) (For more details see Ünver, 2020a: 139-153).

Finally, it is important to mention that according to the Anti-Terror Law article 21 provision and related clauses, The provisions of the Law No. 2330 on Compensation in Cash and Salary are applied in case public officials who were injured while performing their duties at home and abroad or those who were subject to terrorist acts due to coming in contact with terrorists while fulfilling these duties, even if after being released of their position as public officials, become disabled, die or get killed. In this context, since the ECHR did not adequately bestow the necessary protection to the right of life, Turkey has released many convict judgments in many related

cases⁸, and the Turkish Constitutional Court has released many decisions in violation of the words of this law.⁹

On the other hand, in Turkey, in the year 2018, 440 women and in the year 2019, 474 women have been found to be killed by their former spouse, boyfriend, husband, fiancé, or their own parents or siblings (Gülersöyler, n.d.). In the year 2019 murder cases, besides the 218 killed women who the reason behind their murder was not identified, there are 27 were killed for economic reasons, 114 for wanting a divorce, refusing to reconcile, refusing friendship request, and for wanting to make a decision about her own life freely. In 2019 out of 474 murders of women 115 suspected murder were officially recorded and their perpetrators were not found. Among the women whose perpetrators were learned, 134 were killed by husbands, 25 by former husbands, 51 by boyfriends, 8 by former boyfriends, 29 by uncles, brother-in-law, former father-in-law, and by the man their sister was married to, and by other people with whom she was connected by kinship relations, 19 by acquaintances, 15 by fathers, 13 by siblings, 25 by sons, a neighbor, a parent of their children school friend, and 3 by unknown persons. The 2019 report, which included that women were killed mostly by gunshots during this year has also stated that 292 of those women were killed in their homes and 52 were killed on the street. Such results are for certain unacceptable in a country that follows the rule of law, which leads to questioning the viability of the state and law in Turkey and considering it as 'culture of lawlessness', as a result, all interlocutors should be trivialized and multi-scientific solutions should be produced.

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⁸ For ECHR important decisions regarding Turkey given till 2009 see Bahadır, 2009: 41 & so on., Also for more ECHR decisions see: *Mibdi Perinçek v. Türkiye*, app. no. 54915/09, decision date 29.05.2018; *Baskın Oran application*, app. no. 2014/4645, application date: 18.04.2018; also karşı. *F.A. and others'*, app. no.: 2016/1640, application date: 11/3/2020; Ahmet Kortak and others' application, app. no.: 2016/14603, decision date: 10.12.2019; *Şebmus Altındağ and others'*, app. no.: 2014/4926, decision date: 09.01.2020.

⁹ As an example see *Burcu ve Yücel Demirkaya application*, app. no. 2015/1232, decision date 30.10.2018.

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