

THE CHALLENGES OF LEGAL IMPLEMENTATION OF THE RIGHT TO LIFE IN INTERNATIONAL CASE LAW AND IN CONTEXT OF LITHUANIAN LAW

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Abstract. Over time, case law is formed in the courts, which is followed to solve cases of a similar nature. Analyzing examples of case law in which liability for the taking of human life is investigated in context of Lithuanian law, the ECtHR was chosen for the discussion of decisions, since the ECtHR is one of the institutions that decides how correctly the provisions of Article 2 of the European Convention on Human Rights on the human right to life have been implemented. The relevance of the topic is determined by the fact that inappropriate actions of humanity require a new review of responsibility and legal regulation of liability for taking human life.

Keywords: right to life, natural right, international case law, Lithuanian law

INTRODUCTION

Human life is one of the most important natural rights. Everyone has the right to life, liberty and security of person. From a legal point of view, human life and the right to life are the fundamental value from which the development of other human rights originates. It should be noted that the right to life is considered not only a natural, but also the most fundamental human right. Hence, this human right must be protected by law in every country. The right to life is one of the most important human rights, which is protected by the country's constitutional, civil, criminal, health and other laws, as the Constitution requires laws to ensure the right to life, not life itself. However, the legal regulation of this human right to life is not the same in all countries. Hence, the relevance of the topic is determined by the fact that inappropriate actions of humanity require a new review of liability and legal regulation of responsibility for taking human life.

Research object. Ensuring the implementation of the individual's right to life.

Research purpose. From a legal point of view, to reveal the aspects of the legal regulation of the implementation of the right to life, identifying the essential problematic issues in this area.

Research tasks:

1. Define the concept of the right to life.
2. Based on the analysis of case law, to determine the problematic aspects of the legal regulation of the right to life.

Research methodology: taking into account the topic, goals and objectives of the scientific article, the following research methods are applied: document analysis, systematic analysis, comparative analysis and generalization methods.

Abbreviations used in the work:

1. ECtHR – European Court of Human Rights
2. ECHR – European Convention on Human Rights

THE CONCEPT OF THE RIGHT TO LIFE AS A NATURAL HUMAN RIGHT

The right to life refers to an inalienable human quality and is an essential aspect of the rights and freedoms protected by the European Conventions, it is life meant to enable the exercise of other rights and freedoms. The concept of the right to life "would be meaningless if it were only associated with the loss of life". The right to life belongs to the category of human rights, which are inalienable and common to all people. It is according to the right to life that a person enjoys all other rights established and guaranteed by constitutions and international documents.

The right to life is the most important of these basic human rights, as it guarantees a person his right to live. Almost every democratic country "guarantees this right not only to its own citizen, but also to every person in the world". Many authors state that the right to life is a natural human right, therefore it is appropriate to note that "the doctrine of natural human rights states that human rights and freedoms do not arise by the will of the state, but a person acquires them at birth, they are inseparable from the person and do not connect the person with territory, neither with the nation". However, "every person is born in the union of his parents, just as without their union he would not receive life, so without their constant help he would not be able to preserve it in childhood. In old age, the need for marriage and the family that arises from it, the weakening of strength in old age and the inability to live without the help and service of others, show that a person is born, grows, lives and dies in society". Hence, natural rights are given to man by nature and no government or person can deny or restrict them.

From the point of view of scientists, the concept of natural rights evolved from ancient and medieval theories of natural rights, which stated that individuals, as creatures of nature and God, should live their lives and create their societies according to natural or divine norms and provisions. Concepts of natural rights were supposed to emphasize that individuals, as natural creatures, have rights that cannot be violated by anyone or any community. Hence, the natural right to life is intended for every person, but a person, living in society, has to maintain this right, because a person is a part of society.

Right to life concepts still grapple with the changing status of humans and other life forms. Three approaches to the concept of the right to life are presented in the scientific literature:

- Naturalistic theories that describe the right to life as the protection of a person's natural interest in life or are clearly guided by a biological concept of life;
- Procedural theories that define the right to life as a form of mutual recognition;
- It is guided by cultural attitudes that determine the concept of life.

Thus, the provisions of these theories reveal that the human right to life is primarily a biological human nature, which must be realized by knowing the environment and the world.

However, the legal theory of the right to life as a legal right forms a normative concept of life that takes into account the systematic harmony with other basic human rights and constitutional values. Thus, the legal concept of a person's life is related to a person's life using other human rights.

Interpretations of the concept of the right to life based on philosophical analysis are distinguished by other scientists:

- The right to life, as the right to essential life-sustaining things or actions;
- The right to life, as the right not to be (unlawfully) killed;
- The right to life as the right not to kill.

These provisions show that the right to life is primarily the ability to enjoy life, not to be unlawfully killed, and not to take person's life.

In conclusion, it can be said that a person's right to life is a natural human right. The concept of the right to life has been analyzed since ancient times. It is described by philosophers, lawyers and representatives of other fields of science. However, a fundamental understanding of a person's right to life can be formed based on all scientific theories, but by distinguishing general aspects of a person's right to life. Hence, it can be said that a person's right to life is given by nature. Life is necessary for a person to be able to know the world, to follow the norms of the society in which he is born and live, to be able to exercise other human rights. Therefore, taking a person's life is illegal, which obliges states to seek maximum protection of the individual's right to life.

A crime against a person, the taking of his life, whether it is done intentionally or due to negligence, is dealt with in the courts. Over time, case law is formed in the courts, which is followed to solve cases of a similar nature. Analyzing examples of case law in which liability for the taking of human life is investigated, the ECtHR was chosen for the discussion of decisions, since the ECtHR is one of the institutions that decides how correctly the provisions of Article 2 of the European Convention on Human Rights on the human right to life have been implemented. Decisions are made in this institution only if the submitted complaint is admissible.

ANALYSIS OF ECTHR DECISIONS ACCORDING TO ARTICLE 2 OF THE ECHR IN CASES AGAINST LITHUANIA

Analyzing the international case law, when the emphasis is placed on the inappropriate handling of the case for taking life. This subsection presents the case law formed by the ECtHR, when the issue of the right to life and liability for acts committed against human life is examined in accordance with the provisions of Article 2 of the European Convention on Human Rights.

The essence of the case *Bakanova v. Lithuania* - the applicant's complaint that the circumstances of her husband's death were not sufficiently investigated. The main reason for filing the complaint – the applicant's legitimate interest – in finding out the true cause of her husband's death. The main circumstances of the case cited by the applicant regarding the death of her spouse reveal that her husband worked as a mechanic on the private ship "Vega", where he was found dead in his cabin during the voyage. First of all, the captain of the ship formed a commission on the same day to investigate the circumstances of the death. The conclusion presented by the Brazilian doctor stated the cause of death – myocardial infarction. The remains were embalmed, using chemicals, the next day. The investigation conducted by the Brazilian police and the collected material were handed over to the local court. In Lithuania, after receiving the report, an investigation was launched (Article 176 of the Criminal Code of the Republic of Lithuania - violation of the requirements of worker safety and health). The applicant addressed to the prosecutor and the state labor inspectorate, which is responsible for work safety, stating that the working conditions were difficult and dangerous and could have influenced the death of the spouse. However, the prosecutor refused to continue the pre-trial investigation, arguing that there were no signs of a crime, not even mentioning any chemicals. Based on the applicant's new complaint, the Klaipėda Court recognized that the prosecutor had improperly examined the applicant's statement and resumed the pre-trial investigation. The court questioned the sailors of the "Vega" ship, whose testimony revealed that the applicant's spouse worked as a

mechanic in the engine room, where fires often broke out, which led to a strong smell of smoke in the engine room. The sailors' testimonies contained information that the deceased mechanic often worked with a gas mask.

While examining the complaint, it was established that the Lithuanian institutions, although it took a very long time, because the necessary witnesses had to go to sea for a long time, there was no person adequately prepared to perform competent translations of documents, etc., the investigation was conducted properly and the procedural obligations according to Article 2 of the European Convention on Human Rights were fulfilled. It can be noted that the circumstances of the case and the causes of death did not exempt Lithuania from conducting a detailed investigation, because in accordance with the provisions and purpose of Article 2 of the European Convention on Human Rights, it is necessary to ensure the implementation of national legal acts that protect the right to life. Consequently, upon occurrence of an event, the essence of which is human life and liability for the committed deed, it is necessary to assess the extent to which national legislation fulfills the international requirements of legislation.

The situation is similar in the case of *Tumėnienė v. Lithuania* (petition No. 10544/17), because the authorities did not properly investigate the circumstances of the applicant's brother's death. Deciding that the pre-trial investigation in this case was incomplete, the ECtHR drew attention to the fact that the shortcomings of the pre-trial investigation were also noted by the Klaipėda Regional Court and the General Prosecutor's Office in the conclusion of the Official Inspection. Noting the errors of the authorities and the excessively long duration of the investigation into the circumstances of the death of the applicant's brother, the Court decided that the procedural aspect of Article 2 of the Convention had been violated. Taking this into account, the Court awarded the applicant 10,000 euros in compensation for non-pecuniary damage and 3,315 euros to cover litigation costs.

Decisions are submitted to the ECtHR on various grounds and articles of the Convention. There are not many complaints in which improper reasons for the violation of the right to life or inadequate investigation of the case would be emphasized. Therefore, based on the presented summaries of ECtHR decisions, which are based on the provisions of Article 2 of the European Convention on Human Rights, on ensuring the right to life, essential observations are presented.

In the case *Juozaitienė and Bikulčius v. Lithuania* (petition No. 70659/01 and 74371/01), the Court found that the provisions of Article 2 of the Convention were violated during the examination of this case. It was found that material and procedural aspects were violated due to the illegal use of a firearm by a police officer and the failure to conduct an effective investigation.

The applicants' complaint states that their sons were unlawfully shot by police officers and that the investigation into this case was not effective. The applicants' sons were shot by a policeman during a private car chase. The sons of the applicants were traveling in this car as passengers. Summarizing the general principles of the right to life in cases like this, the Court emphasized that the use of lethal force by police officers can only be done when it is "absolutely necessary", i.e. strictly proportionate in the particular circumstances. It was also emphasized that, in principle, there can be no necessity when the detained person does not pose a threat to life and is not suspected of having committed a violent crime, even if not using deadly force would result in the loss of the opportunity to apprehend the fugitive. The Court found in this particular case that by firing continuously and indiscriminately at the car, the officers ran a high risk of shooting the passengers and should have reasonably anticipated that risk. The Court noted that such a high risk to life could only be justified if the shooting was used as a last resort to avoid a very clear and immediate danger that the driver of the car would pose, if allowed to escape. The Court, also taking into account the fact that the applicants' sons were shot during an unplanned operation, when the police officers had to react unprepared, nevertheless concluded that the risk to the lives of the passengers of the car, in the absence of an immediate danger caused by the driver, and therefore in the absence of the need to stop the car, shows that the police officers acted impulsively in this situation. The Court concluded that the death of the applicants' sons was caused by the use of force that did not meet the requirement of "absolute necessity" in the lawful arrest of a person. In considering whether the investigation into the death of the applicants' sons had been effective, the Court noted that the obligation to protect the right to life under Article 2 of the Convention also, by implication, required an effective official investigation if a person had been killed by the use of force (procedural aspect of Article 2 of the Convention). The court, summarizing the general principles of the effectiveness of the investigation, stated that the investigation must be independent, accessible to the victim's family, carried out quickly and reasonably operatively, and effective from the point of view that it can be determined whether the force used can or cannot be justified in specific circumstances, or was not although otherwise illegal. All the shortcomings of the investigation, due to which it is not possible to determine the circumstances of the case or the responsible person, can be evaluated as a lack of effectiveness. Inefficiency is also shown by the fact that the Court, while examining the specific circumstances of the case, drew attention to the fact that the investigation into the legality of the shooting was started almost 10 months after the incident. The Court also noted that the circumstances and legality of the officer's use of force were not assessed. The legal process of the person driving the car did not meet the requirement of an effective investigation, thus the requirement of an urgent investigation was not satisfied. The Court found that many important elements of the incident that should have been evaluated to determine whether the use of deadly force was necessary were not properly considered. Next, the Court emphasized that the institutions, while conducting the investigation, relied on only one, i.e. police version. These shortcomings of the investigation, especially the lack of completeness and comprehensiveness of the investigation, led to the fact that the Court concluded that the authorities did not conduct an effective investigation into the taking of life, and established a procedural violation of Article 2 of the Convention. The Court, having recognized a double (both material and procedural) violation of the aspects of Article 2 of the Convention, awarded each applicant EUR 30,000 in

compensation for pecuniary and non-pecuniary damage. Therefore, in a situation where a person's life is taken, it is necessary to evaluate all the possibilities of the effectiveness of the investigation and apply them to the case.

In other case *Česnulevičius v. Lithuania* (petition No. 13462/06), the Court also found that Lithuania violated the procedural aspect of Article 2 of the Convention due to the death of the applicant's son as a result of violent actions by prisoners. The applicant's son A. Česnulevičius was attacked and beaten several times by other prisoners. After the third beating, after providing medical aid and later being taken to the hospital, A. Česnulevičius died of his injuries the next day. The father of this convict appealed to the Court with a complaint that the prison institution did not ensure his son's safety during his imprisonment, and also that the state institutions did not conduct an effective investigation into the circumstances of his son's murder and did not identify the guilty persons. The Lithuanian courts did not establish a causal connection between the actions (inaction) of the correctional officers and the death of the applicant's son. However, according to the ECtHR, the state in certain cases has a positive obligation to take preventive measures to protect individuals so that a criminal act is not committed against them. In this case, the Court decided that A. Česnulevičius was not provided with a safe environment, because the officers failed to identify, prevent and control violence between convicts and to respond promptly and effectively to it. Also, it was established that the right to an effective investigation into the circumstances of the death of the applicant's son was not ensured. The Court noted that although the investigation in the prison was started urgently, it was not properly conducted and the guilty persons were not identified. Taking this into account, the Court awarded the applicant 30,000 euros for non-pecuniary damage and 2,015 euros for pecuniary damage, as well as 770 euros for legal expenses incurred. Consequently, prison officials have a duty to prevent violent behavior by inmates, which should be regulated by legislation, the non-compliance of which could regulate the officers' liability.

In the case *Banel v. Lithuania*¹⁶ (petition No. 14326/11), the Court found that Lithuania violated the material and procedural aspects of Article 2 of the Convention due to the unprotected life of the applicant's son and the ineffective investigation of the circumstances of his death. The applicant's son was killed when a balcony panel of an abandoned farm building in one of the residential areas of Vilnius city fell. However, during the pre-trial investigation, it was not possible to identify the persons directly responsible for the damage caused by the abandoned building. During the pre-trial investigation, which was sometimes terminated and renewed again, the de facto owner of the abandoned building was determined, and the prosecutors urged the applicant to apply for compensation in a civil procedure, the civil process was not initiated. The applicant appealed to the Court with a petition regarding the failure of the state to protect her son's life and the ineffective investigation into the circumstances of his death. Based on the case law, in cases where the right to life is violated due to negligence, the positive duty of the state enshrined in Section 1 of Article 2 of the Convention does not always require the opportunity to defend violated rights by means of criminal proceedings. However, in this case, taking into account the long-lasting pre-trial investigation and its outcome, as well as the special circumstances of the case, the Court decided that the applicant was not obliged to apply separately to the Lithuanian courts in civil proceedings. Assessing the circumstances of this case, the Court noted that Article 2 of the Convention protects one of the fundamental values in a democratic society - the human right to life - and obliges states not only to refrain from intentional or unlawful taking of life, but also to take appropriate measures aimed at protecting the lives of persons under their jurisdiction. In addition, the Court indicated that in this context, the positive duty of the state includes both the need to take appropriate measures to ensure the safety of people in public places, and the duty to create an independent and efficient judicial system, which allows to ensure effective legal measures to bring liable persons to justice and adequately compensate the victim, also, the effective legal measures deriving from the positive obligation must be effective in practice and not merely provided for in domestic law. The Court noted that at the time of the accident, there were legal measures in Lithuania regulating the duty to control abandoned buildings and to be responsible for the damage caused by them, but they were not effective enough. An important point is that the municipality was already aware of the abandoned building and the threat it posed at the time of the accident, but did not fulfill the obligation assigned by law to take care of it. The Court awarded the applicant 20,000 euros in non-pecuniary damage and 8,135 euros in compensation for material damage. The example of this case reveals the negligent attitude of state institutions to the existing legislation, which leads to additional liability for accidents that have already occurred.

It is appropriate to note that the discussed cases were recognized as admissible due to their nature, as they met the requirements that are necessary for a complaint to be accepted and examined at the ECtHR. However, there are recorded cases when complaints are inadmissible. For example, the ruling of the ECtHR in the case *Marė Šedbarienė v. Lithuania* deemed the applicant's complaint inadmissible, which reveals that complaints at the ECtHR are not always examined. In this case, it was decided and ECtHR case laws was applied that the authorities investigating the cases are not obliged to satisfy every relative's request, whereas in the mentioned case, as many as 4 expert examinations were checked and evaluated for the determination of the cause of death, and the examination and verification of the fifth expert opinion was refused. Consequently, cases are heard at the ECtHR if it is determined that the complaint is admissible and can be examined.

CONCLUSIONS

1. The analysis of scientific literature revealed that a person's right to life is defined as a natural right because it ensures a person's ability to live, therefore the application and protection of this right has been relevant since ancient times and is reflected in all world religions, cultures and the most important international and national legal acts of states.

2. At the international level of legal regulation of the right to life, the most important documents are conventions, on the basis of which the national legal acts of states are created, responding to their provisions and consolidating the requirements for the protection of human life.

3. The state implements its functions in the protection and defense of human life by creating legal mechanisms, the application and observance of the provisions of which form the system of the state's right to life protection.

4. Analyzing the case law, it was found that the essential problematic aspects of ensuring a person's right to life are related to the unequal understanding of legal regulation and the interpretation of legal norms. Complaints submitted to the ECtHR regarding the protection of a person's right to life are related to insufficiently effective investigation of the case, which shows a problematic understanding of the European Convention on Human Rights.

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