

IMPLEMENTATION ISSUES OF ARTICLE 2 (THE RIGHT TO LIFE) OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN RESPECT OF PUBLIC SAFETY PROTECTION

Aurelija Pūraitė, Kristina Mikalauskaitė –
Šostakienė

Mykolas Romeris University, Faculty of Public Security,
Department of Law
V. Putvinskio 70, LT-44211 Kaunas, Lithuania
Telephone (+370 37) 303 655
E-mail: vsftk@mruni.eu

Pateikta 2010 m. kovo 15 d., parengta spausdinti 2010 m. kovo 25 d.

***Annotation.** The European Convention For Protection of Human Rights and Fundamental Freedoms, signed in 1950, has become notably important legal instrument for protection of human right in all member states of Council of Europe. The Convention is binding on domestic courts and national public authorities, it is directly applicable, i.e. the person whose right protected under Convention are violated has a possibility to protect them invoking in national courts, and the domestic courts have an obligation to apply the provisions of the Convention in their jurisprudence. The right to life (Article 2 of the Convention) is one of the most fundamental right of each human being. The states have taken positive obligations to protect the right to life of all persons under its jurisdiction, and negative obligations not to deprive anyone's life by active measures of the state's authorities. The article analyzes the content of right to life and its scope, also the possibilities to impose restrictions and derogations from this right in respect to protection of public safety. The European Court of Human Right formed practice according which the obligation of the state to justify the use of lethal force by absolute necessity and unquestioned public demand is particularly foreseen. The burden of proof in those cases also is on the states, which likewise have the obligation to perform thorough and independent investigation due to each occurrence of use of lethal force by its authorized representative (official or other agent of the state). The noncompliance with any of above-mentioned requirements according the formed by the European Court of Human Rights practice is considered as a violation of the right to life. The article presents and analyzes the numerous practice of European court of Human Rights related to violations of the right to life.*

Keywords: human rights, right to life, obligations of the state, public safety.

Introduction

Relevance of the Topic. The European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter The European Convention on Human Rights, or the

Convention)¹ was signed on 4 November 1950 in the scope of the Council of Europe. Almost all of the States Party to the Convention integrated the Convention into their national legislation. Therefore the Convention is binding on domestic courts and national public authorities. It could be stated that the Convention itself is the most specific expression by the member states of the Council of Europe of their profound belief in the values of democracy and justice, and respect for the rights and fundamental freedoms of people living in the modern society².

The direct application of the Convention means that each individual under jurisdiction of the Party State to the Convention may invoke it in case he/she considers the corresponding rights of the individual have been violated, and the domestic courts have an obligation to apply the Convention. The interpretation of the Convention is a dynamic and evolving process making the Convention a living instrument in the implementation of human rights standards in the present day conditions.

The right to life (Article 2 of the Convention) is one of the most fundamental provisions in the Convention. Together with the protection from torture (Article 3 of the Convention), it enshrines the basic values of democratic societies, and its interpretation must be guided by a recognition of its importance. Self-evidently, without the right to life it is not possible to enjoy other Convention rights. Consequently, its provisions must be strictly construed.

But what does the right to life actually mean under the Convention? Does it only protect individuals from intentional killings by the State? Or might States also have a duty to protect individuals from threats arising from other private individuals, and environmental hazards, as well as from unintentional deprivations of life? Do special duties arise in relation to particularly vulnerable individuals, such as prisoners or those with mental health problems?

The Object of the Research is the content of the right to life, the obligations of the states in respect of this right and possible derogations in the conditions of public safety protection.

The Objective of this Research therefore is to disclose the scope of right to life foreseen in Article 2 of the European Convention on Human Rights and to discuss the possible circumstances in which a state may legitimately interfere with the exercise of this right basing its actions on protection of public safety. To achieve the aim further *tasks* are settled:

1. to analyze the scope of right protected by Article 2 of the Convention on Human Rights;
2. to reveal the restrictions which may be invoked by the state;

¹ *European Convention on Human Rights*.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=50265&p_query=European%20Convention%20On%20Human%20Rights&p_tr2=2 [visited 2009-12-14).

² *Introduction to European Convention on Human Rights. Collected texts*. Council of Europe, 1994.

3. to discuss the case-law practice of European Court of Human Rights (the Court) in respect of protection of right to life;
4. to disclose circumstances when the state may legitimately interfere with the exercise of this right due to protection of public safety.

Methodology of the Research. In the course of reaching the objective of the research both theoretical and empirical methods of the scientific research were employed. The following research methods are used: analytical –critical and linguistic – the scope of the analyzed articles is determined and states’ violations due to improper implication or understanding of international law are revealed; while using the methods of systemic analysis and document analysis the case-law practice and the doctrine of the Court has been analyzed, compared and evaluated.

1. The Content and Scope of Article 2 of the European Convention on Human Rights

The right to life is one of the fundamental rights of every and each human being. It is foreseen in all international and regional legal instruments, and is respected by all states which are members of those treaties. The right to life is elaborated, developed and determined in the jurisprudence of human rights institutions. The Universal Declaration of Human Rights proclaims the right to life under article 3, and links it with other essential rights in the following terms: “Everyone has the right to life, liberty and security of person”³. The International Covenant on Civil and Political Rights expresses the right to life in article 6(1): “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of life”⁴. The European Convention on Human Rights expresses the right to life more broadly and precisely than other international or regional treaties in article 2⁵.

Article 2 of the Convention imposes two types of duties on the state (and its officials):

³ *Universal Declaration of Human Rights*. Signed on December 10, 1948.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=131330&p_query=Universal%20Declaration%20of%20human%20Rights&p_tr2=2 (visited 2009-12-14).

⁴ *International Covenant on Civil and Political Rights*. Signed on December 16, 1996.

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=131206&p_query=International%20Covenant%20on%20Civil%20and%20Political%20Rights&p_tr2=2 (visited 2009-12-14).

⁵ Article 2:

„1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction for a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a) in defence of any person from unlawful violence;
- b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c) an action lawfully taken for the purposes of quelling a riot or insurrection.”

- *A negative obligation* not to deprive anyone of his/her life save in the limited circumstances prescribed by Paragraph 2 of Article 2. Any death caused by an agent of the state using force beyond that which is absolutely necessary or for a reason other than that laid down in Paragraph 2 of the Article will amount to a violation of Article 2⁶. The Court in *McCann v. United Kingdom* stated that “the use of force, however, must be no more than "absolutely necessary" for the achievement of one of the purposes set out in [...] Article 2”. In this case The United Kingdom, Spanish and Gibraltar authorities were aware that the Provisional IRA (Irish Republican Army - "IRA") were planning a terrorist attack on Gibraltar. The operation of detention was planned by United Kingdom officers. The suspects were to be arrested by using minimum force, they were to be disarmed and evidence was to be gathered for a court trial. The officers knew the faces of the suspects, they were surveyed when crossing the board of Gibraltar. It was suspected that they had a bomb in their vehicle and were planning to detonate it. Because of various procedural reasons three terrorist were shot by police officers.

- *A positive obligation* on the state to take appropriate measures to safeguard the lives of those within its jurisdiction. In particular, this positive obligation includes a duty to put in place “effective criminal law provisions to deter the offences against the person, backed up by law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions”⁷. In certain well-defined circumstances, State authorities will also have a positive obligation to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of other private individuals, environmental hazards or even him/herself. This may under certain circumstances require the State to protect certain individuals from identifiable threats to their lives. Furthermore, all deaths must be properly investigated. The law must properly prohibit and punish killings, and unlawful killing must be subject to criminal sanctions. The law must be effectively implemented.

In terms of the standard of proof, where it is alleged that loss of life was caused by a state agent, the European Court of Human Rights has held that this must be proved beyond

⁶ *McCann v. UK* (27 September 1995).

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=63&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39854777&skin=hudoc-en> (visited 2009-12-14).

⁷ *Osman v UK* (28 October 1998). In this case the applicants are British citizens resident in London. The first applicant, Mrs Mulkiye Osman, is the widow of Mr Ali Osman who was shot dead by Mr Paul Paget-Lewis on 7 March 1988. The second applicant, Ahmet Osman, is her son. He was a former pupil of Paul Paget-Lewis. Ahmet Osman was wounded in the shooting incident which led to the death of his father. The applicants complaints are directed at the failure of the authorities to appreciate and act on what they claim was a series of clear warning signs that Paul Paget-Lewis represented a serious threat to the physical safety of Ahmet Osman and his family. There is disagreement between the applicants and the respondent State on essential aspects of the circumstances leading to the tragedy.

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=87&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39854777&skin=hudoc-en> (visited 2009-12-14).

reasonable doubt (*Imakayeva v. Russia* (9 November 2006)⁸). However, where an individual dies in custody and the state fails to provide a satisfactory explanation, the Court may nonetheless reach the conclusion that the death occurred as a result of the acts or omission of the state authorities. The burden of proof in such cases falls on the state to identify the cause of death since the necessary information surrounding the circumstances of death may only be available to the state authorities (*Salman v. Turkey* (27 June 2000)⁹, *Selmouni v. France* (28 July 1999)¹⁰; and *Ognyanova and Choban v. Bulgaria* (23 February 2006)¹¹).

⁸ *Imakayeva v. Russia* (9 November 2006). In this case the son and the husband of the applicant disappeared and the applicant alleged the state authorities failed to properly investigate the case, because the victims disappeared after they were arrested by state authorities. The Court stated that “the Court recalls its jurisprudence confirming the standard of proof “**beyond reasonable doubt**” in its assessment of evidence... Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases where persons are under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, **the burden of proof may be regarded as resting on the authorities** to provide a satisfactory and convincing explanation... These principles apply also to cases in which, although it has not been proved that a person has been taken into custody by the authorities, it is possible to establish that he or she entered a place under their control and has not been seen since. In such circumstances, the onus is on the Government to provide a plausible explanation as to what happened on the premises and to show that the person concerned was not detained by the authorities, but left the premises without subsequently being deprived of his or her liberty” (par.114-115). <http://cmiskp.echr.coe.int/tkp197/view.asp?item=35&portal=hbkm&action=html&highlight=RUSSIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

⁹ *Salman v. Turkey* (27 June 2000). In this case Agit Salman, the applicant's husband, was detained by police and subsequently died. He had been beaten and immersed in cold water during the night of his detention. The Court stated that :” In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused“. (par. 99). <http://cmiskp.echr.coe.int/tkp197/view.asp?item=7&portal=hbkm&action=html&highlight=TURKEY&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

¹⁰ *Selmouni v. France* (28 July 1999). In that case the applicant, a Dutch and Moroccan national detained in France, was found to have been tortured. He was subjected to a large number of intense blows all over his body, he was dragged along by his hair, forced to run along a corridor with police officers tripping him up. He was also urinated over and was threatened with a blow lamp and then a syringe. The Court considered that “where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused”. (par. 87). <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=FRANCE&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

¹¹ *Ognyanova and Choban v. Bulgaria* (23 February 2006). At approximately 2 a.m. on 6 June 1993 Mr Stefanov died after having fallen the previous day from the window of room on the third floor of the police station in the town of Kazanluk. Numerous injuries were found on his body. The ensuing investigation concluded that he had voluntarily jumped out of the window of the room where he had been brought for questioning, and that all his injuries had been the result of his fall. The applicants contested these conclusions. The Court stated that “Persons in custody are in a vulnerable position and the authorities are under an obligation to account for their treatment. Consequently, where an individual is taken into police custody in good health but later dies, it is incumbent on the State to provide a plausible explanation of the events leading to his death. In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt”. However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation“. (par. 94-95). <http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=BULGARIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

In this article we shall not analyze the state's obligation to defend one's right to life imposing criminal sanctions against those who take lives of others. Such laws must be formulated with sufficient precision to enable the citizen to regulate his conduct and in such a way as to provide sufficient protection for the lives of individuals. States do have a certain amount of discretion in determining whether to criminalize certain acts. This aspect of Article 2 shall not be discussed as we emphasize our attention to states active obligation not to deprive one's right to life by the actions of the state officials.

Therefore in the scope of this article the deprivation of life caused by actions of state authorities shall be analyzed. Article 2 requires that agents of the State must be accountable for their use of lethal force. Their actions, therefore, must be subjected to some form of independent and public scrutiny capable of determining whether the force used was or was not justified in a particular set of circumstances. In *Jordan v United Kingdom (4 May 2001)*¹² the Court held that for Article 2 to be satisfied an investigation must comply with the following procedural safeguards:

a) It must be carried out by an independent body in public. Generally, this means that they must be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence. In *Jordan v United Kingdom* an investigation into the conduct of police officers in Northern Ireland by police officers who were part of the same force was also held to lack sufficient independence.

b) It must be thorough and rigorous. Article 2 has been violated where authorities have failed to: ascertain possible eye witnesses, question suspects at a sufficient early stage of the inquiry, search for corroborating evidence, take into account obvious evidence, carry out a proper autopsy, test for gunpowder traces.

Also in *Bazorkina v. Russia (27 July 2006) (par. 117)*¹³ the Court held that "the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with

¹² *Jordan v United Kingdom (4 May 2001)*. Pearse Jordan, aged 22, was shot and killed in Belfast by an officer. The police officers stated they were pursuing the car. On stopping the car, the officers had fired several shots at the driver, fatally wounding him a short distance from where his car had been abandoned. No guns, ammunition, explosives, masks or gloves had been found in the car and the driver, Pearse Jordan, had been unarmed. <http://cmiskp.echr.coe.int/tkp197/view.asp?item=24&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

¹³ *Bazorkina v. Russia (27 July 2006)*. The applicant claimed that the authorities were responsible for the disappearance and killing of her son Khadzhi-Murat Yandiyev. She referred to the known circumstances of his detention, an explicit order by a senior military officer to execute him and the long period of time during which his whereabouts had not been established. The Government, in her view, had failed to provide any reliable information about what had happened to him after the interrogation, and there was no record found of him having been detained at the filtration point, pre-trial detention centre or other facilities, or of his having received medical aid, etc. The Court stated that "In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances." <http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=RUSSIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. For an investigation into alleged unlawful killing by state agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events".

c) It must be capable of imputing responsibility for the death. In case *Bazorkina v. Russia* (27 July 2006) (par. 118) the Court stated that "the investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible";

d) As to the scope, if agents of the State are responsible, it must be capable of determining whether the killing was or was not justified under Article 2(2) and it must be able to identify and punish those responsible. This is an obligation of means and not of result.

Any investigation must also be capable of considering any systemic failures that could have caused the death, for example the planning and organization of a rescue operation and the planning of anti-terrorist police operations (*McCann v United Kingdom*).

The same interpretation of the right to life is settled by other judicial human rights institutions, for example, the Human Rights Committee, working under International Covenant on Civil and Political Rights. The jurisprudence of the Committee includes the great number of cases on the right to life, and much of this has its origins in situations where police and other state officials used force. For example, in the case *John Khemraadi Baboeram et al. v. Suriname* eight prominent people were arrested in their homes in the capital of Suriname by military police and subjected to violence. Following an announcement by State authorities that a number of detainees have been killed while trying to escape, their bodies were delivered to a mortuary. The bodies were seen by family members who testified that they showed numerous wounds. Neither autopsies nor official investigation into the killing had taken place. The Committee concluded that the requirement imposing obligation on the State to protect one's life by law meant that the law had strictly to control and limit the circumstances in which a person might be deprived of his

life by State authorities. In this case it was held that victims were arbitrarily deprived of their lives contrary to the requirements of Covenant on Civil and Political Rights¹⁴.

A few issues should be noted due to states positive obligation to safeguard lives of people from others offering proper police protection. In certain well-defined circumstances, the European Court of Human Rights has found that State authorities may have a positive obligation to take preventive operational measures to protect an individual whose life is at risk, for example from the criminal acts of another individual. The clearest statement by the Court of this obligation was in *Osman v UK (28 October 1998)*¹⁵. On the facts, the Court found no violation of Article 2 since it had not been established that the authorities failed to take reasonable steps to avoid a real and immediate risk to life of which they were aware or ought to have been aware.

The obligation to take measures to safeguard the lives of those held in custody is especially stringent under Article 2 by virtue of their vulnerable position. In particular, States must take reasonable measures to protect prisoners from committing suicide (*Keenan v United Kingdom (3 April 2001)*¹⁶) and from being killed by another person in custody (*Paul and Audrey Edwards v United Kingdom (14 March 2002)*¹⁷). The same test set out in other cases, namely that for a violation of Article 2 to be established, it must be demonstrated that the authorities failed to take reasonable steps to avoid a real and immediate risk to life of which they were aware or ought to have been aware.

¹⁴ Crawshaw R., Cullen S., Williamson T. *Human Rights and Policing*. Boston, 2007, P. 124.

¹⁵ *Osman v UK (28 October 1998)*. In that case, a father was killed and his son wounded by the son's secondary school teacher who had become infatuated with him. The boy's mother brought a claim against the police, who she alleged had failed to act on a series of clear warnings that the school teacher represented a serious threat to the physical safety of her son and the rest of the family. The Court held that: "Not disputed that Article 2 may imply, *inter alia*, positive obligation for State to take preventive operational measures to protect individual whose life at risk from criminal acts of another individual – on other hand, scope of such obligation contested – for Court, it must be established to its satisfaction that authorities knew or ought to have known at time of existence of real and immediate risk to life of individual and failed to take measures which, judged reasonably, might have been expected to avoid said risk – sufficient in this regard for applicant alleging breach of positive obligation to show that authorities did not do all that could reasonably be expected of them in circumstances to avoid risk. On facts of instant case, Court not persuaded that police at any decisive stage knew or ought to have known that lives of applicants' family at real and immediate risk from third party."
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=87&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39854777&skin=hudoc-en> (visited 2009-12-14).

¹⁶ In *Keenan v United Kingdom (3 April 2001)*. The applicant's son had committed suicide whilst in custody. He had a history of paranoia, violence and self-harm. Whilst in custody, he assaulted 2 prison officers and was punished by 7 days of segregation, during which he was found hanging from one of the bars of his cell. The Court found in that case that there had been no violation of Article 2 because, despite the prisoner's mental illness, no formal diagnosis that he was schizophrenic had been made and so the prison authorities could not have been expected to anticipate that he was at immediate risk.
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=22&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

¹⁷ In the *Edwards v. UK (14 March 2002)* case, a breach of article 2 was found where a prisoner was savagely killed by another inmate, Richard Linford, who had a history of mental illness. The medical board, police, prosecution and court had all failed to communicate information about Mr Linford's state of mental health and previous history of violence, so that an appropriate risk assessment was not made. The Court held that this constituted a breach of the State's obligation to protect Mr Edwards' life.
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=39&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

2. Derogations and Restrictions of Right to Life Invoked by the State In Respect of Public Safety Issues

Although the right to life is arguably the most fundamental of human rights, and is expressed unconditionally, for example, in Universal Declaration of Human Rights, this right is not given absolute protection, whereas, for example, the prohibitions of torture and of slavery are protected absolutely. However, the right to life is among those human rights from which the different treaties allow no derogation by states parties in time of public emergency, apart from one particular exception under the European Convention on Human Rights.

The exceptions to the right to life are laid down in Article 2(2). The fundamental nature of the right to life means that these exceptions are exhaustive and must be construed narrowly. In making these exceptions the article purports to define exhaustively permissible grounds for deprivation of life. No other grounds for deprivation of life by the state are permitted under the Convention save that allowed for under article 15¹⁸. Furthermore, Paragraph 2 of Article 2 is not intended to be a list of situations in which intentional killing is justified; rather it sets limits on the use of force which may result in death. The use of force must be no more than “absolutely necessary” to achieve one of the purposes set out in sub-paragraphs, where is foreseen that deprivation of life is only possible in the circumstances where:

- in defence of any person from unlawful violence;
- in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- in action lawfully taken for the purpose of quelling a riot or insurrection.

The use of the word “absolutely” provides for a stricter test than applied when determining whether a State interference is “necessary in a democratic society”. The use of force must be strictly proportionate to the achievement of the aims set out in Paragraph 2 of Article 2. In case *Bazorkina v. Russia (27 July 2006)*¹⁹ the Court stated that “Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be

¹⁸ Article 15:

„1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.“

¹⁹ *Bazorkina v. Russia (27 July 2006)*.

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=RUSSIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective“. Self-defence by the police officers can be a defence for the taking of life under Paragraph 2 Article 2. The State will be required to supply sufficient evidence that agents came under armed attack at the scene of an incident, but self-defence is sufficient to satisfy Paragraph 2 of Article 2²⁰.

The term “lawful”, indicated in point b of Paragraph 2 Article 2, has not been determined by the Court. The Court has emphasized the need for proper warnings to be given before potentially lethal force is used (*Ogur v Turkey (20 May 1999)*²¹). All opportunities to surrender must be given and the use of force must be the option of last resort. For example, in *Kelly v United Kingdom (4 August 2001)*²² it was found that the lethal shooting by soldiers of suspected terrorists who drove through a checkpoint without stopping was absolutely necessary in order to give effect to the lawful arrest. In *Nachova v Bulgaria (6 July 2005)*²³ the Court

²⁰ *McCann v. United Kingdom*. Three terrorists who had been planning a bomb attack in Gibraltar were shot and killed by British police forces. However, the UK’s assertion that they were defending the general public was not held to be within the meaning of absolute necessity because the suspected terrorists could have been prevented from entering Gibraltar in the first place, even if this meant the authorities may not have had ample evidence to prosecute the suspects at that stage. The Court found that the planning of the counter terrorist operation had not taken adequate account of the fundamental importance of the right to life. <http://cmiskp.echr.coe.int/tkp197/view.asp?item=63&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39854777&skin=hudoc-en> (visited 2009-12-14).

²¹ *Ogur v Turkey (20 May 1999)*. The applicant lost her son during an operation by the security forces. The victim had not been running away; no loud-hailer warning had been given before firearms were used; and that the victim have been fatally wounded by a shot from the security forces that was not a warning shot. The Court held that: „In keeping with the importance of this provision in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination“ (par. 78).

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=11&portal=hbkm&action=html&highlight=TURKEY&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

²² *Kelly v United Kingdom (4 August 2001)*. The Court stated that: “the text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor however to be taken into account in assessing its necessity. Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims” (par.93).

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=27&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

²³ *Nachova v Bulgaria (6 July 2005)*. Two persons (Roma Origin) were killed by a member of the military police who was attempting to arrest them. The Court held, that „In particular, it is necessary to examine whether the operation was planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force. The authorities must take appropriate care to ensure that any risk to life is minimized. The Court must also examine whether the authorities were not negligent in their choice of action. Notwithstanding that the victims committed offences ... the evidence shows that the arresting officers were fully aware that victims were not armed or dangerous... balanced against the imperative need to preserve life as a fundamental value, the legitimate aim of effecting a lawful arrest cannot justify putting human life at risk where the fugitive has committed a non-violent

found it was not absolutely necessary to use firearms to arrest a non-violent offender who posed not threat to anyone. The Court held, under those circumstances, the use of firearms would be unlawful even if it means the loss of opportunity to arrest.

The terms “riot” and “insurrection” will have autonomous meanings under the Convention, although neither have been defined as yet. However, where hundreds or thousands of people were throwing projectiles at the security forces Article 2(2)(c) has been held to apply. This was in *Stewart v United Kingdom (10 July 1984)*²⁴. The Court found that the scope of Article 2 covered not only cases of intentional deprivation of life but also situations where the use of force is permitted and results, unintentionally, in the loss of life. In its decision, the Court had regard to the fact that the soldiers were under attack by a violent and hostile crowd and felt threatened, that the use of plastic bullets could be considered appropriate in the circumstances and that the soldiers were trained and experienced in the use of plastic bullets, and the soldier’s aim had been disturbed when missiles thrown by the crowd had hit him at the moment of discharge. In *Güleç v Turkey (27 July 1998)*²⁵, however, machine guns were used by Turkish security forces to quell a violent demonstration. The Court underlined that although the situation fell within the scope of Article 2(2)(c), an appropriate balance had to be struck between the aim pursued and the means employed to achieve it. The lack of appropriate riot control equipment which obliged the security forces to have resort to such powerful weapons was unacceptable, particularly since the incident took place in an area where a state of emergency had been declared. A violation of Article 2 was found since the use of force that resulted in the death of the applicant’s 15 year old son was not absolutely necessary.

offence and does not pose a threat to anyone. Any other approach would be incompatible with the basic principles of democratic societies, as universally accepted today”. (par.103).

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=BULGARIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

²⁴ *Stewart v United Kingdom (10 July 1984)*. In that case, the British army accidentally killed a 13 year old boy when a round of plastic bullets was fired into the crowd during a riot in Northern Ireland. A stone, thrown by the crowd, had hit one of the officers and caused him to misfire.

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=open&documentId=803579&portal=hbkm&source=externalbydo cnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (visited 2009-12-16).

²⁵ *Güleç v Turkey (27 July 1998)*. The applicant asserted that his son had been killed by a bullet fired by the security forces during the demonstration of 4 March 1991, while he was trying to make his way home. He further complained that the gendarmes had used excessive force and that there had been no proper investigation into the circumstances of his child’s death. Demonstration was far from peaceful – confronted with acts of violence which were, admittedly, serious, security forces called for reinforcements and armoured vehicles were deployed. The Court stated that: “the Court accepts that the use of force may be justified in the present case under paragraph 2 (c) of Article 2, but it goes without saying that a balance must be struck between the aim pursued and the means employed to achieve it. The gendarmes used a very powerful weapon because they apparently did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province of Şırnak, as the Government pointed out, is in a region in which a state of emergency has been declared, where at the material time disorder could have been expected.”

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=19&portal=hbkm&action=html&highlight=TURKEY&sessionid=40241823&skin=hudoc-en> (visited 2009-12-16).

The use of force must be strictly proportionate to the achievement of the aims set out in Article 2(2). In *McCann v UK* the Court held that where deliberate lethal force used by officials is used the most careful scrutiny must be applied not only to the actions of the agents of the State to actually administer the force, but also the surrounding circumstances including such matters as the planning and control of the actions under examination. When planning security operations which may or do result in the use of lethal force the following should be taken into account:

- a) The right to life of the general population and also of the suspects (*McCann v UK*);
- b) Precautions taken to avoid or minimize incidental loss of civilian life, for example use of appropriate weapons (*Gulec v Turkey*);
- c) Training given to those involved (*McCann and Stewart cases*);
- d) The calculations of risk made consideration of whether the suspects are armed (*Nachova v Bulgaria case*). An honest but mistaken belief may, however, be sufficient to satisfy Article 2.

In *McCann v UK* the Court held that the authorities had failed to take appropriate care in the control and organization of the arrest operations. The Court held that alternatives were open to the authorities which meant that the loss of life could have been avoided. Therefore the key issues of Article 2 are as follows:

- It is an absolute right;
- Where it permits the lawful taking of life, this is subject to specified circumstances and subject to the test of absolute necessity;
- It imposes on the State both negative and positive obligations.

Conclusions

1. The right to life is a fundamental human right and the exercise of this right is essential for the exercise of all other human rights. The right to life includes not only the right not to be arbitrarily deprived of one's life, but also the right not to be prevented from having access to the conditions guaranteeing a dignified existence. States have the obligation to guarantee the creation of conditions required for violations of this basic right not to occur and, in particular, the duty to prevent its agents from violating it.

2. The requirement of the Convention to protect one's life imposes on the State negative obligation not to deprive anyone of his/her life save in the limited circumstances prescribed by Article 2 (2), and positive obligation to take appropriate measures to safeguard the lives of those within its jurisdiction and to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of another individual. However,

according the Court practice, bearing in mind the difficulties involved in policing modern society, such an obligation has to be interpreted in a way not imposing an impossible or disproportionate burden on the authorities.

3. The European Court of Human Rights formed practice that requires accountability of the agents of the State for their use of lethal force. Their actions, therefore, must be subjected to some form of independent and public scrutiny capable of determining whether the force used was or was not justified in a particular set of circumstances. The obligation to protect the right to life read in conjunction with the state's general duty under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms requires by implication that there should be some form of effective official investigation when individuals have been deprived of life as a result of the use of force by the agents of the state.

4. The use of force by the officials of the State, causing deaths of people, must be strictly proportionate to the achievement of the aims set out in Article 2 (2). The Court has emphasized the need for proper warnings to be given before potentially lethal force is used. All opportunities to surrender must be given and the use of force must be the option of last resort. The burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation that the use of force was within the scope absolute necessity in a democratic society.

REFERENCES

European Convention on Human Rights.
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=50265&p_query=European%20Convention%20On%20Human%20Rights&p_tr2=2 [visited 2009-12-14).

Universal Declaration of Human Rights.
Signed on December 10, 1948.
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=131330&p_query=Universal%20Declaration%20of%20human%20Rights&p_tr2=2
(visited 2009-12-14).

International Covenant on Civil and political Rights. Signed on December 16, 1966.
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_1?p_id=131206&p_query=International%20Covenant%20on%20Civil%20and%20Political%20Rights&p_tr2=2 (visited 2009-12-14).

McCann v. UK (27 September 1995).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=63&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39854777&skin=hudoc-en> (visited 2009-12-14).

Osman v UK (28 October 1998)
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=87&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39854777&skin=hudoc-en> (visited 2009-12-14).

Imakayeva v. Russia (9 November 2006)
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=35&portal=hbkm&action=html&highlight=RUSSIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).

- Salman v. Turkey* (27 June 2000).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=7&portal=hbkm&action=html&highlight=TURKEY&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Selmouni v. France* (28 July 1999).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=FRANCE&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Ognyanova and Choban v. Bulgaria* (23 February 2006).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=BULGARIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Jordan v United Kingdom* (4 May 2001).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=24&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Bazorkina v. Russia* (27 July 2006).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=RUSSIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Keenan v United Kingdom* (3 April 2001).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=22&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Edwards v. UK* (14 March 2002).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=39&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Ogur v Turkey* (20 May 1999).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=11&portal=hbkm&action=html&highlight=TURKEY&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Kelly v United Kingdom* (4 August 2001).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=27&portal=hbkm&action=html&highlight=%22THE%20UNITED%20KINGDOM%22&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Nachova v Bulgaria* (6 July 2005).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=BULGARIA&sessionid=39856536&skin=hudoc-en> (visited 2009-12-14).
- Stewart v United Kingdom* (10 July 1984).
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=open&documentId=803579&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (visited 2009-12-15).
- Güleç v Turkey* (27 July 1998).
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=19&portal=hbkm&action=html&highlight=TURKEY&sessionid=40241823&skin=hudoc-en> (visited 2009-12-16).
- Introduction to European Convention on Human Rights. Collected texts. Council of Europe, 1994.
- Crawshaw R., Cullen S., Williamson T. *Human Rights and Policing*. Boston, 2007.

EUROPOS ŽMOGAUS TEISIŲ KONVENCIJOS 2 STRAIPSNIO (TEISĖ Į GYVYBĘ) ĮGYVENDINIMO PROBLEMOS VISUOMENĖS SAUGUMO KONTEKSTE

Aurelija Pūraitė, Kristina Mikalauskaitė – Šostakienė

Mykolo Romerio universitetas, Lietuva

Santrauka. Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencija, pasirašyta 1950 m., tapo itin svarbiu žmogaus teisių apsaugos mechanizmu visose Europos Tarybos šalyse narėse. Konvencijos nuostatos valstybėse yra tiesiogiai taikomos, t.y. asmuo, kurio Konvencijoje ginamos teisės yra pažeistos turi galimybę tiesiogiai jas ginti, o nacionaliniai teismai savo jurisprudencijoje privalo šios Konvencijos nuostatas taikyti. Viena iš svarbiausių fundamentalių teisių yra teisės į gyvybę. Valstybės yra prisiėmusios pozityviusius įsipareigojimus saugoti visų asmenų, esančių jų jurisdikcijoje, teisę į gyvybę, ir negatyviusius įsipareigojimus nepažeisti teisės į gyvybę aktyviais savo atstovų veiksmais. Straipsnyje analizuojamas teisės į gyvybę turinys ir apimtis, taip pat galimybė taikyti šios teisės apribojimus atsižvelgiant į visuomenės saugumo poreikį. Europos žmogaus teisių teismas suformavo praktiką, kurioje detalai nurodoma valstybių pareiga pateisinti mirtinos jėgos naudojimą absoliučia būtinybe bei nekvestionuojamu visuomenės poreikiu. Įrodinėjimo našta tokiose bylose taip pat tenka valstybėms, kurios taip pat turi pareigą atlikti išsamų ir nepriklausomą kiekvieno savo įgalioto atstovo (pareigūno ir kito valstybės agento) jėgos panaudojimo atvejį, pasibaigusį mirtimi, tyrimą. Bet koks minėtų aplinkybių ir reikalavimų pažeidimas pagal Europos žmogaus teisių teismo suformuotą praktiką yra laikomas teisės į gyvybę pažeidimu. Straipsnyje pateikiama ir analizuojama gausi Europos žmogaus teisių teismo praktika, susijusi su teisės į gyvybę pažeidimu.

Reikšminiai žodžiai: žmogaus teisės, teisė į gyvybę, valstybės įsipareigojimai, visuomenės saugumas.

Aurelija Pūraitė, Mykolo Romerio universiteto Viešojo saugumo fakulteto Teisės katedros lektorė; Mykolo Romerio universiteto Teisės fakulteto Administracinės teisės ir proceso katedros doktorantė. Mokslinių tyrimų kryptys: aukštojo mokslo teisinis reguliavimas, administracinė teisė, žmogaus teisių apsauga.

Aurelija Pūraitė, Mykolas Romeris University, Faculty of Public Security, Department of Law, lecturer; Mykolas Romeris University, Faculty of Law, Department of Administrative Law and Process, Doctoral candidate. Research interests: legal regulation of higher education institutions, administrative law, the protection of human rights.

Kristina Mikalauskaitė – Šostakienė, Mykolo Romerio universiteto Viešojo saugumo fakulteto Teisės katedros lektorė; Kauno apskrities administracinių ginčų komisija, pirmininkė. Mokslinių tyrimų kryptys: administracinė teisė, kvaziteisminių institucijų veikla, žmogaus teisių apsauga.

Kristina Mikalauskaitė – Šostakienė, Mykolas Romeris University, Faculty of Public Security, Department of Law, lecturer; The Kaunas' County Commission of Administrative Litigations, the Chairman. Research interests: administrative law, jurisdictional activities of quasi-judicial institutions, the protection of human rights.