

Boundaries and restrictions of “*The right to life*” according to the European Court of Human Rights (Article 2 of ECHR) jurisprudence

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Abstract

The first substantial right of the European Convention on Human Rights (henceforth referred to as the Convention) is the right to life, set out in Article 2. This right was the first one to be attached to this Convention, because human life is more important than any other right. If one is deprived of the right to life in an arbitrary manner, all other rights are illusory. Being a fundamental right, it is protected by a number of national and international¹ instruments and the most important one, which has made it most relevant in the aspect of legislative theory, but also as part of the application of the right to life, is the Convention. Based on the European Court of Human Rights’ (henceforth referred to as the Court) caselaw, we manage to determine the boundaries and the restrictions of the right to life. This paper includes findings which relate to the concept of the right to life, the protection and guarantees that the Convention offers, Article 2 of the Convention in particular, and the criteria for the restrictions applying on the right to life. The active obligation of the state bears a special importance in this matter, along with the definition of the boundaries and restrictions of the right to life and the boundaries and restrictions applying to the obligations of the Adhering States to guarantee the protection of life and their responsibility in those cases recognized by the Convention when this right is restricted.

Keywords: European Convention on Human Rights, “The right to life”, Court of Human Rights, strengthening of the right, the boundaries and the restrictions of the right to life.

Introduction

The scope of this paper is to analyze the boundaries of the guarantees offered by Article 2 of the European Convention on Human Rights. Nonetheless, during the course of this paper, we will often find combinations of guarantees offered by Article 2 and other guarantees that the Convention offers. As established by caselaw, the Convention needs to be considered as a whole, because the rights included in this instrument do not act separately from each other. On the contrary, several fundamental concepts and approaches, such as: the concept of “law”, “proportionality”, “necessity”, “legitimate scope”, “nonarbitrariness”, “fair balance”, etc., make up the main pillar which guides the entire structure of the Convention and the rights protected by it. There also exists a specific connection between the provisions of the Convention. In this case, the *right to life* is specifically connected to Protocol No. 6 and 13 concerning death penalty and article 15 of the Convention concerning “death resulting from legitimate acts of war”, and on the other hand, with Article 3 “Prohibition of torture”, Article 5 “Right to liberty and security” or Article 8 “Right to respect for private and family life”, etc.

¹ Universal Declaration for Human Rights; International Pact on Political and Civil Rights; European Convention on Human Rights; African Charter of Human Rights, etc.

We will find cases when the provisions of the Convention combine with each other to offer a clearer picture of the guarantees which are protected and the obligations imposed on member States, in the analysis on abortion and right to euthanasia (Korff, 2008).

Namely, Article 2 of the Convention which relates to the protection of the right to life states:

Article 2 "Right to life"

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 of 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:*

- *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 right to life is inalienable and non-derogable (Van Dijk.P, Van Hoof. F, Van Rinj, A, 2006, 403) and it cannot be denied neither in times of war, nor in times of public unrest (Korff, 2011, 8). However, "death as a result of legitimate acts of war" does not automatically justify any action against anybody's life and health in times of war. This becomes meaningful when it is objectively justified based on the standards established by the Convention, but also by the Court's caselaw, where the most important one refers to the acts which are of "*an absolute necessity*". This is made clear in one of the most important cases tried under Article 2 of the Convention, *McCann vs. the United Kingdom*. This article is considered to be one of the most essential provisions of the Convention and along with article 3, they embody one of the most fundamental values of the democratic societies of the Council of Europe.²

In its context, Article 2 is characterized by the strengthening of the right and the limitation of exemptions. As a result, Article 2, which protects the right to life, provides its protection "by law", requiring the provision of rules which are reasonable, achievable, clear and predictable in their application. As far as restrictions provided in the second paragraph, points (a), (b) and (c) are concerned, once again this represents a rigorous test for the States.

In this aspect, the use of the term "*absolutely necessary*", is a standard which needs to be met objectively and needs to be clearly provable to justify the restriction of the right to life in the three well-defined circumstances of this paragraph (Korff, 2011, 9). In the case of *McCann vs. the United Kingdom*, the Court found that Article 2 imposes a positive obligation on the state to probe the deaths occurred in violation of the Convention.

It needs to be stressed that the Convention does not impose rigid requirements on the states; on the contrary, it determines minimum standards, allowing states "a margin of assessment" in order for them to determine how they will meet these standards. The extent to which this discretion is applied depends on the right and its nature, on the nature of the case in question and the interests which are at stake. Such consensus can be reached by using state practice, the practice of other member countries of the

² *McCann vs. the United Kingdom*, Application No. 18984/91, 13 May 1995 , paragraph 147.

Council of Europe and international standards established in the treaties as a basis for this (Korff, 2011, 9).

In Article 2, “*everyone’s right to life shall be protected*”, “everyone” here includes only the right for human life. This provision does not protect and does not include the right to life for animals or legal persons, but only human beings. In this case, there’s even an open discussion on the extent of the guarantees concerning the right to life for the foetus and the right of abortion. One of the problems which has been encountered on the discussions over the interpretation of Article 2, relates to the beginning and the end of the human’s physical life. In this situation, the word “*everyone*” does not include the possibility that the unborn foetus falls under the protection of Article 2 (Van Dijk.P, Van Hoof. F, Van Rinj, A, 2006, 387-389).

There have been three key arguments on the debate as to whether the life of the foetus is protected under the guarantees of the Convention. According to the *first argument*, the foetus’ right to life is not protected by the Convention. The *second argument* accepts a limited protection, judging the foetus’ right to life based on the individual case and the *third argument* states that the foetus’ right to life is a guaranteed and an absolute right. Jurisprudence has been strict in this aspect, by not accepting the foetus’ right to life as an absolute right, otherwise, we would be in a situation where the foetus’ right to life competes with the mother’s right to life, where the latter’s could be in serious danger if the foetus caused irreparable damages to her health. So, in *Bruggermann and Scheuten vs. the German Federal Republic*, the Court stressed that the scope of Article 2 was not to take the unborn foetus under protection.³

The recognition of the foetus ‘right to life’ would be in contradiction with the Convention. The applicant also claimed that there were violations of article 8 on the right to abortion as a violation of her right for a private life. In this case, pregnancy cannot be considered as a state which extends in the sphere of private life. During a woman’s pregnancy, her private life is closely connected to the life of the foetus.

The Convention does not provide a definition of “Life”, when it starts and when it ends. Such definitions come generalized or implied in the Court’s ruling, rather than come as an accurate definition or in the form of a convergence of national legislations and the Convention;⁴ nonetheless this helps us in analyzing the extent and the limitations of the right to life.

In an early case, *X vs. the United Kingdom*, the Commission noted that Article 2 does not mention abortion and this leads to the interpretation that the definition “everyone’s right to life” only covers the right to life of persons who have been born and not the foetus’ (Korff, 2011, 12). In the case of *H vs. Norway*, the court went even further by noting that in particular circumstances, the foetus may be entitled to a protection of its life under Article 2 of the Convention. In the case of *Reeve vs. the United Kingdom*, the case focused on the motion filed by a mother of a two year old child who was born with problems that were supposed to have been identified by the doctors who treated her during her pregnancy. The applicant filed the motion on behalf of her child for the damages caused to the child, in a situation where she had the possibility to abort had she been aware of all the facts. Even in this case, the Commission found the motion

³ Bruggermann and Scheuten vs. German Federal Republic, Application no. 6959/75.

⁴ Pretty vs. the United Kingdom, Application No./2346/02, 29 April 2002 , paragraph 4-6.

for violation of the right to life under Article 2 of the Convention unacceptable. But, in 2002, in the case of *Boso vs. Italy*, the Court expressed itself more directly on the issue of abortion. This case concerned a woman who had carried out abortion against the will of the potential father, but the abortion was carried out according to national law. The Court notes that in particular circumstances, the foetus' life should be guaranteed under Article 2. Meanwhile, the Italian national legislation allows for abortion to take place within the first 12 weeks of pregnancy.

Moving from one extreme to another, the Court's caselaw has provided several guidelines on the boundaries and restrictions of the right to life, referring to what we expounded above concerning the application of Article 2 on the foetus' right to life. But, we also have another controversial extreme, as to whether the Convention protects the right to death through Article 2. In this aspect, caselaw is clear that Article 2 of the Convention protects the right to life, but not the right to death (Van Dijk.P, Van Hoof. F, Van Rinj, A, 2006, 392-393). In the case of *X vs. Germany*, inmates had entered a hunger strike. The German authorities had intervened by feeding the inmates through the use of force. On one hand, there are those who say that such intervention contains significant elements which are prohibited by Article 3 of the Convention. On the other hand, under the Convention, the contracting parties have a *positive obligation*, to take the necessary steps to protect the life and health of everyone, who, at the moment when the threat is identified, is under the custody of state institutions, as Article 2 of the Convention provides.

This situation causes a contradiction between the right of a person for physical integrity, guaranteed by Article 3 and the right of a person to life guaranteed by *law*, from which stems the state's obligation to guarantee it. In this case, this contradiction is solved not only by the Convention, but also by national legislation. In the case in question, the German law had made provisions for it. In case of a hunger strike when the person's health was being threatened, causing him permanent damages and even threats to his life, the intervention of feeding someone through the use of force, was a legal obligation that the state authority could apply. This situation must go through a clear procedure, where the authorities first refer to the doctor's examination and once they obtain a court order to feed the person, they execute such act (Korff, 2011, 19-20).

Restrictions of the right to life covered by Article 2 of the Convention and the principles guiding them

Paragraph 2 of article 2 refers to the moments when deprivation of life is not in contravention of the article in question. We notice that the use of force to protect property is not covered by Article 2. This right was initially included in the drafting of the International Agreement on Civil and Political Rights, in article 6. This provoked objections and was not incorporated in the instruments above. This shows that the use of force which threatens the other person's life cannot be considered as a legitimate means to protect property, save cases when life is in danger. We need to understand that paragraph 2 of Article 2 does not apply to cases when the intentional killing of an individual is allowed, but it ranks and explains the situations when the "use of force" which could unintentionally result in the deprivation of life is allowed. However,

for every case when state authorities use force, including the cases provided for by Article 2, where the use of force deprives a person of his right to life, the state has a strict obligation to justify any act undertaken by it to explain the reasons of “absolute necessity”.

As far as the second paragraph of Article 2 on the limitations is concerned, we will go into more detail over the standards which should guide every Member State to justify the *use of force* against the person, resulting in depriving him of his right to life. Let us analyze them.

a. The principle of “absolute necessity”

The second paragraph of Article 2, with the three points which sanction the deprivation of one’s right to life, is not in contravention with the first paragraph, which protects the right to life. In other words, this paragraph does not aim to determine the moments when the intentional killing of an individual is allowed, but it seeks to justify cases when “*the use of force*”, which deprives an individual from his right to life, in circumstances when this force has been used by state authorities, has been of an “*absolute necessity*”. The phrase “*absolute necessity*” appears as a strict criterion that the Convention imposes on member States. Otherwise known as the “*necessity test*”⁵, it needs to be interpreted in the spirit of the principle of proportionality between the “*used force*” and the “*goals aimed to be achieved*” (Van Dijk.P, Van Hoof. F, Van Rinj, A, 2006, 395-396).

The use of lethal force by the state was first addressed in detail in the matter *McCann vs. the United Kingdom* (27.09.1995). This case clearly shows that the State has a strict obligation to explain any act or action of the use of force against the individual, having consequences on the latter’s life, and Article 2 only exempts the state from any responsibility when the acts that have been carried out have been of an “*absolute necessity*”. The case in question related to three IRA members, who were suspected of exploding a bomb through a remotely controlled device. They were shot to death by members of the air services in Gibraltar. The court maintained that the right to life had been threatened, because it found that measures could have been taken in order for the operation to have been planned and controlled without the need to kill the suspects⁶.

In many cases, the Court has found violations of the right to life, in the absence of a justification by the states regarding the existence of an “*absolute necessity*” behind their actions, as provided by the three limitations of the deprivation of the right to life in paragraph 2 of Article 2. So, in the case of *Persian and others vs. Turkey*, the use of force against inmates to quell riots, which had led to the death of 8 of them, was a violation of Article 2. This intervention by prison authorities was not of an absolute necessity. On the contrary, it did not even fall within the limitations of the right to life provided by the Convention.

The Convention stipulates that life is not deemed deprived and in contravention with Article 2 in cases when this deprivation comes as a result of the use of force, which is of an absolute necessity to effect a lawful arrest or to prevent the escape of a person lawfully detained. In this context, it should be understood that this provision does not

⁵ *McCann vs. the United Kingdom*, Application No. 18984/91, 13 May 1995, paragraph 149.

⁶ Right to life, European Court of Human Rights, Factsheet-Right to life, 2013, p.1.

grant the state a “*carte blanche*”, meaning absolute power to take actions which deprive an individual of his right to life just because the individual escapes the detention of state authorities. This was concluded by the Court in the case of *Putintseva vs. Russia*, when a young man who was completing his military service, was shot to death by his superior, while trying to escape. In this case, the Court concluded that the legal framework on the use of force to prevent the arrest of a soldier, had been incomplete and authorities had failed to minimize the use of deadly force.

In circumstances when an individual is deprived of his life due to the unlawful acts committed by state authorities, besides the obligation to explain the absolute necessity of the act which has been committed, the State also has an obligation to train law enforcement agents in assessing whether there exists or not an absolute necessity for the use of fire weapons, based not only on the respective regulation, but also to respect life as a fundamental value.

This was the conclusion reached by the Court in the matter *Nachova and others vs. Bulgaria*⁷ which concerned the killing of the plaintiff’s relatives by a military officer who was attempting to put them under arrest⁸.

The lack of an internal legal framework which protects the right to life, in principle means that one of the most fundamental rights, such as the right to life, is not being guaranteed in a democratic way. As the Convention states, one of the basic standards in protecting life is sanctioning this right “by law”. This was argued by the Court in a case related to the arrest of a 19 year old by police. During the police operation, the youngster was shot in the head by a police officer. The young man survived, but he remained half paralysed. The Court found that Article 2 of the Convention was violated, because the national law could not sufficiently address the requirement of protecting the right to life by law⁹. In another case, the state was found guilty, because two people had been shot by a police officer, when the latter was off-duty. Here, we have a case where the state has allowed the police officer to carry a fire arm off-duty¹⁰. The Court has encountered frequent cases of the violation of Article 2 of the Convention, where the State has not fulfilled its positive obligations, sometimes due to the lack of a well detailed law regarding the use of fire weapons, and in other cases, when the legal framework has been complete, the fact that it has not been applied correctly, has had consequences.

b. Proportionality

The principle of proportionality is not explicitly expressed in Article 2, but it is clearly founded from the Court’s caselaw.

The proportionality that must exist between the committed acts and the scope for which they are committed and the consequence that they cause, is one of the basic principles which needs to drive every action of the state authorities.

The case *Wasileska and Kalucka vs. Poland*¹¹ concerned the death of a suspect during an operation against terrorism. The Polish government had failed to provide its arguments on the proportionality of the level of force used by police and police actions

⁷ *Nachova and others vs. Bulgaria*, Application No. 43577/98 and 43579/98, 6 July 2005.

⁸ Right to life, European Court of Human Rights, Factsheet-Right to life, 2013, p.2.

⁹ *Soare and others vs. Romania*, Application No. [24329/02](#), 22 February 2011.

¹⁰ *Gorovenky and Bugara vs. Ukraine*, Application No. [36146/05](#) and [42418/05](#), 12 January 2012.

¹¹ *Wasilewska and Kalucka vs. Poland*, Application No. 33949/05, 23 February 2010.

and whether there was a legislative administrative framework to protect people against arbitrariness and abuse of force. In this case, the Court found violations of Article 2¹².

Meanwhile, the case *Figenov and others vs. Russia*¹³ concerned the siege of Dubrovka theatre in Moscow carried out by Chechen separatists in October 2002. In this case, authorities had pumped gas inside the premises of the theatre to free the hostages. The decision to use gas with the aim of freeing hostages, was not considered by the Court as a violation of Article 2 of the Convention in itself, but the cases when the Court finds the state guilty of failing to guarantee the standards of Article 2, had to do with insufficient planning and application of the plan to free the hostages and the lack of effectiveness of investigation and the negligence of the authorities in planning and rescuing the hostages and the lack of medical assistance for the hostages.¹⁴

c. **The state's positive obligations in protecting the right to life**

States not only have an obligation to guarantee the right to life and to offer protection against any intentional and unlawful attempt to deprive people from it, but it also has an obligation to take the necessary steps to protect the life of each person who is within their jurisdiction (A guarantee of Article 1 of the Convention), particularly by introducing effective penal provisions based on the law. In this case, the burden of proof falls on the state authorities to show if there has been unlawfulness in their actions or lack thereof (Van Dijk, P, Van Hoof, F, Van Rinj, A, 2006, 355).

The Court has noted that if an individual, who has been placed under the custody of state authorities, is in good health, and is later found dead, the State has an obligation to provide credible explanations which justify the events that lead to his death.¹⁵

People who are in detention are in a position of danger and authorities have an obligation to protect them, otherwise, any threat to the individual's life under these conditions leads to the state's being held accountable under Article 2. This was the Court's conclusion in the case of *Tanli vs. Turkey*¹⁶ where Mr. Tanli, 22 years old, was in good health at the time of his arrest, but 36 hours after being taken in for questioning at the police station, he was found dead. During the examination of the evidence, the first principle that was applied was the one concerning proof "beyond any reasonable doubt". However, as the Court notes, such proof may come as a result of the co-existence of very strong and clear conclusions.

On the other hand, the lack of direct responsibility by the state for the death of an individual, does not exempt it from applying Article 2.¹⁷ However, the positive obligations stemming from Article 2 must be interpreted in a way that does not impose an impossible or unproportional burden on the authorities. The state is in violation of its positive obligation to protect the right for life if the authorities knew or should have had knowledge of a real and imminent threat on the life of the individual at the time when this threat existed, or in the case of the identification of a criminal offense,

¹² Right to life, European Court of Human Rights, Factsheet-Right to life, 2013, p.3.

¹³ *Finogenov and others vs. Russia*, Application No.18299/03 and 27311/03, 20 December 2011.

¹⁴ Right to life, European Court of Human Rights, Factsheet-Right to life, 2013, p.3.

¹⁵ See the case of *Velikova vs. Bulgaria*, Application No. 41488/98, 18 May 2000, paragraph 70.

¹⁶ *Tanli vs Turkey*, Application no. 2619/95, 10 April 2001, paragraph 141.

¹⁷ *Angelova and Iliev vs. Bulgaria*, 26.07.2007, paragraph 93.

state authorities have not taken adequate measures to prevent and avoid the threat which results in deprivation of life.

To support this argument, we can take a look at the case *Osman vs. the United Kingdom* (20.10.1998 paragraph 116), where Mr. Osman had remained dead and his son had remained injured in a shooting incident by a teacher who had been suspended following a psychiatric evaluation. In this case, the Court did not find any violations of Article 2, as the applicant could not prove that the authorities had knowledge or should have had knowledge that the life of the student and his father were in immediate danger from teacher.¹⁸

In the case *Onerlydiz vs. Turkey*¹⁹ 2002, the Court identified violations of Article 2, when a group of individuals lost their life as a result of an accident occurred in a destroyed bridge. The responsible authorities were given a very small fine as penalty for the negligence shown in performing their tasks. In spite of the fact that during the trial, it was discovered that the authorities were aware of the threat posed by the damaged bridge prior to the accident, the claims that this would be a threat to people's lives were not taken into account (Gomien, 2005, 16).

The procedural aspect of positive obligations

Article 2 of the Convention also implicated positive obligations of a procedural aspect, including the obligation that states have to investigate deaths which may have happened in violation of the Convention²⁰. The main scope of such investigation is to enable an effective application of national laws which protect the right to life even in cases which involve state agencies or agents and to hold them accountable for the deaths taking place under their responsibility.

The requirements that the investigation which takes place in response to the positive obligations in the procedural aspect stemming from Article 2 of the Convention needs to meet are: independence, promptness, swiftness, the capacity to determine facts and being accessible for the public and the relatives.

Paul and Audrey Edwards vs. United Kingdom.²¹ The case concerned the double murder committed by a dangerous offender on the day of his release. Violation of Article 2 on the account of two defects (although the inquiry had met most of the other requirements): the inquiry had no power to compel witnesses, and it had been held in private - the applicants had only been able to attend three days of the inquiry.²² On the other hand, state authorities failed to provide information on the past and the level of threat that the perpetrator presented and they also failed to protect Christopher Edwards' life.²³

¹⁸ The same conclusion has also resulted in the case of *Beru vs. Turkey*, 11. 01.2011 and *Choreftakis and Choreftaki vs. Greece*, 17.01.2012.

¹⁹ *Onerlydiz vs. Turkey*, Application No.48939/99, 30 November 2004.

²⁰ *McCann vs. the United Kingdom*, Application No. 18984/91, 13 May 1995, paragraph 150-194.

²¹ *Paul and Audrey Edwards vs. the United Kingdom*, Application No.46477/99, 14 March 2002, paragraph 64.

²² *Right to life*, European Court of Human Rights, Factsheet-Right to life, 2013, p.5.

²³ *Paul and Audrey Edwards vs. the United Kingdom*, Application No.46477/99, 14 March 2002, paragraph 64.

As a matter of principle, the standard which is applied by the Court in relation to the Convention's alleged violations is "proof beyond any reasonable doubt", where the applicant needs to prove the violation²⁴. In practice, the issue regarding the responsibility for the proof is somehow flexible and depends on the circumstances of the case and the nature of the charges filed by the applicant (Korff, 2011, 31).

The ruling in the *Kaya vs. Turkey*²⁵ case states that the burden of proof fell on the state. The case relates to an applicant who claimed his brother was intentionally killed by security forces, while there was no threat on their life. The *burden of proof* fell on the authorities, as they had to prove that the force that was used was justified and was proportional to the scopes provided by the second paragraph of Article 2.²⁶

The applicant also involved the witnesses which were part of these events in the case, but they could not personally testify in front of the Commission's delegates. Without any doubt, this situation damaged the applicant's case. The Court noted that the procedural protection of the right to life provided by Article 2 of the Convention obliges state agents to provide explanations for the use of deadly force, making their actions part of an independent and public probe, which is able to determine if the used force was justified or not in special circumstances of the case.

Meanwhile, in the matter of *Kurt vs. Turkey*, the burden of proof fell on the applicant. In this case, the court held that the applicant had not submitted concrete evidence proving that her son was really a victim of abuse in contravention of Article 2.²⁷ The applicant claims that she saw her son for the last time in the hands of the members of security forces, who were carrying out a raid in the village and then he disappeared.²⁸

The state has the obligation to protect individuals who are held in custody. The Court has found violations of Article 2 in the case of a prisoner who remained killed while security forces opened fire in an isolated military zone.²⁹ Another case was the one when a young man was beaten to death by an inmate who had mental problems and whom he shared his cell with. The latter had had a history of convictions and had been constantly held under psychiatric care (Van Dijk.P, Van Hoof. F, Van Rinj, A, 2006, 357). In the case of *Pretty vs. the United Kingdom*, the Court pointed out that there had been no violations of Article 2 in the case when the State had refused to hold investigations on a man who could have assisted his wife to commit suicide. The woman suffered from a terminal illness which had affected all of her physical functions, but it had not affected her intellectual capacity.³⁰

The state is responsible and has the burden of proof in relation to the treatment of an individual who dies after being placed under arrest by authorities, when. A good example for this is *Salman vs. Turkey*, where the applicant, at the moment he was placed

²⁴ Ireland vs. the United Kingdom 18.01.1978, paragraph 161.

²⁵ *Kaya vs. Turkey* 158/1996/777/978, 19 February 1998, paragraph 113.

²⁶ For a European Public order, Volume I, Tirana 2001, Council of Europe, Albanian center for human rights, p.90.

²⁷ *Kurt and others vs. Turkey*, (15/1997/799/1002), 25 May 1998, paragraph 104

²⁸ For a European Public order, Volume I, Tirana 2001, Council of Europe, Albanian center for human rights, f.351 and 359

²⁹ *Demiray vs. Turkey*, Application No. 27308/95, 21 November 2000

³⁰ *Pretty vs. the United Kingdom*, Application No./2346/02, 29 April 2002, paragraph. 8.

under arrest, was healthy and did not show any previous wounds³¹. The evidence did not support the government's argument that the wounds on the body of the victim could have been caused during the arrest or during the CPR affected on him to bring him back to life. Thus, the Court held that the government had been irresponsible on the death of Mr. Salam during his imprisonment (Korff, 2011, 46). Also, in the absence of an effective investigation by state authorities regarding the circumstances in which Mr. Salam died, the Court blames state authorities, which have failed in conducting the essential procedures which are normally conducted to secure evidence, by not shooting the necessary photos on the body for the coroner's examination, by not conducting categorization or hispathological tests of the wounds, by presuming that the sternum had been perforated by CPR and without conducting a medical verifying analysis to establish if such procedure of CPR had actually occurred or not. The state has an important obligation to guarantee a full, unbiased and quick investigation.

The boundaries of the application of Article 2 in protecting life in other circumstances

But, what happens with the application of Article 2 of the Convention in cases of international armed conflicts and how far does the jurisdiction of the Convention reach? At first glance, the Convention does answer this question regarding the application of Article 2 through the provision made in article 15 (2) of the Convention, which denotes that even in times of war, there are no derogations of Article 2, save killings that result from unlawful acts of war. These acts are reviewed based on the provisions of humanitarian international law. This means that the acts that result in deprivation of life, committed in times of war, which are in contravention with international humanitarian law, also consist *ipso facto* of a violation of Article 2. Otherwise, when the deprivation of life comes as a result of acts which comply with international right, they do not violate the Convention. As far as the territorial jurisdiction of the Convention in cases of international armed conflicts is concerned, caselaw has not fully expressed itself in this aspect. It maintains the provision of Article 1 of the Convention where "*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention*" within which Article 2, on the right of life, acts.

Also, besides the case of the territory within which the jurisdiction of a member state is applied, the Convention also applies to those "outside the territory" acts which are carried out by a member state, if such acts occur in an area for which the member state takes "effective-control", e.g, as a result of a military act.

Securing the right to life under Article 2 of the Convention, also extends its protective effects on environmental risks which are life threatening. In these cases, other provisions of the Convention come into play, where jurisprudence has had a number of cases relating to environmental problems, where it was claimed a direct impact on individual rights protected by the Convention, such as it was the case in the matter of *Guerra vs. Italy*. The case in question involves an applicant who lived near a plant which emitted large amounts of toxic substances. The residents were used to living

³¹ *Salman vs. Turkey*, 27 June 2000, paragraph 99-100.

with such sort of contamination, which often entered even their homes. A serious situation was produced when a significant amount of dangerous gases caused the poisoning of a considerable number of residents who were admitted to hospital. This case was tried based on article 8, regarding the right to respect for private and family life, which recognized the authorities' *positive obligation* to take effective measures in protecting the guarantees provided by article 8, not seeing it fit to continue and try the case based on Article 2. The Court stresses the importance of information that must be provided to the public and where individuals are impacted by environmental threats.³²

Article 2 provides for a positive obligation for the states in order for them to take effective steps in protecting people who are within their jurisdiction, an obligation which must be interpreted as if applied in the context of every public or private activity, where the right to life may be threatened. This also includes cases of industrial activities, which are considered dangerous by nature. The Court has continued to expound the substantial applicable principles on the obligation that the state has to take all necessary measures in order to prevent death resulting from dangerous acts, which relate to the main obligation to create a legal and administrative framework with the aim of effectively securing and preventing threats posed on the right to life (Korff, 2011, 69).

Authorities find themselves responsible because they fail to deliver their substantial obligations stemming from the guarantees of Article 2 of the Convention, even in cases when death is not caused directly by it or by third parties. Such as it was the case in the matter of *Keenan vs. United Kingdom*,³³ involving a young man who had a history of mental illnesses and who was given a prison sentence for a serious attack that he had undertaken. During his time in prison, he manifested symptoms of his illness and threatened that he was going to cause self injuries. As a result of changes in medication, he displayed an aggressive behaviour and his mental health aggravated. As a result of this aggravation, he manifested aggressive behaviour against prison personnel. As a result of this, he was placed in solitary confinement, where he hung himself. The victim's mother, who was the applicant, claimed that prison authorities had been negligent in terms of the care given to him. The Court noted that the authorities had taken measures and by accompanying him to hospital and by keeping him under observation the whole time that Mark Neenan displayed suicidal tendencies, and this was not in contravention with the substantial principles of Article 2. But the failure to monitor Mark Keenan, the lack of accurate data concerning the examination of his mental health and the poor medical treatment given to an individual with mental problems who posed a threat for himself and the others, lead to a violation of Article 3 of the Convention (Korff, 2011, 82-83).

Conclusions

The conclusion that we draw from this investigation on the theory of the Convention concerning the protection of the right to life under Article 2 and the Court's caselaw, is

³² *Guerra vs. Italy*, 16/1996/735/932) 19 February 1998, paragraph 50.

³³ *Keenan vs. the United Kingdom*, application no. 27229/95, 3 April 2001.

that the right to life must be protected and guaranteed by law. The necessity of having legal provisions on the right to life and the rigorous definitions of the situations which legitimize the restriction of this right, enables an effective enjoyment and a prevention of abuse by state authorities.

States must show a strict approach in undertaking efficient steps in guaranteeing the substantive side of the right to life even in undertaking procedural investigative actions to identify all the moments which have lead to the threats of the right to life. The Convention is clear about the fact that the restrictions of the right to life, in cases of the use of force by state authorities, which results in the deprivation of the individual's life, bear the absolute necessity which justifies the legitimacy of the use of force. In this context, besides the state's obligation to argue and prove in the most convincing way possible the legitimacy of its actions, the training and formation of state authorities, police, military and prison officers, etc, in understanding the concept of *the absolute necessity of the use of force, proportionality* between the action, the goal and the consequence, are also necessary.

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