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OBLIGATIONS OF INSTITUTIONS REGARDING THE PROTECTION OF THE RIGHT TO LIFE*

The right to life is a basic human right. It is contained both in international documents and in legal acts adopted at the national level. In each state, the abovementioned right is proclaimed by the Constitution, while the mechanisms for its protection and sanctions for its infringement are prescribed by various laws. The absence of protection of life can be the basis for different types of liability. Certain categories are particularly sensitive when it comes to the threat of that right. These are children, the elderly, the sick, etc. Every institution has an obligation to implement a series of measures in order to protect the persons residing there for various reasons from negative influences that threaten their life and physical integrity.

In this paper, we start from the assumption that at the level of various institutions there is no awareness of the need to establish mechanisms for the protection of life, as well as the potential responsibility for not establishing them and violating the aforementioned values. That is why we tried to point out the need to improve the responsibility of institutions regarding the protection of life, the importance of the existence of mechanisms for the protection of the right to life at the level of institutions, as well as the possible consequences of failing to establish them.

Keywords: institutions, responsibility, protection, right to life.

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1. Introduction

The right to life is the most important human right and together with the right to human dignity, personal integrity, the prohibition of torture and inhuman treatment or punishment, the prohibition of slavery and forced labor belongs to the corpus of so-called personal rights. The right to life is an absolute human right that must be respected unconditionally and without any restrictions (Krstić, Marinković, 2016: 50).

Bearing in mind that the right to life is inviolable and is guaranteed by all international documents, states have the obligation to take all available measures to protect this right on their territory. The authors emphasize the extraterritorial nature of the obligation to protect the right to life by states. Therefore, the state is obliged to protect all individuals from expulsion or extradition to a country where their life is in serious danger (*Ibid*, 116).

Obligation to protect the life of a person, i.e. the direct obligation of immediate positive action exists in a situation where the state knew or could have known that there was a real and immediate danger to the life of a certain person, and failed to take adequate measures within its jurisdiction to avoid that risk (*Ibidem*). However, some circumstances can still lead to the death of individuals. Therefore, it's sufficient for the state to take all reasonable measures to prevent the occurrence of risks that may contribute to the occurrence of such consequences. Such an attitude is contained in the practice of the European Court of Human Rights, which decided on the violation of the state's obligation to take all necessary measures in order to protect the right to life of individuals.

In the first part of this paper, the subject of analysis are the provisions of international documents that guarantee the right to life, and then the attitudes of the Human Rights Committee contained in General Comment No. 36, which are of great importance for the interpretation of Article 6 of the International Covenant on Civil and political rights that guarantee the right to life.¹

As the practice of the European Court of Human Rights are of great importance for the actions of national authorities, not only judicial ones, but also

¹ United Nations, Human Rights Committee, *General comment No. 36 on article 6: right to life*, 3 September 2019, <https://documents.un.org/doc/undoc/gen/g19/261/15/pdf/g1926115.pdf>, 7.9.2024.

other state institutions, in the following part of the paper the subject of analysis is the jurisprudence of the aforementioned court. In this research, we start from the assumption that at national level it's necessary to improve awareness of the importance of the role of various institutions in terms of protecting the right to life. Therefore, by applying content analysis methods, we tried to indicate when state institutions are obliged to react in a timely manner in order to prevent the occurrence of harmful consequences that may threaten the right to life, as well as when they cannot be considered to have violated their duty to undertake reasonable measures in order to prevent risks to people's lives and health. If the institutions of a state don't react in a timely manner in situations where they are obliged to take adequate measures in order to prevent the occurrence of the aforementioned risk, this can contribute not only to the criminal liability of the responsible persons, but also to the occurrence of material damage to the state due to the obligation to compensate the person's relatives whose right to life was violated by the untimely reaction of state institutions.

2. The right to protection of life and bodily integrity in international documents

The International Covenant on Civil and Political Rights stipulates that the right to life is inseparable from a person's personality and that it must be protected by law (Article 6).² Therefore, it seems that it's inextricably linked with other rights that can be considered so-called corupus of personal rights: the right to dignity, personal integrity, the prohibition of torture and inhuman treatment and punishment, the prohibition of slavery and forced labor. Bearing in mind that so-called are also important for personality devlompment, social and economic rights, the right to life is closely related to them.

According to the authors, the state's obligation to protect the right to life is negative in the sense of refraining from taking life, but also positive in the sense of the obligation to take all reasonable measures to protect the right to life of an individual within the jurisdiction of the state, and not only by the state and its

² International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. <https://www.ohchr.org/sites/default/files/ccpr.pdf>, 7.9.2024.

officials, but also from private individuals (Zdravković, 2019: 341). The positive obligation of the state is contained in Article 2, paragraph 1 of the European Convention on Human Rights. Therefore, the obligation of the state, and therefore of its institutions, is not only to refrain from intentional and illegal taking of life, but also to fulfill the obligation that consists in taking adequate measures to protect the lives of persons under its jurisdiction.³

The provision of some legal acts at the international level also guarantee the right to bodily integrity, although this right is not defined directly. Thus, Article 3 of the European Charter of Fundamental Rights and Freedoms stipulates that everyone has the right to respect for physical and psychological integrity.⁴ Accordingly, in the field of medicine and biology, the free consent of the person to treatment or research must be respected, and the person must be informed of their content in accordance with the provisions of the relevant regulations. In addition to the aforementioned charter, Article 17 of the Convention on the Rights of Persons with Disabilities stipulates the obligation to respect physical and mental integrity (Bublitz, 2022: 2).⁵

In an immediate way, other international documents also guarantee the right to the protection of bodily integrity. For example, in the Universal Declaration of Human Rights, it's included in Article 3, which guarantees every person the right to life, liberty and personal security.⁶ The aforementioned Declaration guarantees the equality of all before the law without any distinction and protection against any discrimination (Article 7). Article 9 of the International Convention on Human and Political Rights guarantees the right of every person to freedom and personal security (Bublitz, 2022: 6).

³ Text of the European Convention on Human Rights in english is available at: https://www.echr.coe.int/documents/d/echr/convention_eng, 7.9.2024.

⁴ Charter of Fundamental Rights of the European Union, 2012/C 326/02, *Official Journal of the European Union*, C 326/391.

⁵ Convention on the Rights of Persons with Disabilities, adopted 12 December 2006 by Sixty-first session of the General Assembly by resolution A/RES/61/106. Entry into force 3 May 2008, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>, 7.9.2024.

⁶ Universal Declaration on Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly Resolution 217A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

Bearing in mind that the state is obliged to take reasonable measures in order to prevent the risk to life, and therefore the physical integrity of the individual, we believe that the obligation to protect this right is also related to the right to life. Therefore, in this paper, the subject of consideration is the obligations of the state and its institutions to protect both of the aforementioned rights. In addition to the right to take preventive measures that reduce the possibility of the occurrence of a risk that can produce harmful consequences for life, as well as the physical integrity of people, the state's obligation, in accordance with the interpretation of the Human Rights Committee, is also to conduct an efficient and effective investigation, in order to investigate a certain event and applied sanctions against persons who violated the right to life and bodily integrity (Zdravković, 2029: 341).

3. The views of the Human Rights Committee expressed in General Comment No. 36 regarding Article 6 of the International Covenant on Civil and Political Rights

The state's obligations regarding the protection of the right to life, can be seen by analyzing the views of the Human Rights Committee expressed in General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights. According to them, the right to life is the supreme right, which represents the basis for the realization of all human rights and it must not be derogated from even during a state of emergency. The basic obligation for the contracting states with regard to the protection of the said right implies not only the adoption of laws, but also the undertaking of other measures that enable the protection of the right of life. These measures include reducing the risk of threats that may come from both physical and legal entities. This implies an adequate level of organization of state bodies and administration through which public powers are exercised in order to protect the right to life. Therefore, this doesn't mean only the establishment of new institutions, but also the prescription of different procedures (United Nations, Human Rights Committee, 2029: paragraphs 18-21). The obligation to protect the right to life by law implies that every material basis for depriving life is prescribed by law and defined in such a way as to

avoid an overly broad or arbitrary interpretation (*Ibid*, paragraph 19). The definition of the right to life, which is contained in various international documents, doesn't contain an explicitly prescribed obligation to protect life. Such an obligation was considered before the European Court of Human Rights, which gave an answer to the question of the limits of such a duty (Šurlan, 2021: 20).

Some authors believe that the right to physical integrity actually combines several other rights: the right to life, the right to health protection, the right to bodily integrity, the right to psychological integrity, the right to sexual integrity, the right to freedom, the right to (human) dignity and the right to a healthy environment (Jotanović, 2017: 107). The above-mentioned rights are interconnected. Thus, for example, endangering the right to life simultaneously endangers the right to health, but also the right to bodily and mental integrity. Similarly, jeopardizing the right to a healthy environment simultaneously threatens the right to life. Therefore, the fact that the protection of the right to life protects all the aforementioned rights at the same time, but also that the right to life is also protected by their protection, should be taken into account. At the national level, the aforementioned rights are guaranteed by the highest legal acts. According to the Constitution of Serbia (*Official Gazette of the Republic of Serbia*, no. 98/2006 i 115/2021), the right to life is inviolable (Article 24), and it also guarantees the inviolability of physical and psychological integrity. Accordingly, no one may be subjected to torture, inhuman or degrading treatment or punishment, or subjected to medical or scientific experiments without their freely given consent (Article 25).

The obligation of the state to protect the right to life requires the member states to take special protection measures towards persons who are in vulnerable situations, i.e. whose lives are at particular risk due to specific threats or existing patterns of violence. In General Comment on Article 6 of the International Covenant on Civil and Political Rights, under persons who may be exposed to risk or threats, the following are stated: human rights defenders, officials who fight against corruption and organized crime, humanitarian workers, journalist, prominent public figures, witnesses to the crime, victims of domestic violence, victims of gender-based violence, victims of human trafficking, children, especially street children, unaccompanied migrant children and children in situations of armed conflict and members of ethnic and religious minorities, etc. (paragraph 23)

However, not a single international document pays special attention to the elderly and the protection of their right to life. Such an approach should be changed in the coming period, bearing in mind both the rapid aging of the population and the difficult living conditions of members of the elderly population, which are primarily reflected in both poor health and the lack of financial resources to provide adequate medical care and help (Kostić, 2023a: 339 and 340).

Special protection measures are enjoyed by persons with disabilities, including persons with psychosocial or intellectual disabilities, in order to ensure their effective enjoyment of the right to life on an equal level, as it's guaranteed to other persons. Those measures must include adaptation to the specific needs of persons with disabilities, such as, for example, enabling persons with disabilities to access basic facilities and services and preventing the unjustified use of force by law enforcement authorities against them. (paragraph 24)

Under particularly sensitive groups, the Committee for Human Rights includes persons who have been deprived of their liberty by the state. Therefore, the state also has a responsibility to take care of their lives and physical integrity and must not rely on lack of financial resources or other problems to diminish this responsibility. This obligation includes: provision of necessary medical care and appropriate regular health monitoring, protection from violence among prisoners; preventing suicides: providing reasonable accommodation for persons with disabilities. (paragraph 25)

According to the position of the Human Rights Committee, the increased duty of the state is also reflected in the obligation to protect persons who are in state institutions that limit freedom, such as: mental health facilities, military camps, refugee camps, camps for internally displaced persons and institutions for minors and orphanages. (*Ibidem*)

In connection with the above, in addition to the protection of the right to life, health and physical integrity, special attention should also be paid to the right to human dignity in order to ensure that accommodation in such institutions doesn't constitute a violation of the said right. Therefore, each state should provide an adequate level of financial resources (the source can be donations of humanitarian aid) in order to enable the realization of such rights. A stay in these institutions also implies the provision of adequate health care and assistance,

while children, in accordance with special regulations guaranteeing children's rights, should be allowed to develop and receive education.

It should be borne in mind that all the mentioned measures imply not only the adoption of general legal acts, but also the adoption of internal rules and procedures at the level of institutions that are obliged to take certain measures to protect children from peer violence and discrimination in order to enable adequate development and education of children, which is one of the essential prerequisites for realizing the right to life of every child. Failure to take adequate measures is a simultaneous violation of the state's obligations undertaken in accordance with international documents. In the event of a violation of the right to life or the right to bodily integrity, as well as failure to take appropriate protective measures, the state bears responsibility, and therefore pays material damages to persons whose rights have been violated or to applicants on behalf of a victim who lost their life in certain circumstances.

According to the position of the Human Rights Committee expressed in General Comment no. 36, the duty to protect life implies that member states should take adequate measures to address general conditions in society that may lead to direct threats to life or prevent individuals from enjoying their right to life with dignity. Under these conditions, the Committee cites crime, environmental destruction, the spread of life-threatening diseases, extreme poverty and homelessness. The measures that the state should take are those activities that enable individuals to access basic goods and services, such as: food, water, shelter, health care, electricity, sewage and other measures necessary for adequate general conditions. One of the important measures is the strengthening of effective health services for emergency cases, operations, activities carried out in emergency situation (firemen, ambulance and police forces), as well as social housing programs (Human Rights Committee, 2029: paragraph 26; Kostić, 2021: 254, 257 and 266).

It can be concluded from the above that the right to life doesn't exclusively include the right to be alive or the right to complete physical integrity. It also includes the right to a dignified life, which would provide every individual with the basic conditions for preserving the dignity of the person. Certainly, in order to protect the dignity of the person, it's necessary to take other measures.

The position of the Human Rights Committee regarding the protection of the right to life is that states are obliged to undertake adequate activities related

to the protection of both health and personal dignity. These measures are primarily of a preventive nature, because when consequences occur, it can be considered that the state, i.e. its institutions didn't take reasonable measures to prevent the occurrence of risks that could endanger the lives of individuals. These measures relate to the prevention of stigmatization that may be associated with disabilities and various diseases, with the mandatory development of plans and programs that promote the prevention of violence, as well as a campaign to raise awareness about the harmfulness of gender-based violence, improving knowledge about the possibility of access to medical examinations and treatments in order to reduce the mortality of mothers and newborns. In order to protect life, the state also has obligation to develop special plans for emergency situations and disaster management plans (Human Rights Committee, 2019: paragraph 26).

Protection of the right to life, according to the position of the Human Rights Committee, includes investigation in the case of illegal deprivation of life, as well as prosecution of the perpetrators of such incidents, including those in which force was used unnecessarily, resulting in death. This obligation implies providing an effective legal remedy to victims of human rights violations, as well as to their relatives (*Ibid*, paragraphs 28-30).

3.1. Special rights of the child according to General Comment No. 36 regarding Article 6 of the International Covenant on Civil and Political Rights

In General Comment No. 36, the Human rights Committee pays special attention to the rights of the child. According to the position of the said body, in accordance with Article 24(1) of the International Covenant on Civil and Political Rights, every child has the right to protection measures required by his or her status as a minor, by his or her family, society and the state. These measures mean the adoption of special regulations and the undertaking of special activities of the child and the need to ensure the survival, development and well-being of every child (Human Rights Committee, 2019: paragraph 60).⁷ This means that the institutions where children are educated must take adequate protection measures,

⁷ According to Article 3 of the Convention on the Rights of the Child, in all activities concerning children, regardless of whether they are undertaken by public or private social welfare institutions, courts, administrative bodies or legislative bodies, the best interests of the child shall be of primary importance.

especially measures against abuse and neglect, which also includes measures related to the protection of children from any type of violence, which also includes establishment of special procedures and activities to suppress cases of peer violence in schools (Kostić, 2022: 391).

Therefore, every state has the obligation to provide children with the right to an adequate standard of living and education as an essential prerequisite for the protection of the right to life in accordance with the Convention on the Rights of the Child. In the General Comment, as a measure of special importance for the protection of the right to life of the child, the Human Rights Committee highlights the obligation of states to enable children to enjoy the highest standard of health, as well as making available the necessary capacities for treatment and health rehabilitation. In addition, the obligation consists in ensuring that no child is deprived of access to such health care services. Special attention should be paid to the reduction of infant mortality, the fight against disease and malnutrition, but also to ensuring the supply of nutritious food and clean drinking water. Special activities should be aimed at informing both parents and children that they have access to education (Article 24 of the Convention on the Rights of the Child, Vaghri, 2022: 32 and 33). Therefore, in order to enable the realization of the best interests of the child at the national level, an environment should be created in which human dignity is respected and the development of each child is ensured. During its assessment and determination, the state must ensure the right to life, survival and development (UN Committee on the Rights of the Child, 2013: paragraph 42, cited according to Ruggiero, 2022: 23).

At the level of each state, it's necessary to enable the realization of the right of every child to a standard of living that corresponds to the child's physical, mental, spiritual, moral and social development (Article 26 of the Convention on the Rights of the Child). For the life and proper development of a child, it's necessary to give children the right to education, so it's important that at least primary education be compulsory and free for all. Special attention must be paid to maintaining discipline in a manner appropriate to the human dignity of the child (Article 28 of the Convention on the Rights of the Child). In order to protect the right to life, children's education should be focused on the development of the child's personality, talents, and mental and physical abilities (Article 29). Therefore the realization of the child's right to life depends first of all on the taking of measures

by a state, i.e. its institutions should undertake to enable the right to its survival and development (Committee on the Rights of the Child, 2013: paragraph 10).

3.2. Environmental protection and the right to life according to General Comment No. 36 regarding Article 6 of the International Covenant on Civil and Political Rights

The Committee for Human Rights paid special attention to considering the relationship between environmental protection and the realisation of the right to life. According to the position expressed in General Comment no. 36, environmental degradation, climate change and unsustainable development represent a threat to the enjoyment of the right to life of both current and future generations. Therefore, in order to protect the right to life, it's necessary to take adequate measures at the level of each state in order to ensure the protection of the environment from damage, pollution and climate changes caused by both public and private entities. Therefore, sustainable use of natural resources should be ensured, basic standards for the environment should be developed and applied, impact assessments should be developed and applied, impact assessments should be carried out, and relevant countries should be consulted on activities that will have a significant impact on the environment. Providing access to information on environmental hazards and paying due attention to preventive measures is stated as a special obligation in this regard (Human Rights Committee, 2016: paragraph 62).

Exactly the same position is contained in the judgments of the European Court of Human Rights. They provide protection for the right to a healthy environment, which is still not guaranteed as a special right in international documents, through the protection of the right to life and freedom of information, and through which the right to receive information is realized (*Öneryildiz v. Turkey, Budayeva and others v. Russia*, stated according to Kostić, 2023b: 1376 and 1377).

4. Obligations of the state and its institutions regarding the protection of the right to life in the practice of the European Court of Human Rights

The practice of the European Court of Human Rights doesn't differ from the positions of the Human Rights Committee expressed in General Comment no. 36 regarding the protection of the right to life, although the petitions addressed to the said court refer to the violation of Article 2 of the European Convention on Human rights. There are many areas in which the state is expected to protect the life and health of individuals, as well as to take a large number of preventive measures in order to protect them. According to Article 2, paragraph 1 of the European Convention on Human Rights, the state has the obligation to refrain from intentional and illegal taking of life, as well as to take appropriate steps to protect the lives of people within its jurisdiction. In this regard, that obligation includes two aspects. The first is reflected in the obligation to ensure an adequate regulatory framework, and the second is the obligation to undertake preventive operational measures (Council of Europe/European Court of Human Rights, 2023: 6).

4.1. Threatening the right to life of persons deprived of liberty

In the case of *Renolde v. France*, the applicant appealed to the European Court of Human Rights, because her brother, who was in custody pending trial, although the medical report stated that he suffered from psychiatric disorders, was transferred to another prison, while the prison file didn't state to suffer from any disease. Two days after the transfer, the detainee tried to commit suicide. The emergency psychiatric team diagnosed him with an acute episode of delirium and prescribed appropriate treatment. However, no attempt was made to ensure that the detainee actually took the medication. Therefore, he was placed in an independent cell where he was under special supervision in the form of more frequent patrols. He then assaulted a guard and was ordered to serve 45 days in the penalty cell. The day after that, he wrote a letter to his sister in which he said he couldn't do it anymore. After his lawyer saw his letter, he asked for an evaluation of his mental capacity to be held in a penal cell. However, he was found

hanged in his cell before he could be examined. Three days before that, he received a supply of medicines, but even then there was no verification that he had actually taken the prescribed therapy (European Court of Human Rights, Information Note on the Court's Case-law, no. 112, October 2008, *Renolde v. France*, Application no. 5608/05, Judgment from 16.10.2008).⁸

In the case *Renolde v. France*, the Court determined that Article 2, paragraph 1 of the European Charter on Human Rights was violated. Namely, it was proven that the competent institutions knew from the moment when the detainee first tried to commit suicide that he was suffering from acute psychotic disorders that could lead to self-harm. According to the position of the court in the specific case, although the detainee's condition was changeable and there wasn't necessarily an immediate risk of a further suicide attempt, that risk was still real and it was necessary to carefully monitor whether the condition could worsen. Therefore, it could be expected that the competent authorities take adequate measures to determine whether it is good for the detainee to remain in detention. However, regardless of the previous suicide attempt and the diagnosis of the detainee's mental state, his admission to a psychiatric hospital was never discussed. Therefore, in the specific case, the competent institutions failed to order the placement of the detainee in a psychiatric hospital. However, what they should have done at the very least was to provide medical treatment according to his condition (*Ibidem*).

In addition, the Court expressed doubt regarding the decision to leave a detainee who was known to suffer from psychotic disorders to drink unsupervised and take prescribed daily therapy. Therefore, the Court held that although the motive for the suicide wasn't known, the failure to ensure that he took his daily medication contributed to his death. In addition, considering the sentence of 45 days in the penal cell imposed on him by the disciplinary commission, it seems that his mental state wasn't taken into account. Those circumstances, and above all the deprivation of visits and other activities, increased the risk of suicide. Therefore, in the specific example, it was about the failure of the institutions to

⁸ Text in English is available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-1876%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-1876%22]}), 7.9.2024.

apply all reasonable measures in order to reduce the risk of suicide of an individual (*Ibidem*). This position of the European Court of Human Rights is exactly the same as the position of the International Committee for Human Rights expressed in General Comment No. 36, which concerns the treatment of the prison population in order to protect the right to life.

4.2. Violation of the child's right to life

In the case of *İlbeli Kemaloğlu and Meriye Kemaloğlu v. Turkey* (Application no. 19986/06, Judgment of the European Court of Human Rights from 10th of April 2012) applicants were the parents of a boy who died at the age of seven in 2004 when Istanbul was hit by a heavy snowstorm. That day, the boy went to his elementary school by the municipal shuttle that ran between his house and school. However, due to the snowstorm, classes were dismissed at the beginning of the afternoon, before the regular end of the school day in accordance with the schedule. According to information from the case file, the boy wasn't on the list for a paid school bus, but used a free municipal shuttle. On that day, the municipality wasn't informed about the early end of classes, so the shuttle didn't arrive when the school was closed. The boy tried to return home by himself, which was 4 kilometres away from his school. Late in the afternoon, when he didn't return home, his parents called the police, and his body was only found a day later, frozen near the river. The Presidency of Elementary School Inspectors of the Istanbul Directorate of Education launched an investigation during which the inspectors took the statement of the municipal shuttle driver who said that he wasn't informed that day that the school would be closed earlier and that everyone had already gone home when he went to school after the boy. In the same year, the inspectors compiled a report in which they determined that the deputy director of the school was guilty of non informing the municipality about the temporary closure of schools, while the Presidency also concluded that the deputy director of the school was guilty of failing to notify the municipal service of the early dismissal of classes transportation. However, he was reprimanded as a disciplinary punishment (paragraphs 4-7).

After that, the boy's parents, who are also petitioners to the European Court of Human Rights, filed two separate lawsuits in the Istanbul Administrative Court against the Ministry of Education, the Municipality of Yenidogan and the

Municipality of Istanbul, in which they stated that their child lost his life due to the negligence of the local authorities and demanded compensation for damages. They requested legal aid for court fees and later submitted all relevant documents on which they based their request for legal aid which was rejected by the Istanbul Administrative Court without giving specific reasons for the rejection (paragraphs 8-11).

In 2004, the applicants filed a criminal complaint with the competent public prosecutor against the school principal, deputy principal and class teacher of the deceased boy. The prosecutor submitted files to the district governor's office with a request to authorize the public prosecutor to initiate criminal proceedings, but the prosecutor rejected his request stating that no guilt can be attributed to the persons against whom the criminal charges were filed. After that, the applicants filed an objection to the Regional Administrative Court against the decision of the governor's office, which was annulled by the aforementioned court, stating that there is sufficient evidence in the case files to initiate criminal proceedings (paragraphs 14-17).

During 2010, the Court of Cassation quashed the judgement of the Criminal Court, without examining the merits of the case for procedural reasons, because the court clerk's signature was missing from the minutes of the hearing, so the file was returned to the Criminal Court, which once again exonerated the accused persons (paragraph 21).

In their application, the applicants complained that Article 2 of the European Convention on Human Rights was violated because the state did not fulfill its positive obligation to protect the life of their son and did not conduct an effective investigation into the circumstances of his death. Therefore, in the specific application, the applicants claimed that the defendant state did not protect the right to life of their child, because they let the seven-year-old child walk alone through the snowstorm. They considered that the effectiveness of domestic legal remedies was insufficient, because there was no effective legal remedy that could hold accountable the persons who contributed to the death of their seven-year-old child through their negligence. The Court pointed out that Article 2, paragraph 1 orders the state not only to refrain from intentional and illegal taking of life, but also to take adequate measures to protect persons under its jurisdiction. In this case, the Court took the position that the state's obligation to protect the right to

life also applies to the school administration, which has the obligation to protect the health and well-being of students, especially children who are particularly vulnerable and must be under the control of competent authorities. However, this positive obligation should be interpreted in such a way as not to impose an excessive burden on the competent authorities, given the unpredictability of human behavior and the operational choices that must be made regarding priorities and resources (paragraphs 32-36).

Bearing in mind the above, according to the Court's opinion, not every risk to life can be considered an obligation from the Convention to take operational measures to prevent the materialization of the risk. To determine the existence of a real and immediate risk to the life of a certain person and to take measures within the authority of the competent authorities if reasonably assessed and if such risk can be expected to be avoided. The choice of means that will enable the fulfillment of positive obligations in accordance with Article 2, according to the opinion of the Court, depends on the free assessment of a particular state, and therefore its institutions and bodies (paragraphs 36-39).

In the circumstances of the particular case where the primary school was closed extremely early due to bad weather conditions, the Court cannot find it unreasonable to expect the school authorities to take basic measures to minimize any potential risk. In addition, the Court considered that by neglecting to inform the municipal shuttle service about the early closing of the school, local authorities didn't take measures that could have been avoided by failing to inform the municipal shuttle service about the early closing of the school, in order to take measures to avoid the risk to the right to life of the applicant's son. According to the opinion of the Court the question of state responsibility in accordance with Article 2 of the Convention could be considered to exist in the event of the inability of the domestic legal system to ensure responsibility for negligent conduct that endangers or doesn't lose human rights (paragraphs 41, 42, 46, 47 and 48).

The positive features of the state therefore include the establishment of an efficient legal system. In the specific case, the Court concluded that the domestic authorities did not undertake the obligation to protect the right to life of the petitioners' seven-year-old son, and even the competent judicial authorities did not enable the petitioners to effectively determine any responsibility for the death of their child and to receive adequate compensation (paragraphs 42 and 49).

Therefore, the Court took the position that there is a violation of Article 2, paragraph 1 of the Convention, as well as that it is a violation of the right to a fair trial guaranteed by Article 6, paragraph 1 of the Convention (paragraph 49).⁹

4.3. The position of the judicial practice regarding the guarantee of absolute security of the right of life

In order to determine the existence of a violation of Article 2, paragraph 1 of the European Convention on Human Rights, it is necessary to determine all the circumstances of the specific case. According to the position of judicial practice, the mentioned article cannot be interpreted in such a way that every individual can be guaranteed the absolute security of the right to life, especially when a person assumes responsibility by exposing himself to unjustified danger.

In the *Gokdemir v. Turkey* judgment, the applicant appealed to the court because her husband drowned in 2005 after falling into the sea while fishing (Application no. 66309/09, European Court of Human Rights Judgement from the 11th of June, 2015).¹⁰ On the same day, two eyewitnesses were questioned by the competent authorities. According to their statements, he fell into the sea because he jumped onto a platform that was slippery while fishing. In 2005, the wife of the deceased filed a criminal complaint with the Public Prosecutor's Office in Bulacak against the City Council of Bulacak for manslaughter, and in her complaint she claimed that the death occurred due to the lack of a rescue vehicle, rope or any similar equipment. In addition, she claimed that no warning sign was posted on the stairs or landing. The public prosecutor decided not to prosecute anyone in connection with her husband's death, as he concluded that her husband died due to his own negligence and recklessness. On the decision of the public prosecutor, the applicant lodged an objection with the competent court, which the court rejected and concluded that the decision not to conduct criminal proceedings was in accordance with the law and procedure (paragraphs 1-11).

⁹ According to Article 6, paragraph 1 of the European Convention on Human Rights, everyone has the right to a fair and public hearing within a reasonable time before an independent and impartial court, established on the basis of law, in the course of deciding on his civil rights and obligations, or on criminal charges against him.

¹⁰ Text of the Judgement in english is available at:
<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-155477%22%5D%2C%22date%22:%5B%222024-07-09%22%5D%7D>.

Bearing in mind the above, the applicant complained that her right to a fair trial was violated because her allegations were neither examined nor investigated by the judicial authorities who, in her opinion, behaved protectively towards the city council. The Court considered that the applicant's complaints related to the effectiveness of the investigation into the death of her person and that they should be examined in the light of Article 2 of the European Convention, according to which states are obliged to take appropriate measures to protect the lives of those under their jurisdiction. In addition, the court stated that the risk of drowning after falling into the sea was an obvious risk that an average person, such as the applicant's husband who was not a vulnerable person, would be expected to appreciate and avoid. Therefore, in the specific case, Article 2 of the Convention cannot be interpreted in such a way as to guarantee every individual an absolute level of safety in any activity in which the right to life may be threatened, and especially in situations where a person bears a certain degree of responsibility for an accident when he is alone exposed herself to unjustified danger. In the specific case, the absence of safety equipment at the exact place where the accident occurred or the failure to place a warning sign can hardly be considered a basis for state responsibility in accordance with Article 2 of the Convention, as it would represent an excessive burden on the authorities. The court found that a tragic incident led to the death of the husband, and the court opined that the authorities had undertaken a series of investigative actions to determine the circumstances of the death without delay. The investigation was carried out on time, and a report was made about it. The police also questioned witnesses who confirmed that the petitioner's husband drowned after accidentally falling, and an autopsy was performed the next day. The public prosecutor decided not to press charges and concluded that the petitioner's husband died due to his own negligence, and the investigation was up-to-date according to the court's opinion. For the above reasons, the court considered that the petitioner's application was inadmissible. (paragraphs 12-21)

5. Conclusion

The right to life is an absolute right guaranteed by various international documents. In order to protect the said right, according to Article 6 of the International Convention on Civil and Political Rights and Article 2 of the European Convention on Human Rights, each state has a negative obligation to refrain from any activity that threatens the said right, and to undertake a series of legislative and operational measures to protect it.

However, as institutions and bodies established by the state act on its behalf, the obligation to implement those measures is their obligation. Failure to undertake adequate activities is a basis for both criminal and tort liability. When it comes to the protection of the right to life, it implies the existence of effective executive and judicial authorities that are obliged to conduct a timely and effective investigation and impose sanctions on individuals who have violated someone's right to life. Failure to undertake such activities can be one basis for state responsibility. However, it should be borne in mind that the state's obligation to protect the right to life is not absolute. It is reflected exclusively in the obligation to take reasonable measures and that when the institution or body acting on behalf of the state knew or could have known that as a result of not undertaking its activities, a risk would occur that could have harmful consequences for the life of a certain person. If in a specific case it is established that a person contributed to the occurrence of harmful consequences by his actions, even though he could and had to know that he was endangering his own life, there will be no responsibility of the state, and therefore of its institutions, for the violation of the right to life.

The right to life is connected with some other rights, so their protection can be viewed through the prism of the protection of the right to life. Under those rights are understood primarily those rights that fall under the so-called personal rights: the right to physical and mental integrity, the right to a healthy environment, etc. By jeopardizing them, in a large number of cases, the right to life is also threatened (eg the right to a healthy environment), while by jeopardizing the right to life, physical and mental integrity is simultaneously threatened.

However, the right to life is also connected with some other rights that developed later, such as social and economic rights. Therefore, the right to life should not be understood exclusively as mere survival, but every individual

should be provided with basic living conditions. According to the position of the Human Rights Committee, sensitive groups should enjoy special protection, such as persons deprived of their liberty, bearing in mind that in relation to them, adequate standards are often not applied that enable them to enjoy basic human rights, as well as persons with disabilities and persons who are located in medical institutions. A special category that needs to be paid attention to is children, who, in order to enable the enjoyment of the right to life, have the need for education and development. Therefore, special protection should be provided to children in primary schools through special procedures and protocols for dealing with cases of violence and abuse, but adequate measures should also be implemented in practice to protect children from harmful actions.

It seems that none of the international documents recognizes the need for special protection of the elderly, especially considering that in many cases the right to life of these persons (due to low pensions, illness and inability to pay for nursing homes and special care and help) questioned. Therefore, in the coming period, special attention should be paid in international documents to this, in our opinion, also sensitive group.

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