Rights of the victim of a criminal offence arising from Article 2 of the Convention on the Human Rights and Fundamental Freedoms

Before beginning to deal with the rights of the victim of a crime, I find it utterly important to discuss the status of a victim from another point of view, namely from the perspective of the Convention on the Human Rights and Fundamental Freedoms (referred as 'Convention').

Article 34 of the Convention envisages the sphere of 'Individual applications', which reads as follows:

> "*The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ...*"

Under Article 34, only applicants who consider themselves victims of a breach of the Convention can complain to the European Court of Human Rights (referred as 'Court'). It is important that it falls first to the domestic authorities to redress any alleged violation of the Convention. Thus, the question whether an applicant can claim to be a victim of the violation concerned is relevant at all stages of the proceedings before the Court.

The notion of 'victim' is interpreted autonomously and irrespective of domestic rules and it does not imply the existence of prejudice, and an act that has only temporary legal effects may suffice. As held for instance in Monnat v. Switzerland[1], the interpretation of the term "victim" is liable to evolve in the light of conditions in 'contemporary society' and it must be applied without 'excessive formalism'.

There are distinct approaches when it comes to victim from the view of the Court, namely the direct and indirect victims. As to the former type, the act or omission in issue must directly affect the applicant, but this criterion cannot applied in an inflexible way. Since the case-law of the Court constantly evolves, the Court has accepted applications from "potential" victims as well, i.e. from those who could not complain of a direct violation. However, a simple conjecture or suspicion is not enough to establish victim status e.g a potential fine on an applicant; or alleged consequences of a judicial ruling). Nevetheless, an applicant cannot claim to be a victim in a case where he or she is partly responsible for the alleged violation. As to the indirect victims to be considered as victims in the light of the Convention, there must be a personal and specific link between the direct victim and the applicant (e.g. the wife of the victim killed by the agents of the state). Applications can be brought only by living persons or on their behalf; a deceased person cannot lodge an application with the Court, even through a representative. However, the victim's death does not automatically mean that the case is struck out of the Court's list. In general terms, the family of the original applicant may pursue the application provided that they have a sufficient interest in so doing, where the original applicant dies after the application has been lodged with the Court.

The applicant must be able to justify his or her status as a victim during the whole of the proceedings. Generally speaking, the mitigation of a sentence by the domestic authorities will deprive the applicant of victim status if the violation is expressly or at least in substance acknowledged, and is subsequently redressed by appropriate and sufficient remedy. Whether someone has victim status may also depend

[1] Monnat v. Switzerland, judgment of 21 September 2006
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-76947

on the amount of the awarded compensation by the domestic courts and the effectiveness of the remedy affording the award.

Now, let's turn to Article 2 of the Convention on - right to life -, which is the most basic human right of all and also the first substantive right envisaged by the Convention, and reads as follows:

> *1. Everyone's right to life shall be protected by law. Noone 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:*
> *(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) in action lawfully taken for the purpose of quelling a riot or insurrection.*

In this particular Article the Convention sets certain minimum standards on States instead of imposing strict and rigid requirements, it is up to the states, how to meet these basic requirements, which follows, they are allowed to have a certain discretion. This decretional right depends on several circumstances, e.g. the nature of the approach, the interests at stake.

This right is absolute, that is, cannot be denied even in time of war or other public emergency threatening the life of a nation. Otherwise every other basic and fundamental right would become rather illusory. There is only one set of exeption, under Article 15 Paragraph 2 of the Convention, which states that: *'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'.*

The second sentence of Paragraph 1 concerns the death penalty, which will be covered somewhat later.

There are two basic elements mentioned in Article 2 of the Convention, i.e. in Paragraph 1 a general obligation to protect the right to life 'by law'; and in Paragraph 2 a prohibition of deprivation of life, which latter is delimited by exceptions listed in Sub-paragraphs a) - c). These exceptions are allowed only when this is 'absolutely necessary' under the listed aims.

The first and utmost important case concerning this issue was McCann v. the United Kingdom[2], where the Court held that the term 'absolutely necessary' in Article 2 „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 paragraph 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2". A general positive obligation is imposed on States to investigate the particular deaths. The Court further held in its judgment that „there should be some form of effective official investigation when individuals have been killed as a result of the use of force by agents of the State".

As examining the matter in hand, there are several phrases and terms which need to be defined or at least clarified. Article 2 concerns a right of 'everyone' where, of course, only human beings are involved. Legal persons (companies) are 'persons', but nontheless are not involved in the concept, since none of them have 'life'. Otherwise they might have fundamental rights protected by the Convention (e.g. right to a fair trial; or right to property), but not under Article 2. The term 'life' is not defined by the

[2] McCann v. the United Kingdom, judgment of 13 August 2008
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-86233

Convention. As to the concept of 'life', only 'human' life is protected, the life of an animal fall outside the scope in any event.

Not only the proper definition of what 'life' is is missing, but also the clarification of when it begins or ends. In its case-law, the Court does not or rather cannot set precise standards, these concerns always fall within the descretion of the States. There is a reasonable margin of appreciation of the States to rule on matters concerning the domestic way of handling the issue. The only obligation of the States that counts is to give appropriate weight to the different interests and reasonably balance between them.

Since the right to life wears an utmost important role amongst basic human rights, we do have to mention abortion which always triggers flagrant public discussions. In cases alike, the Court often refers to the case of X v. the United Kingdom[3] where the Commission held to have three options, namely Article 2 a) does not cover an unborn foetus at all; b) recognises a right to life of the foetus with certain limitations; or c) it grants an absolute right to life of the foetus. In X v. the United Kingdom, the Commission tended towards the first interpretation, that is, Article 2 concerns persons already born and cannot be applied to the foetus. As the case-law evolved, in the H. v. Norway[4] this perspective had changed somewhat to the direction of the second possibility, by holding that in specific circumstances the foetus may enjoy a certain protection under Article 2, considering a divergence of views in the States on whether or to what extent Article 2 protects the foetus's life. The Commission based its position on the different views by the Austrian and German Constitutional Courts and the Norwegian Supreme Court. The Austrian Constitutional Court found, that Article 2 did not cover the unborn life, whereas the German Federal Constitutional Court held that 'everyone' is every living human being, 'everyone' therefore includes unborn human beings. According to the 1978 Norwegian Termination of Pregnancy Act, it is only allowed "self-determined abortion" within the first 12 weeks of pregnancy; between 12 and 18 weeks (if the pregnancy, birth or care for the child might place the mother in a difficult situation of life) on the authority of two doctors; after the 18th week upon serious reasons, and never if there was reason to presume that the foetus is viable. The Commission concluded that „there are different opinions as to whether such an authorisation strikes a fair balance between the legitimate need to protect the foetus and the legitimate interests of the woman in question. However, having regard to what is Stated above concerning Norwegian legislation, its requirements for the termination of pregnancy as well as the specific circumstances of the present case, the Commission does not find that the respondent State has gone beyond its discretion which the Commission considers it has in this sensitive area of abortion. Accordingly, it finds that the applicant's complaint under Article 2 of the Convention is manifestly illfounded".

The Court had to adjudicate on a case directly relating to abortion in the case of Boso v. Italy[5], in 2002. The case concerned a woman who had had an abortion, against the wishes of her husband, the potential father, but in accordance with the relevant domestic law (Law No. 194 of 1978). The Court confirmed the principle stated in H. v. Norway and reassessed *'that it is not required to determine whether the foetus may qualify for protection under the first sentence of Article 2. Even supposing that, in certain circumstances, the foetus might be considered to have rights protected by Article 2 of the*

[3] X. v. the United Kingdom, decision of 13 May 1980
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-74270

[4] H. v. Norway, decision of 19 May 1992
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-1759

[5] Boso v. Italy, decision of 5 September 2002
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-23338

Convention, the Court notes that in the instant case, …, it appears from the evidence that his wife's pregnancy was terminated in conformity with section 5 of Law no. 194 of 1978'. According to the relevant Italian legislation, an abortion may be carried out only in order to protect the woman's health: it authorises abortion within the first twelve weeks of a pregnancy if there is a risk to the woman's physical or mental health. Beyond that point, it may be carried out only where continuation of the pregnancy or childbirth would put the woman's life at risk, or where the child will be born with a condition of such gravity as to endanger the wmother's physical or mental health. In the Court's view, such provisions strike a fair balance between the need to ensure protection of the foetus and the woman's interests. In the Vo v. France[6] case, the applicant was a woman who had been pregnant, who intended to carry her pregnancy to term and whose unborn child was expected to be viable. On a visit to hospital, she was mistaken for another woman with a similar name and had a coil inserted in the uterus which caused leaking of the amniotic fluid, as a result of which she had to undergo a therapeutic abortion, resulting in the death of the foetus. Mrs. Vo claimed that the doctors had acted negligently and that they should have been prosecuted for unintentional homicide. However, the French Court of Cassation held that, since the criminal law has to be strictly construed, a foetus could not be the victim of unintentional homicide. The central question raised by the application was therefore whether the absence of a criminal remedy within the French legal system to punish the unintentional destruction of a foetus constituted a failure on the part of the State to protect by law the right to life within the meaning of Article 2 of the Convention. In answering this question, the Court summed up the submissions in X v. the United Kingdom and H. v. Norway, and in Boso v. Italy, and concluded that: 'It follows from this recapitulation of the case-law that in the circumstances examined to date by the Convention institutions - that is, in the various laws on abortion - the unborn child is not regarded as a "person" directly protected by Article 2 of the Convention and that if the unborn do have a "right" to "life", it is implicitly limited by the mother's rights and interests. The Convention institutions have not, however, ruled out the possibility that in certain circumstances safeguards may be extended to the unborn child'. …That is what appears to have been contemplated by the Commission in considering that "Article 8 § 1 cannot be interpreted as meaning that pregnancy and its termination are, as a principle, solely a matter of the private life of the mother" … and by the Court in the above-mentioned Boso decision. It is also clear from an examination of these cases that the issue has always been determined by weighing up various, and sometimes conflicting, rights or freedoms claimed by a woman, a mother or a father in relation to one another or vis-a-vis an unborn child'. According to the applicant, only a criminal remedy would have been capable of satisfying the requirements of Article 2 of the Convention, but the Court held that in cases of unintentional killing, this was not necessarily required. In the sphere of medical negligence, civil or administrative law remedies and disciplinary measures could suffice.

Now, we shall further briefly refer to other sensitive areas, such as suicide, assisted suicide and euthanasia. Apart from the death penalty, Article 2 envisages only limited circumstances in which a person can be deprived of this right, but none of these relate to suicide or euthanasia. These issues raise difficult questions which are often overlap with each other. Firstly: when does life end? Secondly: is it acceptable to provide palliative care to a terminally ill or dying person (even if the treatment may result in the shortening of life)? Thirdly: do the State have to "protect" the right to life even of someone who does not want to live any longer, against that person's own wishes? Do they have also a right to die, in other words, to commit suicide? And if so, can they seek assistance from other individuals? And finally: can the State allow the ending of life in

[6] Vo v. France, judgment of 8 July 2004
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61887

order to end suffering, even if the person concerned cannot express his or her wishes in this respect? The majority of these questions have not (yet) been put to the Court. When does life end? Just as with the beginning of life, there is no proper consensus (neither legal, nor scientific) on when this moment is. The question could arise, where the authorities had decided to switch off life-support machine at a certain moment when they deemed the person was no longer alive, but where this was disputed by relatives. The Court leaves the question to be answered basically on the States. The question that arises under the Convention in cases alike is whether the national legislation which allows the switching off of the life-support machines still adequately "protects" the right to life of the person concerned.

According to the Recommendation 1418 (1999) of the Parliamentary Assembly of the Council of Europe, the member States should 'ensure that, unless the patient chooses otherwise, a terminally ill or dying person will receive adequate pain relief and palliative care, even if this treatment as a side-effect may contribute to the shortening of the individual's life'. Mercy killings are not regarded as acceptable in the Recommendation. There are no Council of Europe member States that allow for active termination of life, other than at the request of the patient. But it must be noted that there is no clear line between "passive" withdrawal of life support and "active" euthanasia. Whether euthanasia can be in accordance with the Convention, has also not been determined.

In Sanles Sanles v. Spain[7] a man, Mr Sampedro, had been a tetraplegic since the age of twentyfive. From 1993, at the age of fifty, he had tried to obtain recognition from the Spanish courts to provide the right to end his life, with the help of others (including his doctor), without interference by the State. However, he died before the proceedings in Spain had come to an end, and the relative who was appointed to be the successor to this claim, Mrs. Sanles Sanles, was held by the Spanish courts to have no standing in the matter. The Court declared inadmissible (incompatible ratione personae) the applicant's complaints under Articles 2.

The abovementioned Recommendation was referred in the Court's chamber judgment of Pretty v. the United Kingdom[8]. This particular case concerned a 43-year-old married woman, Mrs Dianne Pretty, who was suffering from a degenerative and incurable illness, which was at an advanced stage. Although being paralysed from the neck down, and incapable of decipherable speech, her intellect and capacity to make decisions were unimpaired. Frightened and distressed at the suffering and indignity she would have to endure and unable to commit suicide by herself, she wanted her husband to assist her in this. In the United Kingdom, committing suicide is not a criminal offence, but assisting someone else is. However, prosecutions can only be brought with the consent of the Director of Public Prosecutions (the DPP). Mrs Pretty therefore sought an assurance from the DPP that her husband would not be prosecuted of assisting her to commit suicide in accordance with her wishes, but the DPP refused. The national courts upheld the DPP's decision. Mrs Pretty then turned to the European Court of Human Rights. The Court admitted the case and quoted parts of Recommendation 1418 (1999). The Court was dismissive of the claim that Article 2 of the Convention should be read as granting individuals a right to commit suicide. As to the Court's reasoning „Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life."... „The Court accordingly finds that no right to die, whether at the hands of a third person

[7] Sanles Sanles v. Spain, decision of 20 October 2000
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-22151

[8] Pretty v. the United Kingdom, judgment of 29 April 2002
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60448

or with the assistance of a public authority, can be derived from Article 2 of the Convention." This ruling did not mean that if a particular State recognises such a right, that would be certainly contrary to Article 2; nor did it mean that if a State that did recognise a right to take one's own life were to be held to have acted in accordance with Article 2, that would imply that the applicant, too, should be granted that right. A few days after the judgment, Mrs Pretty started having breathing difficulties and, following palliative care, she slipped into a coma and died a couple of days after the ruling.

Another issue with paramount role to be examined is the use of lethal force by agents of the State. This is covered by the second paragraph of Article 2, which refers to "deprivation of life". Certain actions resulting in the death of persons by the act of the law enforcement forces of the state, will not be regarded as violations of Article 2, if they meet the exhaustively mentioned criteria in sub-paragraphs thereof: to defend any person from unlawful violence (Article 2 (2) (a)); to effect a lawful arrest (Article 2 (2) (b)); to prevent the escape of a person lawfully detained (Article 2 (2) (b)) and, finally; to quell a riot or insurrection through action lawfully taken for that purpose (Article 2 (2) (c)).

The so called "disappearances" (will be discussed below), when someone arrested by an agent of the state but later simply disappears without a trace, are likely to be treated equally to deliberate killings by a state agent.

The use of lethal force by the State was first addressed in details in the case of McCann and others v. the United Kingdom, mentioned above. Without reiterating myself, Article 2 restrictions within „absulote necessity" call for far more rigorous requirements than those layed down in Articles 8 to 11. The force used to the achievement of any of the aims set out in sub-paragraphs of Article 2 must always be strictly „proportionate". The domestic law has got to positively protect individuals from actions not justified under the second paragraph.

In the case of Mc Cann and Others v. the United Kingdom, the Court stressed that "a stricter and more compelling test of necessity" is needed. As to the concrete case, it concerned the death of three members of the Irish Republican Army (IRA), who had travelled to Spain with the intention of detonating a car bomb and had parked a car next to their intended target. Later it turned out that at the time they were killed they were all unarmed, and that the car did not contain a bomb - although a bomb and a timing device was found in the terrorists' hideout in Malaga. The Court held that the suspects had been deliberately killed, therefore the violatation of Article 2 is to be observed. It was the first time that an European Government had been found responsible for the unlawful use of lethal force by law enforcement officials. As to the Court, the operation could have been planned and controlled without the need to kill the suspects. So the force that had been used was not proportionate and gone beyond the absolute necessity test. During its observations, the Court examined whether the national law adequately protected the right to life of the three persons killed, and whether the established facts show a violation of the substantive requirements of Article 2 in the light of the "absolutely necessary" requirement to achieve one of the aims listed in subparagraphs (a)-(c) of Article 2 (2). Furthermore, the procedural requirements under Article 2 were also put under scrutiny.

As it was formerly mentioned, the case-law of the Court uses the wording "absolutely necessary". However, the English legal standard for use of lethal force used required the "reasonably necessary" expression. The question was, whether in Gibraltar the law adequately protected the right to life. The Convention standard apparently required a stricter „condition" than the national standard, but substantially there was no significant difference between the two concepts. The Court, at this time, did not examine the training of the agents concerned as part of its assessment of whether the law provided sufficient protection.

It was not the case in another early case-law, where the Court did pay a significant attention to the domestic legal framework regulating the use of lethal force, and pointed out the serious deficiencies thereof. The case of Matzarakis v. Greece[9] concerned a police car chase. The fleeing man had driven through red traffic lights and crashed through a number of police barriers until the police seriously wounded him by firing several shots at the car with revolvers, pistols and submachine guns. The way in which the firearms were used by the police in the circumstances was chaotic. Sixteen gunshot impacts were counted on the car, some of which being horizontal or heading upwards, instead of downwards as would be expected if only the tyres of the vehicle were being shot. At the relevant time in Greece, the use of firearms was only regulated by a World War II act. It mentioned a number of situations where the member of the police could use firearms without being liable for the consequences. Later on, in 1991, a decree authorised the use of firearms only „when absolutely necessary and when all less extreme methods have been exhausted". There was nothing else regulating the use of firearms during police actions, no guidelines on planning and control of law enforcement actions. In such circumstances, the domestic regulation was not able to fulfill the state's obligation in this respect, so that it was impossible to provide adequate care during police actions, in other words, the domestic legal framework did not satisfy the need to prvide the level of „protection by law" of the right to life. Consequently, the judgment made it clear that deficient legal framework will not suffice, it can constitute a violation, so the applicant, Mr. Matzarakis - though survived - had been the victim of a violation of Article 2 of the Convention. In cases alike, all the surrounding circumstances are under examination, so the respondent State must show the "absolute necessity" of any killing, not only in respect of the actions of the agents who had carried out the killing, but in respect of "all the surrounding circumstances", planning, control and organisation of the operation included.

There are two notes to be mentioned at this stage. Firstly, the Court always relies on the findings of fact of the national „tribunals". However, in utterly exceptional circumstances, it seldom occured that the Commission sent a delegation to the country concerned to establish the facts. Secondly, generally speaking, the burden of proof is on the applicant to prove it with "convincing evidence" and „beyond reasonable doubt" in order his or her allegations to be accepted. However, at this time, it seems that this onus had been reversed by the Court to some extent, since it was the State that had the burden to prove that its actions were "absolutely necessary" in the sense of Article 2.

Also the substantive requirements of Article 2 were put under scrutiny. The Court stressed that the authorities - although they could have done that - did not arrest the suspects at the border and did not prevent them from travelling to Gibraltar. Moreover, the state authorities had made the SAS soldiers believe there was a bomb that could be detonated by remote control, and the suspects would be armed and have the equipment on them to explode the bomb. These were proven to be completely wrong. In such circumstances, the use of lethal force was almost unavoidable, especially in the light of the soldiers' training. The Court assessed that the training of the soldiers involved to continue shooting once they opened fire until the suspect was dead. Their reflex action lacks the degree of caution in the use of firearms to be expected from law enforcement personnel in a democratic society, even when dealing with dangerous terrorist suspects.

[9] Matzarakis v. Greece, judgment of 20 December 2004
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67820

These basic assessments has been confirmed in several cases later, like Kaya v. Turkey[10], or Andronicou and Constantinou v. Cyprus[11] involving the use of lethal and/or near-lethal force.

Examples from recent case-law:

Andreou v. Turkey[12] concerned a British national shot and injured by Turkish armed forces during tensions at the United Nations buffer zone in Cyprus. There has been a violation of Article 2, since the use of potentially lethal force against the applicant had not been "absolutely necessary" and had not been justified by any of the exceptions permitted under Article 2.

In Perisan and Others v. Turkey[13] the force used against the prisoners to quell disturbances in a prison, which had led to the deaths of eight of them, had not been "absolutely necessary" and the Court held that there had been a violation of this article in respect of the eight prisoners who died and six who survived their injuries.

Putintseva v. Russia[14] concerned the death of a young man during his mandatory military service after being shot by a superior when trying to escape. The legal framework on the use of force to prevent the escape of a soldier had been deficient and the authorities had failed to minimise recourse to lethal force.

The procedural requirement to hold an investigation into a killing differs from the substantive requirement not to use lethal force unless absolutely necessary. It is important that there can be a violation of one without a violation of the other, either way. In the McCann case the Court found only a violation of the substantive requirement. Conversely, in Kaya v. Turkey, the Court found no violation of the substantive requirements, but a violation of the procedural ones of Article 2. In other cases, such as Kılıç v. Turkey[15] and Ertak v. Turkey[16] both kinds of requirements were violated.

The case of Kaya v. Turkey, referred above, concerned the killing of the applicant's brother, who was allegedly killed by the security forces in 1993. The Government contended that he was killed in a gun battle between members of the security forces and a group of terrorists who had engaged the security forces on that particular day, and claimed that the applicant's brother was among the assailants. The Court held that there was no sufficient factual and evidentiary basis to conclude (beyond reasonable doubt) that the deceased had been intentionally killed by agents of the State, and that there was therefore no violation of the substantive requirements of Article 2. However, the investigation into the killing had been seriously defective, because the

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[10] Kaya v. Turkey, judgment of 19 February 1998
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[11] Andronicou and Constantinou v. Cyprus, judgment of 9 October 1997
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58102

[12] Andreou v. Turkey, judgment of 27 January 2007
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-95295

[13] Perisan and Others v. Turkey, judgment of 20 August 2010
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98754

[14] Putintseva v. Russia, judgment of 10 August 2012
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110814

[15] Kılıç v Turkey, judgment of 28 March 2000
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58524

[16] Ertak v. Turkey, judgment of 9 May 2000
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59199

prosecutor assumed without question that the deceased was a terrorist who had died in a clash with the security forces and failed to question the soldiers involved in the incident; no tests were carried out on the deceased for gunpowder traces; the deceased's weapon was not dusted for fingerprints; the corpse was handed over to villagers, making it impossible to obtain any evidence of any analys; the autopsy report was perfunctory; etc. There had therefore been a violation of the procedural requirements of Article 2.

As to the procedural requirements (the positive obligation of the state) concerning killings, it is important to note that the essential purpose of investigation is to secure the effective implementation of the domestic laws and regulations 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. The requirements during investigations are of paramount importance: independence, promptness and expedition, capacity to establish the facts, and accessibility to the public and the relatives.

Now, I would like to outline a recent case, which is quite interesting concerning the abovementioned issues. The Giuliani and Gaggio c. Italy[17] case concerned the death of a young man while he was taking part in an anti-globalization protest during the G8 summit in Genoa in 2001. No violation of Article 2 with regard to the use of lethal force, stating that it had not been excessive or disproportionate to what was absolutely necessary in defense of any person from unlawful violence. No violation of Article 2 was found regarding the national legislative framework governing the use of lethal force or with regard to the weapons issued to the law-enforcement agencies and no violation of Article 2 with regard to the organisation and planning of the policing operations at the G8 summit in Genoa. While authorities had a duty to ensure the peaceful conduct and the safety of all citizens during lawful demonstrations, they could not guarantee this absolutely and they had a wide discretion in the choice of the means to be used. No violation of Article 2 with regard to the alleged lack of an effective investigation into the death. The Court found that a detailed investigation into the fatal bullet, which was in dispute between the Parties, was not crucial as the Court stressed that the resort to lethal force had been justified.

Deaths in custody also raise the paramount role of protection of the right to life of a victim. In this respect the case of Salman v. Turkey[18] has a great value as an often referred case. In this judgment the Court held that: „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. The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies."
The applicant's husband, Agit Salman, had been arrested in February 1992 in Turkey, and was detained at a police station. Less than 24 hours later he was dead. Turkish medical experts concluded that he had died from a heart attack, with bruising to the chest and a broken sternum having been caused by a resuscitation attempt. However, international experts disagreed and found that the victim's injuries were consistent with beatings. The Court found that Agit Salman had been subjected to torture during interrogation, which had caused his death. As to the facts, the Court held: „Agit Salman was taken into custody in apparent good health and without any pre-existing injuries or active illness. No plausible explanation has been provided for the injuries to the left ankle, bruising and swelling of the left foot, the bruise to the chest and the broken

[17] Giuliani and Gaggio c. Italy, judgment of 24 March 2011
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104098

[18] Salman v. Turkey, judgment of 27 June 2000
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58735

sternum. The evidence does not support the Government's contention that the injuries might have been caused during the arrest, or that the broken sternum was caused by cardiac massage. … The Court finds, therefore, that the Government have not accounted for the death of Agit Salman by cardiac arrest during his detention at Adana Security Directorate and that the respondent State's responsibility for his death is engaged. It follows that there has been a violation of Article 2 in that respect."

The procedural requirements of Article 2 are equally important in cases of deaths in custody. The Court said that the State should always investigate when a person dies in custody, which should involve an autopsy providing a complete and accurate record of injury and clinical findings, including the cause of death. In this respect there had been crucial failures, because no proper forensic photographs of the body were taken; no sufficient analysis of the injuries were carried out, and; "unqualified assumption" in the forensic report was to be observed. The defects in the examination of the autopsy undermined the chance to determine police responsibility for the death of the applicant's husband.

The responsibility of a state under the headings of Article 2 of the Convention may also occur in case of unresolved killings. In a narrower sense it raises the question of the responsibility of agents of the state, as it did indeed in Kashiyev and Akayeva v. Russia[19]. In the winter of 1999-2000, the applicants had fled the Chechen capital, Grozny, in order not to be involved in the fighting between the Russian Federation forces and Chechen fighters. While returning home, they discovered several bodies of their relatives, which bodies showed signs of beating and also bullet wounds. That particular area, where the bodies were found, was under control of the Russian Federation forces. Meanwhile, one of the applicants' relatives had been seen by eyewitnesses being detained by the Russian military forces. The applicants accused the Government for the killings of their relatives and also for having failed to set forth a proper investigation relating the killings. The Government were requested by the Court to submit a copy of the documents of the criminal investigation but they just partly did so, alleging that the missing part of the documents were not relevant… The Court finally found, since the State had not provided sufficient justification for the killings, that the applicants' relatives were killed by servicemen, therefore their deaths could be attributed to the state. Thus, there had been a violation of Article 2 in respect of its substantive requirements. From procedural point of view, the Court held that there had also been a violation of Article 2, since several deficiencies were to be observed, like procedural delays; no attempt to identify the potential soldiers involved; no autopsies were carried out; entirely futile adjournings of the investigation; unjustified transferrings of the file from one authority to the other; and also lack of scrutiny concerning the particular military operations. In such circumstances, the Court therefore concluded that, for the lack of an effective criminal investigation, the severe deficiencies or rather lack of state actions had led to a violation of the procedural requirements of Article 2.

The Court found a violation of both the substantive and the procedural requirements of Article 2 in its Kılıç judgment as well, since despite of the fact that the victim, a journalist, who was killed in early 1993, had expressly asked for protection from the authorities, which was not provided. The state was aware of the "real and immediate" risk of the unlawful attack against the victim, but failed to provide any protection.

Similarly, in another relevant case, in Shanaghan v. the United Kingdom[20], where a Northern Irish man had been shot dead by a pro-British terrorist organisation

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[19] Kashiyev and Akayeva v. Russia, judgment of 24 February 2005
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68419

in 1991, according to the Court, the state was or should have been aware of the risk of attack. The applicant's son, Patrick Shanaghan had been suspected by the British security forces of being a member of the Irish Republican Army (IRA). The applicant claimed that her son had been threatened by members of the Northern Irish police force during interviewing. A case-file (including a photo), identifying Shanaghan as a suspected terrorist, had been lost, by allegedly falling off of an army lorry, and could have - allegedly, again - ended up in the hands of the terrorists who killed him. Most of the local police had been called to a traffic accident at the time of the shooting, so the killers escaped. A number of shortcomings were summed up by the Court (lack of independence of the police officers; lack of public scrutiny, and information to the victim's family; etc.), which had led to a violation of the procedural requirements of Article 2.

As we have seen, if there are allegations of active collusion between the killers and the State, the State has a heavy duty to carry out a full, impartial and speedy investigation.

In Ertak v. Turkey, referred above, another relevant issue came up to light, namely the phenomena of disappearances. In this particular case, the applicant's son, Mehmet Ertak, had been arrested during an identity check while returning home from work with three members of his family on 20 August 1992. There were eyewitnesses who had allegedly seen the victim while he was in police custody, and that he had been tortured there. One detainee made a report that Ertak had been brought to his cell after torture, apparently dead, and was then dragged out of the cell. He did not see him again. The authorities, against the Commission's expressed wish, did not provide the copies of the custody register. They denied even that Ertak had been arrested or detained and submitted that his name was not included in the custody register. The Commission sent delegates in Turkey to 'investigate' the case, and interviewed several witnesses. The conclusion was that Mehmet Ertak had been arrested. There was found another detainee, who was undoubtfully arrested and detained, and his name was not in the custody register either. Other deficiencies also were to be observed like unprovided, therefore missing, reports on interviews held by the prosecutor. The Court did not find the explanations given by the state sufficient enough to what happened after Mehmet Ertak's arrest and held that „in the circumstances of the case the Government bore responsibility for Mehmet Ertak's death, which was caused by agents of the State after his arrest". Therefore, there has been a substantive violation of Article 2. Since an effective and independent investigation must take place into killings (and alleged killings) by state officials, or in any case in which a person dies while in custody, the Court also examined the procedural aspects. It found that the state did not duly fulfiled its obligation to carry out an effective and adequate investigation into the surrounding circumstances of the disappearance of the applicant's son. The investigation at domestic level had not been thorough and had not been conducted by independent bodies. Thus, there has been a procedural violation of Article 2, as well.

Another important issue derives from the protection of victims of terrorism. At this time, I only briefly touch this sensitive issue. States are under the obligation to take all the necessary measures to protect the fundamental rights of everyone during the fight against terrorist acts, but all these measures taken must respect human rights and the principle of the rule of law at all time. Any form of arbitrariness, as well as any discriminatory or racist treatment must be excluded, and must be subject to appropriate supervision. Nota bene, the "absolute necessary" test wears a paramount relevance. At

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[20] Shanaghan v. the United Kingdom, judgment of 4 May 2001
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59452

this point, the Finogenov and Others v. Russia[21] is to be mentioned. This case concerned the siege of the "Dubrovka" theatre in Moscow by Chechen separatists and the decision to overcome the terrorists and liberate the hostages using gas, in October 2002. The Court found that there had been no violation of Article 2 concerning the decision to resolve the hostage crisis by force and use gas. It further held that there had been a violation of Article 2 concerning the inadequate planning and implementation of the rescue operation. Moreover, a violation of the same Article was to be observed concerning the ineffectiveness of the investigation into the allegations of the authorities' negligence in planning and conducting the rescue operation, as well as the lack of medical assistance to hostages.

In relation of Article 2, the states have the duty to provide adequate protection concerning the actions of their authorities not only in the abovementioned cases but also when, for instance, life-threatening environmental risks occur. In the majority of these cases, applicants complain other provisions of the Convention, but Article 2 also may come into play. In the Guerra and others v. Italy[22] case the applicants lived in Manfredonia, Italy. The factory, which was situated relatively close to the homes of the applicants, released large quantities of toxic substances and the applicants had been subjected to this pollution generally, because emissions from the factory were often channelled towards their homes. Once there had been a serious accident by which tonnes of dangerous gases had escaped. About 150 people had had to be brought to hospital, because of acute arsenic poisoning. The complaint was admitted only under Article 10, but the Court held that it had jurisdiction to examine the case under Articles 8 and 2 of the Convention as well. It focused on the former of these two. Having examined the facts, it concluded that the State had not duly provided the applicants with "essential information" so that they could assess the risks they might face if they stay to live at Manfredonia. Finally, the Court held that there had been a violation of Article 8 and found it unnecessary to consider the case under Article 2 as well.

Another interesting and also oftem referred case was L.C.B. v. the United Kingdom[23]. In this particular case, the applicant was the daughter of a man who had served in the British Air Force in the 50's. He had been exposed to radiation caused by nuclear tests carried out in 1957 and 1958. The applicant, who was born in 1966, was diagnosed as having leukaemia when she was around four and she had to undergo medical treatment. The applicant considered that her father's exposure to radiation was the probable cause of her childhood disease and challenged the state failing to warn and advise his father or monitor her health prior to the diagnosis of her illness. The Court basically examined three questions: first, whether the British authorities knew, or should have known, that the applicant's father had been exposed to dangerous degree of radiation. If this was the case, whether the authorities should have given specific information and advice to the parents, or should have monitored the health of the baby. Thirdly, whether such advice or monitoring would have made the early diagnosis possible. The applicant's complaints were rejected. The Court held that, at the specific time, the authorities could reasonably have believed that the applicant's father had not been dangerously irradiated and it had not been established that there was a causal link between the radiation and the leukaemia. Therefore, it could not have been expected to

[21] Finogenov and Others v. Russia, judgment of 4 June 2012
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108231

[22] Guerra and others v. Italy, judgment of 19 February 1998
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58135

[23] L.C.B. v. the United Kingdom, judgment of 9 June 1998
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58176

notify the applicant's parents of these matters, or to take any other preventive action. Thus, there had not been a violation of Article 2.

We have touched the protection in case of 'killings' by agents of the state so far, but what about the protection of individuals from violence by other private people? A wide range of case-law deals with this particular area, where the applicants complain about the state having failed to protect their or their relatives' life. During the examination of these matters the Court takes into consideration both the substantial and the procedural aspects. States should not only refrain from the deliberate and unlawful taking of life, but also take appropriate steps to safeguard the lives of individuals, in particular by conducting effective provisions backed up by law-enforcement machinery. The case of Osman v. the United Kingdom[24] concerned the killing of the father of a schoolboy, by a teacher who otherwise had become obsessed by the boy. The boy was also involved in the shooting incident, where he wounded and survived. The teacher had been suspended following a psychiatric evaluation because of such infatuations. He was convicted of two charges of manslaughter but since he pled guilty on grounds of diminished responsibility, he was finally sentenced to be detained in a secure mental hospital without limit of time. The question arose whether the authorities could or should have done more to protect the victims. According to the applicants, the police had been informed of the facts, by which the police promised to protect them, but had failed to do so. However, the police denied that they had made any promise, and claimed that they never had enough evidence against the teacher to arrest him prior to the fatal incident. A scrutiny was held, but since someone had been convicted of the killings, this was a summary procedure only, which did not seek to establish the full facts, in particular the actions or rather inactions of the police. The applicants therefore instituted civil proceedings against the police for failing to take adequate steps to protect the child and his father, but these proceedings were dismissed by the British courts for public interest reasons, since, by law, the police was exempt from liability for negligence in the investigation and suppression of crime. The Commission found that the police had been made aware of the substance of the concerns about the teacher but the claim that the police had promised protection to the victims' families had not been substantiated. It had not been backed up enough that the police could or should have been aware of the seriousness of the threat shown by the teacher, therefore it had not been a violation of Article 2. However, it also held that there had been a violation of Article 6, in that the applicants had been denied access to a court by the rule that the police could not be sued for negligence in their official tasks. Subsequently, the Court was satisfied with the Commission's opinion and stressed that the positive state obligations under Article 2 should be interpreted in a way which does not impose an impossible or disproportionate onus on the authorities. The applicants had failed to show that the authorities knew or ought to have known that the lives of the Osman family were at „real and immediate risk" from the teacher. There was therefore no violation of Article 2. Nevertheless, the absence of any judicial examination of the issues at the national level resulted a violation of Article 6.

Another relevant and also often referred case is Menson v. the United Kingdom[25]. The applicants were the siblings of Michael Menson, a mentally disturbed black man, who was attacked and set on fire by a youth gang of white people in a racist attack in London, January 1997. He died in hospital two weeks later. The police failed to take proper measures after the incident to secure evidence and did not take any statement

[24] Osman v. the United Kingdom, judgment of 28 October 1998
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58257

[25] Menson v. the United Kingdom, decision of 6 May 2003
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-23192

from the victim in hospital, although he had been able to describe the attack to his relatives. The applicants complained that the investigations had been affected by racism within the police. They also turned to the Police Complaints Authority, which subsequently confirmed that there was independent evidence to back up the applicants' allegations. The file was transferred to the Prosecution, but a decision on whether to initiate criminal proceedings against members of the police for a crime had still not been taken by the time the Court dealt with the applicants' complaint, in 2003. The applicants complained of several violations of the Convention (Article 2 included). The Court finally declared the case as being "manifestly ill-founded", and inadmissible on all counts - mainly because, in the end, the perpetrators of the crime had been convicted and severely punished. The Court stressed that the investigation throughout the domestic proceedings must be prompt and it also repeated the requirements set out in other cases, concerning deliberate killings by agents of the State, deaths in custody, or killings in which the question of State involvement have remained unresolved.

The absence of any direct state responsibility for the death of an individual does not exclude the applicability of Article 2. In the case of Angelova and Iliev v. Bulgaria[26], the applicants were the mother and brother of a man of Roma origin who was killed in an unprovoked attack by a group of teenagers in 1996. The attack had been racially motivated. The applicants alleged that the authorities had failed to carry out a prompt, effective and impartial investigation and that the domestic legislation contained no separate criminal offence or penalty for racially motivated murder or serious bodily injury. They further alleged that the authorities had failed to investigate and prosecute a racially motivated violent offence and the criminal proceedings had been far too excessive which have resulted in their being denied access to a court to claim damages. The Court noted that no one had been brought to trial over a period of eleven years and, as a result, the proceedings against the majority of the attackers had had to be dismissed under the statute of limitations. The authorities had failed to effectively investigate the death promptly, expeditiously and with the necessary vigour, considering the racial motives. The Court concluded that racist motives had been known to the authorities from early stage of the investigation. Their failure to complete the preliminary investigation and bring the perpetrators to trial expeditiously was, therefore, completely unacceptable. They had also failed to charge anyone with any racially-motivated offence and failed to make the required distinction between offences that were racially motivated and those that were not. The Court examined the case under Article 14 in conjunction with Article 2 and finally concluded that the act of the authorities constituted unjustified treatment that was irreconcilable with Article 14.

The state also has special responsibilities to protect persons in its custody from attacks by other private individuals. The case of Paul and Audrey Edwards v. the United Kingdom[27] concerned a mentally disturbed man, Christopher Edwards (the son of the applicants), who had been arrested in 1994 for accosting women on the street. After a hearing before a magistrate, he was incarcerated in a prison cell. Later that day, another mentally disturbed man, Richard Linford (with a history of violence), was also remanded in custody, apparently in the same cell as Edwards. In the night, Linford attacked and killed Christopher Edwards. A year later, Linford pleaded guilty to a charge of manslaughter and was sent to a secure mental hospital, where he has been diagnosed as suffering from paranoid schizophrenia. Because he pleaded guilty, the facts of the case were only cursorily examined at the trial. Three months after the trial, a private -

[26] Angelova and Iliev v. Bulgaria, judgment of 26 July 2007
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81906

[27] Paul and Audrey Edwards v. the United Kingdom, judgment of 14 March 2002
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60323

therefore non-statutory - report was commissioned about the inquiry of the circumstances of the case by three state agencies. It concluded that the two men should not have been in prison and they should not have been sharing the same cell. The applicants complained that the authorities had failed to protect their son, and thus his right to life was violated. The Court reiterated its ruling in Osman, that there is a violation of the substantive requirements of Article 2 if it is established that that the authorities knew or ought to have known of a real and immediate risk to the life of an individual from the criminal acts of a third party and that they failed to take necessary measures which might have been expected to avoid that risk. The Court found that there had been a number of failings in the way Edwards was treated, because he should have been detained either in a hospital or the health care centre of the prison. On the other hand, Richard Linford's medical history and perceived dangerousness was known to the authorities, and that this knowledge ought to have been brought to the attention of the prison authorities. The conclusion was that there has been a violation of Article 2 in its substantive aspect. From the procedural perspective, the Court found that no full inquest had been held in the case and the criminal proceedings in which Linford was convicted, since he pled guilty, had not involved a trial at which witnesses were examined. In this respect the procedural requirements had not been complied with, therefore the question was whether the non-statutory inquiry had remedied this, like independence, promptness, capacity to establish the facts, accessibility to the public and the relatives. The Court found that there had been two serious defects observed, namely, the inquiry had no power to compel witnesses, and it had been held in private. Because of these two defections, the inquiry had failed to satisfy the procedural requirements of Article 2, thus there had been a violation in that regard, too.

The state has positive obligations concerning the victim's right to life when we are talking about prevention. This duty also involves the prevention of suicide, especially when the indiviual in question is detained. It first occured in the case of Keenan v. the United Kingdom[28]. The case concerned a young man, Mark Keenan, with a history of mental illness, who had been sentenced to imprisonment for assault. He displayed a threat of self-harm during his detention, therefore he was placed in the hospital wing of the prison for a period of time. After some time in the prison he assaulted two members of the prison staff after a change in his medication. For the assault, he was placed in a punishment cell, where he hanged himself. Asphyxiation was confirmed as the cause of death, but the procedure did not seek to establish the wider causes. The applicant, the deceased man's mother, complained under Article 2 that the prison authorities had been negligent in respect of his son's care. She was advised that she could not sue the authorities because English law did not allow an appropriate action. Basically, as mentioned before, states must provide effective criminal-law provisions, with effective law-enforcement machinery. Furthermore, it must take reasonable preventive measures to protect an individual whose life is threatened by the criminal acts of another individual. In the Keenan case, the Court had to consider to what extent these principles apply and finally concluded that the authorities responded in a reasonable way to Keenan's conduct, namely placing him in hospital care and under watch when he showed suicidal aptitude. Thus, there was no appearance of a violation of the substantive requirements of Article 2. However, the Court found that Keenan's treatment had not met the standards of treatment required under Article 3 of the Convention. Just for the stake of completeness, the Court found that the disciplinary punishment imposed on him belatedly may well have threatened his physical and moral resistance and it therefore was not compatible with the standard of treatment required by Article 3 in respect of a

[28] Keenan v. the United Kingdom, judgment of 3 April 2001
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59365

mentally ill person. It was seven-day segregation in the punishment block and an additional twenty-eight days to his sentence imposed two weeks after the event and only nine days before his expected date of release. This must be regarded as constituting inhuman and degrading treatment and punishment within the meaning of Article 3. This perfectly shows how the protection of various provisions of the Convention overlap and interrelate.

A state also has to provide protection in other fields as well, as we have seen in the case of Erikson v. Italy[29]. The requirements as to the protection of the right to life "by law", also apply to cases of alleged medical malpractice. In this particular case an elderly lady, the applicant's mother, had died of an intestinal occlusion. The disease had not been diagnosed at a local hospital where she had been x-rayed but the report of this examinaion had not been signed by a doctor. The criminal investigation failed to identify the doctor and the applicant complained that his mother's right to life was violated on account of the failure of the state authorities to identify those responsible for her death. The Court found that there had been a sufficient criminal investigation conducted. Moreover, it also held against the applicant that she had not initiated a separate civil action against the hospital and rejected the case as "manifestly ill-founded".

In the case of Powell v. the United Kingdom[30], the applicants' son, a 10-year old boy, Robert Powell, died of Addison's disease, which is susceptible to treatment if diagnosed in time. Although from early on, a test for the disease had been recommended by a hospital paediatrician, none had been ordered to be carried out. The applicants alleged that medical records had been falsified to cover this up. Beside the disciplinary proceedings and a police investigation, the applicants also initiated civil proceedings against the health authority. The Authority admitted liability for having failed to diagnose the disease, and paid the applicants a huge sum as damages. The alleged conspiracy to cover up the failure to diagnose, was, on the other hand, struck out by the judge on the ground that, under English law, doctors are not obliged to reveal all the issues to the parents of a deceased child about the circumstances surrounding the death. As to the falsification of the medical records and the subsequent cover-up, the Court held that the examination of the applicants' complaint under Article 2 must necessarily be limited to the events leading to the death of their son. The applicants' complaints under Articles 2 (8 and 10) were undermined by the fact that they withdrew from the appeal hearing in the disciplinary proceedings and settled their civil case. The Court pointed out that where a relative of a deceased person accepts compensation in settlement of a civil claim based on medical negligence he or she is in principle can longer be considered as a victim in respect of the circumstances surrounding the treatment of the deceased or with regard to the investigation carried out into his or her death. The applicants could therefore no longer claim to be (indirect) victims.

The States' positive obligations under Article 2 were, again, confirmed by the Court in the case of Calvelli and Ciglio v. Italy[31], stating that it falls within the states' obligation to adopt appropriate measures by hospitals to protect the patients' lives and proper procedure needs to be conducted in order to unveil the cause of deaths and make those responsible thereof accountable. This latter case concerned the death of a baby shortly after birth. The mother was a level-A diabetic and had a past history of difficult

[29] Erikson v. Italy, admissibility decision of 26 October 1999
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-4817

[30] Powell v. the United Kingdom, admissibility decision of 4 May 2000
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-5215

[31] Calvelli and Ciglio v. Italy, Grand Chamber judgment of 17 January 2002
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60329

confinements. The doctor in charge failed to make external examination of the mother to assess whether the foetus was too large for a natural birth, and was not present at the time of birth. The delay in bringing him to the delivery room had significantly reduced the newborn's chances of survival. The applicants, the baby's parents, had obtained compensation for damages, but believed the doctor in question should have been prosecuted. Criminal proceedings had been set forth, but had had to be abandoned after a couple of years, during which there had been procedural shortcomings and delays, and, finally, the case became time-barred. According to the applicants, this violated the provision of the right to life. The applicants entered into an agreement with the insurers of the doctor and the clinic under which the insurers were to pay a specific sum to the applicants. The Court noted the shortcomings in the criminal proceedings, but found that the civil avenues would have offered the applicants sufficient redress, if they had not settled the case. Furthermore, a civil court judgment could also have led to disciplinary action against the doctor. The Court therefore found it unnecessary to examine the case, whether the fact that a time-bar prevented the doctor being prosecuted for the alleged offence was compatible with Article 2. There had therefore been no violation of Article 2.

There are other areas touching the right to life envisaged in Article 2, out of which it is necessary to refer to, namely the domestic violence. This issue geerally concerns all member states and is likely to be latent to a large extent since it often takes place within personal relationships. However, it is not only women who are affected, men or children may also be the victims of such crimes. Domestic violence can take various forms ranging from physical to psychological violence or verbal abuse.

In the case of Opuz v. Turkey[32], the applicant's mother was shot to death by the applicant's husband in 2002 as she attempted to help the applicant flee the matrimonial home. In the years preceding the killing the husband had subjected both the applicant and her mother to a series of (life-threatening) violent assaults, including beatings, hit by car, and stabbing as well. The incidents and the women's fears for their lives had been brought to the authorities' attention repeatedly. Although criminal proceedings had been brought against the husband for a range of offences, but in at least two instances they were discontinued after the women withdrew their complaints. In respect of the running down case and the stabbing incident the husband was convicted, receiving a three-month prison sentence, and a fine, respectively. The series of violence culminated in the fatal shooting of the applicant's mother. For that offence, he was convicted of murder in 2008 and sentenced to imprisonment with a lodged appeal. The Court held that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life and that they failed to take measures within the scope of their powers of an identified individual which, might have been expected to avoid that risk. The case disclosed a typical pattern of escalating violence against the applicant and her mother that was serious enough to have warranted preventive measures. The situation was known to the authorities that the husband had a record of domestic violence and thus, there was a significant risk of further violence. The possibility of a lethal attack had been foreseeable. On the other hand, the criminal proceedings arising out of the death had been going on for more than six years and an appeal was still pending, which could not be described as a prompt response by the authorities to an intentional killing where the perpetrator had already confessed. As a result, the Court held that there has been a violation of Article 2 of the Convention.

[32] Opuz v. Turkey, judgment of 9 June 2009
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92945

Other example for domestic violation is the case of Kontrovà v. Slovakia[33]. On 2 November 2002 the applicant filed a criminal complaint against her husband for assaulting and beating her with an electric cable. Accompanied by her husband, she later tried to withdraw her complaint and modified it that her husband's alleged actions were just minor offences which called for no further action. On 31 December 2002 her husband shot dead their five year-old daughter and one year-old son. Before the Court, the applicant alleged that the police had failed to take appropriate action to protect her children's lives. The Court observed that the situation in the applicant's family had been known to the local police given the criminal complaint and emergency phone calls. However, one of the officers involved had even assisted the applicant and her husband in modifying the criminal complaint of November 2002 so that it could be treated as a minor offence without any further action. The Court held, in conclusion, that the police had failed in its obligations and the direct consequence of those failures had been the death of the applicant's children and that there had been a violation of Article 2.

As another relatively recent case of domestic violence we have got to mention Branko Tomašić and Others v. Croatia[34]. The applicants were the relatives of a baby and his mother. The mother's husband, the father, had killed his wife and their common child and then committed suicide. All these happened one month after being released from prison, where he had been held for making death threats. He was originally ordered to undergo compulsory psychiatric treatment while in prison and after his release, as necessary, but during the appeal process the court ordered that his treatment be stopped on his release. The applicants complained that the Croatian State had failed to take adequate measures to protect the child and his mother and had not carried out an effective investigation into the deaths relating the responsibility of the state. The Court concluded that the Croatian authorities failed to take adequate steps to prevent the deaths of the child and his mother. The findings of the domestic courts and the conclusions of the psychiatric examination showed that the authorities should have been aware of the serious threats against the lives of the mother and the child. The Court observed several deficiencies in the authorities' conduct as well. Although the need for the husband's psychiatric treatment had been drawn up, the state had failed to prove that such treatment had actually and properly been administered. Although the husband's treatment in prison had consisted of several conversational sessions, but these were conducted without the presence of a psychiatrist and the ordering of compulsory psychiatric treatment had not provided sufficient details on how it should be administered. Furthermore, the husband had not been examined prior to his release whether he still posed a risk to the child and his mother. As a conclusion, the Court held that the domestic authorities had failed to take adequate measures to protect the victims' lives.

And, finally, a couple of words about the death penalty. Article 2 and Protocols Nos. 6 and 13 are concerning the death penalty and the abolition thereof. The second sentence in the first paragraph of Article 2 refers to the death penalty and reads as follows: *„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."* For the States that are party to them (i.e. almost all of the States Party to the Convention), this stipulation has been replaced by the provisions in Protocols Nos. 6 and 13 to the Convention, which abolish the death penalty in times of peace and in all circumstances, respectively. The drafters of the Convention did not regard the existence

[33] Kontrovà v. Slovakia, judgment of 31 May 2007
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80696

[34] Branko Tomašić and Others v. Croatia, judgment of 15 January 2009
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90625

or use of the death penalty as a violation of the right to life of the Convention per se. At the time, in the early 1950s, many States still retained the penalty on their statute books, even if its use was already in decline. Article 1 of Protocol No. 6 stipulates that „The death penalty shall be abolished. No one shall be condemned to such penalty or executed." Subject to its one limitation, the absolute nature of the provision - which, for States that are Party to the Protocol, is regarded as an additional article to the Convention as a whole (Article 6 of Protocol No. 6) - means that no reservations may be made in respect of it. Article 1 of Protocol No. 6 does not affect the application of the rest of Article 2, other than the second sentence of the first paragraph of the latter article. Extra-judicial killings contrary to Article 2 Paragraph 2 remain prohibited. The new article prohibits judicial executions. The one limitation - to which, however, the stipulations in Articles 3 and 4 of the Protocol also apply - is contained in Article 2 of Protocol 6, which reads: *„A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law."*
The second sentence of Paragraph 1 of Article 2 of the Convention remains applicable for those States which retain the death penalty for acts committed in time of war or of imminent threat of war, in particular as regards the requirement that the sentence must be pronounced by a "court" - that is, by an independent and impartial tribunal established by law. The Protocol stipulates, in Article 3, that: *„No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention."* This means that States may not derogate from their obligations under Article 6 in respect of proceedings in times of war or imminent war that could result in the death penalty. Any State Parties to the Protocol that do retain the death penalty in times of war (imminent war) must therefore ensure that the relevant courts and procedures do not depart from the minimum fair trial requirements (envisaged in Article 6).

The phrase in Protocol No. 6 "in time of war or of imminent threat of war" has not yet been clarified. However, in accordance with general international law, it should be read as referring to actual or imminent international armed conflict.

Under Protocol No. 13, States can agree to abolish the death penalty "in all circumstances", i.e. both in times of peace and in times of war.

Now, here are some examples of cases releting both the issue of death penalty and Article 2 of the Convention.

In Bader and Kanbor v. Sweden[35], the applicants were a family of four Syrian nationals who had had their asylum applications refused in Sweden. The deportation orders to be returned to Syria had served on them. They complained that as the father in the family had been convicted of murder in absentia and sentenced to death in Syria, he risked of being executed if returned there. The Court held that the first applicant had a well-founded fear that the death sentence against him would be executed if he was forced to return to his home country. Regarding the criminal proceedings which had led to the death sentence of a summary nature, the Court found that, because of the total disregard of the defence rights, there had been a flagrant denial of a fair trial. The death sentence imposed on the applicant following an unfair trial would cause him and his family additional fear and anguish as to their future in case of being forced to return to Syria. Accordingly, the applicants' deportation to Syria, would give rise to a violation of Articles 2 and 3 (prohibition of inhuman or degrading treatment) of the Convention.

[35] Bader and Kanbor v. Sweden, judgment of 8 November 2005
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70841

The case of Rrapo v. Albania[36], the applicant (Albanian and American national) was detained in a prison in the United States following his extradition from Albania to stand before the court in the United States on numerous criminal charges, one out of which carrying the death penalty. While still detained in Albania, the applicant complained that, given the risk of the death penalty if he were tried and convicted in the US, his Convention rights would be breached as a result of his extradition. The Court found that the applicant's extradition to the United States had not given rise to a breach of Articles 2 and 3 and Article 1 of Protocol No. 13 to the Convention. There was nothing in the materials before the Court that could cast doubts as to the credibility of the assurances that capital punishment would not be imposed in respect of the applicant by the United States. Otherwise, the Court held that there had been a violation of Article 34 (right to individual application), because the applicant had been extradited to the United States in breach of the Court's indication to the Albanian Government, under Rule 39 (interim measures) of the Rules of Court, not to extradite him.

At last, but not least, the case of Öcalan v. Turkey[37] should be referred as to an example concerning, amongst others, the death penalty as a result of a fair trial. Abdullah Öcalan is a Turkish national serving a life sentence in a Turkey. Prior to his detention, he was the leader of the Workers' Party of Kurdistan (PKK), which is considered as an illegal organisation. Arrested in Kenya in on 15 February 1999, he was flown to Turkey where he was sentenced to death in June 1999. Following the 2002 abolition of the death penalty in peacetime in Turkish law, the domestic Court commuted the applicant's death sentence to life imprisonment. He complained about the imposition and/or execution of the death penalty in his regard. Because of this, the Court held that there had been no violation of Articles 2, 3 or 14, as the death penalty had been abolished.

There are of course many other aspects, opinions backed up by cases concerning the victims' rights under the perspective of the European Convention on Human Rights, and the scale is getting wider and wider as our economic and society evolves from time to time.

[36] Rrapo v. Albania, judgment of 25 September 2012
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113328

[37] Öcalan v. Turkey, judgment of 12 May 2005
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69022