CHAPTER 4

The Right to Life and Other Fundamental Civil Rights of the Child in the Case Laws of the Council of Europe Bodies

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ABSTRACT

Life is a condition of human existence and of all freedoms and rights belonging to human beings from conception. These values lose their meaning when there is no reference subject, which is a human being, regardless of the stage of life – prenatal or postnatal. Although not without reservations, this truth has been confirmed in the jurisprudence of the European Commission of Human Rights and the European Court of Human Rights, and is regarded as an important element in shaping contemporary standards for the protection of human rights. The member States of the Council of Europe are obliged to effectively safeguard and protect the right to life. Closely linked to the right to life is the right to respect private and family life, which raises a number of specific issues concerning both the child and its relationship with its parents. This study aims to identify how the right to life of a child from conception and selected rights falling within the concepts of private and family life are understood by convention bodies.

KEYWORDS

human life, conceived child, private and family life, child welfare, biological identity, parental authority

1. Introduction

The right to life is a fundamental right and value of every human being, regardless of nationality, gender, age or social status. This is a condition for the existence and enjoyment of all other rights. Hence, it is not surprising that it has been accorded special prominence in the domestic laws of individual States and inter-state organisations. In Europe, a special role falls on the legal system of the Council of Europe, organised around the European Convention for the Protection of Human Rights and

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Fundamental Freedoms of 4 November 1950[1] (ECHR). This study aims to determine the understanding of the right to life of a child from conception and selected rights falling within the concepts of private and family life by the Convention bodies. This is important because of the law-making and culture-building impact of case laws on the process of law-making and understanding of law by the member States of the Council of Europe, narrowing down the considerations to an analysis of selected judgements of its bodies, which will help outline the European model of the right to life and several other closely related fundamental civil rights of the child.

2. The right to life as a fundamental right

The right to life is guaranteed by Article 2 ECHR:

> 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (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.

The list of situations in which life deprivation is justified is closed. The essence of this provision is to establish an injunction to respect and protect life and, in particular, to prohibit the arbitrary deprivation of life by the State or its officers. It follows that the right to life is universal in nature and equally applicable to every human being. The importance of the right to life is reflected in the non-derogable character accorded to it by Article 15(2) ECHR, which states that the obligations under Article 2 ECHR cannot be suspended even in the event of war or other public dangers threatening the life of the nation, except in cases of death resulting from lawful acts of war, and the obligations contained in Articles 3 (prohibition of torture), 4(1) (prohibition of slavery), and 7 (prohibition of punishment without legal basis).

The protected good is life, which is understood as the existence and continuity of human beings. The placement of the provision in Article 2 ECHR at the beginning confirms the uniqueness of the right to life. The provision of Article 2 ECHR is a fundamental provision of the Convention and enshrines a fundamental value of the democratic society that constitutes the Council of Europe. It follows from the systematic nature of the Convention that the provision of Article 2 ECHR is the benchmark

1 European Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5, and 8 and supplemented by Protocol No. 2, Dz. U. 1993, No. 61, Item 284.

for decoding the meaning of other provisions and determines how they should be interpreted. This implies that the interpretation of all provisions of the Convention must be based on the recognition of the primacy of the protection of life, and any deviation from this is exceptional, and as such, is subject to a restrictive interpretation.[2] The jurisprudence of the Convention bodies – the European Commission of Human Rights and the European Court of Human Rights – has always affirmed the special prominence of the protection of life and, consequently, the special place of Article 2 ECHR among other provisions of the Convention. The jurisprudence of these bodies is considered an important element in shaping contemporary standards of human rights protection. Each human life has the same weight and the introduction of any differentiation into the lives of individuals may lead to dangerous consequences for the rule of law. Another issue is the determination of the point in time from which human life is protected, and the resulting disputes regarding the protection of human life from the moment of conception.[3]

Although the right to life is a necessary condition for the existence and continuity of human beings, it is not absolute. Article 2 ECHR allows for the possibility of life deprivation through the imposition of the death penalty, although the death penalty has been virtually eliminated from the legal orders of the member States of the Council of Europe owing to human rights developments, which has led to the transformation of the territory of the member States of the Council of Europe into a zone free of the death penalty. Therefore, this punishment has been declared unacceptable in peacetime.[4] This was first reflected in Protocol No. 6, adopted in 1983, providing for the abolition of the death penalty (but allowing it to be retained for acts committed in times of war or imminent threat of war), and then in Protocol No. 13, adopted in 2002, providing for the general and definitive abolition of the death penalty. However, not all member States of the Council of Europe have ratified this Protocol. Thus, death penalty can be imposed for acts committed during wartime or a period of imminent threat of war.

The guarantees under Article 2 ECHR oblige member States to effectively safeguard and protect the right to life. The statement, 'everyone's right to life shall be protected' implies not only the State's obligation to refrain from acts of deliberate deprivation of life (negative obligation), but also imposes on it an obligation to adopt measures to protect life (positive obligation), referring to any situation where there is an attempt to deprive or threaten it. Simultaneously, these situations do not have to be caused by the direct actions of the State (its organs or officers); they may also result from random events and actions of third parties. Every case of loss of life that

2 Judgement of the ECtHR in McCann and Others vs. the United Kingdom of 27.09.1995, Application no. 18984/91.

3 See more: A. Jończyk, Aksjologiczne podstawy prawnej ochrony życia dziecka poczętego, "Kościół i Prawo" 2018, vol. 7, no. 1, pp. 201-219; P. Kuczma, Prawna ochrona życia, [w:] Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym, M. Jabłoński (red.), Wrocław, 2014, pp. 35-41.

4 Judgement of the ECtHR in Öcalan vs. Turkey of 12.05.2005, Application no. 46221/99.

is clearly not owing to natural causes requires adequate investigation by the State to clarify its causes and circumstances and entails a reaction of a legal and penal nature. At the most general level, it is accepted that the State has an obligation to: 1) establish a system of legal regulations enabling effective protection of human life in the face of all threats; 2) ensure proper implementation of these regulations by administrative and law enforcement bodies; and 3) take preventive measures to exclude potential threats, both of a specific and general nature.[5]

The legitimate subject is "every human being". As both the concept of life and that of a human being are constructed differently and have a different content depending on religious or philosophical views, a question arises regarding the initial moment of applicability of Article 2 ECHR. This question relates to a human being at the earliest stage of life – the conceived child – and the extension of protection to its life or the refusal to recognise it as a human being and the consequent deprivation of the legal protection of life. The lack of temporal scope for the protection of the right to life raises significant difficulties in unequivocally defining when a human being becomes a human being, and consequently, when he or she is subject to protection under Article 2 ECHR.

3. Protection of the life of the unborn child

The Convention or Convention bodies have not clarified when the legal protection of human life begins. It is a question that prejudges either the legal protection of the conceived child or the refusal to recognise it as an autonomous subject of the right to life (to recognise it as a human being), which opens the way for the legalisation of abortion. Undoubtedly, the moment from which life begins can be interpreted differently, even within a single scientific field (for example, philosophy, law, or medicine), which definitely does not simplify it for the Convention bodies to settle disputes about the possibility of abortion.

The beginning of life concerns the period of prenatal life, including the embryo and foetus. According to the Catholic Church, from the moment the egg is fertilised, a new life begins, which is not the life of the father or the mother, but of a new human being developing independently of them. It would never have become a human being if it had not been one from the beginning. Modern genetic knowledge provides valuable confirmation for this self-evident thesis, which has always been accepted. It has been established that from the first moment, it has a fixed programme of what this living being will be: a human being, concrete existing with its characteristics already well defined. From the moment of fertilisation, the history of an individual's new human life begins, each of which requires time for development and action. This truth has been confirmed by the most recent advances in human biology, which recognise that

5 Judgement of the ECtHR in Osman v. the United Kingdom of 28.10.1998, Application no. 23452/94.

the biological identity of the new human individual is already formed in the zygote formed from fertilisation.[6] Human life, linked to the development and transformation of the human organism, is a continuum, which means that the birth of a child does not constitute him or her as a new being, but opens a new page of his or her life, which is a continuation of the life of a human being already developing in the womb, who gradually acquires the capacity to live independently outside her organism.

There is no consensus on the definition of the beginning of life in the European Council countries. The European Court of Human Rights (ECtHR), in its judgement in the case *Vo vs. France of 8.07.2004*[7] *stated that the question of defining the beginning of life falls within the freedom of States to determine independently in their domestic law the moment from which the right to life and related protection guaranteed by Article 2 ECHR arise. In Vo vs. France*, the mother alleged a violation of the right to life because the actions of the doctor responsible for the death of her child *in utero* did not qualify as involuntary deprivation of the life of the conceived child. The Court stated that it is not desirable or even possible at present to provide an abstract answer to the question of whether the conceived child can be considered a human being within the meaning of Article 2 ECHR. There is no consensus in the practice of States Parties to the Convention regarding the status of the embryo and foetus, although they are beginning to obtain some protection as a result of scientific developments and the potential impact of research in the fields of genetic engineering, medically assisted procreation, and biomedical experimentation. Considering this, the Court found that the embryo and foetus could be considered to belong to the human race. However, this is insufficient to consider a conceived child a human being within the meaning of Article 2 ECHR. The potentiality of this being and its possibility of becoming a person require protection in the name of human dignity without making it a person with the right to life guaranteed by Article 2 ECHR. The conceived child is not considered to be a "person" directly protected by Article 2 ECHR – and even if one were to assume that he or she has a right to life – this is subject to limitation owing to the rights and interests of the mother. Thus, the conceived child cannot be considered directly subject to the protection guaranteed by Article 2 ECHR. Nevertheless, the Court did not exclude *a priori* the possibility that the guarantees of Article 2 could be extended to the conceived child.[8] The Court emphasised that the determination of which moment is to be considered the beginning of life lies within the competence of the States Parties to the Convention, and it is for them to determine from when they will protect that life.

The Court reiterated its position on the determination of the initial moment of life in its judgement in *Evans vs. UK* on 12.04.2007.[9] The case concerned the right to life of embryos, which owing to the withdrawal of the donor's consent to *in vitro* fertilisation

6 Sacra Congregatio pro Doctrina Fidei, Declaratio de abortu procurato Quaestio de abortu procurato (18.11.1974), "Acta Apostolicae Sedis" 1974, nr 12-13, s. 738.

7 Judgement of the ECtHR in Vo vs. France, 8.07.2004, Application no. 53924/00.

8 Ibid.

9 Judgement of the ECtHR in Evans vs. the United Kingdom of 10.04.2007, Application no. 6339/05.

using his genetic material under UK law, had to be destroyed. The applicant alleged that the destruction of embryos violated Article 2 ECHR. The Court emphasised the lack of consensus on the legal and scientific definition of the beginning of life. Moreover, it unequivocally determined that an embryo remaining outside the mother's body is not a subject of the right to life within the meaning of Article 2 ECHR.

This position was upheld in the *Costa and Pavan vs. Italy judgement of 28.08.2012*, which prohibits access to a preimplantation diagnosis. The applicants, a woman and a man who were healthy carriers of a genetic disease, intended to use artificial procreation and preimplantation diagnosis to select embryos so that the child the woman would give birth to would not be affected by the genetic disease. Italy argued that the prohibition of access to a preimplantation diagnosis serves to protect the health of both the child and woman. The Court stated that the Italian legislation "is inconsistent", in that it allows abortion when the conceived child is found to be affected by a disease, while simultaneously prohibiting diagnostics to avoid implantation of the embryo in the event of such a disease. The Court emphasised that the concept of a child should not be equated with that of an embryo.

The most extensive analysis of the status of unborn children was conducted in *X vs. United Kingdom*. The European Commission of Human Rights analysed the general use of the word "every-one" in the provisions of the Convention, as well as 'the context in which the word appears in Article 2' considering whether 'the unborn child falls within the scope of Article 2'. The Commission noted the lack of a Convention definition of the word "*every*" (*every one*; *toute personne*), and identified the provisions of the Convention in which the word is used. In addition to Article 2, Articles 1 (obligation to respect human rights), 5 (right to liberty and security of a person), 6 (right to a fair trial), 8 (right to respect for private and family life), 9 (freedom of thought, conscience, and religion), 10 (freedom of expression), 11 (freedom of assembly and association), and 13 (right to an effective remedy) are included. According to the Commission, in principle, in all these cases the use of the word "everyone" applies only to the postnatal period of life. None of them explicitly indicates that it is also possible to apply it to the prenatal period of life. Referring to the exceptions to the right to life indicated in Article 2(2) ECHR, the Commission stated that the limitations indicated, by their very nature, apply to persons already born and cannot be applied to the conceived child, which supports the conclusion that the conceived child is not a "person" and cannot enjoy the absolute right to life. However, it is noteworthy that references to exceptions to the right to life are unconvincing. The clause indicates who, under certain circumstances, may be deprived of life without violating the provisions of Article 2(1), Sentence 1, ECHR. The identification of the circle of persons who may be deprived of life without violating the provisions of the ECHR (a person sentenced to death, a person using unlawful violence against any person, a person lawfully deprived of liberty to be detained or whose escape is to be prevented, or persons participating in a riot or insurrection) cannot serve as an argument for defining the circle of persons entitled to the right to life. It is difficult to agree with the argumentation adopted, in particular the conclusion that 'abortion would also have to be considered prohibited

when the continuation of the pregnancy would involve a serious risk to the life of the pregnant woman. (...) the "unborn life" of the foetus would be considered to have a higher value than the life of the pregnant woman'. Recognising the right to life of the conceived child would by no means imply recognition of the superior value of its life to that of the mother but would emphasise their equal value. Resolving the possible conflict in the realisation of the right to life of the conceived child and its mother in the case of a 'serious threat to the life of the mother' does not necessarily entail assigning a lower rank to one of these lives.

Convention bodies have addressed the issue of the subjectivity of the conceived child by confronting its right to life with the mother's right to respect for private and family life, as guaranteed by Article 8 ECHR. The position of conventional bodies is most clearly reflected in the *Brüggemann and Scheuten vs. Germany* judgement.[10] At issue were abortion restrictions permitting the termination of pregnancy up to 12 weeks. It should be added that German law also allowed abortions after the 12th week of pregnancy, either in situations where the pregnancy could endanger the woman's life or in cases of severe foetal impairment. Two women, who by no means 'claimed to be pregnant, or to have been denied an abortion, or to have been prosecuted for unlawfully terminating a pregnancy', challenged the compatibility of the existing regulations criminalising abortion with the right to respect for private life. The Commission considered that pregnancy did not belong exclusively to the sphere of private life, as every time a woman became pregnant, her private life was directly linked to that of the conceived child. Therefore, Article 8(1) ECHR cannot be understood as treating pregnancy and its termination exclusively as a sphere of a woman's private life. Considering this, not every regulation concerning the restriction of the possibility to have an abortion automatically constitutes an interference in the sphere of a woman's private life.[11] Moreover, the right to life cannot be restricted to values not equivalent to life. Considering a woman's dignity, she undoubtedly has the right to be shown respect to herself and her choices. However, when comparing the values of these two rights, the right to life must be prioritised. It is clear that taking a human being's life is not only a restriction of his right, but also a complete and irreversible deprivation of his right.

This position was upheld by the Court in its judgement in *A.B.C. vs. Ireland of 16.12.2010*[12] The applicants A.B.C. were residents of Ireland who wished to undergo an abortion. The first (A) was for economic and social reasons, the second (B) was because she was not mentally ready for motherhood, and the third (C) was because her life was threatened by cancer. Each of these women travelled to England to terminate their pregnancy. The women alleged that Irish law, through its restrictive abortion regulation, placed their health and financial well-being at risk, which they claimed

10 Decision of the ECtHR in Brüggemann and Scheuten vs. Germany of 19.05.1976, Application no. 6959/75.
11 Ibid.
12 Judgement of the ECtHR in A.B.C. vs. Ireland of 16.12.2010, Application no. 25579/05.

violated Article 8 ECHR. The Court stated that Article 8 ECHR cannot be interpreted as meaning that pregnancy and its termination belong exclusively to the sphere of a woman's private life. Undoubtedly, the issue of abortion touches the sphere of a woman's private life, however, it goes beyond it, owing to the need to balance this right with other rights protected by the Convention, which does not grant a right to "abortion on request". Although a general European consensus on the legal and scientific definition of the beginning of life cannot be established, there is a clear consensus on the minimum abortion standards necessary to ensure a woman's health and well-being (well-being), which de facto broadens the rationale for the permissibility of abortion to a much wider extent than the health and life of the woman.

With respect to adequate guarantees of the possibility of a lawful abortion, the Court emphasises that the need for such guarantees becomes particularly important in the event of disputes between a pregnant woman and her doctor or between doctors themselves as to whether the preconditions for an abortion have been met in the circumstances of the case. Legislation must ensure that the pregnant woman's legal position is clear as the legal prohibition of abortion, coupled with the risk of criminal liability, may also influence doctors when deciding whether the prerequisites for an abortion have been met. If a legislator authorises an abortion, it is not allowed to shape the legal framework in such a way as to limit the actual possibility of performing an abortion. Moreover, the State is not permitted to prescribe legislation that would block actual access to the performance of an abortion if the State, in acting within the margin of appreciation, regulates the conditions for its performance. States Parties to the Convention are obliged to ensure that a woman's right to a legal abortion is accessible and effectively realised, and failure to comply with this obligation may result in inhuman and degrading treatment,[13] particularly where it may result in serious harm to health or even constitute a threat to life. In its judgement in *R.R. vs. Poland of 26.05.2011*,[14] the Court considered the obstruction of access to abortion by hindering access to examinations and unduly protracting these procedures to prevent the performance of an abortion as sufficient to establish a violation of Article 3 ECHR, according to which 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'.

4. Right to respect for private and family life

The right to life is closely linked to the right to respect for private and family life in terms of making the most important decisions concerning parenting, which is having children. The right to respect for private and family life is guaranteed by Article 8 ECHR:

13 Judgement of the ECHR in Tysiąc vs. Poland of 20.03.2007, Application no. 5410/03.
14 Judgement of the ECtHR in R.R. vs. Poland of 26.05.2011, Application no. 27617/04.

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

This means that any interference by public authorities can only be conducted through a restrictive application of the criteria indicated in Article 8(2) ECHR. It is noteworthy that Article 8 ECHR opens up a group of provisions formulating classical human rights, including respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10) and freedom of assembly and association (Article 11). Their subject matter, formulation, and rules of interpretation are similar and clearly distinguishable from other provisions of the Convention.

The widest and most diverse sphere protected by Article 8 ECHR is private life, which is linked to the idea of the individual's freedom to shape the way he or she lives. However, the injunction to respect private life cannot be confined to the Anglo-American concept of *privacy*. The Court provides broader meaning to the notion of private life by including the social dimension of an individual's functioning; that is, by referring to the development of contact with other people and the outside world. This "external dimension of private life" has long been confirmed in the Court's case law.[15] Nevertheless, an expansive interpretation of private life must not include activities of an essentially public nature under this concept.[16] A broad interpretation of private life links the concept to other spheres protected under Article 8 ECHR. On the one hand, additional protection derives from the place (home, understood as the primary residence or abode) or form (correspondence) of the realisation of private life. On the other hand, it stems from the nature of contact with other people because once the contact takes on a permanent character based on blood ties or legal settlements (as in the case of adoption), the sphere of family life opens up. Therefore, it is neither possible nor necessary to encapsulate the concept of private life in exhaustive definitions.[17] The advantage of such an approach is its flexibility; the scope imprecision of the concept of private life facilitates the development of jurisprudential precedents and an evolutionary approach to the application of law.

The concept of private life includes the right to have a name. Forenames and surnames are basic determinants of the identity (individual, family, and social) of every human being. Simultaneously, it is one of the few elements of identity that is

15 Judgement of the ECtHR in Sidabras and Džiautas vs. Lithuania of 27.07.2004, Application no. 554800/00.

16 Decision of the ECtHR in Friend and Countryside Alliance vs. the United Kingdom of 24.11.2009, Application no. 16072/06 and 27809/08.

17 Judgement of the ECtHR in Niemietz vs. Germany, 16.12.1992, Application no. 13710/88.

fully subject to human control because it is based only on convention and tradition. The Court's jurisprudence takes for granted that the determination of one's forename and surname is an element of private life as well as family life and thus belongs to the sphere protected by Article 8 ECHR.[18] However, simultaneously, the State has a legitimate interest in regulating the use of surnames because public policy considerations require them. Anyone has the right to a family name and cannot be deprived of it without consent. Public interest dictates the regulation of the use of surnames, inter alia, because of the need to ensure registration of the population or protect the means of identifying persons and their links to families bearing a particular name.[19] A first name, unlike a surname, is not stipulated, which means that the determination of the names of newborn children is the right of the parents. Restrictions on this right are permissible to protect the child's interests, particularly when they concern excessively eccentric names or names which merely express a whim.[20] There must always be a fair balance between the rights of parents and the protection of the interests of their child.[21] The State must respect the original transcriptions of names in its official documents. However, a conflict may arise with the protection of the official language because transcription cannot be divorced from the language policy of the State, particularly since the freedom to use one's own language is not one of the freedoms guaranteed by the provisions of the ECHR.[22]

However, an individual's identity is primarily linked to the establishment of ancestry. Therefore, it is the duty of the State to ensure the proper functioning of civil status documentation and the adequacy of this documentation with regard to biological facts. Therefore, the right to know one's own identity is linked to the protection of one's personal interest in knowing and understanding oneself. One element of humanity's essence is anthropological self-awareness, which is the ability to know one's own origin.[23] Self-awareness and knowledge of biological and cultural roots are important elements in the psychophysical development of every human being. Case law related to this issue focuses on three issues. The first relates to the right to information about one's biological origins and is expressed in the belief that people have the right to know their origins and that this right derives from a broad interpretation of the concept of private life,[24] also being part of a broader right to know about one's own person. This is particularly true for the establishment of paternity. The State has an obligation to create procedures that allow the child (those acting on his/her behalf) to establish his/her origin. In the substantive dimension, respect for family life requires that biological and social realities take precedence over legal

18 Judgement of the ECtHR in Burghartz vs. Switzerland of 22.02.1994, Application no. 16213/90.
19 Judgement of the ECHR in Stjerna vs. Finland of 22.11.1994, Application no. 18131/91.
20 Judgement of the ECtHR in Guillot vs. France of 24.10.1996, Application no. 22500/93.
21 Judgement of the ECtHR in Johansson vs. Finland of 6.09.2007, Application no. 10163/02.
22 Decision of the ECtHR in Mentzen vs. Latvia of 7.12.2004, Application no. 71074/01.
23 L. Bosek, Prawo osobiste do poznania własnej tożsamości biologicznej, "Kwartalnik Prawa Prywatnego" 2008, nr 3, s. 948.
24 Judgement of the ECHR in Odièvre vs. France of 13.02.2003 r., Application no. 42326/98.

presumptions.[25] In the procedural dimension, a reasonable balance must be struck between protecting the privacy of the alleged father and the child's right to establish his/her origins.[26] In addition, it should be noted that the problem of the identity of a child conceived as a result of medically assisted procreation should be signalled in a situation where at least one person other than those seeking to conceive the child is involved in the assisted fertilisation procedure. In the context of the way in-vitro procedures are conducted, treating the human embryo in an object-like manner, it is possible to point to a common ideological basis for abortion procedures. Unfortunately, both are characterised by a lack of respect for human life in the earliest phase of human existence.

The second problem concerns a man's right to be certain about the biological origin of his child. Although the law must create the possibility for a man to deny or establish paternity, it may also establish legal presumptions and impose procedural restrictions, inter alia as to time limits.[27] However, procedural obstacles must not go too far and must not block the establishment of the truth when they 'no longer serve anyone',[28] particularly when the establishment of the truth is unanimously demanded by all concerned and – owing to the passage of time – the argument of the protection of the rights of the child has fallen away.[29] This issue has become particularly important with the advent of DNA testing, which was once unavailable. Thus, new relevant evidence emerged in the case. Assuming that there is no need to protect the interests of the child, it can be assumed that depriving the interested party of the possibility of initiating or reopening proceedings to establish paternity violates Article 8 ECHR. However, the Court did not prejudge whether Article 8 ECHR gave interested parties the right to request DNA testing when other persons refused to do so. In its decision in *Darmoń vs. Poland of 17.11.2009,* the Court held that the refusal to initiate proceedings to deny the paternity of a now adult daughter born in wedlock did not violate Article 8 ECHR. Considering the daughter's and mother's refusal to undergo DNA testing, there was a lack of evidence to justify revising the state of the presumption of paternity. Medical advances do not provide sufficient justification for reviewing established filiation relationships. Furthermore, States may adopt various legal solutions to address situations in which the alleged father of a child refuses to comply with a court order to submit tests to establish paternity. The Court considers that a system which does not provide for the possibility of compelling compliance with DNA tests may, in view of the margin of appreciation enjoyed by the State, be compatible with its obligations under Article 8 ECHR, provided that the interests of the person claiming paternity are adequately safeguarded. The impossibility of forcing a person to undergo DNA

25 Judgement of the ECtHR in Kroon and others vs. the Netherlands, 27.10.1994, Application no. 18535/91.
26 Judgement of the ECtHR in Mikulić vs. Croatia, 7.02.2002, Application no. 53176/99.
27 Judgement of the ECtHR in Rasmussen vs. Denmark of 28.11.1984, Application no. 8777/79.
28 Judgement of the ECtHR in Shofman vs. Russia of 24.11.2005, Application no. 74826/01.
29 Judgement of the ECtHR in Paulik vs. Slovakia of 10.10.2006, Application no. 10699/05.

testing is considered proportional if there are alternative ways to establish paternity.[30] However, the principle of proportionality requires that the system at stake must provide the possibility of legal consequences for the alleged father's refusal to submit for DNA testing, and for the prompt adjudication of such cases.[31]

The third issue concerns the child's right to establish the identity of the mother, particularly in systems allowing "anonymous childbirth", where the mother immediately relinquishes her parental rights after giving birth and places the child for adoption, reserving the concealment of her identity. Undoubtedly, there may be a conflict of interests between mother and child, although the institution of "anonymous childbirth" serves the public interest by providing an alternative to abortion. Considering this, the exclusion of access to information on the mother's identity was found to comply with Article 8 ECHR.[32]

Anyone, including incapacitated persons, has a vested interest in obtaining the information necessary to understand their childhood and early development, as well as their biological identity. This information is an important aspect of personal identity. Nevertheless, in its judgement, in *Odièvre vs. France of 13.02.2003*, the Court held that a mother's wish to remain anonymous could not be disregarded. Additionally, the disclosure by the authorities of the biological mother's data without her consent could entail serious risks not only for her but also for the adoptive family that raised the child and the biological father and siblings. They also claim respect for their private and family lives.[33]

Private life is intertwined with family life, which refers to interpersonal relationships. The provision of Article 8(1) ECHR guaranteeing respect for family life is the broadest Convention norm related to the institution of the family. It is complemented by Article 12 ECHR (right to marry and to found a family), complemented by Article 5 of Protocol No. 7 (equality of rights and duties of spouses), and Article 2 of Protocol No. 1, which touches on a specific aspect of parental authority: the right to raise and educate children. However, these provisions are specific, whereas Article 8, inter alia, is treated as a general norm referring to all aspects of family life because of the flexibility of its formulation. Thus, if an area of interpersonal relations is included in the sphere of family life, it enjoys the protection of Article 8 ECHR. Simultaneously, the concept of family life is treated in a dynamic manner. The traditional image of the family as a union of a man and woman based on marriage and having children, as assumed by the authors of the Convention, does not correspond to today's social reality. Hence, the decisive criterion for determining the existence of family life is the factual situation. The existence or nonexistence of family life is primarily a question of fact, depending on the practical existence of close human ties.[34]

30 Judgement of the ECtHR in Mikulić vs. Croatia, 7.02.2002, Application no. 53176/99.
31 Judgement of the ECtHR in Ebru and Tayfun Engin Çolak vs. Turkey of 30.05.2006, Application no. 60176/00.
32 Judgement of the ECtHR in Odièvre vs. France of 13.02.2003, Application no. 42326/98.
33 Ibid.
34 Judgement of the ECtHR in K. and T. vs. Finland of 12.07.2001, Application no. 25702/94.

The appearance of a child always creates a new quality of family life, regardless of the child's status (marital or non-marital), the form of the relationship in which the parents remain, or other family entanglements. It is only necessary for national law to allow all concerned people to lead normal family lives.[35] The essence of family life is invariably the mutual enjoyment of being with one another.[36] Living in a community is a fundamental part of family life for the parent and his/her child, and measures that prevent or impede this constitute interference with the rights protected by Article 8 ECHR. In any such case, a fair balance of competing interests – that of the child and that of his/her parents – is required, however, the best interests of the child may prevail over those of the parents. The breakup of the family is a serious interference, therefore, the measures that would lead to it should have a sufficiently serious and solid basis, determined by the interests of the child. The removal of a child from his or her family environment is an exceptional measure that authorities may use only as a last resort to protect the child from imminent danger.[37] Family life also exists between parents and adopted children[38] or entrusted in adoption proceedings.[39]

Family life implies close personal ties however, does not require family members to live together. Regular contact and a certain degree of dependence are sufficient.[40] This also applies to the bonds between grandparents and grandchildren, which play an important role in family life. However, the relationship between grandparents and grandchildren differs in nature and degree of intimacy from the relationship between parents and children, and therefore, requires weaker protection. The right to respect the family life of grandparents in their relationship with their grandchildren includes, first and foremost, the right to maintain the normal grandparent-grandchild/grandchild bond through mutual contact, even when this usually occurs with the consent of the person exercising parental authority.[41] However, grandparents cannot invoke their right to descendants from their own son who has died, leaving properly preserved genetic material.[42]

The presumption of family life is strongest in relation to relationships with the mother,[43] however, also exists in relation to the father, regardless of whether he is the mother's spouse,[44] whether he has acknowledged his paternity, or whether he lives

35 Judgement of the ECHR in Marckx vs. Belgium of 13.06.1979, Application no. 6833/74.
36 Judgement of the ECtHR in Eriksson vs. Sweden of 22.06.1989, Application no. 11373/85.
37 Judgement of the ECtHR in Barnea and Caldararu vs. Italy of 22.06.2017, Application no. 37931/15.
38 Judgement of the ECtHR in Söderbäck vs. Sweden of 28.10.1998, Application no. 24484/94.
39 Decision of the ECtHR in J. Ł. and M. H.-Ł. vs. Poland of 23.01.2007, Application no. 16240/02.
40 Judgement of the ECtHR in Berrehab vs. the Netherlands of 21.06.1988, Application no. 10730/84.
41 Judgement of the ECtHR in Mitovi vs. the former Yugoslav Republic of Macedonia, 16.04.2015, Application no. 53565/13.
42 Decision of the ECtHR in Petithory Lanzmann vs. France, 12.11.2019, Application no. 23038/19.
43 Judgement of the ECtHR in Kearns vs. France, 10.01.2008, Application no. 35991/04.
44 Judgement of the ECtHR in Johnston vs. Ireland of 18.12.1986, Application no. 9697/82.

with the child.[45] Breaking this presumption requires demonstrating that there has never been an actual relationship between the father and the child, in particular, where the father has never sought to recognise the child and maintain contact with him[46] or that these relationships have irretrievably broken down. Certainly, it is in the best interests of the child to maintain equal contact with both parents, in addition to lawful restrictions justified by his or her interests.[47]

One of the fundamental elements of family life is the exercise of parental rights, which implies the possibility of deciding on fundamental issues concerning the child, such as the place of residence and medical care,[48] extent and nature of the education received, religious direction of upbringing, relations with other persons, including sexual life,[49] and subjecting the child to educational penalties. The scope and imperativeness of parental authority change with the development of the child, however, it always involves interference in the child's life. In this context, it should be emphasised that the child, once he or she has reached a certain level of maturity, should be heard on matters that affect him or her. The detailed design of the hearing procedure, including the possibility of using expert psychologists, is a matter for the national authorities.[50]

The principle of family autonomy delimits a sphere of parental discretion into which public authorities may not encroach, as doing so would violate the autonomy of family life. However, family functioning must be subordinate to prioritising the child's interests. The provision of Article 8 ECHR cannot be interpreted as authorising parents to adopt measures that are detrimental to their child's health or development.[51] Where there is a conflict between the interests of the child and those of the child's parents, consideration of the child's interests is decisive and may justify interference by public authorities in the autonomy of the family, the most drastic manifestation of which is the child's custody. This is confirmed by Article 5 of Protocol No. 7, according to which the rights of parents do not prevent the State from taking the necessary measures to safeguard the welfare of children.

The assumption of custody of a child by public authorities and the placement of the child in a foster family or in a children's home and, possibly, the termination of parental authority, represent the most drastic form of interference with family autonomy, which means that it must always comply with the requirements formulated in Article 8(2) ECHR. Case law has developed various principles of a more specific nature, where the child's interest must be prioritised over both the interests of the parents[52] and

45 Judgement of the ECHR in Berrehab vs. the Netherlands of 21.06.1988, Application no. 10730/84.
46 Decision of the ECtHR in Lebbink vs. the Netherlands of 30.09.2004, Application no. 45582/99.
47 Judgement of the ECtHR in Nowakowski vs. Poland of 10.01.2017, Application no. 32407/13.
48 Judgement of the ECtHR in Nielsen vs. Denmark of 28.11.1988, Application no. 10929/84.
49 Report of the ECHR in X. and Y. vs. the Netherlands of 19.12.1974, Application no. 6573/74.
50 Judgement of the ECtHR in Sommerfeld vs. Germany of 8.07.2003, Application no. 31871/96.
51 Judgement of the ECHR in Johanson vs. Finland of 6.09.2007, Application no. 10163/02.
52 Judgement of the ECHR in Scozzari and Giunta vs. Italy of 13.07.2000, Application no. 3922/98 and 41963/98.

considerations of an administrative or logistical nature.[53] The child's interest must be considered in two ways: on the one hand, it is necessary to ensure that the child grows up in a normal environment,[54] and on the other hand, to ensure that the child maintains contact with his or her natural family, as the severance of this relationship means that the child is detached from his or her roots.[55] Strong emphasis is placed on the principle of subsidiarity, from which it follows that national authorities (courts) are primarily called upon to assess what will serve the interests of the child in the given circumstances, as only they have direct and continuous contact with all parties concerned. The Court's role is not to step in the shoes of the national authorities and replace them in the exercise of their powers, either to regulate the situation of the child or the rights of the child's parents, but only to assess, from the perspective of the Convention, the decisions taken by those authorities within their margin of appreciation.[56] However, simultaneously it is emphasised that in family matters, the margin of appreciation has a wide scope, since views on the permissibility of the intervention of public authorities in the sphere of parental authority vary from country to country, depending on the traditions defining the role of the family and the State in family matters and on the extent of public resources to be used in this sphere.[57]

Deprivation of parental custody can only occur in cases of particularly unworthy behaviour by one or both parents. Custody deprivation cannot be automatic or permanent without the proper consideration of the circumstances and interests involved. Depriving parents of their child's custody constitutes such a drastic interference with their rights that high standards must be set in determining whether such interference is necessary in a democratic society. It is insufficient to establish that national authorities acted in good faith; it is necessary to establish that their assessments and decisions were based on sufficient and relevant arguments.[58] Taking custody is inadmissible if alternative measures of less drastic nature could have been sufficient.[59] Moreover, the taking of custody is intended to be temporary; it should last for a period as short as possible[60] because the passage of time is decisive for the development of the child and to provide him/her with a sense of stability. National authorities must consider children's best interests in this sphere. Thus, as time passes, it may be more beneficial for a child to remain in a new family environment.[61] Therefore, protracted adjudication in custody cases may, owing to often-irreversible consequences, constitute a violation of Article 8 ECHR regarding the child's parents.[62]

53 Judgement of the ECHR in Olsson vs. Sweden of 24.03.1988, Application no. 10465/83.
54 Judgement of the ECHR in K. and T. vs. Finland of 12.07.2001, Application no. 25702/94.
55 Judgement of the ECtHR in Gnahoré vs. France of 19.09.2000, Application no. 40031/98.
56 Judgement of the ECHR in K. and T. vs. Finland of 12.07.2001, Application no. 25702/94.
57 Judgement of the ECHR in Johanson vs. Finland of 6.09.2007, Application no. 10163/02.
58 Judgement of the ECHR in Scozzari and Giunta vs. Italy of 13.07.2000, Application no. 3922/98 and 41963/98.
59 Judgement of the ECHR in K. and T. vs. Finland of 12.07.2001, Application no. 25702/94.
60 Decision of the ECHR in J. Ł. and M. H.-Ł. vs. Poland of 23.01.2007, Application 16240/02.
61 Judgement of the ECHR in Keegan vs. Ireland of 26.05.1994, Application no. 16969/90.
62 Judgement of the ECtHR in H. vs. the United Kingdom of 8.07.1987, Application no. 9580/81.

The ultimate consequence of public authorities taking custody of a child may be that the foster family is provided the option to adopt it. This is permissible if the interests of the child support this, and in determining whether the arguments of the national authorities were of a "sufficient and substantial" nature, account is taken, inter alia, of the conditions in the foster family and the period of time the child has been in it.[63] An important factor in making such a decision is considering the child's opinion if the child has reached a certain degree of maturity and is able to speak with discernment about his or her situation. Although the right to adoption is not among the rights guaranteed by the Convention, the relationship between adopters and adoptees is essentially of the same nature as a family relationship, and is therefore protected under Article 8 ECHR. The only condition for an adoption judgement is considering the welfare of the child. The Court has repeatedly emphasised that adoption means providing a family to a child, not a child, to a family,[64] particularly since the provision of Article 8 ECHR does not create a right to adoption. Therefore, public authorities are under no obligation to allow adoption, even when it is the only way of creating a complete family, while refusal to consent to adoption is not regarded as interference with the sphere protected by Article 8 ECHR. Problems may arise if discriminatory criteria are used in the drafting or application of the laws governing adoption. One such criterion is the treatment of sexual orientation as a factor in the refusal of consent for adoption. In such cases, the violation of Article 14 in conjunction with Article 8 of the ECHR may be considered.[65] In the *Fretté vs. France judgement of 26.02.2002*,[66] the Court had to decide whether the public authorities could refuse a homosexual person permission to adopt a child. The State should ensure that adoptive parents are able to offer the best possible care to their child. The best interests of the child should also be considered. Child specialists, psychiatrists, and psychologists differ in their views on the possible effects of homosexual care. To this end, profound variations in public opinion on this issue must be considered from country to country. The insufficient number of children for adoption also argues against the right to adoption by homosexuals. Considering this, national authorities are entitled to consider that limiting the right to adoption is in the interests of the child regardless of the aspirations of homosexuals wishing to adopt.

This is a condition of public order, in which the origin of the child is properly established. Therefore, completely preventing a man claiming to be the biological father from establishing paternity is simply because another man has already acknowledged that the child violates Article 8 ECHR. In its judgement in *Różański vs. Poland of 18.05.2006*, the Court reaffirmed that when deciding on the need to initiate a procedure allowing for the challenge of a child's previous acknowledgement, national authorities are entitled to exercise their own judgement. However, it stressed that

63 Judgement of the ECHR in Johanson vs. Finland of 6.09.2007, Application no. 10163/02.
64 Judgement of the ECHR in Pini and Bertani and Manera and Atripaldi v. Romania of 22.06.2004, Application no. 78028/01 and 78030/01.
65 Judgement of the ECHR in E. B. vs. France of 22.01.2008, Application no. 43546/02.
66 Judgement of the ECtHR in Fretté vs. France of 26.02.2002, Application no. 36515/97.

the lack of direct access to a procedure by which such a man could seek to confirm his paternity, the absence of guidelines indicating the required manner in which the national authorities exercise their discretion in matters of acknowledgement of paternity, and the superficial manner in which they examine applications seeking to challenge a previous acknowledgement of a child by another man constitute a violation of Article 8 ECHR.[67] However, a refusal to consider a paternity suit does not always amount to a violation of Article 8 ECHR. Such a situation is possible not only when the child has already maintained a family relationship previously established by an acknowledgement or presumption of paternity, but also when the existing social and familial relationship between the child and his legal parents[68] or the courts' assessment that, in specific circumstances, the child's interests militated against agreeing to establish paternity.[69]

Children are also interested in establishing their paternity. In national legal systems, this possibility is limited by various factors. The Court emphasised that a rigid time limit, which implies that only the passage of time is decisive, irrespective of the child's knowledge of the circumstances concerning the father in question, is unacceptable. The chief problem in such cases is the absolute nature of time limits. Indeed, a distinction must be made between situations in which the applicant is objectively unable to find relevant facts concerning the father and others in which the applicant is certain or has reason to believe that a particular person is his father but, for non-legal reasons, chooses not to initiate the relevant proceedings within the statutory time limit. The application of a strict time limit in such cases, regardless of the circumstances relating to the possibility of knowing the facts relating to paternity, even considering the margin of discretion held by the State, goes to the heart of the right to respect for private life.[70]

Similar principles apply when the mother's husband, recognised as the child's father as a result of a legal presumption, cannot bring paternity denial either at all or after the expiry of a legally defined time limit. The Court acknowledged that, in certain circumstances, a time limit for bringing an action for the denial of paternity provides legal certainty in family relations and the interests of the child, and that restrictions on the alleged father's access to court are not incompatible with the provisions of the ECHR.[71] In the *Shofman vs. Russia judgement of 26.11.2005*, the Court held that preventing the denial of paternity to a married man who only became aware of doubts about his paternity one year after the registration of the child, naming him father, was not proportionate to the legitimate objectives of ensuring legal certainty in family relations and protecting the interests of the child.[72] The Court reached a similar conclusion in the case of refusal to reopen proceedings as a result of scientific

67 Judgement of the ECHR in Różański vs. Poland of 18.05.2006, Application no. 55339/00.
68 Judgement of the ECHR in Ahrens vs. Germany of 22.03.2012, Application no. 45071/09.
69 Judgement of the ECtHR in Tóth vs. Hungary of 12.02.2013, Application no. 48494/06.
70 Judgement of the ECtHR in Phinikaridou vs. Cyprus of 20.12.2007, Application no. 23890/02.
71 Judgement of the ECtHR in Mizzi vs. Malta, 12.01.2006, Application no. 26111/02.
72 Judgement of the ECtHR in Shofman vs. Russia of 24.11.2005, Application no. 74826/01.

advances (DNA testing) which would have made it possible to challenge previous findings of paternity. Courts should interpret legislation on this matter by considering scientific progress and its social implications.[73]

Family life, in terms of relationships with children, does not cease with divorce or the actual break-up of the family. Although the breakup of the family always means leaving the child with only one parent, the other parent continues to be the subject of the rights protected by Article 8 ECHR. This means that violations of its provisions can arise both in making a decision on which parent will have permanent custody of the child and in the process of implementing the decision. The principle of subsidiarity and the wide margin of appreciation left to the national authorities in family matters means that the Court only exceptionally intervenes in the merits of the decisions taken by the national authorities, focusing on assessing whether those decisions are arbitrary, that is, discriminatory; whether the procedural guarantees were respected when they were taken; and whether their effective implementation was ensured. The provision of Article 8 ECHR cannot be understood as an obligation to grant one parent exclusive custody or unrestricted access to the child. Here, the Court's jurisprudence imposes a wide range of positive obligations on national authorities, and thus requires them to take measures to protect the rights and interests of both parents.[74]

The decision to entrust permanent custody of a child is made by national authorities. The Court is not called upon to review its merits, although it reserves the right to assess whether the national decision strikes a fair balance between the divergent interests at stake[75] – the interests of the child, which are always treated as a priority, and the interests of both parents. In practice, the Court limits its examination to determining whether the national decision is not based on the application of criteria of an inadmissible nature, above all the criterion of religion[76] or the criterion of sexual orientation,[77] the extent to which it is ensured that the other parent has the possibility of maintaining contact with the child and thus of continuing family life. The total exclusion of the right of access may imply arbitrariness of the decision as a result of a lack of fair balance, unless it is justified by reference to the specific circumstances of the case; whether the procedural rights of both parents have been safeguarded, which requires examining, in particular, whether the decision was not made based on a superficial assessment of evidence or insufficient evidence.[78]

73 Judgement of the ECtHR in Tavli vs. Turkey of 9.11.2006, Application no. 11449/02.
74 Judgement of the ECHR in Zawadka vs. Poland of 23.06.2005, Application no. 48542/99.
75 Judgement of the ECtHR in Nuutinen vs. Finland of 27.06.2000, Application no. 32842/96.
76 Judgement of the ECtHR in Hoffmann vs. Austria of 23.06.1993, Application no. 12875/87.
77 Judgement of the ECtHR in Salgueiro da Silva Mouta vs. Portugal of 21.12.1999, Application no. 33290/96.
78 Judgement of the ECHR in Elsholz vs. Germany of 13.07.2000, Application no. 25735/94.

5. Summary

In the declaratory layer, ECHR bodies have not taken an unequivocal position on the right to life of the conceived child; however, the resolution of incoming complaints indicates that they have ruled out the possibility of treating it in a subjective manner and guaranteeing the legal protection of life as a human being. Crucial to avoid taking an unequivocal position appears to be the awareness of significant divergences in the reflection on the question of the beginning of human life and the circumstance that there is no consensus at the European level on the nature and status of the embryo and foetus, and on the scientific and legal definition of the beginning of human life. It follows from the Court's jurisprudence that the embryo and the foetus are not "persons" and therefore cannot enjoy the full protection of the right to life guaranteed by Article 2 ECHR.

The Court has stressed that this issue is one of sensitivity and the subject of fierce debate. States Parties to the ECHR have yet to develop a universally accepted position. It appears that in such contentious issues, which depend on the system of professed values and the specific sensitivities of the societies of individual States, such a consensus is almost impossible. Consequently, it is not possible to formulate a universal standard for the right to life of the unborn child. Considering this, the Court decided that the question of when the right to life begins lies within the margin of appreciation that individual States should enjoy, regardless of the evolutionary interpretation of the Convention.[79] The margin of appreciation doctrine involves the Court examining in a particular case how the issues in question have been regulated by various States Parties to the ECHR to grant them an appropriate margin of appreciation based on these observations. The more the regulations in question differ from State to State, the wider is the margin of appreciation.[80] However, Judge G. Ress, hearing the case of *Vo vs. France*, noted that there could be no margin of appreciation for the legal protection of the life of the conceived child.[81] However, the determination of the point at which the protection of life order begins to operate is left to the discretion of individual States, which may adopt different or even completely opposite solutions. Therefore, clarification regarding the beginning of life must be sought from the legal systems of each State Party in the ECHR. This means that similar complaints against different States will result in diametrically different judgements; consequently, the conceived child will be protected in Ireland or Poland, but not in Great Britain or France.[82]

Incidentally, it is noteworthy that most European countries allow abortion on request or for social reasons. Of the 48 European countries, only 6 do not allow

79 Łącki, and Wróblewski, Status nasciturusa w orzecznictwie organów Konwencji o ochronie praw człowieka i podstawowych wolności, "Państwo i Prawo" 2016, nr 3, punkt 3.
80 A. Wiśniewski, Koncepcja marginesu oceny w orzecznictwie Europejskiego Trybunału Praw Człowieka, Gdańsk 2008, p. 101.
81 Judgement of the ECtHR in Vo vs. France of 8 July 2004, Application no. 53924/00.
82 Kapelańska, 2011, p. 173.

abortion on request or for social reasons, whereas of the 27 European Union countries, abortion on request and for social reasons is illegal in only 2 countries: Poland and Malta.[83] This means that access to abortion is extremely broad and that the laws of the individual States Parties to the ECHR can be considered liberal.

Although there is no consensus among States Parties to the ECHR on the intensity of the protection of the right to life of the conceived child, most States recognise the need to ensure, at least to a minimum extent, the protection resulting from the dignity inherent in every human being. The need to respect every human being and his or her inherent dignity led to the enactment of the Convention for the Protection of Human Rights and Dignity of the Human Being in the Context of the Application of Biology and Medicine (European Bioethics Convention, EKB) on 4 April 1997. Unlike the ECHR, the EKB distinguishes between a "person" and a "human being", which includes the conceived child within its scope. According to Article 1, the purpose of the ECHR is to protect the dignity and identity of the human being and to guarantee to every person, without discrimination, respect for his or her integrity and other fundamental rights and freedoms vis-à-vis the applications of biology and medicine. In the context of this study, it is important to highlight the close relationship between the ECHR and EHRC. According to Article 29, the Court has the competence to interpret its provisions. Thus, the provisions of the ECHR influence the development of the Court's line of jurisprudence, including the right to life.

There is a civilisational dimension of attitude towards human beings and their right to life. Considering the values professed by Christian Europe, protection of life is prioritised considering the humanistic value of Europe, the right to choose. It should be emphasised that the above dispute is not simply a philosophical or legal discourse. It is a real political problem recurring in public spaces of varying intensities and in various forms. This dispute over values has a fundamental dimension not only because it concerns fundamental human rights, but also because it is a dispute over the nature of civilisation, and its final result will determine the shape of European civilisation.[84]

83 European Abortion Law: A Comparative Overview, 3.03.2021, [Online]. Available at: https://reproductiverights.org/european-abortion-law-comparative-overview-0/ (Accessed: 4 December 2021).

84 Gajda, The right to the protection of the unborn child in the context of the Judgement of the Polish Constitutional Tribunal of October 22, 2020 in the case K 1/20, "Politeja" 2021, no 2, s. 237.

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Judgment of the ECHR in Zawadka vs. Poland of 23.06.2005, Application no. 48542/99.
Judgment of the ECtHR in A.B.C. vs. Ireland of 16.12.2010, Application no. 25579/05.
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