| Chapter 4 |

Right to Life and Abolition of Death Penalty

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ABSTRACT

This chapter debates the right to life versus the abolition of the death penalty in light of the European Convention of Human Rights (ECHR) and other international legal instruments. It places the right to life within the broader spectrum of fundamental human rights, weighing against a criminal justice response-capital punishment-which, worldwide, remains one of the most polemical issues. Historically, the universally practiced state-sanctioned execution was a part of human history until the death penalty was polarised in the last several centuries regarding human rights issues intermingled with ethical, philosophical, and social issues. This chapter now undertakes an in-depth review of Article 2 of the ECHR, considering what bearing it may have on state-sanctioned killings, and outlines the development of the right to life under international law. It further compares the stance of the ECHR with other key human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), underlining common approaches towards protection of life and the abolitionist trend. This chapter gives an overview of how the case law of the European Court of Human Rights (ECtHR) has set standards for an evolving understanding of human dignity through landmark decisions in cases involving the death penalty. It further focuses on the case law of the ECtHR concerning 16 Central and Eastern European countries and evaluates the impact of those judgments on national legal reforms in light of European standards. The chapter therefore concludes by integrating these findings, underlining the importance of the right to life and the leading role of the ECtHR in the universal move towards the abolition of capital punishment.

KEYWORDS

Right to Life, Death Penalty, Abolition, European Convention on Human Rights, European Court of Human Rights, Capital Punishment

1. Introduction

It is an admitted fact that the right to life is a quintessential attribute of fundamental human rights as represented in various international conventions, treaties, and constitutions; however, it does face some formidable challenges when weighed against capital punishment, which, in fact, is an act in contravention on the part of the state. The abolition or upholding of capital punishment is not confined to a legal debate

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between human rights proponents and agencies but is a very ethical, philosophical, and social problem in nature across disciplines such as politics, sociology, theology, and philosophy.[1] But it was not always the case, while state mandated executions existed throughout human history, it has only been several hundred years that death penalty is considered as a problematic social phenomenon.[2]

Capital punishment, state-authorised killing, or so it is normally referred to, has been a very controversial debate all over the world. This calls for its abolition on the wider canvas of human rights, particularly the right not to be subjected to inhuman or degrading treatment and the right to freedom from cruel and unusual punishments, under the Universal Declaration of Human Rights[3] (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).[4] These rights underline the dignity in every human being and challenge the moral and legal justifications put forward to support death penalty.[5]

Discussing right to life, which has also been described and in fact is "the supreme right" or "the foundation and cornerstone of all other rights"[6] cannot be done fully without also discussing the permissibility of the death penalty and abolitionist position. The testimony of the abolitionist position is that no state should have, as concomitant with the basic ethos classically expressed, the right to life and that no person should suffer the ultimate and irretrievable sanction of death. Nowadays, there are softer terms used, such as "termination" or "liquidation", to mask the reality of state-approved killing. This kind of change indicates the evolution against governments and policymakers trying to redefine what the general populace is supposed to believe; a thinly veiled attempt to distort the moral values of such an act with regularity. Despite each of these rebranding efforts, the semantic core has remained the same: the death penalty is the intentional deprivation of life by the state. This view is also further strengthened by the global trend wherein more than two-thirds of countries in the world, including all member states of Council of Europe, have relinquished the death penalty in either law or practice-acting like a passing signal towards making the right to life the most important one.

Basically, the abolition of the death penalty does not get regarded as an independent issue; instead, it pertains to the wider debate regarding protection of human rights and the sanctity of life. The issue must be viewed in a multi-disciplinary manner, encompassing not only legal experts but also politicians, sociologists, theologians, and the general public. Therefore, analysis throughout this chapter will also be holistic.

This chapter attempts to provide a profile of the right to life under the abolitionist framework of the death penalty in accordance with the European Convention on

1 McCloskey, 2012, pp. 485–508.
2 Beccaria, 1963; Bessler, 2014.
3 United Nations, 1948.
4 International Covenant on Civil and Political Rights, 1966.
5 Amnesty International, 2022. p. 6.
6 Schabas, 2002, pp. 8–9.

Human Rights (ECHR). It then puts into context the purview of Article 2 of the ECHR in relation to the right to life and its addressing of state-sanctioned killing, such as the death penalty. A brief history will then follow the development of this right, pointing to some identifying features in the development of international law, together with the trend towards global abolition.

It also compares the protection offered by the ECHR to that deriving from other international and regional human rights instruments, namely the ICCPR and American Convention on Human Rights (ACHR), by underlining similarities in respective approaches toward the right to life and, conversely, the death penalty. It will closely scrutinise the case law developed through the ECtHR, showing how lead cases have set legal parameters to the death penalty and underlining the contribution of the Court to the development of human rights protection.

Afterwards, the chapter will proceed with the case law analysis of the ECtHR concerning the 16 Central and Eastern European countries, assessing the impact of those judgments on national legal reforms and conformance with European standards. At the end of the chapter, the summary will present those observations in an integrated way in order to show the importance of the right to life and the central role of the ECtHR, including, with respect to the abolition of the death penalty.

2. Historical Overview of the Development of Right to life/Abolition of Death Penalty

No discourse on the right to life can be fully undertaken without a detailed scrutiny of the death penalty. Therefore, throughout this chapter, this important right will be analysed in conjunction with the issue of the abolition of the death penalty. The analysis of this issue will begin with a historical overview of the right itself.

The sanctity of human life has always been one of the basic values of laws, tracing back to centuries. This is deeply imbued in the legal tradition and reflects the moral and ethical foundational basis on which the modern legal system has been founded. This idea found expression in the writings of one of the most authoritative English jurists, Sir William Blackstone, who, writing in the seventeenth century, characterised life as 'the immediate gift of God, a right inherent by nature in every individual'.[7] This position put a value on life as such and epitomised it in a way that life was not just a legal right, but a natural right, a divine right which all human beings possess by birth.

Blackstone made it quite clear that this right to life was so basic that even such usually odious things as homicide could be held not unlawful when, for example, done in self-defense.[8] This exception highlights how the law takes the protection of life seriously by even allowing one to take another's life when in self-defense. The fact

7 Blackstone, 1765, p. 125.
8 Blackstone, 1769, p. 180.

that self-defense is recognised as a valid exception underlines the balance the Law seeks between protection of individual rights and recognition of realistic complexities in human interactions where life may be in danger.

Not surprisingly, due to its importance, protection of the right to life has found expression in constitutions and international treaties throughout the world. Logical continuation of this recognition was to start discussions on the abolition of death penalty.[9]

2.1. The Emergence of Abolitionist Movement

Throughout history, capital punishment functioned as a principal tool of social control, often carried out through brutal public executions aimed at deterring crime and reinforcing state authority.[10] Methods of execution often showed brutally creative displays, including hanging, dismemberment, and burning at the stake in colonial America; extreme tortures such as being "broken on the wheel" or "boiled to death" in Europe;[11] and the infamous "death by a thousand cuts" in China.[12] These practices reflected the generally held belief that maximum terror would keep social order.

The late 18th century Enlightenment saw the death penalty's morality and utility finally turned against it, and the hallmark work of the penal abolition movement became Cesare Beccaria's On Crimes and Punishments (1764). Beccaria's thesis was twofold: state killing served no useful purpose whatsoever as a deterrent to crime, and it conflicted with the penal values of the enlightened age.[13]

Beccaria's influence, along with broader humanitarian currents, prompted early reforms across Europe and the Americas. States such as Tuscany, Austria, and parts of the United States restricted or abolished the death penalty, especially for non-homicidal crimes.[14] By the mid-19th century, the trend towards limiting capital punishment gained traction, though reversals were common, especially under authoritarian regimes such as Nazi Germany and Fascist Italy, where executions were used for political repression.[15] In many countries, the end of these regimes marked a return to their commitment to abolition, based on the incompatibility of the death penalty with democratic and human rights values. As Foucault has argued, 'It is therefore universally admitted that, by its very rigour it contradicts the state of rigour'.[16]

In the post-war period, abolitionist momentum resumed, with democratic transitions emphasising human dignity and the inviolability of life. Legal scholars like Marc Ancel advocated for gradualism in abolition, allowing societies to transition

9 Wheeler, 2018, p. 356.
10 Hood and Hoyle, 2008, pp. 11–13.
11 Evans, 1996.
12 Scott, 1950.
13 Beccaria, 1764, pp. 45–47.
14 Hood and Hoyle, 2008, pp. 11–13.
15 Ibid.
16 Foucault, 1977, p. 89.

through limiting capital crimes, commutation, and finally, legal prohibition.[17] Despite setbacks, the normative landscape began to shift decisively in the late 20th century, as international human rights law increasingly viewed the death penalty as incompatible with the dignity of the person.

2.2. Death Penalty and Human Rights Perspective

The contemporary abolitionist movement gained strength following World War II, fueled by the horrors of totalitarian regimes and the new focus on safeguarding the dignity of mankind. Even though, talks on the abolition of the death penalty dates way back, the international movement to abolish the death penalty first gained momentum in 1948 following the introduction of the Universal Declaration of Human Rights ("Universal Declaration"), announcing the right to life and the right not to suffer cruel and inhuman punishment.[18]

This new wave of abolition was fed by several political movements and the growth of regard for protection of the inherent dignity of all human beings. The irreversible character of capital punishment and the vulnerability to judicial mistakes have been the main focus of concern. Investigative reporting, especially in the United States, uncovered erroneous convictions – even where all appeals had been used up. DNA evidence later exonerated defendants who were given death sentences, revealing systematic deficiencies within the system.[19]

For the abolitionists, even the slightest chance of putting to death an innocent individual is unacceptable. Abolitionists contend no system of justice is infallible, and the right to life should never lie at the mercy of error, political expediency, or public sentiment.[20] The view is well put by the former European Union Commissioner for External Relations, Chris Patten, when he described capital punishment as inherently "inhumane, unnecessary, and irreversible".[21]

Abolitionists also reject any of the historical justification for capital punishment such as retribution, deterrence. Retribution is seen to be morally outmoded, and the empirical record on deterrence is inconclusive. Even conceding deterrence to be demonstrable, the moral cost – above all, the risk of killing the innocent – renders it indefensible.[22] These risks are higher in times of political tension or public outrage, when the authorities can use shortcuts to the justice system. In Japan, for example, nearly half of the death row inmates were convicted on the basis of interrogations without the presence of lawyers, causing extensive concerns for fairness.[23]

The abolitionist movement therefore has a very strong human rights and humane approach towards the protection of human dignity. It renounces the application of the

17 Morris, 1965, p. 72.
18 Hood and Hoyle, 2008, pp. 18–19.
19 Gross, et al., 2005, pp. 524–526.
20 Patten, 2001, p. 4.
21 Ibid.
22 Hood and Hoyle, 2008, pp. 18–19.
23 Yasuda, 2004, pp. 215–220.

death penalty as an applicable tool of justice because it is basically faulty, susceptible to mistake, and acts against the spirit of modern democratic societies. By re-framing capital punishment from a criminal policy issue to a basic human rights issue, the abolitionist camp attempts to safeguard individuals against the ultimate violation of state power – the taking of life.

2.3. Abolition of Death Penalty in Central and Eastern Europe

Public opposition to the death penalty in Europe is strong, every country – except Belarus – has abolished the punishment, and there are no serious calls for the restoration of the death penalty. The abolition is not a problematic issue. Nevertheless, this was not always a case and since this chapter aims to provide a historical perspective on the death penalty in conjunction with the right to life, and the main focus is on Central and Eastern European countries, the analysis would be incomplete without examining specific countries.

2.3.1. Central Europe

Abolition of the death penalty in Eastern Europe, signifies a radical turn toward human rights and adherence to democratic principles. The former German Democratic Republic initiated this process when it had abolished the death penalty back in 1987 as one more expression of its commitment to human rights within the framework of general efforts for maintaining the legitimacy of the regime.[24] This decision constituted a break with the long-established consensus regarding capital punishment as an instrument in defense of socialism and to curb violent crime, and also for coming to terms with the Nazi war crimes legacy.[25] The East German decision was among the important early steps in the wave of abolition that crossed the region and generally coincided with the dissolution of Soviet influence and the rise of democratic governance.

Democracy arriving to many of the states of the former Soviet bloc catalysed a wider rejection of capital punishment. Indeed, countries like Romania, the Czech and Slovak Republics, hastened abolition of the death penalty in the early 1990s, often embedding this decision in their new constitutions. For instance, Romania pronounced the death penalty unconstitutional in October 1990, citing its conflict with the fundamental rights of life and human dignity, while the Waiver by the Czech and Slovak Republics happened a bit later in 1990.[26] Another influential factor which furthered this trend was those countries striving to join the Council of Europe, an implication of what is adhered to the standards on human rights, including, among others, abolition of the death penalty.[27]

24 Evans, 1996.
25 Hood and Hoyle, 2008, p. 50.
26 Ibid.
27 Council of Europe 1999. *The Death Penalty: Abolition in Europe*. Strasbourg: Council of Europe Publishing. Available at: https://book.coe.int/en/human-rights-and-democracy/1685-the-death-penalty-abolition-in-europe.html.

The breakup of Yugoslavia in 1991 further complicated matters in the Balkans, but new independent states such as Slovenia, Croatia, and Macedonia[28] quickly took steps toward abolition of capital punishment. Slovenia incorporated abolition into its constitution, declaring human life inviolable, and the streams of Croatia and Macedonia followed suit to similar effect. Even so, in Bosnia-Herzegovina the death penalty had been retained and then abolished in 1997 when the Human Rights Chamber of the Human Rights Commission found it could not be imposed into peacetime crimes.[29] The state of Serbia and Montenegro, the last remnants of the former Yugoslavian republic, finally abolished the death penalty in the early 2000s; this acts in a broader sense as an indicator of the region's move toward compliance with human rights law and alignment with European norms. In Hungary, the Constitutional Court, after hearing the proposal from the League Against Capital Punishment, declared the death penalty unconstitutional in October 1990 on the main ground that it violated the fundamental right to life and human dignity.[30]

The abolition of the death penalty in Bulgaria and Albania was also closely related to their hopes for European integration. It had been preceded by an execution moratorium starting in 1990. Full abolition occurred in 1998. The abolition of the death penalty in Albania was also one of the requirements for membership into the Council of Europe, with the last execution occurring in 1995. In 2007, it ratified Protocol No. 13 concerning the complete abolition of capital punishment in all circumstances.[31] The movement of Poland to abolition was slower compared to that of some of its Eastern European neighbours. In the hands of communist rule, the death penalty was applied not only for crimes, but also as a political means of obliterating opposition. The public support for abolition started to grow gradually in the 1970s, impelled partly by the Solidarity and the intellectuals' valuable contribution of influential organisations in some journals. Moreover, in 1988, Poland put the execution into practice under a moratorium in use, and in 1998, completely abolished the death penalty with its newly passing penal code conditions.[32] Since that time, however, unlike many of its Eastern European peers, Poland's position on the death penalty has remained susceptible to political change.

In the early 2000s, there were political attempts to reinstate the death penalty for certain "vicious" crimes; these were finally rejected due to pressure from the European Union and the Council of Europe. In other words, since the late 20th and early 21st century, abolition of the death penalty in Eastern Europe was deeply interrelated with its transition from the authoritarian regime to democracy and a certain desire to align itself with European standards in the field of human rights. Different as the path was from country to country, some states being quicker than others, the broader

28 Now North Macedonia.
29 Hood and Hoyle, 2008, p.51.
30 Ibid. In 1990 Hungary became a member of the Council of Europe and ratified Protocol No. 6 in 1992.
31 Hood and Hoyle, 2008, p. 52.
32 Fijalkowski, 2005, pp.147–168.

trend reflected a commitment to human dignity and protection of life – a key principle enshrined in international human rights law. Additionally, separate mention shall be made to the states of former Soviet Union, that shall be discussed in next section.

2.3.2. Former Soviet Union

The history of capital punishment in the former Soviet Union was marked by significant turbulence and inconsistency. The death penalty was abolished and reinstated multiple times throughout the 20th century. It was abolished in 1917–18, 1920–21, and again for peacetime offenses between 1947 and 1950, but each time was reintroduced, primarily due to political motives. Lenin justified the reintroduction of the death penalty as a necessary tool for defending the revolution against "class enemies," including those involved in counter-revolutionary activities, terrorist acts, or members of organisations that opposed the regime. This formula was broad and often used to classify common criminals and political dissidents as "enemies of the people," particularly during Stalin's reign when the death penalty became a tool of widespread repression.[33]

In the post-Soviet era, capital punishment was gradually abolished across most of the newly independent republics, driven by internal reforms and external pressure, particularly from the Council of Europe. In Russia, capital punishment was effectively rendered obsolete in 1999 when the Constitutional Court ruled that the death penalty could only be imposed where citizens had the right to a jury trial, a right that was not universally available at the time. This ruling, in line with Article 20(2) of the Russian Constitution, laid the groundwork for a moratorium on executions. In June 1999, the President commuted all death sentences to life imprisonment or 25-year prison terms. By 2006, the Russian Parliament extended the moratorium to 2010, delaying the introduction of juries in Chechnya.[34]

By 2003, eight of the fourteen former Soviet republics had abolished capital punishment for all crimes, with Latvia restricting its use to wartime offenses in 1999.[35] The drive for abolition in the European parts of the former Soviet Union was largely motivated by the desire to join the Council of Europe and, in some cases, the European Union. The new democratic governments sought to distance themselves from the totalitarian past, which had used capital punishment as a tool of political repression.[36]

In Georgia, the abolition of the death penalty was closely tied to the country's desire to align with European norms and values following its independence from the Soviet Union. Georgia had initially retained the death penalty, with executions continuing until the mid-1990s. However, in 1997, President Eduard Shevardnadze, under pressure from international human rights organisations and domestic advocacy

33 van den Berg, 1983, pp.154–174.
34 Hood and Hoyle, 2015, pp. 213–214.
35 Moldova 1995; Georgia 1997; Azerbaijan, Lithuania, Estonia 1998; Turkmenistan, Ukraine 1999; Armenia 2003.
36 Hood and Hoyle, 2008, p. 57.

groups, commuted all death sentences and formally abolished the death penalty. This move was influenced by Georgia's aspirations to join the Council of Europe, which it did in 1999. The Georgian Parliament later ratified Protocol No. 6 of the ECHR, abolishing the death penalty in peacetime, and Protocol No. 13, which abolished it in all circumstances, including wartime. The Georgian Orthodox Church, NGOs, and the media played significant roles in advocating for the abolition of the death penalty, framing it as a necessary step in Georgia's transition to democracy.[37]

Similarly, Armenia's path to abolition was influenced by its desire to align with European institutions. After gaining independence, Armenia maintained the death penalty, but a moratorium was introduced in 1991, and the last execution was carried out in that year. In 2001, Armenia joined the Council of Europe, agreeing to abolish the death penalty as part of its membership obligations. In 2003, Armenia officially abolished the death penalty when it ratified Protocol No. 6 of the ECHR. The Armenian Constitutional Court had previously ruled that the death penalty violated the right to life, paving the way for legislative reforms. By 2006, Armenia had ratified Protocol No. 13, ensuring the abolition of the death penalty for all crimes.[38]

Moldova led the way in Eastern Europe, abolishing the death penalty in 1995 as part of its accession to the Council of Europe. This abolition was formally written into the Moldovan Constitution in 2005. Estonia followed suit, ceasing executions in 1991, and officially abolishing the death penalty in 1998, five years after its accession to the Council of Europe. Latvia, which had continued executions until 1996, abolished the death penalty for ordinary crimes in 1999.[39]

Lithuania faced a more complex situation. After its accession to the Council of Europe in 1993, Lithuanian parliamentarians referred the issue to the Constitutional Court, which declared the death penalty unconstitutional in 1998. Despite public concerns over rising crime rates, particularly a spike in murders between 1990 and 1996, Lithuania abolished the death penalty that same year, reflecting its commitment to joining the European Union and upholding human rights standards. Parliamentarians acknowledged that public support for the death penalty was contingent on the security situation, and once stability was achieved, the abolition proceeded without significant opposition.[40]

Ukraine's path to abolition was slower compared to some of its Eastern European neighbours. Despite agreeing to a moratorium on executions in 1995 when it joined the Council of Europe, executions continued until 1997. Between 1996 and the imposition of the moratorium in 1997, 180 people were executed. The Ukrainian Supreme Court declared the death penalty unconstitutional in 1999, citing its inconsistency with Articles 27 and 28 of the Ukrainian Constitution. By February 2000, the

37 Svanidze, 2004, pp. 273–308.
38 Amnesty International, 2001.
39 Hood and Hoyle, 2008, p. 55.
40 Dobryninas, 2004, pp. 233–252.

Ukrainian Parliament had removed all provisions related to the death penalty from its legal codes.[41]

In Central Asia, the abolition of the death penalty was gradual, and largely driven by external pressure from international human rights organisations. Azerbaijan abolished the death penalty in 1998, following a moratorium established in 1993.[42]

Belarus is the last country in the former Soviet Union to retain the death penalty. In Belarus, the death penalty remains legal and is still carried out, albeit with a reduced number of offenses punishable by death. Public opinion in Belarus remains a significant barrier to abolition, despite the country's ongoing dialogue with international human rights organisations. The President of Belarus has emphasised that the death penalty is applied only in exceptional cases of aggravated murder, but abolition remains elusive.[43]

By the end of 2007, twenty-one states in Eastern Europe and the former Soviet Union had ratified Protocol No. 6 of the ECHR, and most had also ratified Protocol No. 13, signalling their commitment to the abolition of the death penalty. Belarus remains the last country in Europe to continue executions. The abolition of the death penalty in these countries reflect a broader trend towards human rights reform, driven by the desire for integration into European and international institutions.

2.4. Summary

This chapter traced the historical development of the right to life within the context of the abolition of the death penalty. It began with the recognition of the right to life as a basic natural right deeply rooted in legal traditions. An abolitionist movement emerged at the end of the 18th century, built on Enlightenment thinkers such as Cesare Beccaria, who used Enlightenment ideas to argue that the death penalty was both ineffective and cruel. Although early reforms in Europe and the United States managed to restrict capital punishment to grave crimes, its resurgence under most totalitarian regimes in the 20th century significantly slowed progress.

The chapter further highlighted how the rise of international human rights law immediately after the Second World War, particularly through precursors like the Universal Declaration, accelerated the global movement toward abolition. Most Eastern European, post-Soviet states, countries gradually abolished the death penalty as part of their transitions toward democracy, distancing themselves from Soviet practices and aligning with European human rights standards. The chapter concluded by noting the resistance from certain countries, such as Belarus, the last European country to carry out executions, although the broader trend across the region favored abolition.

41 Holovatiy, 1999, pp. 139–151.
42 Amnesty International, 2001.
43 Vasilevich and Sarkisova, 2006, pp. 9–17.

3. Interpreting the Right to Life Through the Lens of the European Convention on Human Rights

3.1. Council of Europe Framework

As mentioned, the international movement to abolish the death penalty gained momentum in 1948 after the introduction of the Universal Declaration, which had made capital punishment an exception to Article 3's injunction that 'every human being has an inherent right to life'.[44] At that time, this was a significant step forward. However, the policy would have lacked sufficient political impact if it had not been for the additional support provided by the Council of Europe, which gave the legitimacy to the abolitionist movement by framing the execution of citizens, whatever their crimes, as a fundamental violation of their inherent dignity and right to life, as indicated in the European Convention of Human Rights, adopted in 1950. The ECHR established one of the provisions left out of the Universal Declaration, namely that States may derogate from the right to life when imposing the death penalty following a conviction of a crime for which capital punishment is a permissible sentence.[45]

Starting in the late 1970s, the Parliamentary Assembly of the Council of Europe began actively to promote the abolition of capital punishment. The advocate role in that movement, was played by Dr Christian Broda, the Austrian Minister of Justice, who framed the death penalty as "inhuman" and incompatible with European values.[46] After these debates, the Parliamentary Assembly officially requested that the Committee of Ministers bring into consideration the abolition of the death penalty, and such a proposal received very strong support from the represented member states.

It was the culmination of these efforts that, in December 1982, Protocol No. 6 to the European Convention on Human Rights was adopted, opened for signature on 28 April 1983. By Article 1 of Protocol No. 6, the death penalty was abolished in peacetime, reflecting a consensus among European nations that capital punishment was incompatible with the values of human dignity and respect for life that underpin the Convention.[47]

Still, one important exception was preserved in Article 2 of the protocol, which permits the death penalty under state laws for times of war or imminent threat of war. This was to take cognisance of the complex security concerns of states in extreme situations, while making substantial strides toward the goal of abolition.[48] Nevertheless, the adoption of Protocol No. 6 was an important milestone in the movement for abolition of capital punishment to set a framework in place for its abolition in Europe.

It was further considered a milestone in the struggle for the absolute abolition of the death penalty in Europe when Protocol No. 13 to the ECHR was adopted in

44 United Nations, 1948.
45 Wheeler, 2018, p. 357.
46 Kruger, 1999, pp. 69–78.
47 Wheeler, 2018, p. 357.
48 Schabas, 2004, pp. 36–63, at p. 43.

Vilnius, Lithuania, on 3 May 2002. In contrast, while the previous protocols allowed for abolition only in peacetime, Protocol No. 13 went further to extend the abolition to all circumstances, including acts committed in times of war or during an imminent threat of war.[49] This was an important step to show that the Council of Europe was committed to the sanctity of life under any condition, and it reiterated the idea of the right to life as an inviolable and fundamental value in democratic societies.

The Committee of Ministers adopted Protocol No. 13 against the death penalty in international law with unmistakable political intent. The preamble to the protocol confirms this commitment because it declared that the member states were 'convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings.' This statement marked a belief in the view that the ultimate punishment, in the form of capital punishment, could not be reconciled with the promotion of human dignity and the observance of human rights. By adopting Protocol No. 13, the member states of the Council of Europe once and for all drew a line in the sand against the death penalty and closed all the remaining ways providing for the use of this punishment legally.

The Protocol came into effect on 1 July 2003, less than one year after its adoption. So far, Protocol No. 13 of the ECHR – abolishing the death penalty completely – has been signed by 44 countries; Armenia and Azerbaijan are signatories. Russia, before a signatory, in 2022 stopped being a member of the Council of Europe; thus, it cannot henceforth have any say on Protocol No. 13 under the ECHR framework.[50]

The adoption and extensive ratification of Protocol No. 13 are more than just a legal watershed; they represent a moral and ethical consensus of European states. Consequently, the protocol embodies a view which regards the right to life as an absolute value and holds that state-sanctioned killing, whatever the circumstances, can never be contained within the principles of respect for human dignity or within the scale of values open to contemporary democratic societies. It must in particular be regarded as significant development given the historical period in which this occurred, following centuries during which capital punishment had taken its place as an instrument of social discipline and of state authority. What is more, the adoption of Protocol No. 13 reinforces the function of international human rights law in shaping domestic policies and legal norms.

3.2. International Legal Framework on the Right to Life and Abolition of the Death Penalty

Besides Council of Europe and its convention with additional protocols, for sake of full analysis, it is important to briefly mention other international legal instruments relating to this right. The global movement for the abolition of the death penalty received great impetus with the adoption of the Universal Declaration. Being a

49 Wheeler, 2018, p. 357.
50 Council of Europe, 2023.

monumental instrument, it laid emphasis on the dignity and inalienable rights of the members of the human family, thus being a base instrument for subsequent human rights instruments.[51] Article 3 of the UDHR categorically declares, 'Everyone has the right to life, liberty, and security of person.' Although the death penalty had not been prohibited in the final draft of the UDHR, its drafting history readily shows that one of the options considered had been the abolition of capital punishment. For instance, it was the Soviet Union that proposed the peacetime abolition of the death penalty be included in the Draft.[52] One can appreciate here that from its very beginning, the debate on the death penalty and right to life were understood. Even though the proposal was rejected, it is evident that the protection of the right to life was associated with the abolition of the death penalty.

The next important step in defining the content of the right to life and its relationship with the death penalty was taken in 1966 when the International Covenant on Civil and Political Rights was adopted; it came into force in 1976. Article 6, ICCPR, is of special importance because this article has established the inherent right to life and clearly circumscribed the applicability of the death penalty.[53] It provides that the death penalty shall be applicable only for "the most serious crimes" and forbids its application to individuals below the age of 18 years and pregnant women. Furthermore, Article 6(6) allows the abolition of the death penalty, stating that 'nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant'.[54] This was overtly meant to be an indication from the international community that the real intention was the universal abolition of the death penalty.

In 1989, the Second Optional Protocol to the ICCPR came into force. By this protocol, the death penalty was abolished outright, and state parties committing to its ratification undertake to not carry out executions and to take all necessary measures to abolish the death penalty within their jurisdiction.[55] To compare, this protocol, unlike Protocol No. 6 of the ECHR, does not provide for any derogations, even in times of war, and as such, represents an absolute position against capital punishment. However, despite this fact, this protocol has been ratified by less than half of the world's nations[56], reflecting the steadfast resistance in some parts of the world to the absolute abolition of capital punishment.

Another noteworthy event regarding this right happened when UDHR was adopted in 1948. Namely, at the Ninth International Conference of American States held in Colombia, the American Declaration of the Rights and Duties of Man was promulgated. Although this declaration did not have the binding force of an international

51 Schabas, 2004, p. 36.
52 Union of Soviet Socialist Republics, 1948 in Schabas, 2013, p. 2208.
53 Hood and Hoyle, 2008, p. 21.
54 United Nations, 1966.
55 Wheeler, 2018, p. 357.
56 At the time of writing of this chapter, 91 countries have ratified or acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

treaty, it was again an important regional attempt at voicing the principles of human rights. Article 1 of the American Declaration corresponds to the UDHR, stating the right to life, liberty, and security of person. However, it was different from other declarations of human rights because it provided not just a list of rights, but also the duties that each one has in respect to another, and that is a comprehensive approach towards human rights and responsibilities.[57] Although there was no binding weight carried by the American Declaration, it nonetheless provided foundational work for a stronger and more effective regime for the protection of human rights under the American Convention on Human Rights (ACHR), created in 1969, which embodied many of the Declaration's principles while establishing binding obligations on its member states.

The ACHR gave considerable vigour to the regional apparatus in the field of human rights in the Americas. For the purpose of protection and promotion of human rights within the Organisation of American States, the convention created both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.[58] The main point of Article 4 of the ACHR is on the right to life and death penalty in quite a subtle manner. It says, 'Every person has the right to have his life respected,' and that the death penalty shall only be applied for the most serious common crimes and pursuant to a final judgment rendered by a competent court. Importantly, this bans the re-establishment of the death penalty in states that have abolished it, and excludes its application for political offenses, related common crimes, and against people under eighteen, over seventy, or pregnant women at the time the crime has been committed.[59]

The scheme on the right to life, along with limitations on the death penalty, respects human dignity within a broad framework of the main features that are present in this declaration. However, these principles given under the ACHR are somewhat weakened by the lack of universal ratification within the region. For example, the United States signed the convention but never ratified it, while Trinidad and Tobago suspended its ratification in 1998 over concerns at the application of the death penalty. The ACHR nonetheless remains an important means in the global and regional effort toward limiting and eventually abolishing capital punishment.

To compare this latter and the ICCPR, they share similar spirit towards abolition, even though they do so in different contexts and various degrees of commitment. The approach taken by these documents are with its emphasis on the protection of life and restriction of the death penalty to the most serious crimes. However, the ACHR goes further by prohibiting the reinstatement of the death penalty in states that have abolished it and being more expansive in the protection accorded in respect of age and circumstances when the death penalty may not be applied. Although the Second Optional Protocol of the ICCPR took a more global lead in the complete abolition of

57 McCloskey, 2012, p. 491.
58 Ibid.
59 Ibid.

the death penalty, the influence it had on the protocol was reflected in the progressive abolition across the different regions, albeit with a number of resistant states.

As for attitudes enshrined in the international criminal law, with its practice, has further entrenched this trend against the death penalty. Notably, the statutes of the new generation of international and internationally hybrid criminal courts, such as the International Criminal Court, have excluded the death penalty in their list of applicable penalties. This is in stark contrast to the earlier international tribunals established in Nuremberg and Tokyo immediately after World War II, where the imposition of the death penalty was available. The prohibition against capital punishment in the ICC and all other tribunals indeed reflects an increasing convergence in international views that the infliction of the death penalty is repugnant to modern human rights standards.[60]

Indeed, during the negotiations of the Rome Statute, representatives of those states which had ratified Second Optional Protocol to the ICCPR and other regional abolitionist treaties took the position that the inclusion of the death penalty in the statute would render cooperation with the Court impossible.[61] In doing so, they acted under the protective purport of the right to life for this group of states, which entailed a commitment on their part not to reintroduce the death penalty. The Human Rights Committee has stated that countries abolishing the death penalty are under an obligation to protect the right to life 'in all circumstances' and therefore should never extradite suspects to countries where they would risk execution.[62] The issue of extradition will be further explored in sections below.

Overall, it can be inferred that with the current status and challenges, despite this development, there are still concerns about the universal abolition of the death penalty. In the most recent data available, more than two-thirds of the world abolished the death penalty either in law or practice, yet strong resistance remains regarding certain regions of the world. Executions continue to be carried out in some countries; and there is also debate about whether or not the death penalty is an effective form of punishment that is morally accepted. The international community demands a full abolition of the death penalty, underlining that it is incompatible with the basic right to life and human dignity. Admittedly, in the case of abolition, the commitment to such steps has been mostly facilitated through the influences of international and regional legal frameworks, supplemented by the supportive work of international agencies such as the United Nations and the Council of Europe. Yet, a truly universal abolition demands continuous commitment and cooperation by every state, along

60 International Criminal Court Statute, Article 77; International Criminal Tribunal for the former Yugoslavia Statute, Article 24; International Criminal Tribunal for Rwanda Statute, Article 23; Special Court for Sierra Leone Statute, Article 19; Law on the Establishment of the Extraordinary Chambers, Articles 38 and 39, as amended on 27 October 2004; Special Tribunal for Lebanon Statute, Article 24; Statute of the Extraordinary African Chambers, Article 24.
61 Fife, 2001, p. 331.
62 Schabas, 2003, pp. 581–604, p. 583.

with sustained efforts toward eliminating the cultural, political, and legal barriers that confront progress in parts of the regions.

3.3. Legal Interpretation of the Right to Life

Article 2 of the ECHR has been described as a cornerstone provision and embodies in itself the most basic right, that is to say, the right to life. It prescribes not only that everybody's life shall be accorded protection by the law but also that very limited circumstances could justify the taking away of life.

Nevertheless, the article further sets conditions whereby the deprivation of life is not a violation of the Convention. Examples of such would be when the force being used is "absolutely necessary" either in self-defense, to effect a lawful arrest, to prevent the escape of a person lawfully detained, or to quell riots and insurrections. First, the importance of Article 2 lies not only in the strong protection it offers to the right to life but also in the subtle balance it achieves between the protection of this right and the realistic realities and requirements of states in practice. The provision thus falls into two main parts: the obligation to protect life by law and the lawful circumstances under which life may be taken without contravening the Convention.

3.3.1. Protection of Life by Law

Paragraph 1of the Article 2 of the ECHR establishes that the right to life is a fundamental human right that the law should protect: 'Everyone's right to life shall be protected by law'.[63] This is a very basic point in the system of the ECHR and has been invariably protected by the ECtHR as the most basic and fundamental right, which forms an adequate ground for the protection of any other right. For this reason, the Court has characterised the right to life as "supreme" in its jurisprudence, since in the democratic regime it is a fundamental value for the dignity of human beings and of the rule of law. This principle was reaffirmed in *Ranđelović and Others v. Montenegro,*[64] where the Court found that a failure to conduct a transparent and effective investigation into the deaths of ferry passengers reflected a systemic failure to protect life through law in a meaningful way.

As such, within the context of the ECHR, Article 2 comes out as a non-derogable right – that which cannot even be suspended in times of public emergency. This is supported by Article 15(2) of the Convention, whereby it, together with Articles 3 prohibiting torture and 4(1) prohibiting slavery and 7 prohibiting punishment without law, is excluded from derogation. For instance, the ECtHR discussed in the case of *Giuliani and Gaggio v. Italy*, the right to life is in the most fundamental position since it is a Convention provision which, even in time of war or other public emergency, admits of no derogation.[65] This installs further detail on the value of human life that

63 Council of Europe, 1950, Article 2(1).
64 *Ranđelović and Others v. Montenegro,* 2017. ECHR.
65 *Giuliani and Gaggio v. Italy* 2011. ECHR § 174.

the Convention would wish to protect from any form of arbitrary deprivation by either a state or other actors.

In addition to this, Article 2 goes further and it not only recognises the right to life but also puts a proactive duty on states to take appropriate measures with respect to individuals within their jurisdiction to protect them from an arbitrary deprivation of life.[66] It follows, therefore, that such an obligation does not only lie in refraining from illegitimate killing but extends to proactive steps needed to be taken so as to secure lives. So far, the case jurisprudence of the ECtHR has been to confirm that the right to life necessitates the states having in place legal and administrative frameworks that credibly protect individuals from threats posed by both state and non-state actors.[67]

In cases such as *McCann and Others v. the United Kingdom,* for instance, the Court has further enunciated the nature of this obligation by requiring that the use of force by state agents should be strictly necessary and proportionate to the threat posed. The Court concluded that any use of lethal force had to be absolutely necessary for the protection of life, and that the state was under an obligation to ensure its agents were adequately trained and equipped to handle any such situation in which the right to life may be put at risk.[68]

3.3.2. State Obligations under Article 2

The Scope of State Obligations under Article 2 pages over the years, through its evolving case law, the European Court of Human Rights has developed a far more sophisticated approach to the state's obligation under Article 2 and provided that there is both a negative and positive obligation. The negative obligation places a dutyon the state and its agents not to intentionally and unlawfully take life, while positive obligations inlcude in itself taking appropriate steps to safeguard the lives of those within its jurisdiction.[69] To put it another way, this positive engagement has two components, namely: a) the obligation to establish a regulatory framework; and, b) the obligation to take preventive operational measures.

According to EctHR there are different contexts that gives rise to obligations of the state. One of such contexts puts burden on State actors who shall do anything in their capacity to protect persons from lethal use of force. The Court on numerous occasions has developed that Article 2 of the Convention imposes an obligation on this authority in certain well-defined circumstances to take preventive operational measures to protect an individual whose life is in threat due to the criminal acts of another individual.[70] However, having regard to the difficulties of policing modern societies, the uncertainties of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation has to be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities.

66 *Nachova and Others v. Bulgaria* [GC] 2005. ECHR, §§ 99–102.
67 *Makaratzis v. Greece* [GC] 2004. ECHR, §§ 57–59.
68 *McCann and Others v. the United Kingdom* 1995. ECHR, § 147.
69 Centre for Legal Resources on behalf of *Valentin Câmpeanu v. Romania* [GC] 2014. ECHR, § 130.
70 *Branko Tomašić and Others v. Croatia* 2009. ECHR, § 50.

Thus, not every alleged risk to life may involve for the authorities a Convention obligation to take operational measures to prevent that risk from materialising. Therefore, this positive obligation can arise only if it is proved that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.[71] This means that where state became aware of real and immediate risk to life and acted accordingly in order to prevent risk for materialising, but failed to do so, does not necessary mean that state violated Article 2 of the Convention.[72] On another hand, for the court it is enough if an applicant shows that the state did not take all the reasonable measures to avoid real and immediate risk to life, which the state knew or ought to have known.

For instance, this principle was very well reiterated in *Tërshana v. Albania,*[73] where the Court found a violation of the procedural limb of Article 2 due to the authorities' failure to investigate an acid attack on a woman effectively, highlighting systemic inaction in addressing gender-based violence. Following several investigative steps taken by the authorities, including examination of video footage and imposition of a compulsion order on the suspect, the identity of the perpetrator and the substance used in such an attack remained unknown. More importantly, no chemical and toxicological examination was carried out because the relevant authority did not have the equipment necessary for, or the competence to perform, such analyses. Such a failure to acquire an important expertise report was considered to be one of the major investigational fallacies.

Similarly, in *Enukidze and Girgvliani v. Georgia,*[74] the Court condemned the state's selective and biased investigation into a politically sensitive murder, committed by its agents. Applicants complained about the investigation into their son's death for any independence, partiality, and thoroughness because those responsible were close to the Ministry. The Court found a violation of Article 2 of the ECHR for both procedural and substantive reasons. It held that the investigation was fundamentally defective because of the manifested conflict of interest and lack of independence since the suspects were high-ranking officials themselves who oversaw the investigation. The investigation failed to take necessary steps aimed at securing essential evidence, protecting witnesses, and properly interviewing suspects. The Court pointed out that the measures adopted by the authorities showed more intent to protect the suspects. The importance of this case lies in its emphatic stand concerning the need for independence and impartiality during an investigation where state agents are concerned. This case has established an important precedent for holding states responsible to ensure that justice is served, even in cases involving high-ranking officials, underlining

71 *Mastromatteo v. Italy* [GC] 2002. ECHR, § 68.
72 *Kurt v. Austria* [GC] 2021. ECHR, § 211.
73 *Tërshana v. Albania*, 2020, Application no. 48756/14, ECHR.
74 *Enukidze and Girgvliani v. Georgia*, 2011. Application no. 25091/07, ECHR.

the principle whereby impunity for state agents cannot be tolerated in a democratic society.

In addition to this, in *Eremiášová and Pechová v. Czech Republic*,[75] the Court underscored the need for prompt investigation into deaths in police custody, finding deficiencies in the Czech authorities' duty of diligence. This case highlighted the procedural obligation under Article 2 that such investigations must be capable of leading to the identification and punishment of those responsible if necessary. In *Arskaya v. Ukraine,*[76] the Court further underlined the procedural duties of states under Article 2, in not only having to protect life but, where there are credible allegations of negligence leading to death, an obligation on the state to conduct an effective investigation. The Court stressed that state authorities needed to act with maximum expedition and thoroughness regarding such investigations, in particular in respect of a person who dies in an institution controlled by state services, such as a hospital. Similarly, in *Daraibou v. Croatia*,[77] the Court addressed the death of an immigration detainee suffering from tuberculosis, the court reinforced the state's heightened duty to protect life when individuals are in custody, particularly when their health renders them vulnerable, and reaffirms the necessity for effective, independent investigations into deaths occurring under such circumstances.

Another context where State obligations is worth mentioning is protection of persons from self-harm. This context, as a rule, is used on persons who for some reason are dependent on the state, which in turn has a duty to protect them. For instance, prison authorities, must perform their duties in a way that is compatible with the rights and freedoms of the individual concerned. There are general measures and precautions available to reduce the opportunities for self-harm, without infringing on personal autonomy. Whether more restrictive measures are needed in respect of any prisoner, and whether it is reasonable for them to be applied, is to be assessed in each case according to its peculiar circumstances.[78]

This obligation becomes particularly relevant in the context of vulnerable persons placed in institutional care, as illustrated by the Grand Chamber in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*.[79] In this case, the Court found violation of Article 2 due to state's failure to provide adequate care to a young man suffering from severe mental disabilities and HIV, who died in a psychiatric hospital. The Court highlighted that states must implement effective legal and administrative measures to protect the lives of those who are especially vulnerable and who lack the capacity to advocate for themselves. Importantly, the judgment expanded standing for NGOs to act on behalf of unrepresented victims, reinforcing that Article 2 entails not only the duty to refrain from unlawful killings but also to protect the lives of

75 *Eremiášová and Pechová v. the Czech Republic*, 2012, Application no. 23944/04. ECHR.
76 *Arskaya v. Ukraine*, 2013. Application no. 45076/05. ECHR.
77 *Daraibou v. Croatia*, 2023. Application no. 84523/17. ECHR.
78 *Renolde v. France* 2008. ECHR, § 83.
79 Centre for Legal Resources on behalf of *Valentin Câmpeanu v. Romania* [GC], 2014. Application no. 47848/08. ECHR.

the most helpless. In the same vein, the Court emphasised in *Mučibabić v. Serbia*[80] that the failure to conduct a prompt and effective investigation into a fatal incident involving hazardous state activity – namely the death of the applicant's son due to illegally produced rocket fuel – constituted a procedural violation of Article 2. The ruling clarified that delayed or ineffective investigations undermine the procedural safeguards of Article 2 and prolong suffering for victims' families. Similarly, in *Olga Koceska and Others v. the Former Yugoslav Republic of Macedonia*[81] the court reaffirmed the principle that positive obligations under Article 2 extend to ensuring public safety infrastructure and that states must respond adequately when failures in such infrastructure lead to loss of life.

The Court has also highlighted that, like detainees, conscripts and contractual military servicemen, whose conditions of life and service are akin to theirs, are in the exclusive custody of the authorities of the State and that those authorities are under an obligation to take care of them.[82]

Yet another example are persons with mental disabilities, who are considered to constitute a particularly vulnerable group and need protection against self-harm.[83] In these types of cases, the authorities have a general operational obligation to take such preventive measures as are reasonable to avoid a person harming himself, irrespective of whether or not there have been voluntary or involuntary hospitalisations. Such specific measures will, however, depend on the specific circumstances in any given case and those specific circumstances will often differ depending on whether the patient is voluntarily or involuntarily hospitalised. But in the case of the applicants who are hospitalised on the basis of a judicial order, thus against their will, the Court, of its own motion, may apply an even harsher standard of scrutiny.[84]

For a positive obligation to arise where the risk to a person derives from self-harm, such as a suicide in custody or in a psychiatric hospital, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and, if so, that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.[85] The ECHR considers, amongst others, in distinguishing whether the authorities knew or ought to have known that the life of an individual was at real and imminent risk, thus engaging the duty to take appropriate preventive measures, such factors as: (i) history of mental problems; (ii) the gravity of the mental condition; (iii) past suicide or self-harm attempts; (iv) suicidal ideas or threats; and (v) physical and mental agitation.[86]

80 *Mučibabić v. Serbia*, 2016. Application no. A34661/07. ECHR.
81 *Olga Koceska and Others v. the Former Yugoslav Republic of Macedonia*, 2013. Application no. 41107/07. ECHR.
82 *Mosendz v. Ukraine* 2013. ECHR, § 92.
83 *S.F. v. Switzerland* 2020. ECHR, § 78.
84 *Fernandes de Oliveira v. Portugal* [GC] 2019. ECHR, § 124.
85 Ibid § 110.
86 Ibid § 115.

There are many other contexts, where state obligation might arise, that due to our space cannot be fully discussed here, but what needs to be highlighted at this stage is that scrutiny on state are much bigger in particular contexts, e.g. in the context of detentions, where state has special duty to take basic precautionary measures to minimise the potential risk to protect well-being of persons deprived of their liberty. Failing to do so, under circumstances discussed in this section, most probably than not, is failing to adhere to the positive obligation of the state protected under article 2 of the ECHR.

3.3.3. Permissible Use of Force

Paragraph 2 of the Article 2 of the ECHR lists the very few circumstances wherein the use by state agents of force causing deprivation of life is not a violation of the right to life. This simply means that the right to life, though a fundamental right, is never absolute when an act of force is so necessary in order to achieve an end that is legitimate. This part of the article does not primarily define instances where it is permitted to kill an individual, as many think is the case, rather it describes the circumstances in which it is permissible to "use force" which may result, as an unintended consequence, in the loss of life. However, such force should necessarily constitute no more than "absolutely necessary" for the attainment of one of the purposes set forth in sub-paragraphs (a), (b) or (c).[87] It is also worth mentioning here, that "Absolutely necessary", the phrase used in this article, shall be interpreted broader and much stricter than the necessity that normally is applicable when deciding 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).[88]

3.3.3.1. Self-Defense or Defense of Others

The first exception, in this regard, is that the use of force is necessary to defend the person or others from unlawful violence. Where an individual's life is in direct danger, this provision derogates a right of self-defense or defense of others for both individuals and state agents. But the ECtHR clarified that lethal force should be strictly necessary and proportionate to the posed threat. In *McCann and Others v. the United Kingdom*, the Court considered an application concerning the use of lethal force by British security forces in Gibraltar. Three suspected terrorists were shot who were believed to be preparing a bombing attack. The Court held that although the security forces genuinely believed that lethal force was required to protect life, the planning and control of the operation were defective, and thus a breach of Article 2. The Court reiterated that the state is under an obligation to minimise the risk to life by making a careful planning and strictly controlling the operation conducted.[89]

87 *Yüksel Erdoğan and Others v. Turkey* 2007. ECHR, § 86.
88 *McCann and Others v. the United Kingdom* 1995. ECHR, § 147.
89 Ibid § 149.

The principle that even in self-defense, the force has to be absolutely necessary, viewed from the well-founded belief about the reality and immanency of the threat, was enunciated in the following case.

3.3.3.2. Effecting a Lawful Arrest or Preventing Escape

To enforce a lawful arrest or prevent escape Article 2, paragraph 2, subparagraph (b) permits the use of force for the purpose of such arrest or of preventing the escape of a person lawfully detained. It is intended to bolster the duty of the state to enforce the law and maintain public order. However, in this case as well, the exercise of force should be used no more than the situation indicates as being necessary for attaining a legitimate object. The ECtHR has taken the position that lethal force can only be applied when there is no other alternative and less intrusive means are to be used whenever possible. In *Nachova and Others v. Bulgaria [GC]*, the Court had to review the killing of two Roma persons who were fired at by a military police officer in an attempt to detain them on suspicion of desertion from military service. The court found that the lethal force was not necessary or proportionate once the officer did not face any imminent danger. There was no actual danger posed by those individuals in order to try and escape. The Court also found that the operation was not thoroughly planned and controlled, and thus in violation of Article 2.[90] This case again reiterates and underlines the question of the proportionality and necessity of using force in attempting to effect an arrest or to prevent an escape. It indicates that lethal force is to be used only when strictly necessary and only as a last resort.

3.3.3.3. Suppressing Riot or Insurrection

The last exception under Article 2, paragraph 2 (c) is the force used to quell a riot or insurrection. The state has an obligation to maintain public order and protect its institutions and its citizens. Such use of force in that regard is duly exercised with extreme care to avoid undue loss of life. The ECtHR has emphasised, however, in the context of riot control, that the 'principles of necessity and proportionality are strictly maintained'. In *Güleç v. Turkey* the applicant's son was killed during a demonstration when lethal force was used by Turkish security forces; the Court examined this case. The security forces used live ammunition in order to disperse the demonstrators. The Court concluded that the authorities failed to ensure that the use of force was strictly necessary and proportionate to the situation. It further mentioned that the police patrol that accompanied them should have applied non-lethal means of crowd control before lethal force was used. The Court then held that the state failed to protect the right to life as provided by Article 2, and lethal force used in this context was unjustified.[91] The Court also pronounced along similar lines in *İlhan v. Turkey*, underlining

90 *Nachova and Others v. Bulgaria* [GC] 2005. ECHR, § 95.
91 *Güleç v. Turkey* (1998) ECHR, § 71.

that the use of force needed to be carefully controlled, and never resorted to except after all other means of controlling the situation had been tried.[92]

To sum up, Paragraph 2 of Article 2 of the ECHR sets the frame within which the use of force by State agents is legitimate, balancing the duty of the State to protect life with maintaining public order against the right to life. Under the developed case law of the ECtHR lethal force can only be used in those cases when it is strictly necessary and proportionate, regarding the situation. Necessity and proportionality are basic safeguards against arbitrariness in the deprivation of life and ensure that the exercise of force by the State is collocated under the most heightened type of scrutiny. As was seen from the cases above, the principle of proportionality and necessity are intertwined and means that, even where the use of force is justified, it may not be more than absolutely necessary in pursuance of the legitimate objective of preventing a loss of life or preventing a serious crime. This principle acts as a check against the excessive use of force by state agents to avoid any undermining of the right to life with the State's actions.

It is also worth mentioning here, that the proportionality test developed by the ECtHR parallels that of the Court of Justice of the European Union. In *Menci*[93], the CJEU reaffirmed that any limitation on fundamental rights must be proportionate, necessary, and pursue legitimate aims in accordance with Article 52(1) of the EU Charter. Though dealing with the *ne bis in idem* principle, the reasoning once again highlights the shared European constitutional tradition of strict proportionality review in fundamental rights cases, including those under Article 2 of the ECHR.

3.4. Contested Areas: Abortion and Euthanasia

Although the ECtHR has taken a progressively firm position opposing the death penalty under Article 2, its case law on abortion and euthanasia demonstrates a more restrained and respectful attitude toward national discretion. These matters underscore the lack of a unified stance among Council of Europe member states and illustrate the Court's dependence on the "margin of appreciation" doctrine, especially in domains marked by deep moral, ethical, and philosophical divisions.

3.4.1. Abortion and the Beginning of Life

The ECtHR has consistently refrained from declaring when life begins for the purposes of Article 2 of the Convention. This issue lies at the heart of abortion debates, yet the Court recognises the profound moral, ethical, and religious differences among member states and has thus declined to impose a uniform standard. As a result, it affords states a wide margin of appreciation in regulating abortion and determining the legal status of the unborn.

92 *İlhan v. Turkey* [GC] (2000) ECHR, §§ 91–92.
93 Criminal proceedings against Luca Menci [GC] (2018), CJEU, Case C-524/15.

In *Vo v. France*,[94] the applicant had complained of a violation of Article 2 where her 20-week-old unborn child had been killed through medical error. The Grand Chamber ruled there was no consensus across Europe on the unborn's status, and consequently denied the protection of Article 2 to the unborn. The Court ruled it to be a matter for the national authorities to decide when life commences, and the Convention did not compel states to criminalise unintentional harm to the unborn. The Court exercised judicial restraint, showing respect for the Contracting States' pluralism. This has been reaffirmed in the case of *A., B. and C. v. Ireland*,[95] where three women objected against Ireland's previously strict abortion regime pursuant to Article 8 (right to respect for private life). Although the Court did recognise the laws prohibiting abortion represent an interference with Article 8 rights, it once again applied a wide margin of appreciation given the moral sensitivity of the matter. Nevertheless, the Court found for one applicant, holding Ireland had breached her rights for failing to provide an accessible and effective procedural means for establishing whether or not she met with the requirements of having a lawful abortion on grounds of risk to her health. This decision reasserted states have the right to enact limiting abortion legislation, but such legislation needs to have sufficient procedural guarantees and should not be arbitrarily disproportionate.

The Court's advancing jurisprudence set another milestone through *M.L. v. Poland*.[96] This case, though not about the breach of Article 2, came following the Polish Constitutional Court's 2020 ruling effectively prohibiting abortion on the basis of fatal abnormalities, abolishing one of the limited lawful rationales for abortion in Poland. The applicant, who had been eligible for an abortion under the existing legislation at the time, had been denied the abortion and had been compelled to seek termination abroad. She claimed violations of Articles 3, 6, and 8 of the Convention. In the historic judgment, the ECtHR held there to have been a violation of Article 8. The Court held the applicant's inability to have access to an abortion to which she was previously entitled to represent an interference with her private life that was illegal. Importantly, the Court also examined the legitimacy of the composition of the Constitutional Court, drawing attention to irregularities with the judicial selection process undermining the principle of the rule of law and the principle of legal certainty. This procedural failing served to underpin the conclusion that the interference was unforeseeable and lacked the protections mandated under Article 8. While the Court rejected the conclusion of a violation of Article 3 being reached, it did recognise the applicant's psychological distress and the cumbersome character of procuring care outside.

Collectively, Vo, A., B. and C., and M.L. map out the ECtHR's strategy: although Article 2 denies the foetus the status of personhood, and national divergence is tolerated, abortion restriction is subject to the standards of legality, proportionality, and

94 *Vo v. France* [GC] (2004) ECHR, §§ 82–86.
95 *A., B. and C. v. Ireland* [GC] 2010. ECHR, §§ 214, 241, 267.
96 *M.L. v. Poland* 2023. ECHR, §§ 39–40.

procedural equity under Article 8. *M.L. v. Poland* further shows that violations of the rule of law – judicial appointments among them – can invalidate the legitimacy of abortion bans, therefore increasing the level of scrutiny the Court subjects them to.

Most recently, in *M.L. v. Poland* (2023), the Court went even further by linking reproductive rights with the rule of law. It found that the applicant's inability to access a lawful abortion, following a decision rendered by an irregularly constituted Constitutional Tribunal, violated Article 8. The judgment highlighted that abortion restrictions must respect both substantive human rights and procedural guarantees ensuring judicial independence.

3.4.2. Euthanasia and End-of-Life Decisions

In the areas of euthanasia and assisted suicide, the ECtHR has proceeded cautiously, incrementally – particularly with respect to interpreting personal autonomy and the concept of dignity under Article 8 (right to respect for private life). As has not been the case with abortion cases, the Court has never gone so far as to articulate a right to die under Article 2 or Article 8 itself. Rather, it hedges its bets: recognising personal autonomy but insisting upon robust protections being implemented by the state, especially since there has been no clear European consensus.

The Court initially addressed this point of contention in *Pretty v. the United Kingdom*.[97] The woman had terminal motor neurone disease and wished for the reassurance of the law that her husband would not be prosecuted should he assist her to end her life. The Court dismissed the contention that Article 2 encompasses the right to die, and also concluded that Article 3 did no more than guarantee the state would not assist to end life. Nevertheless, the Court did acknowledge the state would have to respect decisions taken over one's own body under Article 8. Despite this, it held the UK restrictions to be justified to safeguard vulnerable individuals from harm. In the case of *Haas v. Switzerland*,[98] the Court responded to an individual who sought access to the lethal drug but wished not to undergo psychological evaluation. Swiss authorities insisted on this precaution, and the Court upheld the decision. The Court stressed that since there is no political consensus across Europe on assisted dying, states have the right to establish protective legislative measures – to avoid people making irrevocable choices in times of psychological distress.

Access to justice took centre stage in the case of *Koch v. Germany*.[99] When the applicant's wife, who suffered from an incurable disease and was paralysed, was refused permission to receive life-ending medication, the applicant attempted to have the decision appealed – but German courts would not accept the case. The ECtHR found this to have been in breach of the procedural part of Article 8. The Court did not decide the legality of assisted dying itself, but it did emphasise the need for individuals to have the right to bring such intensely personal cases before the courts. A few

97 *Pretty v. the United Kingdom* 2002. ECHR, §§ 39–40.
98 *Haas v. Switzerland* 2011. ECHR, §§ 39–40.
99 *Koch v. Germany* 2012. ECHR, §§ 45–72.

years later, the Court examined the case of *Lambert and Others v. France*[100] – a case of passive euthanasia among a man who is in a vegetative state. His relatives disagreed on whether to withdraw life support. The Court affirmed France's legal framework for permitting the withdrawal of treatment, insisting the decision-making model had been clear, transparent, and protective. It avoided taking an overly central role again, asserting national authorities were best equipped to grapple with problematic ethical and medical dilemmas – especially where there is no common standard right across Europe. *In Mortier v. Belgium*,[101] the Court examined the Belgian case of a woman who had been enduring long-term psychological suffering. Although the Court did not find fault with the euthanasia itself, it expressed concern with the review process undertaken subsequently. Namely, it criticised the absence of independence for this review, since the physician who had been involved in the carrying out of the euthanasia had also been involved in its evaluation. This ruling emphasised the need for impartial and thorough review mechanisms in jurisdictions where there is legalised euthanasia.

Most recently, in Daniel *Karsai v. Hungary*,[102] the lawyer suffering a terminal form of ALS claimed that the ban on assisted suicide under Hungarian legislation breached his rights under Articles 8 and 14 (right to protection against discrimination). The Court upheld the Hungarian legislation, repeating the assertion that there is no such right to assisted suicide under the Convention. The Court nonetheless agreed, however, that this is an evolving field of law and urged governments to review their policies on an on-going basis as the views of the public, medical practice, and ethical thought evolve.

These decisions demonstrate the ECtHR's attempt to strike the right balance between two fundamental aims: safeguarding the right to life and honouring individual autonomy, where there is gross suffering or terminal illness at stake. Although the Court hasn't reached the point where it has declared states have to legalise euthanasia or assisted dying, it has stated emphatically where it believes it should be done: where states decide to legalise it, the procedure needs to be well-framed, transparent, and safeguarded against exploitation. As culture changes, the Court has kept the door open to further evolution – but for the time being, the Court is maintaining the central aim of preserving both dignity and safety through end-of-life choices.

3.5. Prohibition Against Intentional Taking of Life – Death Penalty

As mentioned in the beginning of this chapter, Article 2(1) of the ECHR allowed the death penalty, stating that 'no one shall be deprived of his life intentionally save in the execution of a sentence of a court…'. However, this wording reflected a pre-abolitionist consensus and has since been significantly transformed by the evolving interpretation of the Court and the adoption of Protocols No. 6 and No. 13. The first

100 *Lambert and Others v. France* 2015. ECHR, §§ 119–127.
101 *Mortier v. Belgium* 2022. ECHR, §§ 165–177.
102 *Karsai v. Hungary* 2024. ECHR, §§ 98–108.

one abolished the death penalty in peacetime, while the latter eliminated it in all circumstances, including wartime, thereby highlighting the position of the Council of Europe that capital punishment is incompatible with the fundamental values of human dignity. Accordingly, all member states but Azerbaijan have now ratified Protocol No. 13, and the ECtHR now considers the death penalty to be inherently against the spirit of the Convention.[103]

An important case showing this development is *Öcalan v. Turkey (2005)*[104], where the Court recognised the use of the death penalty had become seen as contrary to Article 2 even where the original wording of the Convention had allowed for it. The Court stressed the use of the death penalty would have meant inhuman treatment and would seriously impair Turkey's democracy pledges and EU candidacy ambitions. Aside from forbidding capital punishment, the ECtHR also held that Article 2 precludes extradition or removal to states where the concerned individuals would risk being executed. The Court ruled, for instance, in the case of *Soering v. the United Kingdom (1989)* that the extradition of an individual to the U.S., where he risked facing the death penalty would infringe Article 3's prohibition of inhuman treatment.[105] The same principle has been reenacted in the case of *Al Nashiri v. Poland (2014)*, where Poland was held accountable for the transfer of the detainee to United States custody even where there were foreseeable risks of capital punishment.[106]

Similar protections exist in international practice. The UN Human Rights Committee has taken the same approach under the International Covenant on Civil and Political Rights ICCPR, such as, for instance, in *Chitat Ng v. Canada*[107] and *Roger Judge v. Canada*,[108] highlighting the obligations of states to avoid transfers where the death penalty is at stake. Collectively, these new developments show the ECtHR now views the death penalty as incompatible with Article 2, further bolstering the broad European and international consensus that the right to life cannot provide for the intentional causing of death at the hands of the state.

Based on all above mentioned, it can be inferred that not only is death penalty prohibited without any exceptions on the European continent as has been confirmed in numerous court decisions, but this stance of the Court also covers prohibition against extradition or deportation that places an individual at risk of execution in another country.

103 *Al-Saadoon and Mufdhi v. the United Kingdom* 2010. ECHR, § 120.
104 *Öcalan v. Turkey* (Application no. 46221/99) 2003. ECHR, Judgment of 12 March 2003, § 125.
105 *Soering v. United Kingdom*, Federal Republic of Germany intervening 1989. ECHR, § 161.
106 *Al Nashiri v. Poland* 2014. ECHR, § 577.
107 *Chitat Ng v. Canada* (Communication no. 469/1991) UN Doc. CCPR/C/49/D/469/1991, 7 January 1994.
108 *Roger Judge v. Canada* (Communication no. 829/1998) UN Doc. CCPR/C/78/D/829/1998, 20 October 2003.

3.6. Summary

The following chapter discusses how ECHR developed and interpreted the right to life in its main sphere of abolishing the death penalty. In 1948, the Universal Declaration of Human Rights adopted emphasis on inherency of life, which came to be the initial momentum for the abolitionist movement. Although the Declaration itself does not expressly connect the right to life with the abolition of the death penalty, the history of the drafting of that instrument shows that such considerations were not absent. The ideal of the right to life was further articulated with the 1966 ICCPR that placed restrictions on the death penalty and limited its application to the "most serious crimes," while prohibiting its use against children and pregnant women. In 1989, the Second Optional Protocol to the ICCPR called for full abolition, though it remains under-signed internationally.

Article 2 of the ECHR forms one of those cornerstone provisions in establishing a right to life as a fundamental human right, protected by law. The dual duty implicit in that undertaking means not only a negative obligation for states to abstain from unlawful deprivations of life but an additional positive duty to take such measures as are needed to safeguard lives within their jurisdiction. However, Article 2(2) outlines the very limited circumstances in which it would not constitute a violation, including self-defense, when effecting a lawful arrest, or to prevent a riot. The European Court of Human Rights has emphasised that 'the use of force must be "absolutely necessary" and "proportionate"' in cases like *McCann and Others v. the United Kingdom.*

The chapter also explored morally and legally challenging domains where the interpretation of the right to life under Article 2 remains unsettled – particularly abortion and euthanasia. As reflected in relevant subparagraph above, in these areas, the ECtHR has adopted a cautious, deferential stance, invoking the doctrine of the margin of appreciation. In abortion-related cases such, the Court has avoided defining when life begins, instead focusing on procedural safeguards under Article 8. Similarly, in its euthanasia jurisprudence the Court has prioritised personal autonomy and dignity without recognising a right to die, highlighting instead the importance of robust legal frameworks and protections against abuse. Most recently and importantly, as was reaffirmed in Hungarian case, while no right to assisted suicide exists under the Convention, the evolving nature of societal values may invite future re-evaluation.

The chapter also surveys the larger international legal landscape, highlighting the contributions made by the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. The latter established the Inter-American Court of Human Rights and prohibited the re-introduction of the death penalty in countries that abolished it. This chapter underlines the fact that these regional tools of ECHR and ACHR have considerably moved forward the cause, yet global abolition has remained asymmetrical amidst strong resistance in some regions.

4. Conclusion

The impetus of this paper was to dive into how the right to life has evolved and the movement towards the abolition of the death penalty, focusing on respective legal and historical contexts that shaped that trajectory. Historically, the death penalty was widely implemented as a form of punishment and a tool for social control, often justified by theories of deterrence and retribution. The abstraction of an effective abolitionist movement only really materialised with the arrival of the Enlightenment period, essentially inspired by the emergence of Humanism and Rationalism. With thinkers such as Cesare Beccaria, the effectiveness and morality of capital punishment were questioned on the bases that it was inhumane and also ineffective. These forerunning arguments for the abolition of capital punishment provided a framework for the gradual diminution of capital offenses concerned with providing a framework upon which the abolition of the death penalty by many European countries was based.

The paper demonstrated how the ECHR played a considerable role in crystallising the right to life and strengthened the abolitionist cause. Article 2 of the Convention enshrine the right to life itself and maintained rigid conditions whereby life could lawfully be deprived. This was a reflection of shifting basic perception whereby state-ordered executions were seen to be no longer acceptable. The approval of Protocol No. 6, which abolished the death penalty in peacetime, and Protocol No. 13, extending this abolition to all circumstances, formed important steps regarding the European abolitionist movement. Its implementation was carried out along with the European Court of Human Rights that interpreted such provisions and applied them within member states. By sifting the landmark judgments, the Court influenced the national legal systems and set a high benchmark for protection of human rights by reiterating that the death penalty was incompatible with the basic values of human dignity and right to life.

The article also touched on the implications that these legal developments for countries in Central and Eastern Europe, where the transition from authoritarian rule to democratic systems of governance, is often accompanied by far-reaching legal reforms. The case law of the ECtHR in these countries showed a complex but evolutionary approach toward an absolute abolition of the death penalty. The judgments rendered by the Court indicated the necessary standards for an adequate and effective investigation, when suspicious deaths are caused, lethal force is used by state agents, and protection against removal to a country where the applicant would be exposed to a real risk of being sentenced to death.

These judgments further clarified the legal duties of states under the ECHR and had wider regional implications for protection of the right to life and abolition of capital punishment. The article also discussed abolition as part of a world-wide movement beyond Europe by comparing the ECHR framework with another international human rights instrument, namely the International Covenant on Civil and Political

Rights and American Convention on Human Rights. While these different instruments did evidently share a common commitment with regard to the protection of the right to life, the depth of adherence to abolitionist principles varied across regions.

The article noted that even though many countries have abolished the death penalty, there remained strong resistance in parts of the world to such moves, reflecting deep-seated political, cultural, and social barriers. International criminal law further influenced this movement: modern international tribunals excluded the death penalty from their applicable punishments, thereby mirroring the development of the trend internationally against capital punishment. While these progresses existed, however, the paper modestly conceded that the road to total abolition is far from over.

The paper additionally, underlined how the European human rights framework – in particular, the contribution of the ECtHR – has had a gradually evolving impact on the movement for the abolition of the death penalty. It highlighted the tremendous strides ahead that had been taken-place in Europe, where the death penalty is now regarded as incompatible with contemporary human rights norms. Yet, it also reflected the fact that a long, hard battle for abolition still remained around the world. Precedents were developed under the ECHR and other international instruments that gave rise to important legal frameworks; however, these are yet to be universally adopted or enforced.

Each one of those political, cultural, and social barriers needs continuous effort to helve little by little until the removing of capital punishment. The European experience is already a powerful example of how regional human rights mechanisms could drive national policy and expand fundamental rights, as described in the article. The judgments of the ECtHR not only strengthened the right to life across Europe, but they inspired broader international efforts toward the abolition of the death penalty. These needed to be sustained and expanded in order to ensure protection of the right to life globally, without exception. Ultimately, the paper called for an integral approach toward the abolitionist movement, one that combined legal reforms with educational, political, and cultural initiatives. It stressed the idea that the abolition of the death penalty is not simply a matter of the law but highly moral and ethical, at the core level of respect to human dignity and life.

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