

**THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN  
CASES AGAINST THE REPUBLIC OF MACEDONIA REGARDING THE  
VIOLATION OF ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN  
RIGHTS**

**Abstract:** The purpose of this paper is to present Article 2 of the European Convention on Human Rights (ECHR) and its significance in determining its violation before the European Court of Human Rights (ECtHR). The paper first explains the general features of Article 2, its scope and its application, as it is considered as a right where no deviations can be made. Furthermore, the paper elaborates the application of Article 2 through the analysis of case studies before the ECtHR submitted against some of the Balkan countries. These case studies address violations of Article 2 with regard to the use of excessive police force, death in custody, victims of crime, and in other cases and circumstances. In conclusion, the authors present their own results regarding compliance with Article 2 and future challenges that the law enforcement authorities may face when applying Article 2 of the ECHR.

**Keywords:** *right to life, case studies, Macedonia, European Court.*

**ЈОСИФОВИЌ, Ивица<sup>2</sup>**

**СУДСКАТА ПРАКСА НА ЕВРОПСКИОТ СУД ЗА ЧОВЕКОВИ ПРАВА ВО  
СЛУЧАИ ПРОТИВ РЕПУБЛИКА МАКЕДОНИЈА ВО ОДНОС НА ПОВРЕДА НА  
ЧЛЕНОТ 2 ОД ЕВРОПСКАТА КОНВЕНЦИЈА ЗА ЧОВЕКОВИ ПРАВА**

**Апстракт:** Целта на овој труд е да го претстави членот 2 од Европската конвенција за човекови права (ЕКЧП) и неговото значење во утврдувањето на неговата повреда пред Европскиот суд за човекови права (ЕСЧП). Трудот најпрво ги објаснува општите карактеристики на член 2, неговиот опсег и неговата примена, бидејќи се смета за право каде што не може да се направат отстапувања. Понатаму, трудот ја елаборира примената на член 2 преку анализа на студии на случај пред ЕСЧП поднесени против некои од балканските земји. Овие студии на случај се однесуваат на повредите на член 2 во однос на употребата на прекумерна полициска сила, смрт во притвор, жртви на криминал и во други случаи и околности. Како заклучок, авторите ги презентираат сопствените резултати во однос на усогласеноста со член 2 и идните предизвици со кои може да се соочат органите на прогонот при примената на членот 2 од ЕКЧП.

**Клучни зборови:** *право на живот, студии на случај, Македонија, Европски суд.*

### **1. Introduction**

Article 2 of the ECHR contains a fundamental guarantee whose respect guarantees other human rights. The norm of this article protects the right to life which is a basic value in any democratic society. This guarantee may not be revoked or restricted in any case, even in the event of an emergency under Article 15 of the ECHR – Derogation in time of emergency. Along with Article 3 – Prohibition of Torture, it reinforces one of the core values of the democratic societies making up the Council of Europe and, as such, its provisions must be strictly interpreted.

---

<sup>1</sup> Full professor at Faculty of Law, University of Goce Delcev - Stip; ivica.josifovik@ugd.edu.mk

<sup>2</sup> Редовен професор на Правен факултет, Универзитет Гоце Делчев – Штип;  
ivica.josifovik@ugd.edu.mk

The norm from Article 2 of the ECHR, above all, is formed positively, in terms of a comprehensive obligation of the state to protect human life. It also contains a comprehensive prohibition on intentional killing of people, except in connection with deaths resulting from lawful military action. Although this is not explicitly stated in Article 2, the prohibition on deprivation of life applies not only to intentional but also to unintentional actions or omissions. From the negative wording that “no one shall be deprived of his life intentionally”, it is clear that the norm, in the first place, refers to the prohibition of state authorities to arbitrarily take the life of any individual. Therefore, deprivation of life is the subject of the most careful investigation by the ECtHR. However, from this formulation does not arise a negative freedom of the individual to take his own life. Namely, unlike the other rights of the ECHR, the right to life is the only right that a person does not decide for himself, just as he does not decide for his own birth. This entails the responsibility of the state for euthanasia and the like.

## **2. Field of Application**

Article 2 protects human life from its birth to death. It is interesting that the controlling bodies of the Convention to date have failed to solve the problem of whether the norm of Article 2 of the ECHR protects the newly conceived life, i.e. the fetus. Such a broad interpretation would be contrary to the nature of this norm (life), but also to the conception of the entire Convention which protects other rights related to the right to life. Given that Article 2 of the ECHR also protects conception, any termination of pregnancy which is not undertaken to save the life of the mother should be considered a violation of Article 2 of the ECHR, which has no justification given the scope of the norm, as well as its purpose and systemic place in the Convention. Just as the case law of Strasbourg is indefinite regarding the moment when the protection of the right to life begins, it is also indefinite in terms of its termination by euthanasia or the provision of voluntary suicide assistance.<sup>3</sup> The prevailing opinion is that Article 2 does not contain the right to euthanasia or other assistance in the voluntary taking of one’s own life.

Further, the ECtHR has repeatedly emphasized that Article 2 may come into play even if a person whose right to life is allegedly violated does not die. The Court has held that in exceptional circumstances, depending on considerations such as the extent and type of force used and the nature of the injuries, the use of force by law enforcement authorities resulting in death may reveal a violation of Article 2, if the conduct, by its very nature, puts the applicant’s life at serious risk, even though he survives. In all other cases where a person has been assaulted or ill-treated by law enforcement authorities, their complaints will be dealt with in accordance with Article 3 of the ECHR. In cases involving applicants who survived a potentially deadly attack by non-state actors, the Court adopted a similar approach to that taken in cases involving the use of force by state agents. Also, the ECtHR found that allegations of applicants suffering from a serious illness fall under Article 2 of the ECHR when the circumstances potentially involve the liability of the State.

As for the merits, the ECtHR considered the allegations made under Article 2 by persons claiming that their lives were in danger, although such a risk had not yet been realized, when it was satisfied that there was a serious threat to their lives. In cases involving potentially fatal accidents or environmental disasters, Article 2 applies either if (a) the activity in question is dangerous in nature and puts the lives of the persons concerned at real and immediate risk, or if (b) the injuries suffered by them were seriously life-threatening. Finally, in failed numerous suicide attempts by persons with psychological difficulties, the ECtHR considered Article 2 to be applicable, notwithstanding that the injuries sustained were not serious, given the nature of the impugned proceedings which put the applicant’s life in real and immediate risk.

## **3. Positive Obligations**

Article 2 of the ECHR states that the right to life is protected by law. This means that the state, in addition to being obliged to refrain from depriving individuals of their lives, is also

---

<sup>3</sup> Jovanović S. (2020) The Right to Die with Dignity in Serbia. *The Right to Human Dignity – Yearbook No. 3*. Novi Sad: Provincial protector of citizens – Ombudsman and Institute of Criminological and Sociological Research, p. 535.

obliged to take positive measures to protect the lives of individuals, both from interference by law enforcement authorities and from the actions of other individuals, as well as the procedural obligation to conduct an effective investigation into alleged violations of its essential limb.

The protection of the right to life must be effective and real. How the state achieves that result remains at its discretion. Thus, the state is not obliged at all to protect human life in the criminal legislation but can in another appropriate way to satisfy its positive obligations under Article 2 of the ECHR. The obligation to take positive measures covers the legislation, as well as all other acts within the sovereign government. The positive responsibilities of the state especially extend to the organization of the police and other law enforcement authorities in a way that will most successfully protect the right to life under Article 2 of the ECHR. Thus, when implementing measures to combat terrorism and organized crime, the measures must be appropriate to protect the lives of all participants in the operations.<sup>4</sup>

Furthermore, the positive obligations of the state include its duty to investigate any violation of the right to life that occurs within its jurisdiction. The procedure for investigating the death of a person should be undertaken *ex officio*, it must be conducted by an authority that is independent, and it must be effective in terms of the purpose of determining the time, place and manner of death, identifying the perpetrators and prosecuting them. This obligation applies to persons who are under direct control of state authorities (prisoners, soldiers, ill people in hospitals, etc.). For example, the state is obliged to regulate the obligations of hospitals, to protect the right to life of their patients, to provide an opportunity to determine the cause of death, as well as norms for possible liability of doctors. There is a special responsibility for the state in relation to the obligation to protect the lives of prisoners. The state is obliged not only to regulate the protection of the right to life in prisons, but also to organize prison officials to prevent the violation of this right. Thus, there would always be a violation of Article 2 when a prisoner kills another prisoner, and prison officials were obliged to anticipate the occurrence of such a situation.<sup>5</sup> However, Article 2 cannot, and should not, be interpreted as guaranteeing for each individual an absolute level of security in any kind of activity in which the right to life could be endangered, especially when the person concerned bears some degree of liability for the accident when exposed to unjustified danger.<sup>6</sup>

#### **4. Positive obligations in the context of Balkan States**

The use of lethal force by police and security forces is under thorough investigation by the ECtHR. The planning and control of police operations must minimize reliance on a force eligible to take life as far as possible and without discrimination.<sup>7</sup> The Court noted that in deciding whether the force used by law enforcement authorities was “absolutely necessary” it should use a stricter and more convincing test than the one used to decide whether the actions are “necessary in a democratic society”.<sup>8</sup> Article 2 of the ECHR imposes a positive obligation on the law enforcement authorities to ensure that the law adequately protects the right to life and should always be considered in conjunction with Article 13 – Right to an effective remedy – which, because of the essential importance of the right to protect the life, imposes stricter requirements on the investigation of fatal incidents.

In the context of a death in custody, this will require a thorough and effective investigation into the circumstances in which the death occurred and those in position will be

---

<sup>4</sup> Judgment of the European Court of Human Rights (1995). *McCann and Others v. United Kingdom*. Application No. 18984/91. <http://hudoc.echr.coe.int/fre?i=002-10101>.

<sup>5</sup> Judgment of the European Court of Human Rights (2002). *Paul and Audrey Edwards v. United Kingdom*. Application No. 46477/99. <http://hudoc.echr.coe.int/fre?i=001-60323>.

<sup>6</sup> Decision of the European Court of Human Rights (2009). *Molie v. Romania*. Application No. 13754/02. <http://hudoc.echr.coe.int/eng?i=001-94259>.

<sup>7</sup> Simović M., Simović M. (2020) The Right to Die with Dignity in Serbia. *The Right to Human Dignity – Yearbook No. 3*. Novi Sad: Provincial protector of citizens – Ombudsman and Institute of Criminological and Sociological Research, p. 383.

<sup>8</sup> Judgment of the European Court of Human Rights (2005). *Nachova and others v. Bulgaria*. Application No. 43577/98 and 43579/98. <http://hudoc.echr.coe.int/eng?i=001-69630>.

held accountable. Also, it will be required for the applicant to have effective access to the investigative procedure and that the procedure is conducted to establish the identity of the perpetrators and to punish them. Usually, the burden of establishing a connection with a violation of the ECHR falls on the applicant. However, the burden is shifted to the state when the death occurred during detention. In such circumstances, the burden of proof is on the authorities to provide a satisfactory and convincing explanation or plausible explanation of the events leading up to the death of the person deprived of his liberty and to keep appropriate records.<sup>9</sup> The standard required by the ECtHR in assessing evidence of a violation of the ECHR is the proof that leaves no room for reasonable doubt. The test may be satisfied from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact.<sup>10</sup>

The positive obligation to protect the right to life of detainees under Article 2 of the ECHR also requires that they be adequately protected when the attack is carried out by other persons held in custody. Furthermore, when detainees are removed from police or security forces premises but remain under state surveillance, the burden of proof will continue to rest on the government, which must provide satisfactory explanations for the death of the detainee.

Article 2 can only be applied even when the use of excessive force has not actually proved to be deadly. The extent and type of force used as well as the purpose for its use will be relevant factors in assessing compliance with Article 2 of the ECHR. Furthermore, the law enforcement authorities are obliged under Article 2 to take appropriate steps to protect the lives of detainees under their control, even in the event of a suicide attempt or suicide injury or death. The ECtHR in such cases has a duty to determine whether the law enforcement authorities knew or should have known that there was a real and immediate risk of suicide, and if so, whether they had done all that could reasonably be expected of them to eliminate the risk.<sup>11</sup>

At the beginning, the ECtHR dealt with cases of enforced disappearances primarily under Article 5 – Right to liberty and security – and not under Article 2 of the ECHR. In considering whether there is a positive obligation under Article 2 to conduct an effective investigation into the circumstances of the alleged unlawful murder, the Court applied the test of whether there was “solid evidence” which would not leave a reasonable doubt that the missing person is killed by the authorities. If there is no such evidence, the ECtHR states that applications should be considered in conjunction with Article 5 and not in conjunction with Article 2 of the ECHR.<sup>12</sup> However, in determining the responsibility of the State for the alleged death of missing persons, the ECtHR drew “very strong inferences” due to the lack of any evidence and the state’s inability to provide a satisfactory explanation. The failure to conduct a comprehensive “disappearance” investigation may also constitute a violation of Article 2 if the investigation was found to be neither thorough, nor appropriate, nor effective.<sup>13</sup>

The positive obligation for the state arising from Article 2 may be the obligation to prevent fatal consequences, as well as to conduct an effective investigation regarding the circumstances of the incident that led to fatal consequences. As part of this obligation to prevent and reduce the number of offenses, the Court found that it must be concluded 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.” The ECtHR emphasized that this positive obligation

---

<sup>9</sup> Judgment of the European Court of Human Rights (2000). *Salman v. Turkey*. Application No. 21986/93. <http://hudoc.echr.coe.int/eng?i=001-58735>.

<sup>10</sup> Judgment of the European Court of Human Rights (2002). *Anguelova v. Bulgaria*. Application No. 38361/97. <http://hudoc.echr.coe.int/eng?i=001-60505>.

<sup>11</sup> Delibašić V. (2018) Criminal Law Aspects of Domestic Violence. *From Unlawfulness to Legality – Yearbook No. 1*. Novi Sad: Provincial protector of citizens – Ombudsman and Institute of Criminological and Sociological Research, p. 520.

<sup>12</sup> Judgment of the European Court of Human Rights (1998). *Kurt v. Turkey*. Application No. 15/1997/799/ 1002. <http://hudoc.echr.coe.int/fre?i=001-58198>.

<sup>13</sup> Judgment of the European Court of Human Rights (2000). *Timurtaş v. Turkey*. Application No. 23531/94. <http://hudoc.echr.coe.int/fre?i=001-58901>.

should not be interpreted as imposing an impossible and disproportionate burden on the authorities.<sup>14</sup> On the contrary, the Court would find a violation of Article 2 if there is an ineffective protection in relation to the actions of the security forces, which means that there was an omission in preventing a real and immediate risk to the life of individuals.<sup>15</sup>

The obligation to investigate deaths applies not only to deaths while the person is within the state authorities, but also to cases where the authorities are informed of events with fatal consequences. The ECtHR also stated that the obligation to investigate is an obligation to take appropriate steps, not to obtain results. Accordingly, authorities should take appropriate steps to provide relevant evidence for the investigation to be able to identify and punish those responsible. Those responsible for the investigation must be independent of those involved – be it hierarchical or institutional dependence, but also in terms of practical independence. Once the authorities are informed of an event with fatal consequences, or otherwise come to such knowledge, they have the obligation to investigate, without the need for a formal complaint. Investigative bodies must also respond reasonably and promptly. Clearly, when suspects are tried, convicted, and imprisoned for murder, it will usually not be possible to argue that the proceedings proved incapable of identifying and punishing the perpetrators.

The obligation of the state to protect life under Article 2 of the ECHR may also apply to cases of endangerment of the environment which are life-threatening. In considering the positive steps that can be taken under Article 2, the Strasbourg Court examines whether the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk. Furthermore, Article 2 may impose an obligation on the State to provide information and advice and to monitor the health status of individuals considered to be at risk or to establish relevant rules. Accordingly, Article 2 can also be considered when there has been no event with fatal consequences. However, cases of gross environmental pollution are more likely to raise questions under Article 8 – Right to respect for private and family life, home and correspondence – than under Article 2 of the ECHR.<sup>16</sup>

Article 2 may be the basis for a debate on the scope of commitments to take appropriate measures to protect life in the field of health care. In view of the difficulties of allocating limited funds, it is recommended that the Court only in exceptional cases find a violation of Article 2 regarding medical care. However, discriminatory treatment in the provision of medical care may constitute a violation of Article 2 when it is found that the authorities endanger the lives of individuals by refusing to provide health care intended to be available to the general population.

The Court, in its case-law, points out that even in cases where medical negligence has been established, a substantial violation of Article 2 will usually be found only if the relevant legislative framework does not provide adequate protection for the patient's life. Therefore, the Court accepts that it cannot be excluded that the acts and omissions of the authorities in the field of health care policy may in certain circumstances engage their responsibility under the positive limb of Article 2 of the ECHR. However, where a Contracting State has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, it cannot accept that matters such as error of judgment on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient are sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life.

The positive obligations from Article 2 set both preventive and investigative obligations, both in the public and in the private sector. The Court urges states to lay down rules

---

<sup>14</sup> Judgment of the European Court of Human Rights (1998). *Osman v. Turkey*. Application No. 87/1997/871/1083, <http://hudoc.echr.coe.int/eng?i=001-58257>.

<sup>15</sup> Judgment of the European Court of Human Rights (2000). *Mahmut Kaya v. Turkey*. Application No. 22535/93. <http://hudoc.echr.coe.int/eng?i=001-58523>.

<sup>16</sup> Decision of the Judgment of the European Court of Human Rights (2004). *Öneriyildiz v. Turkey*. Application No. 48939/99. <http://hudoc.echr.coe.int/eng?i=001-67614>.

forcing hospitals to adopt measures to protect patient's lives and to ensure that the cause of death in the medical profession can be determined through effective and independent judicial system, so that everyone who is responsible must be held accountable. In relation to cases of medical negligence, an indispensable criminal-legal provision is not required, as the civil procedure may be sufficient, if such a procedure is able to determine the responsibility of the professionals in the medical profession involved in providing appropriate civil restitution, such as damages.

Based on this broader understanding of the State's obligation to provide a regulatory framework, the Court has accepted that, in the very exceptional circumstances described below, the responsibility of the State under the substantive limb of Article 2 of the Convention may be engaged in respect of the acts and omissions of health-care providers.

The first type of exceptional circumstances concerns a specific situation where a patient's life is knowingly put in danger by denial of access to life-saving emergency treatment. It does not extend to circumstances where a patient is considered to have received deficient, incorrect or delayed treatment. The second type of exceptional circumstances arises where a systemic or structural dysfunction in hospital services results in a patient being deprived of access to life-saving emergency treatment and the authorities knew about or ought to have known about that risk and failed to undertake the necessary measures to prevent that risk from materialising, thus putting the patient's lives, including the life of the particular patient concerned, in danger. The Court is aware that on the facts it may sometimes not be easy to distinguish between cases involving mere medical negligence and those where there is a denial of access to life-saving emergency treatment, particularly since there may be a combination of factors which contribute to a patient's death. However, for a case to fall into the latter category, the following factors must be met: (i) the acts and omissions of the health-care providers must go beyond a mere error or medical negligence, in so far as those health-care providers, in breach of their professional obligations, deny a patient emergency medical treatment despite being fully aware that the person's life is at risk if that treatment is not given; (ii) the dysfunction at issue must be objectively and genuinely identifiable as systemic or structural in order to be attributable to the State authorities, and must not merely comprise individual instances where something may have been dysfunctional in the sense of going wrong or functioning badly; (iii) there must be a link between the dysfunction complained of and the harm which the patient sustained; and (iv) the dysfunction at issue must have resulted from the failure of the State to meet its obligation to provide a regulatory framework in the broader sense indicated above.<sup>17</sup>

##### **5. Republic of Macedonia and cases concerning Article 2 of the ECHR**

In the case of *Gorgiev*, the applicant alleged that the State was liable for a violation of Article 2 for an action which was dangerous to his life by a police officer.<sup>18</sup> The applicant was shot in the chest and sustained several serious injuries, including fractures and internal bleeding. The court sentenced the perpetrator, a police officer, to two years of imprisonment for serious crimes against public safety, who in an alcoholic state, inadvertently pulled the trigger of his service gun and shot Gorgiev.

The applicant's civil claim for damages against the Ministry of the Interior was rejected because the Court of First Instance and the Higher Court held that the State could not be held liable in the absence of a causal link between the applicant's proceedings and his official duties. However, the police officer acted during his working hours, he was in uniform when he shot the applicant and, therefore, was publicly regarded as a law enforcement agent while using a service gun. For these reasons, the ECtHR held that the harmful action taken by the police officer must be recognized by the respondent State and that there has been a violation of Article 2 of the ECHR.

---

<sup>17</sup> Judgment of the European Court of Human Rights (2017). *Lopez De Sousa Fernandez v. Portugal*. Application No. 56080/13. <http://hudoc.echr.coe.int/eng?i=001-179556>.

<sup>18</sup> Judgment of the European Court of Human Rights (2012). *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*. Application No. 49382/06. <http://hudoc.echr.coe.int/eng?i=001-110543>.

The Government objected that Gorgiev had not exhausted all effective remedies and gave arguments in defence of its allegations, including that the perpetrator had no intention of killing the applicant; that state responsibility had ended with criminal proceedings against the perpetrator who was convicted and imprisoned; that the perpetrator at the critical time left the office during working hours without consent of his superiors; and that the perpetrator acted as a private person.

Analysing the arguments of both sides, the ECtHR concluded that there had been a violation of Article 2 of the ECHR, as Gorgiev had been the victim of conduct that put his life at risk, although he survived (regardless of whether the perpetrator had intended to kill him). According to the Court, the State may be liable for unlawful acts of a police officer taken outside of his/her official duties, based on findings that the police officer acted during his/her working hours; the perpetrator was intoxicated; was in uniform at the time of the shooting; and he fired the service gun and was therefore considered publicly as a law enforcement agent. For these reasons, the Court held that the harmful action taken by the police officer must be recognized by the respondent State and that there has been a violation of Article 2 of the ECHR.

In addition, the ECtHR held that the actions of official State agents taken outside the performance of their duties, which resulted in physical harassment resulting in death, could reveal a violation of Article 2 of the ECHR. The Court also noted that Article 2 does not only deal with deaths as a result of the use of force by state agents, but also establishes a positive obligation on States to take appropriate steps to protect the lives of those in their competence, which also requires them to establish a legislative and administrative framework that should define the limited circumstances in which law enforcement officers may use force and firearms. Thus, the Court recommended that a system of appropriate and effective safeguards be established and rigorously enforced to prevent its agents from misusing official weapons given to them in the context of their official duties, as well as to establish high professional standards regarding recruiting and training of police officers to ensure that persons serving in these bodies meet the necessary criteria.

Furthermore, given the difficulties in policing in modern societies, the unpredictability of human behaviour, and the operational choices that must be made in terms of priorities and resources, the scope of positive commitment must be interpreted in a way that does not impose an impossible or disproportionate burden on authorities. Not every alleged risk to life can require the Convention to take operational measures to prevent that risk from being realized. For a positive obligation to arise, it must be established that the authorities knew or should have known at the time of the existence of a real and immediate risk to the life of an identified person from the offenses of a third party and that they did not take action which was expected to avoid such a risk.

For the ECtHR, police officers should not be left in a vacuum while performing their duties, whether in the context of a planned operation or spontaneous pursuit of a person. The duty of the state to protect the right to life must also be considered to include taking reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, to have an effective independent judicial system, which ensures the availability of remedies capable of establishing the facts, bringing the perpetrators to justice and providing adequate justification.

The case of *Kitanovska-Stanojkovic* refers to the delayed execution of custodial sentence imposed on a defendant found guilty of a serious attack on the applicant.<sup>19</sup> The first applicant was seriously injured during a robbery at her home, while her husband, who was also attacked, later died of his injuries. The father of the second and third applicants also died in the attack. The attackers were convicted of aggravated theft and received prison sentences. However, one of the attackers continued to live in the vicinity of the applicant for 18 months before serving his sentence.

---

<sup>19</sup> Judgment of the European Court of Human Rights (2016). *Kitanovska Stanojkovic and Others v. the Former Yugoslav Republic of Macedonia*. Application No. 2319/14. <http://hudoc.echr.coe.int/eng/?i=001-167126>.

In the proceedings, the applicant complained that the delayed execution of custodial sentence led to a violation of Article 2 of the ECHR. The court found that the effectiveness of the criminal investigation implies timely execution of the sentence. The non-fulfillment of this request, especially due to the lack of coordination between the two departments (the enforcement and the juvenile department) of the same criminal court, as well as the fact that there was no enforcement judge who could deal with the case, is a procedural violation of Article 2 of the ECHR.

Although the ECtHR found that the State had fulfilled its procedural obligation under Article 2 concerning the determination of the circumstances of the incident and the identification and punishment of the perpetrators, it also concluded that the authorities had not exercised due diligence in enforcing the imprisonment sentence which resulted in unreasonable delay, that was not in accordance with the State's obligation under Article 2, notwithstanding the fact that the perpetrator had not shown any hostility towards the applicants following his conviction. The Court further notes that the notion of an effective investigation under Article 2 can also be interpreted as imposing a duty on States to carry out its final judgments without undue delay. For the Court, "The requirement of effectiveness of the criminal investigation under Article 2 of the Convention can be also interpreted as imposing a duty on States to execute their final judgments without undue delay. It is so since the enforcement of a sentence imposed in the context of the right to life must be regarded as an integral part of the procedural obligation of the State under this Article."

In the case of *Kitanovski*, the applicants, a father and son, allege a violation of Article 2 of the ECHR because of their claim that the son's life was in danger when police opened fire on his father's car during a car chase.<sup>20</sup> According to the applicants, the son, Aleksandar Kitanovski, who was driving his father's car, was driving backwards to reach a fast food restaurant. Police officers started chasing him and after driving around a roadblock set up to stop him, police officers started firing at the car. When police later arrested him, they allegedly beat him with batons and punched him in the face, head, abdomen and the back, which, in addition to violating Article 2, also means violating Article 3 of the ECHR.

Following the criminal charges by Tihomir Kitanovski, on behalf of his son, against unidentified police officers for intimidation, torture and ill-treatment, the prosecutor decided that there were no grounds for prosecution. Following the criminal charges filed by the Ministry of Interior against Aleksandar Kitanovski, the Court of First Instance found him guilty of assaulting a police officer in the line of duty and sentenced him to one and a half years of imprisonment. Following the appeal, the Higher Court returned the case for a new trial.

Relying essentially on Article 2 and Article 3 of the ECHR, the applicants complained that Aleksandar Kitanovski's life had been put at risk; that he was harassed by police officers; and that there was no effective investigation into the allegations. The Court, using the test of absolute necessity, found a violation Article 2 and found that the use of potentially deadly force against the applicant was not absolutely necessary, as there was no suspicion that he had committed a crime justifying the danger from the escape, and the shooting by police officers was not preceded by warnings, as required by international and domestic law. In this connection, the Court also found a violation of the procedural aspect of the right to life for the same reasons which led the Court to conclude that no effective investigation had been carried out under Article 3 of the ECHR.

The Court found that the force used by the police officers to arrest the applicant, who allegedly evaded routine control, was not strictly necessary for his conduct. As a result, the applicant sustained bodily injuries, and his treatment was categorized as degrading. In addition to the violation of the substantive aspect of Article 3, the Court found a violation of the State's procedural duty to conduct an effective investigation into the applicant's allegations that the police had put his life at risk and exposed him to ill-treatment. The Court's judgment focuses on the inactivity of the Public Prosecutor's Office, which, despite the seriousness of the

---

<sup>20</sup> Judgment of the European Court of Human Rights (2015). *Kitanovski v. the former Yugoslav Republic of Macedonia*. Application No. 15191/12. <http://hudoc.echr.coe.int/eng?i=001-150640>.

allegations, the fact that the applicant provided the public prosecutor with the identities of the officers concerned, as well as the evidence provided by the applicant, did not take any investigative action nor did he inform the applicant in a timely manner about the criminal charges filed. Finally, the Court notes that the same prosecutor who filed criminal charges against the applicant, accusing him of assaulting a police officer in the performance of his duties, had previously examined his appeal, which the Court found raised doubts about his impartiality.

In the case of *Neškoska*, which concerns the murder of the applicant's son, the ECtHR ruled that in the case of the murder of Martin Neškoski, there was no violation of Article 2 of the ECHR in terms of the effectiveness of the investigation.<sup>21</sup> Martin Neškoski's mother, Lenka Neškoska, complained to the ECtHR that the investigation into her son's death was ineffective. The court explains that her son was killed by a member of the special police force, during the celebration of the 2011 election results.

Referring to the domestic procedure, the Court notes that there was a trial for Neškovski's murder, which resulted in a 14-year prison sentence for the perpetrator. Regarding the investigation of the case, the Court explains that the public prosecutor asked the investigating judge to open an investigation against the perpetrator, but during the investigation Martin Neškoski's mother filed criminal charges against four other people, three of whom were police officers, on suspicion that they helped the perpetrator to cover up the murder and mistakenly told the public prosecutor that Neškoski had died of a drug overdose. However, the public prosecutor rejected the charges, finding that there were no grounds to prosecute the indicated persons, i.e., referring to the evidence, he found that three of the persons were not present when the perpetrator fatally hit Neškoski. Dissatisfied with this decision, Neškoski's mother continued to seek justice as a subsidiary plaintiff, but her application was rejected. Finally, Lenka Neškoska submitted an application to the ECtHR, stating that there had been a violation of Article 2 and that the investigation had not been effective because the judiciary had not examined all aspects of the incident that resulted in murder of Neškoski, as well as the failure to establish the responsibility of all persons involved.

Examining the application, the ECtHR issued a judgment stating that in the case of the murder of Martin Neškoski, there was no violation of Article 2 of the ECHR and that the state undertook an effective investigation into the cause of death of her son, i.e. that the State has met all the criteria established by the ECtHR case law in similar cases. The court found that the actions or omissions of those persons allegedly involved in failing to report the offence or the perpetrator and assisting the perpetrator after the execution of the offence were not detrimental to the effective conduct of the investigation for the purposes of Article 2 of the ECHR, as it refers to the establishment of relevant facts; the identification and punishment of the person responsible for death; and the accessibility and quality of the evidence obtained, were not compromised by any of the shortcomings identified by the applicant. Finally, the Court held that the additional evidence submitted by the applicant in the form of a CD-ROM with audio content and transcripts of taped telephone conversations involving high-public officials relating to conversations about a possible perpetrator of the offense, which was apparently occurred shortly after the incident, has no probative value, as it has not been previously tested by the domestic authorities, nor has its authenticity been confirmed. As a result, the Court found no violation of Article 2 of the ECHR.

### **Conclusion**

Article 2 of the ECHR protects the right to life and addresses three main requirements: first, a prohibition on unlawful killing by state agents; second, the duty to investigate a suspicious death; and third, a positive commitment that requires steps to be taken to prevent an avoidable loss of life. States must take appropriate steps to protect the lives of those within their jurisdiction and, as stated in the case law of the Republic of Macedonia, must establish a

---

<sup>21</sup> Judgment of the European Court of Human Rights (2016). *Neškoski v. the Former Yugoslav Republic of Macedonia*. Application No. 60333/13. <http://hudoc.echr.coe.int/eng?i=001-160217>.

legislative and administrative framework designed to ensure effective prevention; must exercise the utmost care and define the limited circumstances in which law enforcement authorities may use firearms and deadly force; must take reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, to have an effective independent judicial system in place to ensure the availability of remedies capable of establishing the facts, to prosecute and punish the perpetrators and ensure adequate compensation for the victims. Despite all the above positive obligations by the state, these same obligations were not fulfilled in the presented cases and are negative examples that must not be repeated.

### **Bibliography**

1. Delibašić V. (2018) Criminal Law Aspects of Domestic Violence. *From Unlawfulness to Legality – Yearbook No. 1*. Novi Sad: Provincial protector of citizens – Ombudsman and Institute of Criminological and Sociological Research;
2. Jovanović S. (2020) The Right to Die with Dignity in Serbia. *The Right to Human Dignity – Yearbook No. 3*. Novi Sad: Provincial protector of citizens – Ombudsman and Institute of Criminological and Sociological Research;
3. Simović M., Simović M. (2020) The Right to Die with Dignity in Serbia. *The Right to Human Dignity – Yearbook No. 3*. Novi Sad: Provincial protector of citizens – Ombudsman and Institute of Criminological and Sociological Research.

### **Online Sources**

4. Decision of the European Court of Human Rights (2009). *Molie v. Romania*. Application No. 13754/02. <http://hudoc.echr.coe.int/eng?i=001-94259>;
5. Decision of the Judgment of the European Court of Human Rights (2004). *Öneryildiz v. Turkey*. Application No. 48939/99. <http://hudoc.echr.coe.int/eng?i=001-67614>;
6. Judgment of the European Court of Human Rights (1995). *McCann and Others v. United Kingdom*. Application No. 18984/91. <http://hudoc.echr.coe.int/fre?i=002-10101>;
7. Judgment of the European Court of Human Rights (1998). *Kurt v. Turkey*. Application No. 15/1997/799/ 1002. <http://hudoc.echr.coe.int/fre?i=001-58198>;
8. Judgment of the European Court of Human Rights (1998). *Osman v. Turkey*. Application No. 87/1997/871/1083, <http://hudoc.echr.coe.int/eng?i=001-58257>;
9. Judgment of the European Court of Human Rights (2000). *Mahmut Kaya v. Turkey*. Application No. 22535/93. <http://hudoc.echr.coe.int/eng?i=001-58523>;
10. Judgment of the European Court of Human Rights (2000). *Salman v. Turkey*. Application No. 21986/93. <http://hudoc.echr.coe.int/eng?i=001-58735>;
11. Judgment of the European Court of Human Rights (2000). *Timurtaş v. Turkey*. Application No. 23531/94. <http://hudoc.echr.coe.int/fre?i=001-58901>;
12. Judgment of the European Court of Human Rights (2002). *Anguelova v. Bulgaria*. Application No. 38361/97. <http://hudoc.echr.coe.int/eng?i=001-60505>;
13. Judgment of the European Court of Human Rights (2002). *Paul and Audrey Edwards v. United Kingdom*. Application No. 46477/99. <http://hudoc.echr.coe.int/fre?i=001-60323>;
14. Judgment of the European Court of Human Rights (2005). *Nachova and others v. Bulgaria*. Application No. 43577/98 and 43579/98. <http://hudoc.echr.coe.int/eng?i=001-69630>;
15. Judgment of the European Court of Human Rights (2012). *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*. Application No. 49382/06. <http://hudoc.echr.coe.int/eng?i=001-110543>;
16. Judgment of the European Court of Human Rights (2015). *Kitanovski v. the former Yugoslav Republic of Macedonia*. Application No. 15191/12. <http://hudoc.echr.coe.int/eng?i=001-150640>;
17. Judgment of the European Court of Human Rights (2016). *Kitanovska Stanojkovic and Others v. the Former Yugoslav Republic of Macedonia*. Application No. 2319/14. <http://hudoc.echr.coe.int/eng?i=001-167126>;
18. Judgment of the European Court of Human Rights (2016). *Neškoski v. the Former Yugoslav Republic of Macedonia*. Application No. 60333/13. <http://hudoc.echr.coe.int/eng?i=001-160217>;

19. Judgment of the European Court of Human Rights (2017). *Lopez De Sousa Fernandez v. Portugal*. Application No. 56080/13. <http://hudoc.echr.coe.int/eng?i=001-179556>.