

PERCEPTIONS
JOURNAL OF INTERNATIONAL AFFAIRS

December 1998 - February 1999

Volume III - Number 4

RIGHT TO LIFE*

SAFA REİSOĞLU

Professor Dr. Safa Reisoğlu is a professor at Galatasaray University, Istanbul, and a member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The most important socio-political event characterising the second half of the twentieth century is the international effort to determine and protect human rights.

Because of activities and international agreements, particularly following World War II, the concepts of human rights and liberties are no longer simply abstract. They have attained a more concrete and detailed structure with increasing national and international endorsement. It is now a universally held belief that all human beings are born with an equal degree of freedom, rights and liberties. Included among the rights and liberties specifically emphasised in international documents are the rights: to life; to pursue a life without torture or suffering inhuman or degrading treatment or punishment; to equality before the law, to being assumed innocent unless judged otherwise; to protection of one's dignity and maintaining self-respect in the face of aggression; to freedom of thought, religion and conscience; to disseminate thought without being constrained by national borders; to ownership; the provision of state security for all; of unarmed and non-aggravated public assembly; to the freedom to establish an association or a union; of education and of political elections through popular representation.

I. PROTECTION OF LIFE

1) Assuring the right to life is undoubtedly the pivotal point in the concept of the protection of human rights. Physical survival is a prerequisite for benefiting from various rights and liberties included in the European Convention for Human Rights and other international documents. For this reason, those framing the Universal Declaration of Human Rights gave primary emphasis to the protection of human life and made direct reference to everyone's right to life. The United Nations adopted the Universal Declaration of Human Rights in 1948 and the International Convention on Personal and Political Rights, which reaffirms the same idea, in 1966.

The same provision, expressed as "Everyone's right to life shall be protected by law" is included in Article 2 of the European Convention for Human Rights and this is the central theme of this study.

2) States, public institutions and those acting on behalf of them (e.g. security forces) have the express burden of protecting human life (withholding the exceptions provided in Article 2 of the European Convention for Human Rights).

States are further liable to take measures to protect human life against unlawful assaults by third parties (e.g. terrorists, various legal or illegal institutions) as well as respecting the right to life.

These measures may naturally vary from one state to another depending on the circumstances.

3) During the framing of Article 2 of the European Convention for Human Rights, a very controversial topic was the stage at which a human being's right to life and physical existence began and the stage at which it ended. Different opinions were submitted about whether a child in the mother's womb (a foetus) falls within the scope of protection, and where abortion stands in this relation. Similarly, the issue of euthanasia led to different assertions in different countries. When the text and purpose of Article 2 of the Convention are considered, the term 'everyone', in principle should be interpreted as applying to life covering the post-natal period, as is conceded by the European Commission of Human Rights. The issue of abortion and euthanasia (independent of Article 2 of the Convention) is left to be resolved in accordance with the civil code of each individual country.

II. RESTRICTIONS ON THE RIGHT TO LIFE

The right to life is not an absolute right without limitations. Article 2 of the European Convention for Human Rights specifies restrictions (exceptions) to the scope of this right.

Limitations in Article 2 of the Convention in reference to the right to life are restrictive in nature; human life cannot be intentionally terminated, aside from exceptional conditions. Even in the event of war, states cannot take precautionary measures in conflict with Article 2 (see Convention, Article 15/2).

The following restrictions are included in Article 2 of the European Convention for Human Rights with respect to the right to life:

A- Court Decision

According to the Article 2/1 of the European Convention for Human Rights, "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

Thus, the Convention has been made contingent on two fundamental factors to execute a death penalty:

- 1) If it exists, the death penalty must be provided by the law;
- 2) Only a court can render the death penalty.

In other words, no body other than the courts, whatever its function or status, can determine or conclude whether or not a crime has been committed, or if it is punishable by death; one cannot pass a verdict without a trial.

There must be a reasonable balance between the death penalty as decreed by certain laws for certain crimes and the gravity of the crime. Otherwise, a situation that is in conflict with the purpose of the Convention, whose primary goal is the protection of the right to life, will transpire.

Recently, the move to abolish the death penalty has been gaining weight for various reasons. Protocol No. 6, concerning the abolition of the death penalty, annexed to the Convention dictates:

“The death penalty shall be abolished. No one shall be condemned to such penalty or executed.”
There is however an exception provided for in Article 2 of the Protocol authorising the death penalty for acts committed during or under the risk of war. The United Nations also verified and submitted for signature a similar Protocol on 15 December 1989.

B- Other Restrictions

According to paragraph 2 of Article 2 of the European Convention of Human Rights, if the act of killing occurred as a result of "the use force which is no more than absolutely necessary", then the act is not regarded as being in conflict with the principle of the right to life as is in the following cases.

a) Legitimate Defence

The individual who has been compelled to terminate the life of an aggressor threatening that individual's or some other individual's life, under the compulsion of repelling an immoral and an unyielding attack, is not considered to have acted in conflict with Article 2 of the Convention (right to life).

The meaning of “legitimate defence” in Article 2 of the Convention in question is applicable only to circumstances with respect to a direct threat to physical existence. Taking the life of an aggressor to repel a threat to property will not be considered, in principle, as “legitimate defence” within the scope of the Article 2/2 of the Convention.

b) Detaining and Preventing the Escape of a Detainee

It is not considered in violation of the Convention’s Article 2, on the right to life, if "the use of force which is no more than absolutely necessary" is resorted to in order to arrest or to prevent a detainee from escaping; even under circumstances of the detainee's death as result of the force used to prevent his escape. However, it must be reiterated that the event of death is not in contravention of the right to life with respect to the exceptional circumstances of the event (e.g. the individual who is trying to escape is deemed very dangerous and the crime for which he is arrested, heinous) and if resorting to force (in principle) was unavoidable and that it was not with the intent to cause death.

c) Uprisings and Quelling Rebellions

It is not considered in violation of the Convention’s Article 2 on the right to life and not in conflict with the law to resort to "the use of force which is no more than absolutely necessary" (within the bounds of the law and with respect to the gravity of the circumstances and of the distress incurred on persons or goods) in order to quell uprisings or rebellions; even under circumstances of death incurred as result of the force in question.

It is not necessary for state forces or third persons to exercise "legitimate defence" in order to suppress a riot or a rebellion by force. The gravity of the event is seen as sufficient for the resort to force. However, it must be stated as a general rule of law, that the state should specifically avoid undue force which the circumstances do not call for, in suppressing an uprising or a rebellion.

d) War Actions

Another exception to the principle of the right to life is embodied in paragraph 2 of Article 15 of the Convention. According to Article 15/2, death as a result of actions of war that are in accordance with the law are not considered a breach of the right to life, as foreseen in Article 2 of the Convention.

III. COURT OPINION ON RESTRICTIONS ON THE RIGHT TO LIFE

The European Court of Human Rights has seized the opportunity to reveal its opinions on Article 2 of the Convention through a decision rendered on September 27, 1995 (série A n°324) in the *McCann c. Royaume – Uni* case, regarding the killing, by British soldiers, of three IRA members on the suspicion of having committed an assassination. According to the said decision of the Court:²

1) A consequential and extensive investigation into the legality of actions is called for in the event of death as a result of force applied by state troops. A state's obligation to protect the lives of its subjects requires such an investigation.

2) There should be an equitable balance between the scope of using force and the benefits intended to be preserved.

If there are justifiable reasons to use force simply on the appearance (style of occurrence) of an event, state troops resorting to force is not considered unwarranted, even under circumstances where the outward appearance of the event is later proven to be a misleading one.³

3) The existence of a balance between the benefit intended to be preserved and the force applied is not sufficient alone to deem the event of death acceptable within the scope of Article 2 of the Convention. State forces, during the operation, are obligated to take measures that will minimise the occurrence of death as a result of using force.⁴

IV. RULES ON THE RIGHT TO LIFE COVERED BY THE TURKISH CONSTITUTION

The Turkish Constitution includes rules on the right to life, and restrictions thereof, similar to Article 2 of the Convention. According to Article 17 of the Constitution:

“Every one has the right to life.”

“The cases of carrying out of death penalties under court sentences and the act of killing in legitimate-defense, the occurrences of death as a result of the use of a weapon permitted by law as a necessary measure in cases of: apprehension, or the executing of warrants of arrest, the prevention of escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, the execution of orders of authorized bodies during martial law or state of emergency are outside the provision of paragraph 1 (right to life).”

1 Protocol No. 6, only binding those countries that have sanctioned it as of the month following its approval by five member states of the European Council, came into force as of 1.3.1985. Turkey, the United Kingdom, Bulgaria and Poland have not signed the protocol. Among the states which have approved and signed the protocol are France, Germany, Italy, Holland, Switzerland, Sweden, Spain, Norway, Finland, Romania, Austria, Denmark and Hungary.

2 For detailed information on the decision and event, see Vincent Berger, *Jurisprudence de la cour*

européenne des droits de l'homme, sh.7,vd, Paris, 1996.

3 The event that led to this case begun with the police receiving information that the IRA would explode by remote control an automobile filled with bombs. The police were ordered to arrest three individuals fleeing from the auto, after it had been parked at the confirmed location. Due to certain gestures and bodily motions of the three individuals fleeing, the police reached the conclusion that they had a remote control in their bags or on their person which they were going to set off causing the death of many innocent civilians. Thus, they opened fire on the individuals, killing all three. It was discovered later that these individuals were in fact terrorists, yet they possessed no firearms nor were there any bombs in the auto at the time of the event.

4 The court decided (ten votes against nine) that state forces had not been attentive nor were they sufficiently organised, and were thus in violation of the principle of the right to life set forth in Article 2 of the Convention. The court, however, unanimously rejected the demands of plaintiffs (relatives of the dead) for compensation due to lack of evidence that the suspects killed had actually intended to place the bombs.

* This paper has been extracted from relevant sections of Prof. Dr. Safa Reisoğlu's book entitled "Uluslararası Boyutlarıyla İnsan Hakları" (International Dimensions of Human Rights), to be published in 1999.