AACC SRD Research

Right to Life

AACC SRD
AACC Secretariat for Research and Development

Constitutional Court of Korea

AACC Member Institutions

Afghanistan		Independent Commission for Overseeing the Implementation of the Constitution
Azerbaijan		Constitutional Court
Bangladesh		Supreme Court
India		Supreme Court
Indonesia		Constitutional Court
Jordan		Constitutional Court
Kazakhstan		Constitutional Council
Korea, Rep.		Constitutional Court
Kyrgyz Rep.		Constitutional Court
Malaysia		Federal Court
Maldives		Supreme Court
Mongolia		Constitutional Court
Myanmar		Constitutional Tribunal of the Union
Pakistan		Supreme Court
Palestine		Supreme Constitutional Court
Philippines		Supreme Court
Russia		Constitutional Court
Tajikistan		Constitutional Court
Thailand		Constitutional Court
Türkiye		Constitutional Court
Uzbekistan		Constitutional Court

(as of December 2022)

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Preface

The AACC SRD, established in 2017 to conduct joint research among AACC members on constitutions and constitutional adjudication in Asia, now presents its fifth research publication.

The AACC SRD laid the foundation for understanding constitutional adjudicatory bodies and constitutional justice systems through its research on jurisdictions and organization of AACC members (2018) and constitutional review at AACC members (2019). Then it continued its research by focusing on rights that are constitutionally protected, publishing research on the freedom of expression (2020) and a general overview of constitutional rights (2021). This year, the AACC SRD has chosen, as its annual research topic, one of the most important constitutional rights protected by all AACC members: "Right to Life."

The introductory chapter of this book (Part A), lays out the context, background and our working methods, and summarizes the contents of this year's research project. Part B consists of comparative tables on selected topics of importance, offering at a glance key facts and landmark cases on issues including capital punishment, abortion, euthanasia, and assisted suicide. Part C presents the collection of materials submitted by AACC members, containing facts and information on various aspects of the constitutional right to life. It provides in-depth information on legal norms, systems, and relevant adjudication. It also takes a step beyond the traditional discussions, by inviting AACC members to explore expansive dimensions, such as the development of biomedical technology, and socio-economic and environmental dimensions of the right to life.

Over the last five years of joint research, I was able to witness an incredible level of professionalism and cooperation demonstrated by AACC members. I am well aware that it was no easy task to submit materials on a different

research topic every year during busy work schedules. Being convinced that the knowledge we have accumulated together will provide a very valuable source of information contributing to constitutional justice in Asia, I hereby express my deep gratitude to each and every one of the AACC members.

Jongmun Park
Secretary General
AACC SRD / Constitutional Court of Korea

Congratulatory Message

It is with great pleasure that I extend my congratulations to the AACC SRD for publishing its fifth research book. I also convey my sincere gratitude to AACC member institutions for their active participation in this research book project and the staff at the AACC SRD for their hard work in putting together this publication.

The AACC SRD, founded in 2017 to contribute to the AACC's objectives of the development of democracy, the establishment of the rule of law and the protection of human rights, selects a particular topic of research concerning constitutions and constitutional justice each year; organizes an annual international conference as a forum for extensive debate and discussion; and conducts studies of comparative constitutional law based on the materials officially provided by individual AACC member institutions. The annual research book is the outcome of such research and an invaluable asset of the AACC, containing experience and knowledge of Asian countries on constitutions and constitutional adjudication.

This year's research book brings together knowledge and experience of the individual AACC members on the protection of the right to life in constitutions and constitutional adjudication, including the constitutional duty of the State to protect life. The right to life, a transcendental right granted by the law of nature, is the precondition for all fundamental rights and the most fundamental of all constitutional rights. This year's research on the right to life is of particular significance since the global pandemic of COVID-19 more than ever necessitates in-depth discussions on the State's duty to protect life. This book also gives the reader a glimpse of constitutional adjudication from the individual Asian countries on key issues including capital punishment, euthanasia and assisted suicide, and discussions within the context of socio-economic and environmental dimensions of the right to life.

AACC member institutions, despite their different historical, cultural and religious backgrounds and political and economic realities, are striving to achieve the common values of establishing democracy and protecting human rights based on the rule of law. I hope that research activities of the AACC SRD, which give AACC members the opportunity to share their respective knowledge and wisdom in this journey of joint efforts, will continue to grow. It is also my hope that this book will serve as a valuable resource for readers around the world including constitutional justice practitioners and researchers in the field.

Namseok Yoo
President
Constitutional Court of Korea

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Introduction

Introduction

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1. Background

This book is the fifth publication of the Secretariat for Research and Development (SRD) of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC).[1] According to Elaboration 3.3 of Article 22 of the AACC Statute, one key task of the AACC SRD is to plan, conduct, and coordinate joint research activities among AACC members. The annual book project conducted by the AACC SRD since the Secretariat's establishment in 2017 is designed to fulfil this mandate. This year's book contains chapters drafted respectively by seventeen AACC member institutions. While this introductory chapter (Part A) and the comparative tables (Part B) have been drafted by the AACC SRD,[2] every country chapter in this book (Part C) is the independent work of the respective AACC member. These country chapters are also referred to as "Fact Files." Each of these has a cover page that contains an overview paragraph designed to provide a summary of some of the most important themes.

1 Further information on the AACC SRD can be found on its website: http://www.aaccsrd.org/en/main.do.

2 The comparative tables have been reviewed by participating AACC members.

Over the past years, the AACC SRD has usually chosen relatively broad topics, such as on AACC institutions' jurisdictions and organization, constitutional review systems, and on constitutional rights protection in general. The aim was for the AACC SRD in its early years to first publish materials providing an overview of foundational issues of constitutional adjudication. The AACC SRD has in the past also successfully published one volume focusing on one particular constitutional right, the freedom of expression.[3] For 2022 and in the coming years, the AACC SRD aims to continue with rights-specific themes as one of its main options for research. This year the AACC SRD has therefore chosen one of the most fundamental of constitutional rights as its annual research topic: *Right to Life*.

Many fundamental issues regarding the potential limitations on the right to life can be discussed, especially in light of the special importance of the right to life. These include capital punishment, abortion, euthanasia and suicide, and the lethal use of force during law enforcement activities. These issues all involve the immediate deprivation of life either by the state or private actors during peacetime, and many of these have been subject to constitutional adjudication.

Expansive understandings of the right to life can also be a matter of constitutional law. One example is interpreting the right to life as a right to "dignified life," thereby implicating socio-economic dimensions, such as defining a constitutionally adequate minimum standard of living. Environmental degradation, including threats posed by climate change, can also be directly detrimental to the right to life. Constitutional courts around the world have adjudicated on constitutional disputes concerning the right to life, which have been framed within the context of environmental protection.

Through the 2022 book project, the AACC SRD has invited all AACC member institutions to share their relevant experiences and perspectives on all of these above issues. Although the AACC SRD provided all AACC members with a chapter template, some structural variations in the chapters exist as a result of particular experiences of AACC members. However, most chapters do broadly follow the suggested chapter outline, thereby making it easier for the reader to make cross-references on particular themes and issues.

The remainder of this introductory chapter highlights some of the key contents

3 The four previous publications are titled as follows: *Jurisdictions and Organization of AACC Members* (2018), *Constitutional Review at AACC Members* (2019), *Freedom of Expression: Experience of AACC Members* (2020), and *Constitutional Rights and AACC Members* (2021). All AACC SRD publications are available under the "Publications" section of the AACC SRD website: http://www.aaccsrd.org/en/pubsLst.do.

that can be found in the respective chapters of this book. The first focus is on the legal basis of the right to life, both at the national and the international level. Secondly, information on the constitutional right to life is synthesized under three specific themes: Direct exercise of state power, personal self-determination, and expansive interpretations of the right to life. These three themes also reflect the session structure of the AACC SRD's Research Conference 2022, which was held as part of this book project.[4] Since the AACC is an association of constitutional adjudicatory bodies, this introductory chapter provides a summary of the three themes mainly based on the relevant adjudication of AACC members. Case references in this chapter's footnotes generally only provide the name and year of the case. For detailed case reference information of each case, please consult the individual Fact Files contained in Part C of this book.

2. Legal basis

a. Constitutional reference

With only one exception, all constitutional texts surveyed in this book contain an explicit provision on the right to life.[5] The only exception is the Constitution of the Republic of Korea (hereafter "Korea"). However, even though Korea's constitutional text does not contain an explicit provision on the right to life, the Constitutional Court of Korea in 1996 recognized the right to life as an unenumerated constitutional right. The Court held that "human life is noble and the source of the dignified human being" and that it "is a transcendental right granted by the law of nature based on the human instinct to survive and the purpose of human existence." Therefore, it is "considered as one of the most essential fundamental rights functioning as the prerequisite for all fundamental rights."[6]

As for all the other surveyed constitutions, an explicit provision on the right to life is provided for. Those provisions also make it clear that the right to life is a universal right: Key terminology used in these texts include reference to "everyone" or "every person" having the right to life, or that "no person" shall be deprived of life. Despite its fundamental and universal nature, just as with most constitutional rights, the right to life may be subject to certain limitations. Some of these provisions therefore do contain explicit references to limitations.

4 For further information on the conferences held by the AACC SRD, see http://www.aaccsrd.org/en/eventLst.do.

5 For an overview, see Tables 1 and 2 of Part B of this book.

6 Decision 95Hun-Ba1 (1996).

Examples include general wording such as "in accordance with law" or the naming of explicit methods, such as reference to capital punishment. However, it should be pointed out that some of the provisions on the right to life actually explicitly prohibit the death penalty, or emphasize the exceptional nature of the death penalty.[7]

Being of fundamental importance, it is notable that in the majority of the surveyed constitutional provisions the right to life does not feature on its own. Six of the seventeen surveyed provisions on the right to life exclusively concern the right to life. These are the constitutional provisions from Azerbaijan, Indonesia,[8] Kazakhstan, Mongolia, Russia, and Uzbekistan. In contrast, in the relevant constitutional provisions from the other countries the right to life features with at least one other constitutional right. One example is the similarity of the right to life provisions found in Bangladesh, India, Malaysia, Myanmar and Pakistan. The first part of these provisions all refer to the simultaneous protection of the right to life and the right to liberty. Similarly, the Kyrgyz Constitution specifically pairs up the right to life with the right to health. Other countries may refer to the right to life as part of a group of rights and include various different contexts (the Philippines, Tajikistan, Thailand, and Türkiye).[9]

b. Ratification of the ICCPR

With only two exceptions, all AACC members participating in this book project are located in countries that have ratified the International Covenant on Civil and Political Rights (ICCPR).[10] The ratification of the ICCPR is significant due to it being one of the most important international human rights treaties that contain a provision guaranteeing the right to life. Significantly, Article 6(1) of the ICCPR makes it clear that the right to life "shall be protected by law." This means that the state not only has the negative duty to respect the right to life through non-interference, but also the positive duty to "protect" the right to life by taking action to prevent interference with this right.[11]

The First Optional Protocol of the ICCPR (ICCPR-OP1) establishes an individual

7 For further discussion on capital punishment, please refer to Part 3.a of this introductory chapter.

8 Article 28A of the Indonesian Constitution also speaks of the right to defend one's "existence."

9 For an overview of the constitutional provisions on the right to life, see Table 2 of Part B of this book.

10 The two exceptions are Malaysia and Myanmar.

11 According to the UN Human Rights Committee, Article 6(1) ICCPR obliges States parties to "establish a legal framework to ensure the full enjoyment of the right to life by all individuals as may be necessary to give effect to the right to life. The duty to protect the right to life by law also includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities." United Nations Human Rights Committee, "General Comment No. 36, Article 6: right to life," paragraph 18 (https://undocs.org/CCPR/C/GC/36).

communications mechanism to the UN Human Rights Committee, the body that monitors the implementation of the ICCPR by states parties. Ten of the seventeen AACC members' countries surveyed in this book have ratified ICCPR-OP1: Azerbaijan, Kazakhstan, Korea, the Kyrgyz Rep., Mongolia, the Philippines, Russia, Tajikistan, Türkiye, and Uzbekistan. Specifically related to the right to life, the ICCPR has a Second Optional Protocol (ICCPR-OP2), which aims at the abolition of capital punishment. Seven of the seventeen AACC members' countries surveyed in this book have ratified ICCPR-OP2: Azerbaijan, Kazakhstan, the Kyrgyz Rep., Mongolia, the Philippines, Türkiye, and Uzbekistan.[12]

3. Direct exercise of state power

As mentioned, despite the fundamental nature of the right to life, it can be subject to certain limitations. However, these need to be constitutionally justified. Some of the most direct examples are situations where the right to life is immediately deprived by the exercise of state power, such as resulting from capital punishment or the use of lethal force by public authorities during law enforcement.

The ICCPR recognizes the possibility of capital punishment, but Article 6 ICCPR stipulates various safeguards "2. […] sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. […] 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. […]"

Likewise, the adequate guarantee of the right to life certainly requires the implementation of legislative frameworks to prevent instances of arbitrary deprivation of life by law enforcement officials. This issue has been discussed at length in a recent official UN commentary on Article 6 ICCPR. According to this *Comment No. 36* of the UN Human Rights Committee, "[i]n particular, all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the

12 For an overview of the ratification of the ICCPR and its two Optional Protocols within the AACC context, see Table 1 of Part B of this book.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life."[13] The following summarizes information provided by AACC members regarding capital punishment and the lethal use of force by state authorities, especially within the context of relevant adjudication on these issues.

a. Capital punishment

An overview of the seventeen countries surveyed in this book provides the following picture on the use of capital punishment:[14] Seven have abolished capital punishment,[15] five retain the possibility of capital punishment but currently do not apply it in practice,[16] and five continue to apply capital punishment.[17] Regardless of the current legal status of capital punishment, nine of the seventeen AACC members contributing to this book mention examples of relevant constitutional adjudication. These are Bangladesh, India, Indonesia, Kazakhstan, Korea, Malaysia, Pakistan, the Philippines, and Russia. The following sub-sections provide an overview of some of these judgments.

Adjudication prior to abolition

Among the countries that have abolished capital punishment, the Philippine Supreme Court and the Kazakh Constitutional Council mention relevant adjudication rendered in the period prior to abolition. From 1993 until 2004, the Supreme Court of the Philippines assumed direct appellate review over all criminal cases involving the death penalty. In 1998 it ruled that "the death penalty *per se* is not a cruel, degrading or inhuman punishment" and that "any infliction of pain in lethal injection is merely incidental in carrying out the execution of death penalty and does not fall within the constitutional proscription against cruel, degrading and inhuman punishment."[18] However, in 2004 the Court did emphasize

13 United Nations Human Rights Committee, "General Comment No. 36, Article 6: right to life," paragraph 13 (https://undocs.org/CCPR/C/GC/36).

14 See Table 4 of Part B of this book.

15 In order of year of abolition: Azerbaijan (1998), Türkiye (2004), the Philippines (2006), the Kyrgyz Rep. (2007), Uzbekistan (2008), Mongolia (2017), and Kazakhstan (2022).

16 In order of year of last execution: Russia (1996), Korea (1997), Malaysia (2018). In the case of Myanmar, the information provided by the Constitutional Tribunal of Myanmar does not provide an officially notified and announced date or year of the exercising of the moratorium. It mentions that the moratorium was exercised in about 1989 but points out that there is no official evidence for the date. So the Fact File mentions that it has been exercised since over thirty years. The Fact File of the Constitutional Court of Tajikistan does not provide information on the last execution. However, it mentions that a moratorium was declared in 2004.

17 Bangladesh, India, Indonesia, Pakistan, and Thailand.

18 *Leo Echegaray v. The Secretary of Justice* (1998).

that "where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone."[19] Two years later, in 2006, the death penalty was abolished in the Philippines.[20]

In Kazakhstan, even though the Constitutional Council in 2003 affirmed capital punishment as "an exceptional measure of punishment for especially grave crimes," [21] this form of punishment has now been abolished. In 2020 Kazakhstan signed ICCPR-OP2 and the President of Kazakhstan asked the Constitutional Council for an official interpretation of the retention of the death penalty that was at the time stipulated in paragraph 2 of Article 15 of the Constitution. The Council determined that due to the possibility of reservations, the constitutional provision does not prevent the ratification of the Protocol.[22] Upon ratification of ICCPR-OP2 by Kazakhstan in 2021, a reservation was made that, in accordance with Article 2 of the Protocol, Kazakhstan reserves the right to apply the death penalty in wartime. Yet constitutional reform in 2022 completely abolished the death penalty in Kazakhstan. Instead of being a legal basis for capital punishment in exceptional circumstances, paragraph 2 of Article 15 has been amended to explicitly prohibit the death penalty. As a result of the constitutional reform of 2022, the Constitutional Council's resolution rendered in 2020 will be revised.[23]

Retention but non-application

In terms of the countries which retain capital punishment but have refrained from applying it in recent years, the following summarizes information from Russia, Korea, and Malaysia.[24]

Even though the death penalty has not been carried out in Russia since 1996, there have been two key instances of constitutional adjudication on this matter in the following years. In 1999 the Constitutional Court concluded that the death penalty shall not be imposed until federal law comes into effect that practically ensures the right to a jury trial for every person who may be sentenced to death.[25] This temporary prohibition on the imposition of capital punishment was motivated procedurally, focusing on the fact that at the time there were no jury trials in at

19 *People v. Efren Mateo y Garcia* (2004).

20 See Part II.A. of the Fact File by the Supreme Court of the Philippines in this book.

21 Normative resolution dated January 30, 2003 No. 10.

22 Normative resolution dated December 15, 2020 No. 4.

23 Part II.A. of the Fact File by the Constitutional Council of Kazakhstan in this book.

24 See Part II.A. of each of the Fact Files provided by the respective AACC member institutions from these countries in this book.

25 Judgment of 2 February 1999 No. 3-P.

least some parts of the territory of the Russian Federation. A decade later, the Russian Supreme Court lodged a request with the Constitutional Court, seeking to clarify whether the moratorium introduced by the Constitutional Court in 1999 would remain in force. The Constitutional Court responded by pointing out that as a result of the lengthy moratorium, guarantees for not being subjected to capital punishment have formed. It also noted that a stable constitutional legal regime has been developed within which, taking into account Russia's international obligations, the inevitable process towards the abolition of capital punishment is taking place. The Constitutional Court concluded that the introduction of jury trial throughout the territory of the Russian Federation does not open the possibility to impose capital punishment, including where the sentence is based on a jury verdict.[26]

In Korea, the last execution took place in 1997. However, even though capital punishment has not been applied since then, the Constitutional Court has so far held the existence of capital punishment as constitutional, such as in 1996 and 2010.[27] In the latter decision, the Constitutional Court viewed that "while the final decision on the constitutionality of capital punishment rests with the Constitutional Court, the issue of whether to maintain or abolish the statutes recognizing the capital punishment is a matter of legislative policy which should be decided by the legislature with democratic legitimacy." It also held that "[t]he problem of the possibility of a misjudgment cannot be construed as a problem inherent in the system of capital punishment itself, and should be solved through the institutional system, such as judicial tier system and retrial system, and the improvement thereof. Therefore, it is difficult to rule that the capital punishment violates the right to life." The Court went on to find that "capital punishment, which is to be imposed limitedly only for heinous crimes such as the cruel murder of a number of people, cannot be considered an excessive punishment compared to the cruelty of the crime. Capital punishment is the outcome of the heinous crime that the criminal has voluntarily chosen, and thus, cannot be considered to infringe on the criminal's dignity and worth as a human being. Further, even if judges or prison officers who declare or execute capital punishment may suffer from a guilty conscience, it is difficult to say that, for this reason alone, the capital punishment system infringes on their human dignity and worth." At the time of this book's publication, another case arguing the unconstitutionality of the death penalty is pending at the Constitutional Court of Korea.[28]

26 Decision of 19 November 2009 No. 1344-O-R.

27 Respectively Decision 95Hun-Ba1 (1996) and Decision 2008Hun-Ka23 (2010).

28 Case 2019Hun-Ba59 (pending).

The non-application of capital punishment in Malaysia is relatively recent. While capital punishment continues to be regarded as a legitimate form of punishment for serious criminal offences, the Malaysian government declared a moratorium on death penalty executions since July 2018.[29] Yet the constitutionality of capital punishment was recently upheld in 2020, where the Federal Court of Malaysia ruled on the constitutionality of the death penalty under section 39B of the Dangerous Drugs Act 1952.[30] In this case, the Federal Court held that the legislature is responsible for enacting laws and determines as a matter of policy, the nature of the law and the commensurate punishment for it. However, it also pointed out that the legislature's rights are not infinite and the judiciary has the judicial power to examine such laws to ascertain whether the laws are just, fair and reasonable. The Malaysian government is currently looking into proposals to consider abolishing death penalty laws.[31]

Retention and application

Some AACC members are also located in countries that continue to apply capital punishment in practice. These are Bangladesh, India, Indonesia, Pakistan and Thailand. In 2007 the Constitutional Court of Indonesia upheld the constitutionality of capital punishment.[32] According to the Fact File submitted by the Indonesian Constitutional Court for this book, this decision provides the end point for the death penalty debate so far. Even though the decision is in the context of narcotics, the Fact File points out that this decision is the basis for genuine thought about the position of the death penalty and its constitutionality in Indonesia. The decision stated that the right to life is not absolutely enforced.[33]

In 2015 the Appellate Division of the Supreme Court of Bangladesh argued for the continued use of capital punishment, considering the social conditions and cultural values in the country.[34] However, the Appellate Division of the Supreme Court has on numerous occasions commuted the death penalty to life imprisonment. Key grounds for commutation include the young age of the convict[35] and inordinate delays in the disposal of the case.[36] In 2017 the Appellate Division of the Supreme Court observed that "[i]t has been the practice of this

29 See Part II.A. of the Fact File by the Federal Court of Malaysia in this book.

30 *Letitia Bosman v. Public Prosecutor and other appeals* (2020).

31 See Part II.A. of the Fact File by the Federal Court of Malaysia in this book.

32 Decision No. 2-3/PUUV/2007.

33 See Part II.A. of the Fact File by the Constitutional Court of Indonesia in this book.

34 *Bangladesh Legal Aid and Services Trust (BLAST) and Ors. vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs, Dhaka and Ors.* (2015).

35 *State vs. Tasiruddin* (1960) and *Samaul Haque Lalon vs. State* (2021).

36 *Nazrul Islam (Md.) vs. State* (2012).

Court to commute the sentence of death to one of imprisonment for life where certain specific circumstances exist, such as the age of the accused, the criminal history of the accused, the likelihood of the offence being repeated and the length of period spent in the death cell."[37]

In India, the constitutionality of capital punishment was first questioned before the Supreme Court in 1973.[38] The Supreme Court held that the deprivation of life is constitutionally permissible if it is done according to procedure established by law as per Article 21 of the Constitution. Over time, the Supreme Court has developed its jurisprudence on capital punishment and when it may be imposed. In 1979 the Supreme Court held that the death sentence should be imposed only when special reasons exist for the imposition, and that it can be invoked only in extreme situations.[39] In 1980 the Supreme Court emphasized that the death penalty is an exception rather than the rule and it ought to be imposed only in "gravest of cases of extreme culpability," or in "rarest of rare" cases. The Court further clarified that "life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of crime."[40] The "rarest of rare" standard is the current test used by courts to determine whether capital punishment is merited in a particular case. This standard has been further explained in subsequent judgments of the Supreme Court.[41] Further examples of relevant cases on capital punishment include two from 1983. In one of these the Supreme Court invalidated legislation that provided for mandatory death sentence when a person commits murder while undergoing life imprisonment.[42] In the other the Supreme Court criticized undue delay in execution of the death sentence and called such instances "degrading" and "inhuman."[43]

The Fact File provided by the Supreme Court of Pakistan for this book also mentions a set of relevant adjudication, focusing on the safeguards against the arbitrary imposition of the death penalty. For example, in 2021 the Supreme Court held that executing a condemned prisoner who, due to mental illness, was unable to understand the reason behind his or her punishment would not meet the ends of

37 *Kamal vs. The State* (2017). For further details on capital punishment in Bangladesh, see Part II.A. of the Fact File by the Supreme Court of Bangladesh in this book.

38 *Jagmohan Singh v. State of Uttar Pradesh* (1973).

39 *Rajendra Prasad v. State of Uttar Pradesh* (1979).

40 *Bachan Singh v. State of Punjab* (1980).

41 *Machhi Singh v. State of Punjab* (1983).

42 *Mithu v. State of Punjab* (1983).

43 *Sher Singh v. State of Punjab* (1983). For further details on capital punishment in India, see Part II.A. of the Fact File by the Supreme Court of India in this book.

justice, even though all appellate and mercy petition stages had been exhausted.[44] Within the context of military tribunals, the Peshawar High Court held in 2018 that the Court in its constitutional jurisdiction could positively interfere with the decision of the military courts on three fundamental grounds: if the case of the prosecution was based, 1) on no evidence, 2) insufficient evidence and 3) absence of jurisdiction.[45] In 2019 the Peshawar High Court held that the accused, who were sentenced to death by military courts, were denied their legal and fundamental right of engaging a private counsel. It held that the cases were cases of no evidence, if the alleged confessional statements were made without any independent advice after months or years of confinement. The Court set aside the convictions and sentence of death by the military courts, and gave directions to set the accused free.[46]

b. Lethal use of force by state authorities

The use of force by state authorities during law enforcement can result in the deprivation of the right to life. Therefore, the state not only has the negative duty to refrain from doing so, but also the positive duty of implementing rules and regulations to minimize the risk of arbitrary deprivation of life. Regarding these issues, the Fact Files of AACC members in this book provide information on relevant legal norms. Six of the seventeen AACC members also provide examples of relevant constitutional adjudication. The following summarizes judgments discussed by AACC members located in India, Korea, Malaysia, Pakistan, the Philippines, and Türkiye.[47]

In India, the Supreme Court has held that any ill-treatment of the detainee by the police would entitle him to monetary compensation under Article 21 of the Constitution.[48] Later on, in a landmark judgment the Supreme Court dealt with the issue of custodial deaths thoroughly and laid down certain guidelines for the protection of detainees.[49] These guidelines were subsequently incorporated into the Code of Criminal Procedure by way of amendment. Furthering the cause of safe police custody, the Supreme Court has mandated the entire premise of the police stations be covered under CCTV cameras, to curb the risk of police brutality and custodial death.[50]

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44 *Safia Bano v. Government of Punjab* (2021).

45 *Muhammad Ayaz v Superintendent District Jail, Timergara, District Lower Dir* (2018).

46 *Abdur Rashid v Federation of Pakistan* (2019). For further details on capital punishment in Pakistan, see Part II.A. of the Fact File by the Supreme Court of Pakistan in this book.

47 For an overview of the list of these cases, see Table 8 of Part B of this book.

48 *Nilabati Behera v. State of Orissa and Ors.* (1960); *Mohanlal Sharma v. State of Uttar Pradesh* (1989).

49 *D.K. Basu v. State of West Bengal* (1997).

50 *Paramvir Singh Saini v. Baljit Singh and Ors.* (2020).

In Korea, key relevant cases concern the use of water cannons by the police. One example is from 2020, where the police fired a straight jet of water at a demonstrator for 13 seconds, aiming constantly and directly at his head and other parts above his chest. As a result, he was injured, went into a coma and died after being treated in a hospital for 10 months. In this case, the Constitutional Court held that the conduct of the demonstrator "did not pose a clear and direct threat to the legal interests of others or to public peace or order, and thus the necessity for the conduct of directly spraying a jet of water cannot be recognized." It concluded that such police action infringed on the "right to life and freedom of assembly by violating the rule against excessive restriction."[51]

In 2013, the High Court in Malaysia held that there is no hard and fast rule as to when the police can open fire at fleeing suspected criminals. It must depend on the facts and circumstances of each case. In the 2013 case, the Court further elaborated as follows. The fact that only one out of 30 bullets hit the upper part of the car that was being chased by police, while the other 29 hit its lower back and underside showed that the single bullet that hit the back of the deceased's head was unintended. The accused's intention when he opened fire was to shoot at the car and not at the deceased and his sole intention was to immobilise the car. The totality of the evidence could not support any suggestion that the accused intended to kill the deceased. Also, the police would not have been justified to open fire at the car if the deceased had not conducted himself like a dangerous criminal who was intending to evade arrest. The fact that the deceased was not a criminal is of no consequence if otherwise by the deceased's conduct, the deceased had led the police into believing that he was one. It was clear that the situation the police were faced with warranted the discharge of firearms.[52]

In Pakistan, the Supreme Court has held that Section 5(2)(i) of the Anti-Terrorism Act 1997 was invalid to the extent it authorised the officer of police, armed forces and civil armed forces charged with the duty of preventing terrorism, to open fire or order for opening of fire against person who in his opinion in all probability was likely to commit a terrorist act or any scheduled offence, without being fired upon.[53] In another case, the Supreme Court took suo motu notice of the killing of an unarmed citizen at the hands of Sindh Rangers, a federal paramilitary force called in aid of the police and civil administration, in Karachi.[54] The Court termed the incident "a classical case of high handedness of the law enforcing agencies"

51 Decision 2015Hun-Ma1149 (2020).

52 *Jenain Subi v PP* (2013).

53 *Mehram Ali v Federation of Pakistan* (1998).

54 *Suo Motu Case No. 10 of 2011: In the matter of Brutal Killing of a Young Man by Rangers* (2011).

which clearly indicated barbarism because once the victim had been overpowered, as evident from the video clip of the event recorded by a journalist, he was not to be fired upon in any case and at maximum the Rangers personnel could have handed him over to the police, if there was any allegation of his involvement in the commission of some offence. In 2012 the Supreme Court observed in the context of allegations of "high handedness on the part of law enforcement agencies" in the insurgency-hit province of Balochistan, that it was the duty of the State to enforce fundamental rights of citizens and protect their life, liberty and property. The Court gave directions that the Federal Government should ensure immediate action under the Constitution to provide security to the people of the province against all criminal aggression.[55]

In the Philippines, the writ of *amparo* provides for a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.[56] The writ applies to extralegal killings and enforced disappearances or threats thereof. The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. Unlike other processes issued by the courts, the writ once issued is enforceable anywhere in the Philippines. Acknowledging the urgency in the remedy sought, the court, justice or judge are required to docket the petition and act upon it immediately without need for payment of docket fees. The Supreme Court had its first opportunity to apply the *amparo* rule in 2008.[57]

The Constitutional Court of Türkiye has examined many individual applications on the allegations of deaths caused by the use of force by security forces resulting from the use of weapons.[58] Other cases have dealt with bombs in air operations,[59] sticks and physical force,[60] tear gas,[61] and tear gas grenades.[62] The Constitutional Court considered that cases of death occurring as a result of the use of force by public officers must be examined within the scope of the state's negative obligation under the right to life. This obligation concerns both deliberate killing

55 *President Balochistan High Court Bar Association v Federation of Pakistan* (2012).

56 See Part II.E. of the Fact File by the Supreme Court of the Philippines in this book.

57 In the case of *Secretary of National Defense, et al., v. Raymond Manalo and Reynaldo Manalo* (2008).

58 Generally, see Part II.E. of the Fact File by the Constitutional Court of Türkiye in this book. It mentions cases such as *Cemil Danışman* (2014) and *Mustafa Çelik and Siyahmet Şaran* (2017).

59 *Encü and Others* (2016).

60 *İpek Deniz and Others* (2016).

61 *S.K.* (2015) and *Ulaş Lokumcu* (2016).

62 *Turan Uytun and Kevzer Uytun* (2015) and *İbrahim Aslan* (2016).

and the use of force that ends in death without premeditation.[63] Within the scope of the negative obligation concerning the right to life, the officers who use force through the exercise of public authority bear the responsibility to not end the life of any individual in an intentional and unlawful way.[64]

4. Personal self-determination

The right to life can be closely and intricately intertwined with the concept of personal self-determination. They can either be in conflict or reinforce each other. In the case of abortion, the right to life of the foetus may conflict with the right to self-determination of the woman. If the pregnancy causes life-threatening risks to the woman, then her right to life will also be engaged. In the case of euthanasia, the right to self-determination of the individual seeking euthanasia may conflict with a particular understanding of the right to life, namely that the right to life does not include a legally enforceable "right to die." Also, if vulnerable individuals are being pressured into opting for euthanasia, both their right to life as well as their right to self-determination could be interfered with. Similar arguments relating to the rights to life and self-determination also apply to the criminalization of assisted suicide. The regulation of issues pertaining to the beginning and end of life will have to strike a constitutionally permissible balance.

a. Abortion

Among the seventeen countries surveyed in this book, six generally prohibit abortion. These are Bangladesh, Indonesia, Malaysia, Myanmar, Pakistan, and the Philippines. The other eleven countries allow abortion up to a certain time limit.[65]

In the absence of extraordinary circumstances, a time limit of twelve weeks is found in Azerbaijan, Kazakhstan, the Kyrgyz Rep., Mongolia, Russia, Tajikistan, Thailand, and Uzbekistan. In Türkiye the time limit is ten weeks, and in India it consists of twenty weeks. In the case of Korea, where abortion was decriminalized as a result of constitutional adjudication in 2019 (see below), the exact time limit is yet to be determined.

Consent of the woman is one key issue that has featured in relevant adjudication.

63 *Cemil Danışman* (2014).

64 *Serpil Kerimoğlu and Others* (2013).

65 For an overview, see Table 5 of Part B of this book.

The Supreme Court of India ruled in 2001 that an abortion undertaken without the consent of the woman is punishable under the Penal Code, even if her husband consented to it.[66] Abortion without the mother's consent, thus constituting an offence, was also mentioned in Turkish constitutional adjudication. According to a decision of the Turkish Constitutional Court in 2016, "(...) an unborn child is clearly not recognised as a human being in the context of criminal law. However, the fact that the foetus is not explicitly recognised as a human being under criminal law does not mean that it is not protected in any way in the Turkish Legal System. In particular (...) in cases where the rights and interests of the mother and the child do not conflict and even overlap, the life of the foetus is closely linked to the mother's right to life. Provisions regulating the protection of the mother's right to life indirectly protect the right to life of the foetus. In the present case, since the parents wanted their child to be born alive, the right to life of the foetus is effectively protected by provisions that both protect the mother's right to life and bodily integrity and regulate the offence of abortion committed without the mother's consent."[67]

Recently, adjudication at some AACC members have decriminalized abortion. The Constitutional Court of Korea held on April 11, 2019 that both Article 269(1) of the Criminal Act which penalizes a pregnant woman who procures her own miscarriage and the part concerning "doctor" in Article 270(1) of the Criminal Act which penalizes a doctor who procures the miscarriage of a woman upon her request or with her consent are nonconforming to the Constitution. The opinion concluded that the balance of interests test is not satisfied, since the provisions give unilateral and absolute priority to the public interest in protecting foetal life. Accordingly, it violates the rule against excessive restriction and a pregnant woman's right to self-determination. As a result, the Court ordered the legislature to amend the relevant provisions by December 31, 2020.[68] However, the legislature has so far failed to do so.

In the case of Thailand, constitutional adjudication in 2020 has led to legislative changes in 2021. The Constitutional Court of Thailand ruled in 2020 that the challenged legal provision affected the rights and liberties of women in excess of necessity and was not consistent with the rule of proportionality, and restricted rights and liberties under section 28 of the Constitution.[69] In this ruling, the Court further held that the provisions of the Penal Code on this issue had been in force for sixty years, and had caused problems of illegal abortions in society resulting

66 *Shri Bhagwan Katariya and Ors. v. State of Madhya Pradesh* (2001).

67 *Zeki Kartal* (2016).

68 Decision 2017Hun-Ba127 (2019).

69 Ruling No. 4/2563 (2020), dated 19th February B.E. 2563 (2020).

in harm to the lives and bodies of a large number of women. The provision had also caused social problems due to the unpreparedness of women for numerous children born. Current medical sciences has greatly advanced, enabling care to safely support a woman's decision with regard to such issue at the appropriate time. In addition, there was a lack of comprehensive and appropriate protective measures for medical practitioners. The Constitutional Court therefore proposed that the Penal Code and laws relating to abortion should be revised in line with current circumstances. The relevant agencies had to take actions to revise such provisions of law within 360 days. As a result, the provisions relating to the offence of abortion have been amended by the Penal Code Amendment Act No. 28, B.E. 2564 (2021).

b. Euthanasia

Although some of the materials provided by AACC members in this book do mention the right to refuse medical treatment, most of the seventeen surveyed countries fully prohibit euthanasia. The only exceptions are India, Korea, and Türkiye, where passive euthanasia is permitted. However, active euthanasia continues to be prohibited in these three countries.[70] So far, the issue of euthanasia has rarely been subject to constitutional adjudication at AACC members. Some rare examples are provided in the materials submitted by the Supreme Court of India and the Constitutional Court of Korea.

In 2011 the Supreme Court of India recognized the right to die with dignity as part of the right to live with dignity under Article 21.[71] In this case, the Supreme Court for the first time legalized passive euthanasia, but only when the person is in a persistent vegetative condition, there is no chance of recovery, and subject to the permission of the High Court. In 2014 the Supreme Court extended this doctrine by enabling any person to draw up what is known as a "living will." [72] According to the materials submitted by the Indian Supreme Court in this book, the right to die is an important aspect of the right to life and shall not be seen as a limitation but as an extension of the right to life. By guaranteeing a dignified death to the individual, the constitutional right to live with dignity is upheld. Yet the materials do point out that at the same time, the Court has widely discouraged active euthanasia or suicide by individuals.[73]

In 2009 the Constitutional Court of Korea found that the right of self-

70 For an overview, see Table 6 of Part B of this book.

71 *Aruna Ramchandra Shaunbaugh v. Union of India* (2011).

72 *Common Cause 'A' Registered Society and Ors. v. Union of India and Ors.* (2014).

73 See Part II.C. of the Fact File by the Supreme Court of India in this book.

determination allows a dying patient to determine whether to withdraw his or her life-sustaining treatment. The Court reasoned that the decision and actual practice of withdrawing such treatment corresponds to the human value and dignity in that such practice is to leave one's life at the hand of nature, freeing the dying patient from non-natural intrusion on the body. Therefore, a patient can be regarded as being able to make a decision to deny or cease life-sustaining treatment to keep one's dignity and value as a human being when facing death and inform the medical staff of his/her decision or wishes in advance before being unable to communicate.[74]

c. Assisted suicide

Assisted suicide is criminalized in all of the seventeen surveyed countries in this book, including in the three countries where passive euthanasia is permitted. In some of these seventeen surveyed countries, distinctions are made between different types of such offences. For example, in the Kyrgyz Rep., a distinction is made between the incitement and the inducement to suicide. In Russia, legislative reforms were introduced to differentiate between incitement to suicide and the inducement or aiding to committing suicide, as well as the offence of "organizing activities" aimed to incite the committing of suicide.[75]

In 2011 Korea enacted the "Act on the Prevention of Suicide and the Creation of Culture of Respect for Life." Under this Act, no person shall distribute suicide-inducing information through the information and communications network. The term "suicide-inducing information" means the following information used to actively encourage suicide or to assist suicide: (a) information on seeking suicide partners; (b) information suggesting specific methods concerning suicide; (c) documents, pictures, videos, etc. containing content on practicing or inducing suicide; (e) other information equivalent to those referred to in the above items, which obviously aims at inducing suicide (Article 2-2 Item 3 of the Act). Also, under the Act, where a citizen is, or finds himself or herself, at the risk of suicide, he or she has a right to request help from the state or a local government (Article 3(1)).[76]

74 Decision 2008Hun-Ma385 (2009).

75 For an overview of relevant legal provisions, see Table 7 of Part B of this book.

76 For further information on this law, see Part II.D. of the Fact File of the Constitutional Court of Korea in this book.

5. Expansive interpretations

a. Socio-economic dimensions

The right to life can be interpreted to encompass what may be categorized as subsistence rights and other relevant rights. These include the right to food, water, housing, healthcare, etc., and can involve issues regarding a "minimum standard of living." The understanding of the right to life as the right to "life in dignity" is one main reason for such an approach to the right to life. The right to life therefore is not merely focused on preventing the arbitrary deprivation of life, but can be viewed from a broader perspective. For example, the UN Human Rights Committee has noted the need to address the "general conditions in society" relevant to the protection of the right to life.[77] A number of AACC members have provided examples of adjudication that have expanded the meaning of the right to life within the socio-economic context.[78] Adjudication on such expansive understandings are especially found in Bangladesh, India, Malaysia, and Pakistan.

In Bangladesh, the High Court Division of the Supreme Court has rendered a number of judgments on this matter. In 1999 it declared the eviction of slum dwellers without rehabilitation as tantamount to denying the right to life.[79] The meaning of "right to life" was further advanced in 2009 when the Court held that the imposition of Value Added Tax (VAT) on receipts of medical and dental treatment, etc. to be inconsistent with the right to life.[80] The harmful effects of smoking was dealt with in a case from 2000, where the Court took such harm into consideration and held that the advertisement of cigarettes is ultimately an infraction of "right to life."[81] In 2016 the Appellate Division of the Supreme Court defined the right to life as follows: "…right to life is not only limited to protection of life and limbs but also extends to the protection of health, enjoyment of pollution free water and air, bare necessaries of life, facilities for education, maternity benefit, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life

77 "The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. […] The measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective emergency health services, emergency response operations (including firefighters, ambulance services and police forces) and social housing programmes." United Nations Human Rights Committee, "General Comment No. 36, Article 6: right to life," paragraph 26 (https://undocs.org/CCPR/C/GC/36).

78 For an overview of the list of cases, see Table 9 in Part B of this book.

79 *Ain O Salish Kendra vs. Bangladesh* (1999).

80 *Advocate Zulhasuddin vs. Bangladesh* (2009).

81 *Prof. Nurul Islam vs. Bangladesh* (2000).

consistent to human dignity."[82]

The Supreme Court of India has also offered a broad understanding of the right to life as enshrined in Article 21 of the Indian Constitution. It declared in 1984 that Article 21 "includes protection of health and strength of workers, men and women, and of tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief."[83] In a series of other cases, various unenumerated components of Article 21 were recognized, such as the right to livelihood,[84] the right to privacy,[85] and the right to education.[86] It was after the Supreme Court took an expansive approach to interpret Article 21 to include education, that the right to free education for children from six to fourteen years of age was inserted into the Constitution by way of constitutional amendment.[87] In a landmark case the Supreme Court declared that harassment of a working woman at her place of work amounts to violation of rights of gender equality and right to life and liberty, clearly violating Articles 14, 15 and 21 of the Constitution.[88] Recently, in a judgment that decriminalized homosexuality, the Supreme Court observed that every individual, irrespective of their gender identity and sexual orientation has the right to live with dignity, a right that is guaranteed under Article 21 of the Constitution.[89]

Article 5(1) of the Federal Constitution of Malaysia has been interpreted by the Malaysian judiciary to encompass various essential aspects of life ranging from livelihood,[90] education,[91] and locomotion,[92] to privacy[93] and dignity.[94] The application of these elements can be seen from case examples concerning the abovementioned aspects. According to the materials provided by the Federal Court of Malaysia in this book, this range of rights is not exhaustive and remains open to further judicial interpretation as novel situations arise.[95]

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82 *Government of Bangladesh and Ors. vs. Professor Nurul Islam* (2016).
83 *Bandhua Mukti Morcha v. Union of India* (1984).
84 *Olga Tellis v. Bombay Municipal Corpn.* (1985).
85 *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017).
86 *Mohini Jain v. State of Karnataka* (1992).
87 See Part III.A. of the Fact File of the Indian Supreme Court in this book.
88 *Vishakhaand Ors v. State of Rajasthan* (1997).
89 *Navtej Singh Johar v. Union of India* (2018).
90 *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar* (2019).
91 *Datuk Seri Anwar Ibrahim v Kerajaan Malaysia & Anor* (2021).
92 *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* (2021).
93 *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* (2021).
94 *Nindra a/p Nallathamby v Datuk Seri Khalid Bin Abu Bakar* (2014).
95 See Part III.A. of the Fact File of the Federal Court of Malaysia in this book.

In 1994, the Supreme Court of Pakistan held that "[t]he word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally."[96] The right to life guaranteed by Article 9 of the Constitution of Pakistan has been expanded via judicial interpretation to recognize a number of constitutional rights. According to the materials provided by the Supreme Court of Pakistan in this book, it has been laid down that Article 9 of the Constitution, which guarantees life and liberty according to law, is not to be construed in a restrictive manner. Rather, life is a broader concept which includes the right of enjoyment of life, and maintaining adequate level of living for full enjoyment of freedom and rights.[97] It has been held that the fundamental right to life includes the right to pure and unpolluted water,[98] the right to basic health care,[99] the right to livelihood,[100] the right to safe and health-friendly environment,[101] protection against adverse effects of electromagnetic fields,[102] the right to enjoy pollution-free air,[103] the right of access to justice,[104] the right to food,[105] the right to provision of electricity and gas,[106] education, civic and civil infrastructure and transportation.[107] A number of these examples of adjudication overlap with cases dealing with the environmental dimensions of the right to life (see below).

Some of the other AACC members also provide examples of relevant adjudication, albeit to a lesser extent. In 2014, the Supreme Court of the

96 *Shehla Zia v WAPDA* (1994).

97 *Employees of Pakistan Law Commission v Ministry of Works* (1994).

98 *West Pakistan Salt Miners Labour Union, Khewra v Director, Industries and Mineral Development, Punjab* (1994), *Shahzada Sikandar ul Mulk v Capital Development Authority* (2019), *Zeenat Salim v Pakistan Naval Farms* (2022).

99 *Suo Motu Case No. 19 of 2016* (2017).

100 *Pir Imran Sajid v Telephone Industries of Pakistan* (2015), *Abdul Wahab v HBL* (2013), *National Bank of Pakistan v Nusrat Perveen* (2021), *Jet Green (Pvt.) Limited v Federation of Pakistan* (2021).

101 *Barrister Zafarullah Khan v Federation of Pakistan* (2018), *West Pakistan Salt Miners Labour Union Khewra v Director, Industries and Mineral Development, Punjab* (1994), *Suo Motu Case No. 10 of 2010 (Contamination of Water of Mancher Lake due to Disposal Effluent from MNV Drain now converted into RBOD)* (2011), *Shahab Usto v Government of Sindh* (2017), *Shehla Zia v WAPDA* (1994), *Sheikh Asim Farooq v Federation of Pakistan* (2019), *Shehri v Province of Sindh* (2001), *Shahzada Sikandar ul Mulk v Capital Development Authority* (2019), *Zeenat Salim v Pakistan Naval Farms* (2022).

102 *Shehla Zia v WAPDA* (1994).

103 *Haji Mullah Noor Ullah v Secretary Mines and Minerals* (2015).

104 *Government of Balochistan v Aziz Ullah Memon* (1993), *Al-Jehad Trust v Federation of Pakistan* (1997), *Asfandyar Wali v Federation of Pakistan* (2001), *Munir Hussain Bhatti v Federation of Pakistan* (2011).

105 *Muhammad Ahmad Pansota v Federation of Pakistan* (2020).

106 *OGRA v Midway II, CNG Station* 2014 SCMR 220, *Iqbal Zafar Jhagra v Federation of Pakistan* (2014).

107 *Naimatullah Khan Advocate v Federation of Pakistan* (2020).

Philippines interpreted the constitutional right to health as a component of the right to life;[108] and materials provided by the Constitutional Court of Indonesia presented its adjudication concerning electrictity,[109] the right to water,[110] and the right to education.[111] In relation to socio-economic dimensions of the right to life, the concept of the "social state" was invoked in relevant adjudication in Kazakhstan[112] and Türkiye.[113] This concept was also highlighted in the materials provided by the Constitutional Court of Russia, setting the relevant context for discussing a case on labour pensions[114] and another on compensation for damage suffered as a result of terrorist acts.[115] Examples from Thailand include elaboration on two judgments concerning a person's liberty to engage in an enterprise or an occupation.[116] The materials provided by the Constitutional Court of Azerbaijan contain a list of adjudication concerning socio-economic rights.[117]

In Korea, although the right to life is an unenumerated constitutional right recognized through constitutional interpretation, the constitutional text does explicitly contain provisions on the "right of human worth and dignity" (Article 10) and the "right for a life worthy of human beings" (Article 34(1)). In constitutional practice, there is therefore little need to interpret these rights in conjunction with the socio-economic aspects of the right to life. However, the socio-economic aspects of the right to life could be interpreted, on a case-by-case basis, as the prerequisite for the rights in Articles 10 and Article 34(1). The materials provided by the Constitutional Court of Korea in this book therefore introduces two relevant decisions. A decision from 2004 dealt with the question of whether the minimum cost of living publicly notified by the Minister of Health and Welfare infringed upon the right to a life worthy of human beings of the complainants who are a disabled household.[118] The other case is from 2016, which concerned whether overcrowded confinement in correctional facilities infringed upon the human dignity and worth of inmates.[119]

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108 *Imbong v. Ochoa* (2014).

109 Decision No. 001-021-022/PUU-I/2003.

110 Decision No. 85/PUU-XI/2013.

111 Decision No. 13/PUU-VI/2008.

112 Normative resolution of December 21, 2001 No. 18/2.

113 E. 1986/16, K. 1986/25, 21 October 1986; E. 1988/19, K. 1988/33, 26 October 1988; E. 1990/27, K. 1991/2, 17 January 1991.

114 Decision of 15 February 2005 No. 17-P.

115 Decision of 27 December 2005 No. 523-O.

116 Ruling No. 25/2547 (2004), dated 14th January B.E. 2547 (2004), Ruling No. 12/2552 (2009), dated 19th August B.E. 2552 (2009).

117 See Part III.A. of the Fact File of the Constitutional Court of Azerbaijan.

118 Decision 2002Hun-Ma328.

119 Decision 2013Hun-Ma142.

b. Environmental dimensions

Environmental degradation can have a significant impact on the right to life. As noted by the UN Human Rights Committee, "[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. […] Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors."[120]Within this publication of the AACC SRD, ten of the seventeen AACC members have provided examples of relevant adjudication.[121] Some of the longest list of cases are found in the materials from India and Pakistan.

The expansive interpretation of "life" in Article 21 of the Indian Constitution has led to the development of environmental jurisprudence in India. In 1991, the Supreme Court of India declared that the right to life under Article 21 of the Constitution includes the right to the enjoyment of pollution-free water and air for full enjoyment of life.[122] A few years later, in 1997, the Supreme Court ordered the closure of tanneries that were polluting water, in furtherance of the "right to clean drinking water" guaranteed in Article 21 of the Constitution.[123] In order to curb air pollution, the Supreme Court in 2001 ordered the entire fleet of public transport buses in Delhi to be run on CNG and not diesel.[124] Key environmental concepts were also addressed by the Supreme Court such as adopting the principle of sustainable development as being based on the principle of inter-generational equity.[125] The Court further declared that the "precautionary principle" and the "polluter pays principle" are essential features of sustainable development.[126] The Supreme Court has also adopted the "doctrine of public trust," which rests on the premise that certain natural resources like air, sea, and waters are meant for general use and cannot be restricted to private ownership: The natural resources of a nation are held in trust, for the benefit of the general public.[127] Additionally, in India, rights under Article 21 may be read contextually and applied to right-

120 United Nations Human Rights Committee, "General Comment No. 36, Article 6: right to life," paragraph 62 (https://undocs.org/CCPR/C/GC/36).

121 For an overview of the list of cases, see Table 10 in Part B of this book.

122 *Subhash Kumar v. State of Bihar* (1991).

123 *M.C. Mehta v. Union of India* (1997).

124 *M.C. Mehta v. Union of India* (2001).

125 *T.N. Godavarman Thirumulpad v. Union of India* (2006).

126 *Nature Lovers Movement v. State of Kerala* (2009).

127 *M.C. Mehta v. Kamal Nath* (1997).

holders other than human beings, such as rivers[128] and animals.[129]

The right to life as interpreted in Pakistan also has environmental dimensions. A number of relevant examples of such adjudication can be listed. These respectively concern issues such as, but not exclusively, hazards of electromagnetic fields,[130] clean water,[131] industrial or nuclear waste,[132] impure food items,[133] sustainable development,[134] environmental justice,[135] and climate change.[136] For overview summaries of each of these cases, see Part III.B. of the Fact File of the Supreme Court of Pakistan in this book.

In Bangladesh, the Supreme Court has also clearly interpreted the right to life as encompassing environmental dimensions. In 1996 the Appellate Division of the Supreme Court declared that "Articles 31 and 32 of our Constitution protect right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life."[137] In 2001 the High Court Division of the Supreme Court observed that "[t]he expression 'life' enshrined in Article 32 includes everything which is necessary to make it meaningful and a 'life' worth living, such as, among others maintenance of health is of utmost importance and preservation of environment and hygienic condition are of paramount importance for such maintenance of health, lack of which may put the 'life' of the citizen at nought."[138] In 2012, the Appellate Division of the Supreme Court again confirmed the environmental dimension of the right to life, stating that "[i]t is now settled that right to life includes right to protection and improvement of environment and ecology."[139]

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128 *Mohd. Salim v. State of Uttarakhand and others* (2016).

129 *Animal Welfare Board of India v. A. Nagaraja and Ors.* (2014); *Chief Secretary to the Government, Chennai, Tamil Nadu and Ors. v. Animal Welfare Board and Anr*. (2017); *Sri Subhas Bhattacharjee v. The State of Tripura* (2018).

130 *Shehla Zia v WAPDA* (1994).

131 *West Pakistan Salt Miners Labour Union, Khewra v Director, Industries and Mineral Development, Punjab* (1994) and *Shahab Usto v Government of Sindh* (2017).

132 *In re: Human Rights Case (Environment Pollution in Balochistan)* (1994).

133 *Adeel-ur-Rehman v Federation of Pakistan* (2005).

134 *Suo Motu Case No. 10 of 2005 (Re: Environmental hazard of the proposed New Murree Project)* (2010).

135 *Ali Steel Industry v Government of Khyber Pakhtunkhwa* (2016).

136 *Asghar Leghari v Federation of Pakistan* (2018) and *DG Khan Cement Company Limited v Government of Punjab* (2021).

137 *Dr. Mohiuddin Farooque vs. Bangladesh* (1996).

138 *Dr. Mohiuddin Farooque vs. Bangladesh* (2001).

139 *Metro Makers and Developers Limited and others vs. Bangladesh Environmental Lawyers' Association Limited (BELA) and Others* (2012).

In Malaysia, even though the right to a healthy environment is not expressly mentioned in the Federal Constitution of Malaysia, there have been relevant adjudication on the importance of upholding the quality of the environment.[140] Specifically, in connection with the right to life, the Court of Appeal has held that the duty of the courts is to interpret the fundamental rights according to the values of the society, and the Court in this case recognised that the right to life must include the right to live in a safe and healthy environment.[141]

Other AACC members in this book presenting adjudication on environmental dimensions on the right to life include those from Kazakhstan, Korea, the Philippines, Russia, and Türkiye. These make connections between explicit constitutional provisions on environmental protection and the impact on human life.

In Kazakhstan, Article 31 of the Constitution stipulates that the state shall aim to protect the environment in favour of human life and health. Within this context, the Constitutional Council has dealt with a case concerning the social protection of citizens affected by the environmental disaster in the Aral Sea region, noting that the conditions of the place of residence and loss of health are independent criteria and can be considered both separately and in combination.[142]

Materials provided by the Constitutional Court of Korea in this book note that since the Constitution prescribes the right to environment in Article 35(1), there is not much need in judicial practice for considering the right to life from an environmental perspective. Superior courts including the Constitutional Court and the Supreme Court have also yet to review the right to life from an environmental aspect. However, a constitutional complaint arguing that the Framework Act on Low Carbon, Green Growth regarding the total amount of national GHG emissions infringed upon the right to environment and the right to life,[143] and a constitutional complaint of a similar nature requesting the review of the Framework Act on Carbon Neutrality and Green Growth for Coping with the Climate Crisis are currently pending before the Constitutional Court.[144]

In the Philippines, the right to life is also understood to encompass the right of the people to a healthy environment. Section 16, Article II of the Constitution mandates the state to protect and advance the right of the people to a balanced

140 Such as *Wong Kin Hoong & Ors v Ketua Pengarah Jabatan Alam Sekitar & Anor* (2010).

141 *Raub Australian Gold Mining Sdn Bhd v Hue Shieh Lee* (2016).

142 Normative resolution of April 29, 2005 No. 3.

143 Case 2020Hun-Ma389 and Case 2020Hun-Ma1516 (both pending).

144 Case 2021Hun-Ma1264 (pending).

and healthful ecology in accord with the rhythm and harmony of nature. In a landmark case, the Court declared that the right to a balanced and healthful ecology unites with the right to health and that while this right is found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation, the advancement of which may even be said to predate all governments and constitutions.[145]

In Russia, the right to favourable environment is guaranteed under Article 43 of the Constitution. According to the materials submitted by the Russian Constitutional Court in this book, this right has a value on its own, but it is also related to other rights, including the right to life. A person living in society remains connected to nature or the state of the environment. Relevant adjudication by the Russian Constitutional Court concern nuclear disaster,[146] the priority of public interests within the context of ecological safety,[147] extraordinary payments (within the context of insolvency) for services necessary to eliminate or prevent the threat of ecological disaster,[148] and compensation for damage inflicted by a violation of environmental legislation.[149]

Article 17 of the Turkish Constitution, safeguarding the right to life, does not include any provisions regarding environmental dimensions. Instead, it is Article 56 which states that everyone has the right to live in a healthy and balanced environment. Yet the Constitutional Court of Türkiye has held that the right to a healthy environment must be assessed in conjunction with Article 17, which embodies legal interests with respect to physical and mental integrity, and Articles 20 and 21, which respectively safeguards the right to respect for private and family life and the inviolability of domicile.[150]

145 *Oposa v. Factoran* (1993).

146 Judgment of 1 December 1997 No. 18-P.

147 Judgment of 14 May 2009 No. 8-P.

148 Judgment of 1 February 2022 No. 4-P.

149 Judgment of 2 June 2015 No. 12-P.

150 See *Mehmet Kurt* (2016).

6. Conclusion

This introduction provided an overview of the constitutional right to life within the AACC context. Its focus has been mainly on available constitutional adjudication. As mentioned at the beginning of this introduction, one key mandate of the AACC SRD is to facilitate joint research between AACC members. For such joint research to come to fruition, a basic understanding of each AACC institution's legal context and adjudicatory record on selected topics of constitutional law is a necessary prerequisite.

This introduction has especially highlighted cases from AACC members regarding capital punishment, the lethal use of force by state authorities, the legality and regulation of abortion, and the expansive dimensions of the right to life. These are areas where AACC members have provided the most numerous examples of their constitutional adjudication in this book. For further details regarding these cases, see the individual Fact Files provided by AACC members in Part C of this book.

Apart from relevant adjudication, the Fact Files also shed further light on relevant constitutional and legislative provisions, as well as other contexts, such as historical and cultural factors. Therefore, even if an AACC member does not possess relevant adjudicatory experience on some of the topics discussed in this book, the AACC member provides information on the constitutional, legislative, and cultural framework that are of relevance.

The reader is invited to use this introduction as merely a snapshot of the materials provided in this book. In turn, it is the hope of this book to further encourage the reader to deeply engage with the constitutional law of each of the countries in which AACC members are located.

Part B.

Comparative Tables

Comparative Tables

Note: Only the countries of AACC members contributing to this publication (17) are included in the comparative tables. The displayed information is drawn from the Fact Files of AACC members contained in this book.

Table 1. Basic overview

Country	Key constitutional provision on the right to life[151]	General constitutional provision on rights restrictions[152]	State party to the ICCPR	State party to ICCPR-OP1 and OP2
Azerbaijan	Art. 27	Art. 71 II	✓	OP1, OP2
Bangladesh	Art. 32	-	✓	-
India	Art. 21	-	✓	-
Indonesia	Art. 28A	Art. 28J(2)	✓	-
Kazakhstan	Art. 15	Art. 39	✓	OP1, OP2
Korea, Rep.	-[153]	Art. 37(2)	✓	OP1
Kyrgyz Rep.	Art. 25	Art. 23(2)	✓	OP1, OP2
Malaysia	Art. 5(1)	-	-	-
Mongolia	Art. 16.1	Art. 19.3	✓	OP1, OP2
Myanmar	Sec. 353	-	-	-
Pakistan	Art. 9	-	✓	-
Philippines	Art. III Sec. 1 Art. II Sec. 11	Art. III Secs. 1, 2 and 19 (1)	✓	OP1, OP2
Russia	Art. 20	Art. 55(3)	✓	OP1
Tajikistan	Art. 18	Art. 14	✓	OP1
Thailand	Sec. 28	Art. 26	✓	-
Türkiye	Art. 17	-	✓	OP1, OP2
Uzbekistan	Art. 24	Art. 19	✓	OP1, OP2

151 For further details on these provisions, see Table 2.

152 For further details on these provisions, see Table 3. Constitutions which do not contain general limitation clauses may contain individual restrictions for particular constitutional rights.

153 The Constitution of the Republic of Korea does not contain an explicit provision on the right to life. However, the Constitutional Court of Korea recognized the right to life as an unenumerated constitutional right in 1996 (95Hun-Ba1, November 28, 1996).

Table 2. Constitutional provisions on the right to life

Note: This table compiles the most direct reference to the constitutional guarantee for the right to life. For further provisions of relevance to the right to life, please refer to the respective Fact Files of the AACC members contained in this publication.

Country	Constitutional provision	Full text of the provision
Azerbaijan	Art. 27	I. Everyone has the right to life. II. Except extermination of enemy soldiers in a case of military aggression, when executing the sentence and in other cases prescribed by law, right of every person for life is inviolable. Everyone's right to life shall be inviolable, except in the event of killing of enemy soldiers during their armed attacks, in the case of execution of capital punishment pursuant to a court judgment that has become effective, and in other cases as prescribed by law. III. Capital punishment, until it has been completely abolished, may be prescribed by law as an exclusive penalty only for particularly serious crimes against the state, or against the life and health of a human being. IV. Weapons may not be used against a person except as prescribed by law in cases of self-defense, necessity, apprehension and arrest of criminals, preventing the escape from a place of detention, suppressing insurrection against the state or preventing coups d'état, or military aggression against the country.
Bangladesh	Art. 32	No person shall be deprived of life or personal liberty save in accordance with law.
India	Art. 21	No person shall be deprived of his life or personal liberty except according to procedure established by law.
Indonesia	Art. 28A	Every person shall have the right to live and to defend his/her life and existence.
Kazakhstan	Art. 15	1. Everyone shall have the right to life. 2. No one shall have the right to arbitrarily deprive life of a person. The death penalty is prohibited.
Korea, Rep.	-[154]	-
Kyrgyz Rep.	Art. 25	1. Everyone in the Kyrgyz Republic has an inalienable right to life. Encroachment on personal life and health shall not be permitted. No one shall be arbitrarily deprived of life. Death penalty shall be prohibited. 2. Everyone shall have the right to defend his life and health and the lives and health of others against unlawful encroachments, within the limits of necessary defense.

154 The Constitution of the Republic of Korea does not contain an explicit provision on the right to life. However, the Constitutional Court of Korea recognized the right to life as an unenumerated constitutional right in 1996 (95Hun-Ba1, November 28, 1996).

Malaysia	Art. 5(1)	No person shall be deprived of his life or personal liberty save in accordance with law.
Mongolia	Art. 16.1	The right to life. Deprivation of human life shall be strictly prohibited unless otherwise highest measure of punishment, as prescribed by the Criminal Code of Mongolia for the commission of most serious crimes, is sentenced by a final judgment of the court.
Myanmar	Sec. 353	Nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person.
Pakistan	Art. 9	No person shall be deprived of life or liberty save in accordance with law.
Philippines	Art. III Sec. 1	No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
	Art. II. Sec. 11	The State values the dignity of every human person and guarantees full respect for human rights.
Russia	Art. 20	1. Everyone shall have the right to life. 2. Capital punishment until its complete abolition may be established by federal law as an exclusive form of punishment for particularly grave crimes against life, and the accused shall be granted the right to have his case examined by a court with the participation of a jury.
Tajikistan	Art. 18	Everyone has the right to life. No one can be deprived of life, except by a court verdict for a particularly serious crime. The inviolability of the person is guaranteed by the state. No one may be subjected to torture, inhuman treatment or punishment. Forced medical and scientific experiments on humans are prohibited.
Thailand	Sec. 28	A person shall enjoy the right and liberty in his or her life and person. Arrest and detention of person shall not be permitted, except by an order or a warrant issued by the Court or on other grounds as provided by law. Search of person or any act affecting the right or liberty in life or person shall not be permitted except on the grounds as provided by law. Torture, brutal acts or punishment by cruel or inhumane means shall not be permitted.
Türkiye	Art. 17	Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence. The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent. No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity. The acts of killing, when using a weapon is permitted by law as a compelling measure, during self-defence, the execution of warrants of capture and arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during state of emergency, do not fall within the scope of the provision of the first paragraph.
Uzbekistan	Art. 24	The right to life is an inalienable right of every human being. Infringement against it shall be regarded as the gravest crime.

Table 3. General limitation clauses on constitutional rights

Note: These provisions stipulate the general grounds and conditions for the restriction of rights and freedoms. Constitutions which do not contain general limitation clauses may contain individual restrictions for particular constitutional rights. This table is a slightly modified version of the table found on pp. 23-25 of the AACC SRD's 2021 publication "Constitutional Rights and AACC Members."

Country	Constitutional provision	Full text of the provision
Azerbaijan	Art. 71 II	No one may restrict exercise of rights and freedoms of a man and citizen. Everyone's rights and freedoms shall be restricted on the grounds provided for in the present Constitution and laws, as well as by the rights and freedoms of others. Restriction of rights and liberties shall be proportional to the result expected by the state.
Bangladesh	-	-
India	-	-
Indonesia	Art. 28J(2)	In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands base upon considerations of morality, religious values, security and public order in a democratic society.
Kazakhstan	Art. 39	1. Rights and freedoms of an individual and citizen may be limited only by law and only to the extent necessary for the protection of the constitutional system, defense of public order, human rights and freedoms, and the health and morality of the population. 2. Any acts capable of violating inter-ethnic and inter-religious harmony shall be recognized as unconstitutional. 3. Restriction of the rights and freedoms of citizens for political reasons shall not be allowed in any form. The rights and freedoms provided for by articles 11, 13–15, paragraph 1 of article 16, article 17, article 19, article 22, paragraph 2 of article 26 of the Constitution, are not subject to limitation in any case.
Korea, Rep.	Art. 37(2)	The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.

Kyrgyz Rep.	Art. 23(2)	Human and civil rights and freedoms may be limited by the Constitution and laws for the purposes of protecting national security, public order, health and morale of the population as well as rights and freedoms of other persons. Such limitations can be also introduced in view of specific modalities of military or other civil service. The introduced limitations should be commensurate to the declared objectives.
Malaysia	-	-
Mongolia	Art. 19.3	In exercising his/her rights and freedoms, a person shall not breach national security, the rights and freedoms of others, or violate public order.
Myanmar	-	-
Pakistan	-	-
Philippines	Art. III Sec. 1	No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
	Art. III Sec. 2	The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
	Art. III Sec. 19 (1)	Excessive fines shall not be imposed, nor cruel, degrading, or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty shall be reduced to *reclusion perpetua*.
Russia	Art. 55(3)	Human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State.
Tajikistan	Art. 14	The rights and freedoms of individual and citizen are regulated and protected by the Constitution, laws of the Republic, and international legal acts recognized by Tajikistan. The rights and freedoms of individual and citizen are exercised directly. They determine the goals, content and application of laws, the activity of legislative, executive and local agencies of state power and self-government and are secured by judicial power. Limitations of rights and freedoms of citizens are permitted only for the purpose of securing the rights and freedoms of other citizens, public order, and protection of the constitutional system and the territorial integrity of the Republic.

Thailand	Art. 26[155]	The enactment of a law resulting in the restriction of rights or liberties of a person shall be in accordance with the conditions provided by the Constitution. In the case where the Constitution does not provide the conditions thereon, such law shall not be contrary to the rule of law, shall not unreasonably impose burden on or restrict the rights or liberties of a person and shall not affect the human dignity of a person, and the justification and necessity for the restriction of the rights or liberties shall also be specified. The law under paragraph one shall be of general application, and shall not be intended to apply to any particular case or person.
Türkiye[156]	-	-
Uzbekistan	Art. 19[157]	A citizen of the Republic of Uzbekistan and the state shall be bound by mutual rights and mutual responsibility. Citizens' rights and freedoms, established by the Constitution and laws, shall be inalienable. No one shall have the right to deprive or limit them without a court.

155 Section 26 is preceded by Section 25, the latter being the first provision of "Chapter III. Rights and Liberties of the Thai People." One part of Section 25 stipulates conditions in which rights and liberties shall be exercised: "As regards the rights and liberties of the Thai people, in addition to the rights and liberties as guaranteed specifically by the provisions of the Constitution, a person shall enjoy the rights and liberties to perform any act which is not prohibited or restricted by the Constitution or other laws, and shall be protected by the Constitution, insofar as the exercise of such rights or liberties does not affect or endanger the security of the State or public order or good morals, and does not violate the rights or liberties of other persons."

156 Article 13 of the Turkish Constitution, as amended on 3 October 2001 by Law no. 4709, enabling the restriction of fundamental rights and freedoms can be read as follows: "Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality." As it can be inferred from this article, there are specific limitation provisions which are listed under each of the rights and freedoms enshrined in the Constitution, if any. However, even though no reason for restriction is included in the article regulating a given right, such rights may be restricted relying on the rules covered under other articles of the Constitution (CC, E.2010/83, K.2012/169, 1/11/2012).

157 Article 19 is followed by Article 20, the latter stipulates conditions in which rights and freedoms shall be exercised: "The exercising of rights and freedoms by a citizen must not encroach on the lawful interests, rights and freedoms of other persons, the state and society."

Table 4. Capital punishment

Capital punishment has been abolished	Year of abolition	Key relevant constitutional adjudication mentioned in the Fact Files
Azerbaijan	1998	-
Türkiye	2004	-
Philippines	2006	*Leo Echegaray v. The Secretary of Justice* (1998) *People v. Efren Mateo y Garcia* (2004)
Kyrgyz Rep.	2007	-
Uzbekistan	2008	-
Mongolia	2017	-
Kazakhstan	2022	Normative resolution of January 30, 2003 No. 10 Normative resolution of December 15, 2020 No. 4[158]
Capital punishment is retained but not applied	**Year of last execution**	**Key relevant constitutional adjudication mentioned in the Fact Files**
Myanmar	No exact year[159]	-
Russia	1996	Judgment of 2 February 1999 No. 3-P Decision of 19 November 2009 No. 1344-O-R
Korea, Rep.	1997	Decision 95Hun-Ba1 (1996) Decision 2006Hun-Ka13 (2007) Decision 2008Hun-Ka23 (2010) Case 2019Hun-Ba59 (pending)
Tajikistan	No exact year[160]	-
Malaysia	2018	*Alma Nudo Atenza v. Public Prosecutor & Another Appeal* (2019) *Letitia Bosman v. Public Prosecutor and other appeals* (2020)

158 As a result of constitutional reform in 2022, this normative resolution will be revised.

159 As mentioned in the Fact File of the Constitutional Tribunal of Myanmar, there is no officially notified and announced date or year of the exercising of moratorium. It mentions that the moratorium was exercised in about 1989 but there is no official evidence for the date. So the Fact File mentions that it has been exercised since over thirty years.

160 The Fact File of the Constitutional Court of Tajikistan does not provide information on the last execution. However, it mentions that a moratorium was declared in 2004.

Capital punishment is retained and applied	Key relevant constitutional adjudication mentioned in the Fact Files
Bangladesh	*State vs. Tasiruddin* (1960) *Nazrul Islam (Md.) vs. State* (2012) *Bangladesh Legal Aid and Services Trust (BLAST) and Ors. vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs, Dhaka and Ors.* (2015) *Kamal vs. The State* (2017) *Ataur Mridha Alias Ataur vs. The State* (2020) *Samaul Haque Lalon vs. State* (2021)
India	*Jagmohan Singh v. State of Uttar Pradesh* (1973) *Rajendra Prasad v. State of Uttar Pradesh* (1979) *Bachan Singh v. State of Punjab* (1980) *Machhi Singh v. State of Punjab* (1983) *Mithu v. State of Punjab* (1983) *Manoj v. State of Madhya Pradesh* (2022)
Indonesia	Decision No. 2-3/PUUV/2007
Pakistan	*Abdur Rashid v. Federation of Pakistan* (2019) *Muhammad Ayaz v. Superintendent District Jail, Timergara, District Lower Dir* (2018) *Sikandar Hayat v. State* (2020) *Safia Bano v. Government of Punjab* (2021)
Thailand	-

Table 5. Abortion

Abortion is legal (upon conditions)	Time limit[161]	Key relevant constitutional adjudication mentioned in the Fact Files
Azerbaijan	12 weeks	-
India	20 weeks	*D. Rajeshwari v. State of Tamil Nadu and Ors.* (1996) *Shri Bhagwan Katariya and Ors. v. State of Madhya Pradesh* (2001)
Kazakhstan	12 weeks	-
Korea, Rep.	Not yet decided[162]	Decision 2017Hun-Ba127 (2019)
Kyrgyz Rep.	12 weeks	-
Mongolia	12 weeks	-
Russia	12 weeks[163]	-
Tajikistan	12 weeks	-
Thailand	12 weeks	Ruling No. 4/2563 (2020), dated 19th February B.E. 2563 (2020)
Türkiye	10 weeks	*Zeki Kartal* (dec.), no. 2013/2803 (2016) *Onur Arslan* (no. 2017/17652) (2020)
Uzbekistan	12 weeks	-
Abortion is generally illegal[164]		**Key relevant constitutional adjudication mentioned in the Fact Files**
Bangladesh		-
Indonesia		-
Malaysia		*Munah binti Ali v Public Prosecutor* (1958) *Chan Phuat Khoon v Public Prosecutor* (1962) *Mary Shim v Public Prosecutor* (1962) *PP v Dr Nadason Kanagalingam* (1985) *Pendakwa Raya v Wong Ah Kean* (2010)
Myanmar		-
Pakistan		-
Philippines		*Geluz v. Court of Appeals* (1961) *James Imbong, et al., v. Hon. Paquito N. Ochoa, Jr., et al.* (2014)

161 Certain exceptions may exist beyond this specified period, such as for medical or other reasons. For further details, see the relevant sections of each respective Fact File. Some AACC members have opted to emphasize the existence of special circumstances also in this table.

162 The Constitutional Court of Korea held in 2019 that legal provisions criminalizing abortion are nonconforming to the Constitution (2017Hun-Ba127). However, the National Assembly has not yet made the relevant necessary legislative amendments.

163 Extended in specific extraordinary circumstances.

164 Where abortion is generally prohibited, certain exceptions may still exist, such as for the purpose of saving the life of the mother. For further details, see the relevant sections of each respective Fact File.

Table 6. Euthanasia

Note: So far, this issue has rarely been subject to constitutional adjudication at AACC members. For some rare examples, see the Fact Files provided by the Supreme Court of India and the Constitutional Court of Korea.

Full prohibition of euthanasia[165]	***Active* euthanasia is prohibited, but *passive* euthanasia is permitted**
Azerbaijan	India[166]
Bangladesh	Korea, Rep.[167]
Indonesia	Türkiye
Kazakhstan	
Kyrgyz Rep.	
Malaysia	
Mongolia	
Myanmar	
Pakistan	
Philippines	
Russia[168]	
Tajikistan	
Thailand	
Uzbekistan	

165 Some Fact Files provided by AACC members for this book do mention the right to refuse medical treatment. For further details, please consult each Fact File's section on euthanasia for potential further information. Some AACC members have opted to explicitly point out this information also in this table.

166 Relevant constitutional adjudication mentioned in the Fact File by the Supreme Court of India are *Aruna Ramchandra Shaunbaugh v. Union of India* (2011) and *Common Cause 'A' Registered Society and Ors. v. Union of India and Ors*. (2014).

167 Relevant constitutional adjudication mentioned in the Fact File by the Constitutional Court of Korea is Decision 2008Hun-Ma385 (2009).

168 The patient retains the right to refuse from further medical help, see the Fact File by the Constitutional Court of Russia, Section II.C.

Table 7. Assisted suicide

Note: So far, this issue has rarely been subject to constitutional adjudication at AACC members. The following table lists key relevant legal norms from the criminal law.

Country	Criminal offence	Key relevant legal norm(s)
Azerbaijan	Bringing to suicide	Art. 125, Criminal Code
Bangladesh	Abetting suicide	Sec. 306, Penal Code
India	Abetment to suicide	Sec. 306, Penal Code
Indonesia	Encouraging, helping, or facilitating suicide	Art. 345, Criminal Code
Kazakhstan	Incitement to suicide	Art. 105, Criminal Code
Korea, Rep.	Murder upon request or with consent; instigating, aiding, and abetting suicide	Art. 252, Criminal Act
	Distribution of suicide-inducing information	Art. 25, Act on the Prevention of Suicide and the Creation of Culture of Respect for Life
Kyrgyz Rep.	Incitement to suicide	Art. 128, Criminal Code
	Inducement to suicide	Art. 129, Criminal Code
Malaysia	Abetment of suicide	Sec. 306, Penal Code
Mongolia	Incitement to suicide	Art. 10 paragraph 4, Criminal Code
Myanmar	Abetment of suicide	Sec. 306, Penal Code
Pakistan	Act towards commission of suicide	Sec. 325, Penal Code
Philippines	Giving assistance to suicide	Art. 253, Revised Penal Code
Russia	Incitement to suicide	Art. 110, Criminal Code
	Inducement to committing suicide or aiding to committing suicide	Art. 110.1, Criminal Code
	Organisation of activities aimed to incitement to commit suicide	Art. 110.2, Criminal Code
Tajikistan	Bringing a person to suicide	Art. 109, Criminal Code
Thailand	Causing death	Sec. 288-294 (esp. 293), Penal Code
Türkiye	Directing suicide	Art. 84, Penal Code
Uzbekistan	Forcing to suicide	Art. 103 Criminal Code

Table 8. The use of lethal force by state authorities

Note: The table shows available constitutional adjudication on this matter as mentioned in the Fact Files in this book.

Country	Year	Key relevant constitutional adjudication mentioned in the Fact Files
Azerbaijan	-	-
Bangladesh	-	-
India	1960 1989 1997	*Nilabati Behera v. State of Orissa and Ors.* *Mohanlal Sharma v. State of Uttar Pradesh* *D.K. Basu v. State of West Bengal*
Indonesia	-	-
Kazakhstan	-	-
Korea, Rep.	2018 2020	Decision 2015Hun-Ma476 Decision 2015Hun-Ma1149
Kyrgyz Rep.	-	-
Malaysia	2013	*Jenain Subi v PP*
Mongolia	-	-
Myanmar	-	-
Pakistan	1998 1998 2014 2011 2012 2022	*Benazir Bhutto v President of Pakistan* *Mehram Ali v Federation of Pakistan* *In the matter of: For Arrest of Accused of Murder of Her Daughter Waheeda* *Suo Motu Case No. 10 of 2011: In the matter of Brutal Killing of a Young Man by Rangers* *President Balochistan High Court Bar Association v Federation of Pakistan* *Asma Nadeem v Federation of Pakistan*
Philippines	2008 2021	*Secretary of National Defense, et al., v. Raymond Manalo and Reynaldo Manalo* *Atty. Howard M. Calleja, et al., v. Executive Secretary, et al.*
Russia	-	-
Tajikistan	-	-
Thailand	-	-
Türkiye	2013 2014 2015 2015 2016 2016 2016 2016 2017 2019 2020 2021	*Serpil Kerimoğlu and Others* *Cemil Danışman* *S.K.* *Turan Uytun and Kevzer Uytun* *Encü and Others* *İbrahim Aslan* *İpek Deniz and Others* *Ulaş Lokumcu* *Mustafa Çelik and Siyahmet Şaran* *Hüseyin Yıldız and İmiş Yıldız* *Şehmus Altındağ and Others* *Tochukwu Gamaliah Ogu*
Uzbekistan	-	-

Table 9. Socio-economic dimensions of the right to life

Note: The cases displayed in this table are drawn from information provided under the heading "Socio-economic dimensions" of the right to life in the respective Fact Files. In this book, AACC members mostly discuss this issue under Part III. A. of the Fact Files.[169]

Country	Year	Key relevant constitutional adjudication mentioned in the Fact Files
Azerbaijan	2010	On Verification of conformity of Article 247.3 of the Labour Code
	2014	On Interpretation of subparagraph 20 of Article 11.1 of the Law on Status of Military Personnel and Article 121.2 of Regulation on Performing of Military Service
	2015	On Interpretation of Article 15 of the Family Code
	2017	On Verification of conformity of some provisions of the Law on Social Security of Children who have lost their parents and were deprived of parental care
	2018	On Interpretation of some provisions of Articles 157 and 158 of the Civil Procedure Code
Bangladesh	1999	*Ain O Salish Kendra vs. Bangladesh*
	2000	*Prof. Nurul Islam vs. State*
	2010	*Advocate Zulhasuddin vs. Bangladesh*
	2016	*Government of Bangladesh and Ors. vs. Professor Nurul Islam*
	2021	*Government of Bangladesh and Ors. vs. Md. Saiful Islam and others*
India	1980	*Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar*
	1984	*Bandhua Mukti Morcha v. Union of India*
	1985	*Olga Tellis v. Bombay Municipal Corpn.*
	1992	*Mohini Jain v. State of Karnataka*
	1997	*Vishakhaand Ors v. State of Rajasthan*
	2006	*Secretary, State of Karnataka v. Umadevi and Ors.*
	2014	*National Legal Services Authority v. Union of India*
	2017	*Justice K.S. Puttaswamy (Retd.) v. Union of India*
	2018	*Navtej Singh Johar v. Union of India*
Indonesia	2003	Decision No. 001-021-022/PUU-I/2003
	2008	Decision No. 13/PUU-VI/2008
	2013	Decision No. 85/PUU-XI/2013
Kazakhstan	2001	Normative resolution of December 21, 2001 No. 18/2
Korea, Rep.	2004	Decision 2002Hun-Ma328
	2016	Decision 2013Hun-Ma142
Kyrgyz Rep.	-	-

169 Where applicable, a number of related or overlapping case examples may be found in Part III.C. of the Fact Files in this publication, which presents "Other expansive interpretations" of the right to life. Examples include materials provided by the Supreme Court of India, the Federal Court of Malaysia, and the Supreme Court of Pakistan.

Malaysia	2000	*Jakob Renner (An Infant suing through his father and next friend, Gilbert Renner) & Ors v Scott King, Chairman of Board of Directors of The International School of Kuala Lumpur & Ors*
	2013	*N Indra a/p Nallathamby v Datuk Seri Khalid Bin Abu Bakar*
	2019	*Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar*
	2021	*Datuk Seri Anwar Ibrahim v Kerajaan Malaysia & Anor*
	2021	*Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor*
Mongolia	-	-
Myanmar	-	-
Pakistan	1988	*Benazir Bhutto v Federation of Pakistan*
	1993	*Government of Balochistan v Aziz Ullah Memon*
	1994	*Employees of Pakistan Law Commission v Ministry of Works*
	1994	*Shehla Zia v WAPDA*
	1994	*West Pakistan Salt Miners Labour Union, Khewra v Director, Industries and Mineral Development, Punjab*
	1997	*Al-Jehad Trust v Federation of Pakistan*
	2001	*Asfandyar Wali v Federation of Pakistan*
	2001	*Shehri v Province of Sindh*
	2011	*Munir Hussain Bhatti v Federation of Pakistan*
	2011	*Suo Motu Case No. 10 of 2010 (Contamination of Water of Mancher Lake due to Disposal Effluent from MNV Drain now converted into RBOD)*
	2013	*Abdul Wahab v HBL*
	2014	*Iqbal Zafar Jhagra v Federation of Pakistan*
	2014	*OGRA v Midway II, CNG Station*
	2015	*Haji Mullah Noor Ullah v Secretary Mines and Minerals*
	2015	*Pir Imran Sajid v Telephone Industries of Pakistan*
	2017	*Shahab Usto v Government of Sindh*
	2017	*Suo Motu Case No. 19 of 2016*
	2018	*Barrister Zafarullah Khan v Federation of Pakistan*
	2019	*Shahzada Sikandar ul Mulk v Capital Development Authority*
	2019	*Muhammad Ahmad Pansota v Federation of Pakistan*
	2020	*Naimatullah Khan Advocate v Federation of Pakistan*
	2020	*Sheikh Asim Farooq v Federation of Pakistan*
	2021	*Jet Green (Pvt.) Limited v Federation of Pakistan*
	2021	*National Bank of Pakistan v Nusrat Perveen*
	2022	*Zeenat Salim v Pakistan Naval Farms*
Philippines	2014	*Imbong v. Ochoa*
Russia	2005	Decision of 15 February 2005 No. 17-P
	2005	Decision of 27 December 2005 No. 523-O
Tajikistan	-	-
Thailand	2004	Ruling No. 25/2547 (2004), dated 14th January B.E. 2547 (2004)
	2009	Ruling No. 12/2552 (2009), dated 19th August B.E. 2552 (2009)
Türkiye	1986	E. 1986/16, K. 1986/25, 21 October 1986
	1988	E. 1988/19, K. 1988/33, 26 October 1988
	1991	E. 1990/27, K. 1991/2, 17 January 1991
Uzbekistan	-	-

Table 10. Environmental dimensions of the right to life

Note: The cases displayed in this table are drawn from information provided under the heading "Environmental dimensions" of the right to life in the respective Fact Files. In this book, AACC members mostly discuss this issue under Part III.B. of the Fact Files.[170]

Country	Year	Key relevant constitutional adjudication mentioned in the Fact Files
Azerbaijan	-	-
Bangladesh	1996 2001 2012	*Dr. Mohiuddin Farooque vs. Bangladesh* *Dr. Mohiuddin Farooque vs. Bangladesh* *Metro Makers and Developers Limited and others vs. Bangladesh* *Environmental Lawyers' Association Limited (BELA) and Others*
India	1991 1997 1997 2001 2003 2006 2009 2014 2016 2017 2019	*Subhash Kumar v. State of Bihar* *M.C. Mehta v. Kamal Nath* *M.C. Mehta v. Union of India* *M.C. Mehta v. Union of India* *State of M.P. v. Kedia Leather and Liquor Ltd.* *T.N. Godavarman Thirumulpad v. Union of India* *Nature Lovers Movement v. State of Kerala* *Animal Welfare Board of India v. A. Nagaraja and Ors.* *Mohd. Salim v. State of Uttarakhand and others* *Chief Secretary to the Government, Chennai, Tamil Nadu and Ors. v. Animal Welfare Board and Anr.* *Sri Subhas Bhattacharjee v. The State of Tripura*
Indonesia	2014	Decision No. 18/PUU-XII/2014
Kazakhstan	2005	Normative resolution of April 29, 2005 No. 3
Korea, Rep.	Pending Pending Pending	Case 2020Hun-Ma389 Case 2020Hun-Ma1516 Case 2021Hun-Ma1264
Kyrgyz Rep.	-	-
Malaysia	2010 2016	*Wong Kin Hoong & Ors v Ketua Pengarah Jabatan Alam Sekitar & Anor* *Raub Australian Gold Mining Sdn Bhd v Hue Shieh Lee*
Mongolia	-	-
Myanmar	-	-

170 Where applicable, a number of related or overlapping case examples may be found in Part III.C. of the Fact Files, which presents "Other expansive dimensions" of the right to life. Examples include materials provided by the Supreme Court of India, the Federal Court of Malaysia, and the Supreme Court of Pakistan.

Pakistan	1994	*In re: Human Rights Case (Environment Pollution in Balochistan)*
	1994	*Shehla Zia v WAPDA*
	1994	*West Pakistan Salt Miners Labour Union, Khewra v Director, Industries and Mineral Development, Punjab*
	2005	*Adeel-ur-Rehman v Federation of Pakistan*
	2010	*Suo Motu Case No. 10 of 2005 (Re: Environmental hazard of the proposed New Murree Project)*
	2011	*Suo Motu Case No. 10 of 2010 (Contamination of Water of Mancher Lake due to Disposal Effluent from MNV Drain now converted into RBOD)*
	2016	*Ali Steel Industry v Government of Khyber Pakhtunkhwa*
	2017	*Shahab Usto v Government of Sindh*
	2018	*Asghar Leghari v Federation of Pakistan*
	2018	*Barrister Zafarullah Khan v Federation of Pakistan*
	2021	*DG Khan Cement Company Limited v Government of Punjab*
Philippines	1993	*Oposa v. Factoran*
	2008	*Metropolitan Manila Development Authority (MMDA) v. Concerned Residents of Manila Bay*
	2019	*Maynilad Water Services Inc. v. The Secretary of Environment and Natural Resources*
Russia	1997	Judgment of 1 December 1997 No. 18-P
	2009	Judgment of 14 May 2009 No. 8-P
	2015	Judgment of 2 June 2015 No. 12-P
	2022	Judgment of 1 February 2022 No. 4-P
Tajikistan	-	-
Thailand	-	-
Türkiye	2016	*Mehmet Kurt*
Uzbekistan	-	-

Part C.

Fact Files from AACC Members: Right to Life

1. Azerbaijan

Constitutional Court

Overview

The constitutional right to life is enshrined in Article 27 of the Constitution. This provision stipulates the right to life as inviolable, but also contains some key exceptions such as those related to times of war and capital punishment. However, capital punishment was abolished in 1998. The Republic of Azerbaijan is a member of the Council of Europe and a signatory to the European Convention on Human Rights. It is also a state party to the International Covenant on Civil and Political Rights (ICCPR) and the two Optional Protocols to the ICCPR. Regarding the issue of abortion, artificial termination of pregnancy can be carried out at the request of a woman up to 12 weeks of pregnancy. Abortion during a later period may be possible depending on the presence of certain conditions. In Azerbaijan, euthanasia and assisted suicide are prohibited. Regarding the use of force by public authorities, various provisions in the Constitution are of relevance. More specifically, Article 5 of the *Law of the Republic of Azerbaijan on Police* regulates police activity in relation to the protection of human rights and freedoms. Many socio-economic dimensions of the right to life are covered via independent constitutional provisions on socio-economic rights. Examples of relevant constitutional adjudication include cases on provisions in the Labour Code, Family Code, and also legislation concerning the social security of children. In relation to the environmental dimension of the right to life, Article 39 of the Constitution and Article 6 of the *Law of the Republic of Azerbaijan on Protection of the Environment* are of particular relevance.

Outline

I. Defining the right to life

A. Recognition and basic obligations

The right to life, which is an inalienable human right, is enshrined in the Constitution of the Republic of Azerbaijan, as well as in the universal and regional instruments for the protection of human rights, to which Azerbaijan is a party.

Chapter III. FUNDAMENTAL RIGHTS AND FREEDOMS OF MAN AND CITIZEN

Article 27. Right to life

I. Everyone has the right to life.

II. Except extermination of enemy soldiers in a case of military aggression, when executing the sentence and in other cases prescribed by law, right of every person for life is inviolable.
Everyone's right to life shall be inviolable, except in the event of killing of enemy soldiers during their armed attacks, in the case of execution of capital punishment pursuant to a court judgment that has become effective, and in other cases as prescribed by law.

III. Capital punishment, until it has been completely abolished, may be prescribed by law as an exclusive penalty only for particularly serious crimes against the state, or against the life and health of a human being.

IV. Weapons may not be used against a person except as prescribed by law in cases of self-defense, necessity, apprehension and arrest of criminals, preventing the escape from a place of detention, suppressing insurrection against the state or preventing coups d'état, or military aggression against the country.

Article 12 of the Constitution of the Republic of Azerbaijan establishes that ensuring the rights and freedoms of man and citizen, a proper standard of living for the citizens of the Republic of Azerbaijan is the highest objective of the state. To achieve this objective, it is necessary to direct the laws adopted in the Republic of Azerbaijan, first of all, to ensure human rights and freedoms, enshrined in the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party. The current legislative practice in the

country shows that when preparing laws, they are guided by the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party, and many draft laws in the process of their preparation are submitted for examination by international organizations specializing in the field of human rights and are adopted taking into account their conclusion.

The Republic of Azerbaijan, participating in international treaties on human rights and freedoms, within its jurisdiction, has assumed an obligation to ensure the rights and freedoms of every person. Within the framework of the mechanisms for monitoring the fulfillment of this obligation, it is important to implement the conclusions and recommendations of the specialized structures of the United Nations, the Council of Europe and other intergovernmental organizations on the periodic reports submitted by the Republic of Azerbaijan on ensuring human rights and freedoms. Along with this, as part of the execution of judgements of the European Court of Human Rights, it is planned to take measures to improve legislation. When fulfilling these obligations, a detailed analysis of the recommendations is necessary, as well as the definition of upcoming measures and the state structures responsible for their implementation. In this regard, it is envisaged to involve the following structures in the mentioned process. Local non-governmental organizations that carry out activities in the field of human rights protection are also involved in this work.

The Republic of Azerbaijan has acceded to all major multilateral treaties in the field of human rights and regularly submits reports on the implementation of the provisions of these treaties for consideration by the relevant Committees.

According to Article 148 (“Acts constituting the legislative system of the Republic of Azerbaijan”) Paragraph II of the Constitution of the Republic of Azerbaijan, international treaties to which the Republic of Azerbaijan is a party shall be an integral part of the legislative system of the Republic of Azerbaijan. Article 151 of the Constitution of the Republic of Azerbaijan provides that if a conflict arises between normative legal acts of the legislative system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum) and inter-state treaties to which the Republic of Azerbaijan is a party, the international treaties shall apply.

Main international human rights treaties and their protocols:

- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 1966.
    - The Republic of Azerbaijan acceded to this Covenant by Resolution

No. 226 of the Milli Majlis (Parliament) of the Republic of Azerbaijan dated July 21, 1992.

- *International Covenant on Civil and Political Rights (ICCPR)*, 1966.
  - The Republic of Azerbaijan acceded to this Covenant by Resolution No. 227 of the Milli Majlis (Parliament) of the Republic of Azerbaijan dated July 21, 1992.

- *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, 1965.
  - The Republic of Azerbaijan acceded to this Convention by Resolution No. 95-IQ of the Milli Majlis (Parliament) of the Republic of Azerbaijan dated May 31, 1996.

- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 1979.
  - The Republic of Azerbaijan acceded to this Convention by Resolution No. 1074 of the Milli Majlis (Parliament) of the Republic of Azerbaijan dated June 30, 1995.

- *Convention on the Rights of the Child (CRC)*, 1989.
  - The Republic of Azerbaijan acceded to this Convention by Resolution No. 236 of the Milli Majlis (Parliament) of the Republic of Azerbaijan dated July 21, 1992.

- *Second Optional Protocol to the ICCPR*, aiming at the abolition of the death penalty, 1989.
  - The Republic of Azerbaijan acceded to this Protocol by Resolution No. 582-IQ of the Milli Majlis (Parliament) of the Republic of Azerbaijan dated December 11, 1998, with the following clause:
    - "The Republic of Azerbaijan, applying the Second Optional Protocol of 1989 to the International Covenant on Civil and Political Rights, concerning the abolition of the death penalty, in exceptional cases, through the adoption of a special law, may use the application of the death penalty for serious crimes committed in time of war or in the event of a threat of war."
  - By the Law of October 5, 1999, the above clause and the Paragraph 6 of the Law of December 11, 1998 on accession to this Protocol were amended and given in a new version: "During the war, in relation to a person accused of committing a particularly serious crime of a military nature in period of war, the death penalty may be applied."

- Despite the fact that the legislation in the above case allows for the possibility of applying the death penalty, Article 42 of the *Criminal Code of the Republic of Azerbaijan* (which contains all types of punishment) does not indicate the "death penalty" as a type of punishment, as well as in no article of the Code the use of this type of punishment was not reflected.

- *International Convention for the Protection of All Persons from Enforced Disappearance*, 2006.
  - The Republic of Azerbaijan signed the Convention on February 6, 2007.

- *International Convention on the Rights of Persons with Disabilities and Optional Protocol*, 2006.
  - The Republic of Azerbaijan signed both documents on January 9, 2008.

The Republic of Azerbaijan, having joined the Council of Europe and ratified the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, on April 15, 2002, recognized the jurisdiction of the European Court of Human Rights.

The Constitution of the Republic of Azerbaijan and other legislative acts enshrine a number of legal means that ensure the guarantees of the right to life.

These are the means that provide constitutional guarantees for a dignified life, guarantees of social protection; the right not to be subjected to torture or other ill-treatment; the right to health protection and medical care; the right to a favorable environment, etc.

The functions of the state in ensuring the right to life, as well as other human rights, are manifested in creating conditions for the realization of this right, in its protection, security and restoration.

In accordance with Article 12 of the Constitution of Azerbaijan, the highest objective of the state is to ensure rights and liberties of a person and a citizen and a proper standard of living for the citizens of the Republic of Azerbaijan. Rights and liberties of a person and a citizen listed in the present Constitution are applied in accordance with international treaties to which the Republic of Azerbaijan is a party.

At the same time, it should be noted that according to Article 71 of the

Constitution of the Republic of Azerbaijan, the legislature, executive and judiciary shall have the duty to observe and to protect the rights and freedoms of man and citizen set forth in the Constitution. No one may restrict the exercise of rights and freedoms of a man and citizen. Everyone's rights and freedoms shall be restricted on the grounds provided for in the present Constitution and laws, as well as by the rights and freedoms of others. Restriction of rights and liberties shall be proportional to the result expected by the state.

However, it should be also noted that the Article contains a provision according to which, rights and freedoms of man and citizen may be partially and temporarily restricted in time of war, martial law and state of emergency, as well as mobilization, subject to the international obligations of the Republic of Azerbaijan. The population shall be notified in advance about restrictions as regards their rights and liberties.

B. Constitutional status

The principle of the inviolability of the rights and freedoms of man and citizen is one of the fundamental principles of the existence of the state governed by the rule of law, according to which the state ensures the realization of the rights and freedoms of citizens, and the opportunity for them to actually enjoy the benefits provided for in its Constitution. The state also ensures the strength and stability of rights and freedoms, and protects these against infringement from outside and from within the state.

In accordance with Article 24 of the Constitution of the Republic of Azerbaijan, human dignity is protected and respected. Everyone, as from the moment of birth, enjoys inviolable and inalienable rights and freedoms. Rights and freedoms shall also include the responsibilities and duties of everyone to the society and to other persons. Abuse of rights is not allowed.

Rights provided by Article 27 "Right to life" (except for cases of death resulting from the lawful conduct of war), Paragraph I of Article 28 "Right to Liberty", Paragraph III of Article 46 "Right to Protect Honour and Dignity", Article 63 "Presumption of Innocence", Article 64 "Inadmissibility of double jeopardy" and Paragraph VIII of Article 71 "Guarantees for rights and freedoms of man and citizen" of the Constitution of the Republic of Azerbaijan cannot be limited. These rights cannot be subject to limitation clauses (Article 2 of the *Constitutional Law of the Republic of Azerbaijan on Regulation of the Exercise of Human Rights and Freedoms in the Republic of Azerbaijan*).

C. Rights holders

A broad approach to the right to life, which goes beyond the mere prohibition of arbitrary deprivation of life, includes the creation by the state of legal, social, economic and other conditions that ensure a normal, full, dignified human life.

Thus, the content of the right to life is:

- the right to preserve the life;
- the right to demand from the state the creation of conditions for ensuring the life;
- the right to health protection and medical care;
- the right to control life.

The right to life, as noted earlier, is interpreted by Article 24 of the Constitution of the Republic of Azerbaijan. One of the elements of this right is the inadmissibility of arbitrary deprivation of life. The protection of the right to life is carried out by various methods, its guarantees are enshrined in various branches of law, including criminal law.

1. The beginning and the end of life

Paragraph II of Article 24 of the Constitution states that from the moment of birth, everyone, as from the moment of birth, enjoys inviolable and inalienable rights and freedoms. This means that the Constitution links the emergence of the rights and freedoms of citizens with a fairly certain legal fact of birth. Consequently, the right to life also belongs only to a specific subject - a born person.

According to Article 39 of the *Law of the Republic of Azerbaijan on Protection of Public Health Care*, dated June 26, 1997, the moment of death of a person is determined by a medical worker. The definition of the moment of death, the criteria and procedure for terminating resuscitation is determined by the Ministry of Health in agreement with the Ministry of Justice.

In accordance with Article 307 of the *Civil Procedure Code of the Republic of Azerbaijan*, facts of legal importance are established. On the basis of this Article, the court establishes the relevant facts regarding the emergence, change or termination of personal or property rights of individuals and legal entities. Such facts include the registration of death, the fact of death of the person at a certain time and also under certain circumstances. On such facts depends the potential refusal of the relevant executive authorities (Ministry of Justice of the Republic of Azerbaijan) in the registration of the event of death.

At the same time, it should be pointed out that according to Article 41 of the *Civil Code of the Republic of Azerbaijan*, a court may declare a natural person as deceased where, for five years, there has been no information at his residence regarding his whereabouts and where such person disappeared under circumstances which posed danger of death or provided grounds for concluding that he may have died as a result of an accident and there has been no information about such person for six months.

A court may declare military serviceman or other person who disappeared in connection with military operations as deceased not earlier than two years after the date of the end of the military operations. The date of entry into force of a judicial declaration of a person as deceased shall be deemed as the date of death of such person. In cases specified by Articles 41.1 and 41.2 of this Code, a court may deem the date of his assumed demise as the date of his death.

2. Animal life

A relevant provision can be found in the *Law of the Republic of Azerbaijan on the Animal World*:

Article 11. Participation of individuals and legal entities in the field of protection and use of the animal world

- Individuals and legal entities, as well as public organizations have the right to participate in the protection, use, increase of the animal world, protection, improvement and restoration of its habitat within the boundaries established by the legislation of the Republic of Azerbaijan.
- The rights and obligations of individuals and legal entities, as well as public organizations in the field of protection and use of the animal world include:
    - use of objects of the animal world in accordance with the requirements of this Law;
    - obtaining from state bodies information established by law on the protection and use of the animal world;
    - implementation of the functions of public ecological expertise and public control in the field of protection, use and reproduction of the animal world and its habitat;
    - participation in the implementation of targeted state programs in the field of protection and use of the animal world;
    - exercising other rights and obligations established by law;
    - state bodies exercising the functions of management and control in the field of protection and use of the animal world must, in their work

on the protection, use and restoration of objects of the animal world, take into account the opinions and proposals of individuals and legal entities, including public organizations.

II. Limitations: Key issues

A. Capital punishment

On February 10, 1998 on the basis of the Resolution of the Milli Majlis (Parliament) of the Republic of Azerbaijan, the *Law of the Republic of Azerbaijan on Introducing Amendments and Additions to the Criminal, Criminal Procedure and Correctional Labour Codes of the Republic of Azerbaijan in connection with the Abolition of the Death Penalty in the Republic of Azerbaijan* was adopted.

The death penalty was replaced by life imprisonment in the *Criminal Code of the Republic of Azerbaijan*.

In accordance with Article 57 of the *Criminal Code of the Republic of Azerbaijan*, life imprisonment is established only for the commitment of especially grave crimes against peace and humanity, war crimes, crimes against the person, public security and public order and state power. Life imprisonment is not imposed on women, persons who at the time of the commitment of the crime were under the age of eighteen, as well as men who had reached the age of sixty-five by the time the court passed the sentence. The court may replace life imprisonment with imprisonment for a specific period or release on parole if it concludes that the need for further serving the sentence is no longer necessary. Key factors for such a conclusion include taking into account the actual serving by the convict of at least twenty-five years of the sentence in the form of life imprisonment, and the fact that the convicted person had not committed an intentional crime during the period of serving the sentence. Punishment in the form of life imprisonment may be replaced by deprivation of liberty for up to ten years in the manner prescribed by Article 57.3 of this Code.

On February 10, 1998 the *Law of the Republic of Azerbaijan on Introducing Amendments and Additions to the Criminal, Criminal Procedure and Correctional Labour Codes of the Republic of Azerbaijan in connection with the Abolition of the Death Penalty in the Republic of Azerbaijan* was adopted. According to this Law, the death penalty was excluded from the penitentiary system and

replaced by life imprisonment. Life imprisonment was approved as the main type of punishment by the Milli Majlis (Parliament) of the Republic of Azerbaijan upon the Law No. 787-IQ of 30 December 1999 and entered into the system of punishments provided for in Article 42 of the *Criminal Code of the Republic of Azerbaijan*, which entered into force on September 1, 2000.

There is no constitutional case law on the issue of capital punishment.

B. Abortion

According to Article 30 of the *Law of the Republic of Azerbaijan on Protection of Public Health Care*, every woman has the right to decide the issue of maternity independently. Artificial termination of pregnancy is carried out at the request of a woman up to 12 weeks of pregnancy. According to social recommendations, artificial termination of pregnancy can be carried out up to 22 weeks of duration of pregnancy. If relevant medical indications and the consent of the woman exist, artificial termination of pregnancy is carried out regardless of the duration of pregnancy.

The text of Article 27 of the Constitution of the Republic of Azerbaijan, which provides for the right to life, does not unequivocally refer to the right to life of an embryo (embryo in the mother's womb). Paragraph II of Article 24 of the Constitution, which is referred to as conainting the main principle of rights and freedoms of man and citizen, states that "everyone, as from the moment of birth, enjoys inviolable and inalienable rights and freedoms."

In general, the term "life" in the Azerbaijani language is defined as existence not from a biological point of view, but only from a social one. Subparagraph 2 of Article 25 of the *Civil Code of the Republic of Azerbaijan*, which establishes that "legal capacity for a natural person arises from the moment of birth and ceases to exist upon the moment of death", reinforces the corresponding norm of the Constitution.

In accordance with Subparagraph 3 of Article 25 of the *Civil Code of the Republic of Azerbaijan*, the right to inherit arises from the moment of conception; however, the exercise of this right is possible only after a natural person's birth.

As mentioned above, an abortion can be performed only according to indications (reasons). Accordingly, abortion is in no way a violation of the right to life. There is no constitutional case law on the issue of abortion.

C. Euthanasia

According to the legislation of the Republic of Azerbaijan, euthanasia is not allowed.

Article 38 of the *Law of the Republic of Azerbaijan on Protection of Public Health Care* states:

Article 38. Prohibition of euthanasia

> Euthanasia is prohibited, that is, the acceleration of the death of the patient by any means or actions at the request of the patient, or the cessation of artificial interventions that contribute to the continuation of life.
>
> A person who deliberately induces a patient to euthanasia or performs euthanasia shall be liable in accordance with the law.

According to Article 135 "Euthanasia" of the *Criminal Code of the Republic of Azerbaijan*, euthanasia, that is, at the request of the patient, the acceleration of his death by any means or actions, or the cessation of artificial measures that help him continue his life - shall be punishable by deprivation of liberty for a term up to three years, with or without deprivation of the right to hold certain positions or engage in certain activities for a term up to two years.

There is no constitutional case law on the issue of euthanasia.

D. Suicide and assisted suicide

According to Article 125 of the *Criminal Code of the Republic of Azerbaijan*:

Article 125. Bringing to suicide

> Bringing a person who was in material, service or other dependence on the guilty person to commit suicide or attempted suicide by means of threats, cruel treatment or systematic humiliation of his dignity, — shall be punishable by imprisonment for the term from three up to seven years.

There is no constitutional case law on the issue of suicide.

E. Lethal use of force during law enforcement

According to Paragraph II of Article 31 of the Constitution of the Republic of Azerbaijan:

Article 31. Right to live in safety

> II. Except cases prescribed by law it is prohibited to infringe upon a person's life, physical and mental health, property, living premises, and to commit acts of violence against him/her.

Moreover, according to Paragraph III of Article 46 of the Constitution of the Republic of Azerbaijan:

Article 46. Right to protect honour and dignity

> III. No one may be subject to torture. No one may be subject to degrading treatment or punishment. Medical, scientific and other experiments may not be carried out on any person without his/her consent.

According to Article 27 and 28 of the *Law of the Republic of Azerbaijan on Provision of Rights and Freedoms of Detainees* (№ 352, 22.05.2012):

Article 27. Non-application of torture and inhuman or humiliating treatment

> Detained or arrested persons may in no case be subjected to torture and inhuman or humiliating treatment or punishment. At places of detention, they may not be kept in humiliating conditions.

Article 28. Ethical treatment

> Employees of places of detention must be polite in their relations with detained or arrested persons. Humiliating treatment of detained or arrested persons shall be prohibited.

According to Article 4.2 of the *Law of the Republic of Azerbaijan on Operative Search Activity* (№ 728, 28.10.1999):

Article 4. Guarantees for human and civil rights and liberties

> II. It is prohibited to violate human and civil rights and liberties envisaged

in the Constitution of the Republic of Azerbaijan and legal interests of legal entities. The temporary restriction of human and civil rights and liberties in the course of implementation of operative search activity is allowed only in accordance with the provision of this Law in case of prevention and disclosure of crimes, search of those concealing from court, investigation and investigating authorities, escaping sentencing and missing.

According to Article 5 of the *Law of the Republic of Azerbaijan on Police* (№ 727, 28.10.1999):

Article 5. Activity of police in the field of protection of human rights and freedoms

I. In the course of performing of its duties, the police shall protect the rights and legal interests of all individuals specified by the Constitution of the Republic of Azerbaijan and treaties to which it is a party, irrespective of race, nationality, religion, language, sex, origin, property, official position, beliefs, affiliation to political parties, trade unions or any other civil associations.

II. Police is proscribed from humiliating treatment of individuals. Coercing of offenders or persons who are suspected of committing offences with a view to extract their testimonies or confessions, as well as threatening, torturing and subjecting to any other private and moral pressure shall be prohibited.

III. Police shall be allowed to undertake the measures provided by the present Law against the rights and freedoms of individual only on the grounds and order prescribed by the legislation of the Republic of Azerbaijan.

IV. In case of any restriction of rights and freedom of an individual, the police officers shall explain the reasons and grounds for this restriction, as well as the rights and liabilities of the individual.

V. Police shall enable detained or arrested person to pursue their rights.

VI. If police officers violate rights, freedoms and legal interests of an individual, the police body shall be bound to undertake necessary steps to restore infringed rights, freedoms and legal interests of the individual, as well as to compensate the detriment inflicted.

VII. Compensation for the detriment inflicted as the result of illegal actions

of police officers shall be paid as provided by the legislation of the Republic of Azerbaijan.

There is no constitutional case law on the issue of the use of lethal force by law enforcement officials.

F. Other limitations on the right to life

Constitutional protection of health and legislation on healthcare provide another area of law that regulates or impacts the right to life.

According to Article 41 of the Constitution of the Republic of Azerbaijan:

Article 41. Right to protection of health

I. Everyone has the right to protection of his/her health and to medical assistance.
II. The state takes all necessary measures for development of all forms of health services based on various forms of property, guarantees sanitary-epidemiological safety, facilitates various forms of medical insurance.
III. Officials who conceal facts and circumstances threatening life and health of people are accountable under the law.

According to Articles 1, 2 and 3 of the *Law of the Republic of Azerbaijan on Protection of Public Health Care* (№ 360, 26.06.1997):

Article 1. Basic principles of public health care

The basic principles of public health care are:
the state providing rights of man and citizen in the field of public health care and the responsibility of legal entities and physical persons connected with it;
holding preventive actions in the field of public health care;
availability of the medico-public assistance to all;
protection of citizens in case of disability.

Article 2. The legislation of the Republic of Azerbaijan in the field of public health care

The legislation of the Republic of Azerbaijan in the field of public health care consists of the Constitution of the Republic of Azerbaijan, this Law, other

corresponding legal acts of the Republic of Azerbaijan, and also international treaties with participation of the Republic of Azerbaijan.

Article 3. Obligations of the state in the field of public health care

Obligations of the state in the field of public health care are:
determination of fundamentals of policy of the state in the field of public health care, and also protection of rights and freedoms of man and citizen;
preparation and implementation of state programs in the field of health protection;
determination of rules of the organization and activities of health care system;
financing of the state health care system;
environmental protection and providing ecological safety;
determination of the amount of insurance and rules of payment of insurance sums for compulsory medical insurance;
guarantee of rendering the medico-public assistance for national groups;
guarantee of healthy competition for organizations of the state and non-state health care systems;
protection of family, parents and children;
implementation of international cooperation in the field of health care except for, the transfer materials and medicines made of fabric components;
implementation of accreditation of medical institutions.

III. Expansive interpretations

A. Socio-economic dimensions

The Constitution of the Republic of Azerbaijan establishes socio-economic rights more broadly via a number of rights provisions:

Article 16. Social development and the state

I. The state of Azerbaijan takes care of improvement of well-being of all people and each citizen, their social protection and proper standard of living.
II. The state of Azerbaijan promotes development of culture, education, public health, science, arts, protects nature of the country, historical,

material and spiritual heritage of the people.

Article 17. Family, children and the state

I. Family as a kernel of society is under special protection of the state.
II. Taking care of the children and their upbringing is the duty of the parents. The state shall supervise the implementation of this duty.
III. Children who do not have parents or guardians, or who are deprived of parental care are under the protection of the state.
IV. It is prohibited to involve children in activities that may threaten their lives, health, or morality.
V. Children under the age of 15 may not be employed for work.
VI. The state supervises the implementation of children's rights.

Article 29. Right to property

I. Everyone has the right to property.
II. No one form of property shall take precedence over others. The right to property, including the right to private property shall be protected by law.
III. Everyone may possess movable and immovable property. Right to property includes the right to possess, use and dispose of property individually or jointly with others.
IV. Nobody may be deprived of his/her property without a court decision. The outright confiscation of the property is prohibited. Expropriation of property for state needs is permitted only on condition of fair compensation in advance.
V. Private property shall entail social responsibility.
VI. Land ownership may be restricted by law for social justice and the purposes of efficient use of the land.
VII. The state guarantees the right of inheritance.

Article 34. Right to marriage

I. Everyone has the right to marry upon attaining the age prescribed by law.
II. Marriages shall be entered into with free consent. Nobody may be forced to marry.
III. Family and marriage are under protection of the state. Maternity, paternity and childhood are protected by law. The state renders support to families with multiple children.
IV. Rights of wife and husband are equal. Care and upbringing of children constitute both right and responsibility of parents.

V. Children have the duty to respect and care for their parents. Children who have attained eighteen years of age and who are capable of working shall be responsible for the care of their parents if the latter are not capable of working.

Article 35. Right to work

I. Labour is the foundation of individual and public welfare.
II. Everyone has the right to freely choose activity, profession, occupation and place of work, based on his/her abilities.
III. Nobody may be forced to work.
IV. Employment contracts shall be concluded voluntarily. Nobody may be forced to conclude an employment contract.
V. A court may order forced labour, the terms and duration of which are prescribed by law; there may be forced labour in connection with the execution of orders given by an authorized person during military service, or in connection with the performance of work assigned during times of emergency or martial law.
VI. Everyone has the right to work in safe and healthy conditions, to receive remuneration for his/her work without any discrimination, for no less than the minimum wage prescribed by the state.
VII. Unemployed persons have the right to receive social allowances from the state.
VIII. The state shall apply all of its resources for the elimination of unemployment.

Article 37. Right to rest

I. Everyone has the right to rest.
II. Person working based on employment contracts shall be guaranteed the legally prescribed work period of no more than eight hours per working day, days off and public holidays and a paid leave, at least once a year, of no less than twenty-one calendar days.

Article 38. Right to social security

I. Everyone has the right to social security.
II. Family members are the first to be duty-bound to render assistance to their needy kin.
III. Everyone has the right to social security upon attaining the age prescribed by law, in case of illness, disability, loss of bread-winner in the family,

loss of work capacity, unemployment or in other cases prescribed by law.
IV. Minimum pensions and social allowances are prescribed by law.
V. The state facilitates the development of charity activity, voluntary social insurance and other forms of social security

Article 41. Right to protection of health

I. Everyone has the right to protection of his/her health and to medical assistance.
II. The state takes all necessary measures for development of all forms of health services based on various forms of property, guarantees sanitary-epidemiological safety, facilitates various forms of medical insurance.
III. Officials who conceal facts and circumstances threatening life and health of people are accountable under the law.

Article 42. Right to education

I. Every citizen has the right to education.
II. The state guarantees the right to free and obligatory secondary education.
III. The education system is controlled by the state.
IV. The state guarantees continued education of talented persons irrespective of their financial position.
V. The state sets minimum educational standards.

Article 58. Right to association

I. Everyone is free to associate with others.
II. Everyone has the right to establish any association, including political party, trade union and other public association or to join an already existing association. Freedom of activity of all associations is guaranteed.
III. Nobody may be forced to join any association or to remain its member.
IV. Activity of associations the purpose of which is the forcible overthrow of legitimate state authority on the whole territory of the Republic of Azerbaijan or in any part thereof, as well as those having objectives which are considered a crime, or which use criminal methods are prohibited. Activity of associations which violate the Constitution and laws may be prohibited only by a court decision.

Article 59. Right to free enterprise

I. Everyone may, using freely his/her possibilities, abilities and property,

engage individually or together with others in entrepreneurial activity or other kinds of economic activity not prohibited by the law.

II. Only protection of state interests, human life and health is regulated by the state in entrepreneurial activity

Relevant constitutional adjudication concerning socio-economic dimensions of the right to life:

21.06.2010 - On Verification of conformity of Article 247.3 of the *Labour Code of the Republic of Azerbaijan* to the Constitution of the Republic of Azerbaijan

28.03.2014 - On Interpretation of subparagraph 20 of Article 11.1 of the *Law of the Republic of Azerbaijan on Status of Military Personnel* and Article 121.2 of *Regulation on Performing of Military Service approved by the Law of the Republic of Azerbaijan* of October 3, 1997

16.10.2015 - On Interpretation of Article 15 of the *Family Code of the Republic of Azerbaijan*

25.01.2017 – On Verification of conformity of some provisions of the *Law of the Republic of Azerbaijan on Social Security of Children who have lost their parents and were deprived of parental care* with Article 25.1 of the Constitution of the Republic of Azerbaijan on complaint of Mr. Javidan Gafarov

14.03.2018 - On Interpretation of some provisions of Articles 157 and 158 of the *Civil Procedure Code of the Republic of Azerbaijan*

B. Environmental dimensions

According to Article 39 of the Constitution of the Republic of Azerbaijan:

Article 39. Right to live in a healthy environment

I. Everyone has the right to live in a healthy environment.
II. Everyone has the right to gain information about the true ecological situation and to get compensation for damage done to his/her health and property by violation of ecological requirements.
III. No one may cause threat or damage to the environment and natural resources beyond the limits prescribed by law.
IV. The state guarantees the preservation of ecological balance and protection

of the species of wild plants and wild animals prescribed by law.

Moreover, according to Article 6 of the *Law of the Republic of Azerbaijan on Protection of the Environment* (№ 678-IQ, 08.06.1999):

Article 6. Rights and duties of individuals in the field of the environmental protection

1. Rights of each of citizens, individuals without citizenship and citizens of foreign states (hereinafter referred to as 'individual') shall be as follows:
1.1. to receive information on existence of the environment favourable for life and health, status of such environmental conditions and measures for the improvement thereof;
1.2. to receive compensation for damages caused to their health and property following breach of legislation on environmental protection;
1.3. to live in the natural environment favourable to health and life;
1.4. to use the natural resources, to undertake measures for the protection and reinstatement thereof, to take part in protection and improvement of the environment in accordance with prescribed procedures;
1.5. to take part in accordance with legislation in meeting, assemblies, pickets, demonstrations and marches, referendums on environmental protection;
1.6. to apply to state authorities and organisations in relation to environmental protection;
1.7. to give proposals in relation to public ecological examination;
1.8. to request through administrative and court procedures cancellation of decisions on location, construction, reconstruction and putting into operation of enterprises, facilities and other ecological harmful objects causing negative impact upon health and environment, as well as limitation, suspension of activities of physical persons and legal entities, and liquidation of legal entities;
1.9. to raise claims before appropriate authorities and courts for bringing organisations, officials and individuals guilty of breach of legislation on environmental protection before liability;
1.10. to exercise other rights stipulated by the legislation.
2. Each individual shall protect the environment.

There is no constitutional case law on the issue of environmental dimensions of the right to life.

Annex 1: List of cited legal provisions

1) Constitutional provisions

Constitution of the Republic of Azerbaijan (last amended 26 Sep. 2016)

- Articles 12, 16, 17, 24, 27, 28 (I), 29, 31 (II), 34, 35, 37, 38, 39, 41, 42, 46 (III), 58, 59, 63, 64, 71, 148 (II), 151.

2) Constitutional laws

Constitutional Law on Regulation of the Exercise of Human Rights and Freedoms in the Republic of Azerbaijan

3) Laws

Law of the Republic of Azerbaijan on the Animal World

Law of the Republic of Azerbaijan on Introducing Amendments and Additions to the Criminal, Criminal Procedure and Correctional Labour Codes of the Republic of Azerbaijan in connection with the Abolition of the Death Penalty in the Republic of Azerbaijan

Law of the Republic of Azerbaijan on Operative Search Activity

Law of the Republic of Azerbaijan on Police

Law of the Republic of Azerbaijan on Protection of Public Health Care

Law of the Republic of Azerbaijan on Protection of the Environment

Law of the Republic of Azerbaijan on Provision of Rights and Freedoms of Detainees

4) Resolutions of the Milli Majlis (Parliament) of the Republic of Azerbaijan

The Resolution No. 226 of the Milli Majlis (Parliament) of the Republic of Azerbaijan "On accession to the International Covenant on Economic, Social and Cultural Rights", dated July 21, 1992.

The Resolution No. 227 of the Milli Majlis (Parliament) of the Republic of Azerbaijan "On accession to the International Covenant on Civil and Political Rights", dated July 21, 1992.

The Resolution No. 95-IQ of the Milli Majlis (Parliament) of the Republic of Azerbaijan "On accession to the International Convention on the Elimination of All Forms of Racial Discrimination", dated May 31, 1996.

The Resolution No. 1074 of the Milli Majlis (Parliament) of the Republic of Azerbaijan "On accession to the Convention on the Elimination of All Forms of Discrimination against Women", dated June 30, 1995.

The Resolution No. 236 of the Milli Majlis (Parliament) of the Republic of Azerbaijan "On accession to the Convention on the Rights of the Child", dated July 21, 1992.

The Resolution No. 582-IQ of the Milli Majlis (Parliament) of the Republic of Azerbaijan "On accession to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty", dated December 11, 1998.

5) Legal codes

Civil Code

Civil Procedure Code

Criminal Code

6) International provisions

The Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

Convention on the Elimination of All Forms of Discrimination against Women

(1979)

Convention on the Rights of the Child (1989)

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)

International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Convention on the Rights of Persons with Disabilities (2006)

Optional protocol to the Convention on the Rights of Persons with Disabilities (2006)

Annex 2: List of cited cases

1. 21.06.2010 - On Verification of conformity of Article 247.3 of the *Labour Code of the Republic of Azerbaijan* to the Constitution of the Republic of Azerbaijan
2. 28.03.2014 - On Interpretation of subparagraph 20 of Article 11.1 of the *Law of the Republic of Azerbaijan on Status of Military Personnel* and Article 121.2 of *Regulation on Performing of Military Service approved by the Law of the Republic of Azerbaijan* of October 3, 1997
3. 16.10.2015 - On Interpretation of Article 15 of the *Family Code of the Republic of Azerbaijan*
4. 25.01.2017 - On Verification of conformity of some provisions of the *Law of the Republic of Azerbaijan on Social Security of Children who have lost their parents and were deprived of parental care* with Article 25.1 of the Constitution of the Republic of Azerbaijan on complaint of Mr. Javidan Gafarov
5. 14.03.2018 - On Interpretation of some provisions of Articles 157 and 158 of the *Civil Procedure Code of the Republic of Azerbaijan*

2. Bangladesh

Supreme Court

Overview

The right to life is enshrined in articles 31 and 32 of the Constitution. It is a non-derogable right and the State has the positive obligation to protect the right to life. Bangladesh has acceded to the ICCPR. Even though capital punishment is available in Bangladesh (section 53 of the Penal Code), the courts are very cautious in imposing the death penalty and in most cases commute it to one of life imprisonment. Death penalty cannot be imposed upon a child. Abortion is generally prohibited and is only permitted when required for saving the life of the mother (sections 312 and 313 of the Penal Code). Euthanasia is illegal and currently no relevant adjudication is available. Likewise, both suicide and assisted suicide are illegal in Bangladesh (sections 305, 306 and 309 of the Penal Code). Regarding the use of force by public authorities, law enforcers are only permitted to use lethal force in the exercise of their right to private defence (sections 96 and 100 of the Penal Code). They face stringent punishment in case of torture or custodial death. In terms of expansive interpretations of the right to life, the Supreme Court of Bangladesh has on many occasions made such interpretations from different aspects. For example, in *Government of Bangladesh and Ors. vs. Professor Nurul Islam* (2016), the Appellate Division of the Supreme Court observed that "…right to life is not only limited to protection of life and limbs but also extends to the protection of health, enjoyment of pollution free water and air, bare necessaries of life, facilities for education, maternity benefit, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent to human dignity."

Outline

I. Defining the right to life

A. Background

Bangladesh got her independence from Pakistan on the 26th day of March, 1971 through a historic struggle for national liberation. The liberation war ended on 16 December 1971 when the Pakistani occupation army surrendered at Dhaka. The victory was achieved at the cost of lives of three million innocent people of Bangladesh and sacrifice of honour of two hundred thousand women during the war. Just after independence, Father of the Nation Bangabandhu Sheikh Mujibur Rahman focused on building a society where every person will be equal before the eye of the law and there will be no exploitation. Right after the independence, under the leadership of Bangabandhu Sheikh Mujibur Rahman the Constituent Assembly drafted a new constitution for Bangladesh wherein basic rights of the people as recognised under international human rights treaties were recognised, incorporated and safeguarded.

The Constitution of Bangladesh is the supreme law of the land. It has created three organs of the State, namely the legislature, the executive and the judiciary. The legislature makes law, the executive ensures that the laws are enforced and the judiciary resolves disputes. The Constitution has created two tiers of the judiciary in Bangladesh. They are the higher judiciary and the subordinate judiciary. The higher judiciary consists of the Supreme Court with its two Divisions, namely the Appellate Division and the High Court Division. The Appellate Division of the Supreme Court of Bangladesh is the highest court of the land. It is also the constitutional court of Bangladesh.

The Constitution has given the Supreme Court of Bangladesh the power and authority to examine and declare any law including a constitutional amendment invalid if that law or amendment of the Constitution is contrary to the original Constitution or against the basic structure of the Constitution.

‘Right to life’ is one of the fundamental rights guaranteed by the Constitution of

Bangladesh to all its citizens and all people temporarily living in Bangladesh.

B. The right to life in the Constitution

1. How the Constitution has recognized the right to life

Right to life has been guaranteed as one of the fundamental rights in the Constitution of Bangladesh. Fundamental rights are contained in Part III of the Constitution. These rights are judicially enforceable.

The first mention of the right to life can be found in article 31 of the Constitution. The article is produced below:

> 31. To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular **no action detrimental to the life**, liberty, body, reputation or property of any person shall be taken except in accordance with law.

The wording of the article indicates that the right to life is not an unqualified right. Action detrimental to the right to life can be taken by the State when that action has sanction of law.

The next article that clearly recognises the right to life is article 32. This article prohibits arbitrary deprivation of life in the following way:

> 32. No person shall be deprived of life or personal liberty save in accordance with law.

In this article life and personal liberty have been given same importance. It suggests that a life without personal liberty is meaningless. Both life and personal liberty can be taken away by the State under the law passed by the legislature. But any such law has to pass the test of constitutional validity. Any law incompatible with the basic structures of the Constitution and its philosophical notion can be struck down by the Supreme Court of Bangladesh.

2. International human rights instruments

The Constitution in article 25 states that one of the fundamental principles of State

policies would be respect for international law and the principles enunciated in the United Nations Charter. Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR), the most celebrated international instrument advocating the right to life, on 6 September 2000. However, ratification or accession does not make an international instrument directly applicable in domestic domain of Bangladesh. Explaining this, the High Court Division observed in the case of *Bangladesh Legal Aid and Services Trust and others vs. Bangladesh and others (2010)*, 63 DLR (HCD) 1 as below:

> "It is important to note that the Courts of Bangladesh will not enforce those Covenants as treaties and conventions, even if ratified by the State as they are not part of the corpus juris of the State unless those are incorporated in the municipal legislation. But the court can look into these conventions and covenants as an aid to interpretation of the provisions of Part III of the Constitution particularly to determine the rights implicit in the rights like the right to life and the right to liberty, but not enumerated in the Constitution."

Further, in *HM Ershad vs. Bangladesh (2000)*, 21 BLD (AD) 69 the Appellate Division of the Supreme Court of Bangladesh observed:

> "The national courts should not... straightway ignore the international obligations which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear and inconsistent with the international obligations of the state concerned, the national courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies."

3. Constitutional status

Right to life is recognised by the Constitution of Bangladesh. It is one of the fundamental rights guaranteed to the people of Bangladesh and also to non-Bangladeshi people who are temporarily living in Bangladesh. If anyone is deprived of this right arbitrarily he can challenge the legality of the arbitrary action of the State which has jeopardized his life. The High Court Division of the Supreme Court of Bangladesh in exercise of its writ jurisdiction can enforce this right under article 102 of the Constitution.

The Constitution has guaranteed the enforcement of fundamental rights including right to life under article 44 in the following terms:

> 44. (1) The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.
> (2) Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.

So far no court other than the High Court Division of the Supreme Court of Bangladesh has been empowered to enforce the fundamental rights that include right to life.

Fundamental rights enjoy special constitutional status. These rights cannot be abrogated except in case of emergency declared by the President of the Republic. Article 141A of the Constitution has given the President the authority of declaring emergency in consultation with the Prime Minister for a period of one hundred twenty days, if he is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance. If an emergency is declared, only then fundamental rights conferred under articles 36, 37, 38, 39, 40 and 42 may be curtailed and, the President may, on the written advice of the Prime Minister, by order, declare that the right to move any court for the enforcement of fundamental rights shall remain suspended. It is worth noticing that even during an emergency the Constitution has not curtailed the right to life enshrined in articles 31 and 32. Therefore, it is a non-derogable right and the State has the positive obligation to protect the right to life.

The Constitution has prohibited the State to make any law inconsistent with any provisions of fundamental rights including right to life under article 26 and has declared that if any law inconsistent with the fundamental right exists, that law shall become void to the extent of such inconsistency. This provision has opened the door for the people to challenge the constitutional validity of any law which is contrary to the fundamental rights.

C. Right holders

1. Citizens and non-citizens

In the Constitution of Bangladesh not all fundamental rights are available to each and every person residing in the territorial boundary of the country. Some of the fundamental rights are only for citizens of the country. They include the

right to be not discriminated on the grounds of religion, race, caste, sex or place of birth etc.; rights of equality of opportunity in public employment; freedom of movement; freedom of assembly; freedom of association; freedom of profession or occupation; freedom of religion; rights to property; protection of home and correspondence etc. But the right to life is available to any person living in the country irrespective of his status as citizen or non-citizen.

2. When human life begins and ends from a legal point of view

There is no clear legal provision in any law in Bangladesh as to when life legally begins. The Penal Code defines life in section 45 as below:

> 45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

However, while discussing the offence of culpable homicide the Penal Code of Bangladesh explains in section 299 that the causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

It appears from the text of section 299 of the Penal Code that in true sense life does not get recognition of law until any part of a living child is brought forth from its mother's womb.

Similarly, when life ends has not been clearly defined in any statute but the Penal Code says in section 46 as below:

> 46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

So, it can be understood from the above definition that life ends with the death of a human being.

D. Limitations: General considerations

From the language used in articles 31 and 32 of the Constitution there remains no ambiguity that the right to life guaranteed by the Constitution is subject to the provisions of law enacted by the legislature. However, in Bangladesh there exists no law that authorises arbitrary taking of life. Law only permits taking of life by

the State in execution of the death penalty imposed by a competent court after a fair trial where the accused gets sufficient opportunity to defend himself by an advocate and if he is not wealthy enough to employ an Advocate to defend him, it is the responsibility of the State to appoint a 'state defence lawyer' and bear all his costs. If the trial court imposes the death penalty on a person after finding him guilty, that penalty cannot be executed without it being confirmed by the High Court Division of the Supreme Court. When after due hearing the High Court Division confirms the death penalty, the convict can file an appeal to the Appellate Division of the Supreme Court 'as of his right' provided by article 103 of the Constitution. If the Appellate Division of the Supreme Court affirms the sentence of death of the convict, he will have another opportunity for filing a review petition. If the review petition is rejected, the only forum that will remain open for him is the President of the Republic, who under his constitutional authority can commute sentence of death of a person. The whole process ensures that no life will be taken by the State arbitrarily without reasons.

However, the law enforcement agency may be permitted to use lethal force in exercise of right to private defence. Section 96 of the Penal Code says that nothing is an offence which is done in the exercise of the right of private defence. Section 100 of the same code states that the right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of such an assault as may reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of such assault. Consequently, if the members of law enforcement agency confront assault that may reasonably be believed to result in death or grievous hurt, they may use force proportionately to incapacitate the assailant even if that force causes death of the assailant.

To ensure that law enforcement agency uses proportionate force and does not torture anyone in custody, Bangladesh enacted a law titled "Torture and Custodial Death (Prevention) Act 2013" (Act No. 50 of 2013) in which the Court of the Sessions Judge (a judge having power to try cases in which death sentence may be imposed) has been empowered to order for investigation of an alleged custodial torture or death and try the case. If a member of a law enforcement agency is found guilty of torturing or causing death of a person in custody, he may be sentenced to at least five years imprisonment with fine or imprisonment for life and fine in case of causing death. If anybody is found guilty of abetting the offence of torturing in custody he may also be sentenced to at least two years of imprisonment and fine.

On receiving information that a person has been killed, it is the duty of the police

to proceed to the place where the body of such deceased person is, and to make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument, if any, such marks appear to have been inflicted. This report is called inquest report and it is prepared under section 174 of Code of Criminal Procedure, 1898. But for ensuring fairness in case of custodial death the Code under section 176 ordains that a Magistrate shall hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer.

II. Limitations: Key issues

A. Capital punishment

1. Can only be imposed upon adults

Article 35 of the Constitution of Bangladesh enumerates the legal principles to be followed in the trial of criminal cases and imposing punishment upon a person. The text of article 35 of the Constitution of Bangladesh is reproduced below:

> 35. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.
>
> (2) No person shall be prosecuted and punished for the same offence more than once.
>
> (3) Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.
>
> (4) No person accused of any offence shall be compelled to be a witness against himself.
>
> (5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

> (6) Nothing in clause (3) or clause (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial.

From the text of the above article it is clear that no form of cruel punishment is allowed in Bangladesh. However, the article does not prohibit capital punishment.

Section 53 of the Penal Code provides for forms of punishments that can be legally imposed upon a convict. It enumerates (a) death, (b) imprisonment for life, (c) imprisonment (both rigorous and simple), (d) forfeiture of property and finally (e) fine as the punishments. So, the death penalty is very much in existence in Bangladesh.

In support of keeping the death penalty in the statute book alive the Appellate Division of the Supreme Court of Bangladesh has observed in the case of *Bangladesh Legal Aid and Services Trust (BLAST) and Ors. vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs, Dhaka and Ors.(2015),* 35 BLD (AD) 178, that:

> "Our social conditions, social and cultural values are completely different from those of western countries. Our criminal law and jurisprudence have developed highlighting the social conditions and cultural values. The European Union has abolished death penalty in the context of their social conditions and values, but we cannot totally abolish a sentence of death in our country because the killing of women for dowry, abduction of women for prostitution, the abduction of children for trafficking are so rampant which are totally foreign to those developed countries. In some cases, we notice the killing of women or minor girls by pouring corrosive substances over petty matters, which could not be imagined of to be perpetrated in the western countries. We would not incorporate principles foreign to our Constitution or be proceeding upon the slippery ground of apparent similarity of expressions or concepts in an alien jurisprudence developed by a society whose approach to similar problems on account of historical or other reasons differ from ours. We cannot altogether abolish the sentence of death taking the philosophy of European Union."

However, the courts in Bangladesh are very cautious in imposing the death penalty and in numerous occasions the Appellate Division of the Supreme Court of Bangladesh has commuted the death penalty confirmed by the High Court Division to one of imprisonment for life. Some of the grounds for commutation of the death sentence are:

1. Young age of the convict (*State vs. Tasiruddin (1960)*, 13 DLR 203, approved again in *Samaul Haque Lalon vs. State (2021)*, 74 DLR (AD) 151).
2. Where the period spent in the condemned cell by the convict is inordinately long (more than 6 years) because of the delayed disposal of his case (*Nazrul Islam (Md.) vs. State (2012)*, 66 DLR (AD) 199).

In the case of *Kamal vs. The State (2017)*, 15 ADC 65 the Appellate Division observed:

> "On the question of commutation of the sentence, we are to take into consideration the heinousness of the offence committed in juxtaposition with the mitigating circumstances. It is by now established that in Bangladesh the sentence for the offence of murder is death which may be reduced to one of imprisonment of life upon giving reasons. It has been the practice of this Court to commute the sentence of death to one of imprisonment for life where certain specific circumstances exist, such as the age of the accused, the criminal history of the accused, the likelihood of the offence being repeated and the length of period spent in the death cell."

2. Not applicable to children

Bangladesh signed the UN Convention on Child Rights (UNCRC) on 26 January 1990 and ratified it on 03 August 1990. Article 37(a) of the UNCRC states:

> No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

Surprisingly, the essence of the above provision was very much present in the Children Act, 1974 of Bangladesh (now repealed) which was enacted well before UNCRC came into force. Section 51(1) of the Children Act, 1974 stated:

> Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment

In 2013 Bangladesh enacted a new Children Act repealing the older one and the above provision has been kept intact in section 33 of the new Act. In 1974 Act a child was a person up to the age of 16 years. But in the new legislation complying with UNCRC a child has been defined as a person up to the age of 18 years.

3. Meaning of 'imprisonment for life'

In the case of *Ataur Mridha alias Ataur vs. The State (2020)*, 15 SCOB (AD) 1 the question arose whether imprisonment for life means imprisonment for the rest of the convict's natural life. In this case the petitioner sought review of the judgment by the Appellate Division dated 14.02.2017 passed in Criminal Appeal No.15 of 2010 in which his sentence of death was commuted to imprisonment for the rest of his natural life. Mr. Justice Hasan Foez Siddique (the incumbent Honourable Chief Justice of Bangladesh) writing the majority decision of the court observed that imprisonment for life prima-facie means imprisonment for the whole of the remaining period of convict's natural life but it would be deemed equivalent to imprisonment for 30 years if sections 45 and 53 are read along with sections 55 and 57 of the Penal Code and section 35A of the Code of Criminal Procedure.

The Appellate Division also held that in the most serious cases, a whole life imprisonment order can be imposed. In those cases, the prisoner will not be eligible for release at any time. The circumstances which are required to be considered for taking such decision are: (1) surroundings of the crimes itself; (2) background of the accused; (3) conduct of the accused; (4) his future dangerousness; (5) motive; (6) manner and (7) magnitude of crime.

B. Abortion

1. Abortion/miscarriage

In Bangladesh the right of 'abortion' has not been recognized. In the legal texts it has been termed as 'miscarriage.' Causing miscarriage is an offence in Bangladesh. Abortion is only permitted when it is required for saving the life of the mother and done in good faith. A woman who is going to be the mother of the unborn child and in whose womb the baby is being nourished, has no right to put an end to the life of the baby inside her womb.

Section 312 of the Penal Code provides, "Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Explanation.-A woman who causes herself to miscarry, is within the meaning of this section." The consent of the woman or of her guardian to the

causing of such miscarriage does not justify the act.

Section 313 of the same code provides that whoever causing miscarriage without women's consent shall be punished with imprisonment for life, or for a term which may extend to ten years, and also with fine.

2. Menstrual Regulation (MR)

Government, however, introduced a national family planning program in 1979 resorting to the method of Menstrual Regulation (MR). It is one of the official policies for population control. This MR procedure uses Manual Vacuum Aspiration (MVA) by which a woman who has missed a menstrual period and has not passed 10 weeks after the missed cycle, can be safely put into non-pregnancy. Therefore, it is apparent that offence under section 312 or 313 of the Penal Code is committed when after 10 weeks of pregnancy intentional miscarriage is done.

C. Euthanasia

Euthanasia is illegal in Bangladesh and no single case law is available in this jurisdiction. Though some years ago an impoverished Bangladeshi father named Hossain, a fruit vendor, applied for euthanasia for three terminally ill members of his family to the District Local Authority of Meherpur in the rural west of the country asking to 'allow them to be put to death with medicines.' The above incident sparked a rare debate about euthanasia in a deeply conservative society like Bangladesh though the so-called "mercy killing" is forbidden both under the secular law of the land, and by the religious code adhered to by the Muslim-majority population.

D. Suicide and assisted suicide

It has been enumerated in section 305 of the Penal Code that "if any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine."

Abetting an adult to suicide is also an offence under section 306 of the same Code, which states: "If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term

which may extend to ten years, and shall also be liable to fine."

Section 309 of the Penal Code states, "Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

So, suicide and assisted suicide has no sanction of law in Bangladesh and is totally illegal. The law in this regard is so harsh that any failed attempt of committing suicide is also a crime and punishable with imprisonment or fine or with both.

E. Lethal use of force during law enforcement

Law enforcers are only permitted to use lethal force in exercise of their right to private defence. An elaborate discussion has been made above on this issue (see Section I.D).

F. Other limitations on the right to life

In Bangladesh the novel coronavirus (Covid-19) has been listed as an infectious disease. The Infectious Diseases (Prevention, Control and Eradication) Act, 2018 has been enacted to raise awareness, prevent, control and eradicate infectious or communicable diseases addressing public health emergencies. After the outbreak of Covid-19, Bangladesh underwent unprecedented situations which affected every domain of the citizens' lives. There was continuous lock down for which people had to stay at home. Consequently, business suffered and people's means of earning a livelihood became narrow. During the peak time of infection hospitals were overwhelmed with patients. Lives were completely uncertain. At that time government came forward to fulfil its constitutional obligation to save lives and provided support to the people with food and other essentials.

Due to the Covid-19 pandemic the regular court proceedings were interrupted. The Parliament enacted The Use of Information-Technology by the Courts Act, 2020 and thus an accessible justice delivery system was ensured. Therefore, the Government of Bangladesh took appropriate measures for providing safeguards to the citizens' lives to protect the right to life guaranteed by the Constitution of Bangladesh.

III. Expansive interpretations

A. Socio-economic dimensions

The Constitution of Bangladesh is founded on the high ideals of nationalism, socialism, democracy and secularism. On the solid pillars of these four high ideals the fundamental principles of State policies have been rolled out. The fundamental principles set out in the Constitution are fundamental to the governance of Bangladesh, they are applied by the State in the making of laws, provide guidance to the interpretation of the Constitution and of the other laws of Bangladesh, and form the basis of the work of the State and of its citizens. However, unlike fundamental rights provided in Part III of the Constitution, the fundamental State policies are not judicially enforceable. The Constitution ordains that it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation, a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens. In this context the socio-economic dimensions of the right to life have been expressly recognized in the Constitution of Bangladesh in its article 15. It declares that it shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens – (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care; (b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work; (c) the right to reasonable rest, recreation and leisure; and (d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

In a welfare State ensuring education for all is sine qua non for attaining the living standard that gives a human being dignity in the society. But education is not cheap. It entails huge amount of resources. No doubt that the economy of Bangladesh is growing faster and a boost in trade, business and export has empowered the nation to shrug off the title of a least developed country. But with the available resources it is not immediately possible for Bangladesh to make education of all levels free for its huge population. Article 17 of the Constitution has thus made it mandatory for the State to adopt effective measures for the purpose of establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such

stage to be determined by law. Accordingly the Parliament passed a law in 1990 by which primary education (which is up to 5th grade) had been made compulsory and free for all children in Bangladesh. However, for girls the government has arranged stipends for up to secondary level. Apart from education, in the field of public health the Constitution has directed the State in article 18 to take measures so that the level of nutrition is raised and public health is improved. The Vaccination Act, 1880 is one of the Acts that makes vaccination mandatory.

The Supreme Court of Bangladesh safeguards and protects the Constitution and interprets law. As mentioned earlier, the Supreme Court of Bangladesh has two Divisions. The Appellate Division of the Supreme Court of Bangladesh is the highest court of the land. The law declared by the Appellate Division is binding on the High Court Division and the law declared by either division of the Supreme Court is binding on all courts subordinate to it. Both Divisions of the Supreme Court of Bangladesh on many occasions have expanded the meaning of the "right to life" interpreting it from different aspects. In the case of *Ain O Salish Kendra vs. Bangladesh (1999)*, 19 BLD 488, the High Court Division declared the eviction of slum dwellers without rehabilitating them is an action contrary to rights provided in articles 31 and 32 of the Constitution of Bangladesh which is tantamount to denying the right to life. The High Court Division further advanced the meaning of 'right to life' in the case of *Advocate Zulhasuddin vs. Bangladesh (2009)*, 30 BLD 1 by terming the imposition of Value Added Tax (VAT) on receipts of medical and dental treatment, pathological laboratory and diagnostics centre and on fees of specialist doctors to be inconsistent with the right to life.

In the case of *Prof. Nurul Islam vs. Bangladesh (2000)* reported in 52 DLR 413, Professor Nurul Islam, who was the president of a non-government organization that was created to eliminate smoking from the society by organizing awareness program and persuasion, filed a writ petition in the High Court Division seeking preventive order from the Court in order to debar the 'Voyage of Discovery' in 1999 from coming to Bangladesh and advertising cigarette brand produced by the British American Tobacco in apprehension that it could attract the people of younger generation in smoking. The High Court Division, taking into consideration the harmful effects of smoking to human health held that the advertisement of cigarettes violates the right enshrined in article 18 of the Constitution and is ultimately an infraction of 'right to life.'

In the case of *Government of Bangladesh and others vs. Md. Saiful Islam and others (2021)*, 16 SCOB AD 8 the Appellate Division observed:

> "After toiling for the benefit of the government and the people of this

> country continuously for a considerable amount of time, i.e. for 20 or more years, if the government leave a work-charged employee to face the wrath of unpaid, uncertain and bleak retirement period, and we turn a blind eye to his miserable condition, that would be totally unethical and wholly contrary to constitutional philosophy of socio-economic justice."

In this case the court directed the government to formulate a policy instrument for giving pensionary and other benefits to the work-charged employees who have served without break for a considerable period of time i.e. for 20 years or more but have not been regularized in job.

These are some of the glaring examples of how courts have expanded the socio-economic dimensions of the fundamental right of the life of the people.

B. Environmental dimensions

The Constitution of Bangladesh has ordained in article 18A that the State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens. The Parliament has passed many laws in a view to protect the environment of this country. The most important law promulgated in this regard was the "Bangladesh Environment Conservation Act 1995." This Act prohibits, *inter alia*, the plying of vehicles that emit smokes injurious to human health and environment, production of shopping bag made from polythene; cutting and/or razing hills and filling up water-bodies.

In the case of *Dr. Mohiuddin Farooque vs. Bangladesh (2001)*, 22 BLD 534 the High Court Division referring to the article 32 of the Constitution observed:

> "This declaration in the Constitution is not mere empty words. These guarantees are of fundamental in nature, bestowed upon the people of Bangladesh by its Constitution. The expression 'life' enshrined in Article 32 includes everything which is necessary to make it meaningful and a 'life' worth living, such as, among others maintenance of health is of utmost importance and preservation of environment and hygienic condition are of paramount importance for such maintenance of health, lack of which may put the 'life' of the citizen at nought. Naturally, if the lives of the inhabitants living around the concerned factories are in jeopardy, the application of Article 32 becomes inevitable because not only a right to life but a meaningful life is an inalienable fundamental right of a citizen of this

country."

In *Dr. Mohiuddin Farooque vs. Bangladesh (1996)*, 49 DLR (AD) 1 the Appellate Division observed:

> "Articles 31 and 32 of our Constitution protect right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life."

In *Metro Makers and Developers Limited and others vs. Bangladesh Environmental Lawyers' Association Limited (BELA) and Others (2012)*, 65 DLR (AD) 181 the Appellate Division of the Supreme Court of Bangladesh observed:

> "It is now settled that right to life includes right to protection and improvement of environment and ecology and there is specific law in that regard restricting use of nal lands[171] in the areas in question which operate as reservoir of flood and rain water. If these lands are filled up it will create serious problem in draining out the water resulting from flood and rain and the affected people would compel the authorities through judicial review to take steps to preserve and protect health, environment and ecology in the Dhaka Metropolitan area."

C. Other expansive dimensions

Interpreting right to life the Appellate Division of the Supreme Court of Bangladesh has observed in the case of *Government of Bangladesh and Ors. vs. Professor Nurul Islam (2016)* reported in 68 DLR (AD) (2016) 378: "…right to life is not only limited to protection of life and limbs but also extends to the protection of health, enjoyment of pollution free water and air, bare necessaries of life, facilities for education, maternity benefit, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent to human dignity."

In the above decision of the highest Court of the land the dimensions like facilities for education, maternity benefit etc. which touch the quality of life of a person to lead a dignified existence have also been included within the periphery of an

171 Arable land.

inalienable fundamental right-right to life.

Annex 1: List of cited legal provisions

1) Constitutional provisions

Constitution of Bangladesh, 1972 (last amended on 08 July 2018)

- Article 31
- Article 32
- Article 25
- Article 102
- Article 44
- Article 141A
- Article 36
- Article 37
- Article 38
- Article 39
- Article 40
- Article 42
- Article 26
- Article 103
- Article 35
- Article 15
- Article 17
- Article 18
- Article 18A

2) Legislative provisions

Penal Code, 1860 (last amended in 2004)

- Section 45
- Section 299
- Section 46
- Section 96
- Section 100
- Section 53
- Section 55

- Section 57
- Section 312
- Section 313
- Section 305
- Section 306
- Section 309

Torture and Custodial Death (Prevention) Act, 2013

Code of Criminal Procedure, 1898
- Section 35A
- Section 174
- Section 176

Children Act, 1974 (now repealed)
- Section 51(1)

Children Act, 2013
- Section 33

The Infectious Diseases (Prevention, Control and Eradication) Act, 2018

The Use of Information-Technology by the Courts Act, 2020

The Vaccination Act, 1880

Bangladesh Environment Conservation Act, 1995

3) International provisions

United Nations Charter

International Covenant on Civil and Political Rights (ICCPR)

UN Convention on Child Rights (UNCRC)
- Article 37(a)

Annex 2: List of cited cases

1) Appellate Division, Supreme Court of Bangladesh

1. *Ataur Mridha alias Ataur vs. The State (2020)*, 15 SCOB (AD) 1
2. *Bangladesh Legal Aid and Services Trust (BLAST) and Ors. vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs, Dhaka and Ors.(2015)*, 35 BLD (AD) 178
3. *Dr. Mohiuddin Farooque vs. Bangladesh (1996)*, 49 DLR (AD) 1
4. *Government of Bangladesh and Ors. vs. Professor Nurul Islam (2016)* reported in 68 DLR (AD) 378
5. *Government of Bangladesh and others vs. Md. Saiful Islam and others (2021)*, 16 SCOB AD 8
6. *HM Ershad vs. Bangladesh (2000)*, 21 BLD (AD) 69
7. *Kamal vs. The State (2017)*, 15 ADC 65
8. *Metro Makers and Developers Limited and others vs. Bangladesh Environmental Lawyers' Association Limited (BELA) and Others (2012)*, 65 DLR (AD) 181
9. *Nazrul Islam (Md.) vs. State (2012)*, 66 DLR (AD) 199
10. *Samaul Haque Lalon vs. State (2021)*, 74 DLR (AD) 151

2) High Court Division, Supreme Court of Bangladesh

1. *Advocate Zulhasuddin vs. Bangladesh (2009)*, 30 BLD 1
2. *Ain O Salish Kendra vs. Bangladesh (1999)*, 19 BLD 488
3. *Bangladesh Legal Aid and Services Trust and others vs. Bangladesh and others (2010)*, 63 DLR 1
4. *Dr. Mohiuddin Farooque vs. Bangladesh (2001)*, 22 BLD 534
5. *Prof. Nurul Islam vs. Bangladesh (2000)* reported in 52 DLR 413
6. *State vs. Tasiruddin (1960)*, 13 DLR 203

3. India

Supreme Court

Overview

The right to life is enshrined in Article 21 of the Constitution, and India has ratified the International Covenant on Civil and Political Rights. The right to life is non-derogable but not absolute. The death penalty is a legitimate form of punishment under Indian laws. Relevant safeguards can be found in the Constitution and laws such as the Criminal Procedure Code. The constitutionality of the death penalty has also been subject to adjudication by the Supreme Court. Abortion is not recognized as a constitutional right but as a legal right. The termination of pregnancies is to be done strictly in terms of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as MTP Act). The Act provides that a pregnancy may be terminated by a registered medical practitioner subject to the conditions laid down therein. Pregnancies may be terminated where they do not exceed twenty weeks and for certain categories of women where they do not exceed twenty-four weeks. India permits only passive euthanasia, upon fulfilment of certain considerations. Attempted suicide is an offence in India, though recent developments have allowed the scope of assisted suicide to the extent of passive euthanasia. Regarding the use of force by public authorities, relevant safeguards are found in Articles 21 and 22 of the Constitution, as well as in the Criminal Procedure Code. An example of a relevant landmark judgement on this issue is *D.K. Basu v State of West Bengal*. The constitutional jurisprudence of India provides various examples regarding the socio-economic, environmental and many other expansive dimensions of the right to life. For example, *Olga Tellis v. Bombay Municipal Corpn.* recognized the right to livelihood as part of the right to life. Also, *Kharak Singh v. State of U.P.* included the right to live with dignity as part of the right to life, thus paving the way for the recognition of various environmental rights.

Outline

I. Defining the right to life

A. Recognition and basic obligations
B. Constitutional status
C. Rights holders
D. Limitations: General considerations

I. Defining the right to life

A. Recognition and basic obligations

1. Article 21 of the Constitution

The Constitution of India expressly recognizes the right to life as a constitutional right that is enshrined under Article 21: "*No person shall be deprived of his life or personal liberty except according to a procedure established by law.*" Although it is only 19 words long, Article 21 of the Indian Constitution has been interpreted by the Supreme Court of India extremely expansively. This provision has become a prime example of the transformative role of the Indian Constitution, with new depth and meaning given to 'right to life' as a part of Indian jurisprudence.

Article 21 has been interpreted to confer on every person the fundamental right to life and personal liberty. The terms 'life' and 'personal liberty' have been interpreted to cover a wide amplitude of rights. The Supreme Court has held that these rights cannot be deprived except through a fair, just and reasonable procedure established by law.[172]

The expression 'right to life' does not connote merely physical and animal existence. Rather, as observed by the Supreme Court of India, it encompasses the "*right to live with human dignity*" and all that goes along with that phrase, namely, the necessities of life such as adequate nutrition, clothing, and shelter.[173] Article 21 has been interpreted as a repository of all important human rights, essential for a person to live a dignified life. In the case of *Justice K.S. Puttaswamy (Retd.) v.*

172 Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
173 Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

Union of India,[174] the Supreme Court held that rights under Article 21 concerned the sanctity of human life and read 'right to privacy' into its ambit. The 'right to livelihood' has also been read into the right to life as no person can live without adequate means of living.[175]

Enjoyment of life and its attainment also requires the preservation and protection of the environment, ecological balance, and a pollution-free environment. A clean and pollution-free environment is an integral facet of the right to a healthy life.[176] The Supreme Court has held that the 'precautionary principle'[177] and 'polluters pay principle'[178] are essential features of sustainable development and form part of the environmental law of the country emanating from Article 21.[179]

Article 21 uses the word 'deprived', which was first interpreted by the Supreme Court of India in the case of *A.K. Gopalan v. State of Madras*.[180] In that case, the Court narrowly interpreted Article 21 to only apply to cases where a 'total loss' of the right was in issue, and not in cases when the right is only restricted. However, this interpretation was modified by later decisions of the Supreme Court. The current position of law is that Article 21 would also apply in cases where restrictions are imposed on personal liberty.[181]

The Apex Court held that while interpreting 'procedure established by law' the same must satisfy the tests of 'reasonableness', 'fairness' and 'justness.'[182] Article 21 even applies to executive authorities while taking administrative actions.

2. India and international human rights treaties on the right to life

India ratified the International Covenant on Civil and Political Rights (ICCPR) on 10th April 1979. By the collective efforts of the National Human Rights Commission (a statutory public body constituted for the protection and promotion of human rights) and the Supreme Court, various articles of the ICCPR have come to be recognized as forming a part of the body of rights available to an individual

174 Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

175 Olga Tellis v. Bombay Municipal Corp., (1985) 3 SCC 545.

176 Virendar Gaur v. State of Haryana, (1995) 2 SCC 577.

177 'Precautionary Principle' means that the Government and the concerned statutory authorities must anticipate, prevent, and act on the causes of environmental degradation.

178 The principle of 'polluter pays' means that the one who carries on a hazardous activity is liable to make good the loss caused to another person by such activity.

179 M.C. Mehta v. Union of India, (1987) 1 SCC 395; Lafarge Umiam Mining Ltd v. Union of India, (2011) 7 SCC 338.

180 A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

181 Kharak Singh v. State of U.P., AIR 1963 SC 1295; Kiran v. Govt of A.P., (1990) 1 SCC 328.

182 Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

under Article 21. For example, Article 17 of the ICCPR provides for, *inter alia*, protection of individuals from unlawful interference with their privacy, family, home, or correspondence. This was explicitly recognized by the Supreme Court of India as a part of the right under Article 21 of the Constitution of India in the case of *People's Union for Civil Liberties (PUCL) v. Union of India*.[183] Similarly, Article 9(3) of the ICCPR provides that an individual has the right to a speedy trial. The Supreme Court of India, in the landmark case of *Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar*[184] recognized the right to speedy trial of an individual as being "*implicit in the broad sweep and content of Article 21 [of the Constitution]*." Article 9(1) of the ICCPR grants individual protection from arbitrary arrest and detention, except in accordance with the procedure as established by law. The Supreme Court has issued various guidelines governing arrest of a person before trial.[185] Guidelines were also discussed in the landmark case of *D.K. Basu v. State of West Bengal.*[186]

The Supreme Court referred to Articles 1, 3, 5, 6 and 12 of the Universal Declaration of Human Rights (UDHR) and Articles 6, 16, 17 of the ICCPR in the case of *National Legal Services Authority v. Union*[187] to provide self-determination rights to transgender persons and to recognize transgender persons as the 'third gender' for safeguarding their rights under the Indian Constitution.

In the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Supreme Court of India referred to Article 5 of the UDHR and Article 7 of the ICCPR to hold that the right to live with human dignity under Article 21 of the Constitution includes the detainee's right to consult a legal advisor of his choice and the right to have interviews with the members of his family and friends.[188] In another case, Article 10 of the ICCPR[189] was referred to by the Supreme Court while holding that Article 21 does not allow mandatory handcuffing of under-trial prisoners while being taken to the court or jail. Further, the Court held that handcuffing must be done only after obtaining judicial approval.[190]

Similarly, the Convention on the Rights of the Child (CRC) was ratified by India on 11th December 1992. To give effect to treaty obligations and protect the

183 People's Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 SCC 301.

184 Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, (1980) 1 SCC 81.

185 Joginder Kumar v. State of U.P., (1994) SCC 4 260.

186 D.K. Basu v. State of West Bengal, (1997) 1 SCC416.

187 National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

188 Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

189 Article 10 ICCPR: All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

190 Prem Shankar Shukla v. Delhi Admn., (1980) 3 SCC 526.

interest of children, the Indian Parliament has enacted various laws, such as the Juvenile Justice Care and Protection of Children Act 2015, the Commission for Protection of Child Rights Act 2005, the Prohibition of Child Marriage Act 2006, and the Protection of Children from Sexual Offences Act 2012. The Supreme Court has sought the strict implementation of these statutes. A child has a right to be protected from exploitation, violence, abuse, poor health, child labor, infanticide, trafficking, etc.[191] All of these protections are held to be part of an inclusive definition of Article 21. The Supreme Court of India held that the right to receive education as a child is an integral part of Article 21.[192] In *Vishal Jeet v. Union of India*,[193] the Supreme Court issued directions to safeguard the interest of children by protecting them from sexual abuse and exploitation. The Court held that even the children of prostitutes have a right to protection, care, dignity, equality of opportunity, and rehabilitation like any other citizen of this nation. The Court formulated a scheme and constituted Child Development and Care Centres (CDCC) along with advisory and monitoring committees at the central, state, and local levels to rehabilitate such children and make them a part of mainstream society.[194]

India ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 9th July 1993. Indian courts have relied on the same to hold that the right against sexual harassment is a part of the Right to Life and Dignity under Article 21.[195] Every woman has an inherent right to be treated with decency, dignity and privacy, and any violation of these rights would directly affect Article 21 of the Indian Constitution.[196]

Even when domestic statutes do not expressly provide for rights like those specified in international human rights treaties which have been ratified or acceded to by the country, the Constitutional Courts[197] have taken their aid to read in such rights into Article 21 of the Indian Constitution, by interpreting the same expansively.[198]

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191 M.C. Mehta (Child Labour matter) v. State of T.N., (1996) 6 SCC 756.

192 Unni Krishnan J.P. and Ors. v. State of Andhra Pradesh and Ors., (1993) 1 SCC 645.

193 Vishal Jeet v. Union of India, (1990) 3 SCC 318.

194 Gaurav Jain v. Union of India, (1997) 8 SCC 114.

195 Union of India and Ors. v. Mudrika Singh, Supreme Court of India, Civil Appeal No. 6859 of 2021, order dt. 03.12.2021.

196 State of Maharashtra v. Madukar Narayan Mandikar, (1991) 1 SCC 57.

197 The High Courts of the various constituent states in India and the Supreme Court of India are collectively referred to as 'Constitutional Courts', as the Constitution of India explicitly establishes the same.

198 Sheela Barse v. Secy., Children's Aid Society, (1987) 3 SCC 50; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

3. Dimensions of the right to life

The authority to deprive an individual of his right to life or personal liberty is subject to a just, fair, and reasonable procedure prescribed by a valid law. Article 21 provides protection not only against executive action, but also against legislative action. It is not confined to procedural protection only; it extends to the substance of the law.[199]

However, despite the language of the constitutional provision, the expansive interpretation of Article 21 by the Supreme Court has resulted in the imposition of certain positive obligations on governmental authorities as well. Some of the substantive rights that flow from the right to life are as follows:

a. Clean environment

Right to life includes the right to a clean and wholesome environment.[200] Right to health is part and parcel of the right to life, and therefore, the right to clean water and air is essential for the right to life.[201] Non-smokers shall not be deprived of their life and have a right to live in a clean, healthy, and smoke-free environment.[202]

b. Women's rights

The right to live in dignity is inclusive of women's reproductive rights.[203] Women have a right to sexual autonomy and therefore Section 497 of the Indian Penal Code 1860 (hereinafter, "IPC") which punished adultery was declared unconstitutional.[204]

c. Right to privacy

The Nine-Judge Bench of the Supreme Court unanimously recognized that the right to privacy falls under the ambit of Article 21.[205]

d. Third gender rights

All the fundamental rights are equally applicable to transgender persons, and they have a right to self-identification of their gender.[206]

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199 Mithu v. State of Punjab, (1983) 2 SCC 277.

200 Municipal Council, Ratlam v. Shri Vardhichand and Ors., (1980) 4 SCC 162.

201 F.K. Hussain v. Union of India and Ors., AIR 1990 Ker 321.

202 Murli S. Deora v. Union of India, (2001) 8 SCC 765.

203 Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1.

204 Joseph Shine v. Union of India, (2018) 2 SCC 189.

205 Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

206 National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

e. Right to life and detainee and prisoners

Apart from the right to free legal aid[207] and the right to speedy trial,[208] an accused has a right to a fair trial. A fair trial is a *sine qua non* of the right to life under Article 21.[209] Right to life includes the right against custodial violence, which is perhaps the worst form of human torture affecting the dignity of the accused.[210]

B. Constitutional status

The concept of right to life is "non-derogable." The government owes a duty to protect this by both negative and positive obligations.

Article 359[211] of the Constitution of India provides for the "*Suspension of the enforcement of the rights conferred by Part III during emergencies*." An issue that was raised was whether such 'suspension' of fundamental rights by the imposition of an Emergency, included the suspension of the right to life under Article 21. On 25th June 1975 when a National Emergency was imposed in India, this question came up before the Court in the case of *ADM Jabalpur v. Shiv Kant Shukla212* wherein the Court held that it could be. However, this position has changed with the 44th Constitutional Amendment passed on 7th December 1978 which specified that Articles 21 and 20 of the Constitution cannot be suspended even during emergencies, and by a subsequent decision of the Supreme Court, wherein the right to life under Article 21 has been held to be a 'natural right' which is inherent in all humans, and which cannot be suspended by the authorities.

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207 M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

208 Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, (1980) 1 SCC 81.

209 Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374.

210 Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

211 **Article 359** - Suspension of the enforcement of the rights conferred by Part III during emergencies.— (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of [the rights conferred by Part III **(except articles 20 and 21)**] as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.
(1A) While an order made under clause (1) mentioning any of [the rights conferred by Part III (**except articles 20 and 21)**] is in operation, nothing in that Part conferring those rights shall restrict the power of the State as defined in the said Part to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the order aforesaid ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect (…)

212 ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.

C. Rights holders

Article 21 of the Constitution specifies that 'no person' shall be deprived of their rights. This suggests that the rights enshrined therein are applicable to all individuals, regardless of their citizenship status. The right to life under the Indian Constitution is available to citizens as well as non-citizens.

However, the question of when 'a person' can be said to exist to enjoy the rights under Article 21 of the Constitution has not yet been conclusively decided by the Supreme Court of India. Abortion in India is governed by a Parliamentary enactment, *viz.*, the Medical Termination of Pregnancy Act 1971. Under this enactment, medical termination of pregnancy was permitted, conditionally, for a gestation period of 20 weeks. In 2021, the Medical Termination of Pregnancy (Amendment) Act 2021 was brought in further increase the upper gestation limit from twenty to twenty-four weeks for special categories of women, such as vulnerable women, victims of rape or incest etc. Further, the recent amendment also provides that upper gestation limit does not apply in cases of substantial fetal abnormalities diagnosed by a Medical Board.

Article 21 of the Constitution has been interpreted by the Supreme Court of India to also encompass the right to die with dignity. The Supreme Court has recognized the possibility of passive euthanasia in certain circumstances, such as when patients who are terminally ill or are in a persistent vegetative condition with no sign of recovery. In situations where passive euthanasia is allowed the "*best interest of the patient shall override the State interest*."[213]

Every human has a fundamental right to die with dignity which includes the 'right to decent burial or cremation.'[214] This was of immense importance during COVID outbreaks. The National Human Rights Commission of India released an Advisory on 'Upholding the Dignity and Protecting the Rights of the Dead.'[215] Therefore, the right to privacy and dignity, which is a fundamental facet of the right to life, extends even after the death of the person. This has also been recognized statutorily under Section 499 of the IPC, where the representatives of the deceased can sue for defamation.[216] The right to reputation, which is connected to the right

213 Common Cause (A Regd. Society) v. Union of India and Another, (2018) 5 SCC 1.

214 Pardeep Gandhy v. State of Maharashtra, Special Leave Petition (Civil) Diary No. 11081/2020, order dt. 04.05.2020.

215 National Human Rights Commission of India, Advisory For Upholding the Dignity and Protecting the Rights of the Dead available at<https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20for%20Upholding%20Dignity%20%26%20Protecting%20the%20Rights%20of%20Dead.pdf> (last accessed on 9thMay 2022).

216 Section 499 - Explanation 1—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living, and is intended to be hurtful to the feelings of his

to dignity, is itself a part of Article 21 of the Constitution.

The High Courts, along with the Supreme Court, have also sometimes interpreted the word 'person' and 'life' in Article 21 broadly, to hold that rivers[217] and animals[218] can also be protected by the 'right to life' enshrined in the Constitution.

D. Limitations: General considerations

The Supreme Court has acted as custodian of the fundamental rights of the people to fulfil the constitutional objectives. The Supreme Court, through what has been called the golden triangle,[219] has strived to uphold the lives and liberties of persons and has always endeavoured to champion the cause of dignified living for all.

II. Limitations: Key issues

A. Capital punishment

Capital punishment (death penalty) is a legitimate form of punishment under Indian laws. This form of punishment has a long history in the Indian subcontinent, as it was used by Indian rulers and by the British in the colonial era.

Even though retaining capital punishment was extensively discussed by the Constituent Assembly while framing the Constitution of India, it was concluded that capital punishment needs to be retained because of its deterrent effect on crimes in society.

India has a federal structure. Therefore, offenses providing for capital punishment are contained in both central and state legislations. The central legislations which provide for capital punishment are as follows: –

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family or other near relatives.

217 Mohd. Salim v. State of Uttarakhand and others, Uttarakhand High Court, W.P.(C) No. 126 of 2017, order dt. 05.12.2016.

218 See Animal Welfare Board of India v. A. Nagaraja and Ors., (2014) 7 SCC 547; Sri Subhas Bhattacharjee v. The State of Tripura, Tripura High Court, W.P.(C)(PIL) No. 2/2018, order dt. 27.09.2019.

219 The golden triangle provides protection to individuals from any encroachment upon their rights. The Supreme Court in the case of *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 held that a law depriving a person of 'personal liberty' has not only to withstand the test of Article 21 (Protection of Life and Personal Liberty) but also Articles 14 (Right to Equality) and 19 (Right to Freedom).

- Air Force Act 1950
- Arms Act 1959
- Army Act 1950
- Assam Rifles Act 2006
- Border Security Force Act 1968
- Coast Guard Act 1978
- Commission of Sati (Prevention) Act 1987
- Delhi Metro Railway (Operation and Maintenance) Act 2002
- Geneva Convention Act 1960
- Indian Penal Code 1860
- Indo-Tibetan Border Police Force Act 1992
- Narcotic Drugs and Psychotropic Substances Act 1985
- Navy Act 1957
- Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962
- Protection of Children from Sexual Offences Act 2012
- Sashastra Seema Bal Act 2007
- Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989
- Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002
- Unlawful Activities Prevention Act 1967

In India, post-independence, capital punishment has been sparingly used in exceptional circumstances with well-established judicial safeguards. Some of the important procedural and substantive safeguards governing capital punishment are as follows–

1. Constitutional safeguards

- Article 21 of the Constitution, which is the provision relating to the right to life and liberty.
- Article 72 of the Constitution enables the President to suspend, remit, and commute the death sentence of any person. Further, Article 161 of the Constitution empowers the Governor to commute the death sentence of a person to imprisonment for life.
- Article 134(1) of the Constitution provides the right of second appeal to the Supreme Court, if the High Court has on appeal reversed the sentence of acquittal to death sentence.

2. Legislative safeguards under the Criminal Procedure Code 1973 (CrPC)

- Sec 235(2), CrPC explicitly provides for a separate sentencing hearing when the trial court awards the death sentence.
- Sec 354(3), CrPC provides that when a person is convicted of an offence punishable with death or imprisonment for more than ten years, then such judgment shall record special reasons for such sentence.
- Sec 366, CrPC provides that any judgment by the Sessions Court inflicting capital punishment shall not be executed unless confirmed by the High Court.
- Sec 367, CrPC provides that the High Court shall have all the power to order to annul, convict or confirm the sentence of the lower court including a death sentence.
- Sec 369, CrPC provides that if a case is forwarded to a Bench consisting of two or more judges, then the confirmation of the sentence shall be signed by at least two of them.
- Sec 370, CrPC provides that when the Bench is equally divided then the matter be referred to a third judge whose opinion shall be final.
- Sec 416, CrPC provides that the High Court shall mandatorily commute the death sentence of a pregnant woman to imprisonment for life.
- Sec 433, CrPC empowers the government to commute a death sentence without the consent of the convict.
- Sec 379, CrPC provides a right to appeal to the Supreme Court when the High Court, on appeal, has reversed an order of acquittal of the accused and sentenced him to death upon conviction.

3. Constitutional adjudication

The constitutionality of capital punishment was first questioned before the Supreme Court of India in the case of *Jagmohan Singh v. State of Uttar Pradesh*[220] on the grounds of being in violation of Article 19 (freedom of speech and expression) and Article 21 (right to life) of the Constitution. However, the Supreme Court held that the deprivation of life is constitutionally permissible if it is done according to procedure established by law as *per* Article 21 of the Constitution.

The Supreme Court has, however, developed a rich jurisprudence on capital punishment and when it may be imposed. In *Rajendra Prasad v. State of Uttar Pradesh*,[221] the Supreme Court held that the death sentence should be imposed only when special reasons exist for the imposition of the same, and that it can

220 Jagmohan Singh v. State of Uttar Pradesh, AIR 1973 SC 947.

221 Rajendra Prasad v. State of Uttar Pradesh, AIR 1979 SC 916.

be invoked only in extreme situations. In the landmark judgment of *Bachan Singh v. State of Punjab*,[222] a Constitution Bench of the Supreme Court upheld capital punishment as not being in violation of Article 21. The Court, however, emphasized that the death penalty is an exception rather than the rule and it ought to be imposed only in 'gravest of cases of extreme culpability', or in 'rarest of rare' cases. The court further clarified that "*life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of crime*." The 'rarest of rare' standard developed by the Supreme Court in the *Bachan Singh* case (*supra*), is the current test used by Courts to determine whether capital punishment is merited in a particular case.

This standard has been further elucidated in subsequent judgments of the Supreme Court. In *Machhi Singh v. State of Punjab*,[223] the Supreme Court held that before giving the death penalty the judge must enquire as to whether–

> a) There is something uncommon about the crime which renders the sentence of imprisonment of life inadequate and calls for the death sentence?
> b) The circumstances of the crime are such that there is no alternative but to impose the death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

Thereon, in the case of *Mithu v. State of Punjab*,[224] the Supreme Court invalidated Section 303 of the IPC which made the infliction of death sentence mandatory when the person commits the offence of murder while undergoing life imprisonment. The Supreme Court declared such a provision mandating the death penalty to be in violation of the right to life under Article 21.

In *Sher Singh v. State of Punjab*,[225] the Supreme Court criticized undue delay in execution of the death sentence and called such instances 'degrading' and 'inhuman.' The Court upheld the right of a convict who has lived in fear of the death sentence for a long duration, to apply to the Court to review his sentence.

The 262nd Law Commission of India Report[226] recommended the abolition of

222 Bachan Singh v. State of Punjab, AIR 1980 SC 898.

223 Machhi Singh v. State of Punjab, AIR 1983 SC 957.

224 Mithu v. State of Punjab, AIR 1983 SC 473.

225 Sher Singh v. State of Punjab, AIR 1983 SC 465.

226 Law Commission of India, Report No. 262 - "The Death Penalty", available at <https://lawcommissionofindia.nic.in/reports/report262.pdf > (Last visited on 30thMay, 2022).

capital punishment "*for all crimes other than terrorism-related offenses and waging war*." However, the Supreme Court has upheld capital punishment as a means of administering justice but has limited its scope with the doctrine of 'rarest of rare' cases.

Furthermore, the Supreme Court in the case of *Manoj v. State of Madhya Pradesh*[227] has held that during the sentencing hearing under Sec 235(2) of the CrPC a report by the jail authorities needs to be submitted to the trial court noting the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details during his time at the jail. The Court would then decide whether a convict on death row is capable of reformation. The Court further added that when an appeal is heard after a long hiatus of the trial court's judgment, a fresh report by the jail authorities shall be submitted along with a 'psychiatric' and 'psychological' report of the convict to record the "*the reformative progress, and reveal post-conviction mental illness, if any*."

B. Abortion

In India, abortion is not recognized as a constitutional right. However, it is a legal right in India under the Medical Termination of Pregnancy Act 1971. Prior to the enactment of this Act, abortion procedure could not be performed to protect the life of the mother. But after the enactment, the provisions validated termination of pregnancy up to twenty weeks under several circumstances like –

- When pregnancy poses a risk to the life of a pregnant woman or causes grave injury to her physical or mental well-being.
- When there is a substantial risk that the child if born would be seriously handicapped due to physical or mental abnormalities.
- When pregnancy is caused due to rape.
- When pregnancy is caused by the failure of contraceptives used by a married woman or her husband.
- When the socio-economic condition of the family is poor and/or if the couple already have two children.

Furthermore, the recent amendment in the MTP Act in 2021 permits the termination of a pregnancy, where the length of the pregnancy is between twenty and twenty-four weeks, for categories of women such as:

227 Manoj v. State of Madhya Pradesh, 2022 SCC Online SC 677.

- When the pregnant woman is a minor.
- When her status changed during pregnancy i.e. – widow or divorced.
- When she is a survivor of physical assault, rape, or incest.
- When the woman is mentally ill.
- When the woman is pregnant in humanitarian settings or disaster or emergency.
- When there are fetal anomalies that have a substantial risk of being incompatible with life or if the child were to be born, it may suffer from serious physical or mental abnormalities leading the child to be severely handicapped.

It is worth mentioning that an abortion that is not performed by a registered medical practitioner or for grounds other than this Act is a punishable offense under Sections 312-318 of the IPC.

The Madras High Court in *D. Rajeshwari v. State of Tamil Nadu and Ors.*[228] allowed for the termination of pregnancy of a victim of rape when she was three months pregnant, holding that having a child at the age of eighteen may injure her mental health.

In *Shri Bhagwan Katariya and Ors. v. State of Madhya Pradesh*,[229] the Supreme Court ruled that an abortion undertaken without the consent of the woman is punishable under the IPC, even though her husband consented to it.

C. Euthanasia

India permits only passive euthanasia, upon fulfilment of certain considerations, such as being in a persistent vegetative condition with no chance of recovery. Under Section 309 of the IPC the attempt to commit suicide was made a punishable offence, mandating imprisonment of up to one year. However, Indian law has developed substantially to acknowledge an individual's autonomy, bodily integrity, right to self-determination and dignity.

In the case of *Aruna Ramchandra Shaunbaugh v. Union of India*,[230] the Supreme Court recognized the right to die with dignity as part of the right to live with dignity under Article 21. In this case, the Supreme Court for the first time

228 D. Rajeshwari v. State of Tamil Nadu and Ors., 1996 Cri.L.J. 3795.

229 Shri Bhagwan Katariya and Ors. v. State of Madhya Pradesh, 2001 4 MPHT 20 CG.

230 Aruna Ramchandra Shaunbaugh v. Union of India, (2011) 4 SCC 454.

legalized passive euthanasia, but only when the person is in a persistent vegetative condition, there is no chance of recovery, and subject to the permission of the High Court.

With *Common Cause 'A' Registered Society and Ors. v. Union of India and Ors.*,[231] the Supreme Court extended the doctrine upheld in the *Aruna Ramchandra Shaunbaugh* case (*supra*). The Court enabled any person to draw up what is known as a 'living will.' Living wills are essentially instruments that help an individual make an early decision as to the kind of medical interventions they would prefer or not prefer in case they become incompetent. As per the 'Doctrine of Living Will', introduced by the Supreme Court, a person may draft a will instructing his physician to euthanize him, if he becomes terminally ill or falls into a permanent vegetative condition, unable to give informed consent. Whether such a person is terminally ill or in a permanent vegetative condition needs to be ascertained by the Medical Board to avoid any foul play. But before undertaking euthanasia, the authorized Medical Board shall certify that all treatments have been exhausted and the condition of the person is not likely to improve.

Thus, the right to die is an important aspect of the right to life and shall not be seen as a limitation but as an extension of the same. By guaranteeing a dignified death to the individual, the constitutional right to live with dignity is upheld. But at the same time, the Court has widely discouraged active euthanasia or suicide by individuals.

D. Suicide and assisted suicide

Since the enactment of the IPC in 1860, the law not only criminalizes abetment to suicide but also any attempt to commit suicide. Section 306 of the IPC criminalizes abetment to suicide with imprisonment of up to ten years and a fine. Further, Section 309 of the IPC makes attempt to suicide a punishable offence with imprisonment of up to one year or with a fine or both. Section 309 of the IPC has often been criticized for criminalizing all kinds of an attempt at suicide and for its alleged failure to take into consideration individual circumstances and mental well-being of a person. Moreover, the 210th Law Commission of India Report[232] recommended effacing of Section 309 of the IPC, by calling the provision inhuman. It observed, "*Those who attempt suicide are already distressed and*

231 Common Cause 'A' Registered Society and Ors. v. Union of India and Ors., AIR 2014 SC 1556.

232 Law Commission of India, Report No. 210 - "Humanization and Decriminalization of Attempt to Commit Suicide", available at <https://lawcommissionofindia.nic.in/reports/report210.pdf> (Last visited on 24th May, 2022).

in psychological pain and for them to face the ignominy of police interrogation causes increased distress, shame, guilt and further suicide attempt."[233] The report concluded, "*It would not be just and fair to inflict the additional legal punishment on a person who has already suffered agony and ignominy in his failure to commit suicide.*"[234] However, as of now, Section 309 of the IPC stands valid.

As to the question of assisted suicide, it has been allowed by the Supreme Court only in the form of 'passive euthanasia', wherein medication and life support are removed when a person is in a persistent vegetative condition with no chance of recovery.[235] It is only in this limited context that the 'right to die' is recognized in India.

In conclusion, attempted suicide is an offence in India; though certain judgments call for humane treatment of such offenders, recent developments have allowed the scope of assisted suicide to the extent of passive euthanasia only.

E. Lethal use of force during law enforcement

During British rule, the policing system in India was used as a tool to inflict brutalities on the local population. Therefore, the drafters of the Constitution and criminal statutes provided various safeguards to protect the citizens of India from excessive use of force in police action in the name of law enforcement.

1. Constitutional safeguards

The primary safeguard in this regard is Article 21 itself, which prohibits the deprivation of life and liberty except according to 'procedure established by law.' Therefore, lethal force if enforced must be justified by law. This right is so fundamental that it cannot be restricted even during the imposition of a national emergency. But the use of force by authorities for law enforcement is permissible only in cases of exceptional emergency, wherein a public servant has no other recourse, such as private defense or security of the nation among others.

Article 22 makes it mandatory that the arrestee be informed of the grounds of arrest and of the right to consult a lawyer. This article further postulates that the arrestee shall not be detained for more than 24 hours except when produced

233 *Ibid.* at 35.

234 *Ibid.* at 38.

235 Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.

before the Magistrate. Similar provisions exist in the CrPC 1973 which mandates the production of an arrestee before a Magistrate within 24 hours of arrest. This is done to ensure the safety of the arrested person and check the legality of the arrest.

2. Safeguards under the Criminal Procedure Code 1973 (CrPC)

- Section 46(2) of the CrPC provides that the police officer may use 'all means necessary to effect arrest' if the arrestee evades arrest or forcibly resists the endeavour to arrest him. But Section 46(3) of the CrPC clarifies that this section does not give a right to cause the death of a person who is not accused of an offense punishable with death or life imprisonment.
- Section 41B of the CrPC requires the police officer making an arrest to make a memorandum of arrest and have it signed by a relative or respectable member of the locality. Section 41C of the CrPC requires the names of the person arrested and the officer effecting the arrest to be displayed outside the police control room in every district.
- Section 41D of the CrPC read with Section 303 of the CrPC provides an accused with the right to consult a counsel of his choice. Additionally, Article 39A of the Constitution read with Section 304 of the CrPC requires the provision of free legal assistance to a person who lacks 'sufficient means to engage a pleader.'
- Section 176 of the CrPC mandates the Magistrate to hold an inquiry when any person 'dies or disappears' in the custody of the police.
- Section 54 of the CrPC requires medical examination of the person arrested by an authorized medical officer. Further, Section 55A of the CrPC imposes a duty upon the person having custody of the accused to take reasonable care of his health and safety.
- Section 56 of the CrPC read with Sections 57 and 76 of the CrPC mandate that no person can be detained without a warrant, for more than 24 hours of detention. Further, such person shall be produced before the Magistrate without undue delay (within 24 hours at most). These safeguards are also constitutionally guaranteed under Article 22 of the Constitution.
- Section 50 of the CrPC read with Article 22 of the Constitution provides that a person arrested to be informed of the grounds of arrest and of his right to be released on bail.
- Section 60A of the CrPC read with Section 49 of the CrPC prescribe that arrest must be made only as per the CrPC, and no arrested person shall be subjected to more restraint than is necessary to prevent escape.

The Supreme Court has been very critical of police. It held that any ill-treatment of the detainee by the police would entitle him to monetary compensation under Article 21 of the Constitution.[236]

Later on, in the landmark judgment of *D.K. Basu v State of West Bengal*[237] the Supreme Court dealt with the issue of custodial deaths thoroughly and laid down certain guidelines (for the protection of detainees). The most important mandate of this case was the preparation of a memorandum of arrest which is to be signed by a relative of the person arrested and if no relative is to be found, provide the right to the detainee to inform his relative and convey his whereabouts. This judgment further required the setting up of a Police Control Room where the information regarding the details of arrest and place of detention shall be displayed within 12 hours of arrest. These guidelines were subsequently incorporated into the Code of Criminal Procedure (CrPC 1973) by way of amendment.

Furthering the cause of safe police custody, the Supreme Court has mandated the entire premise of the police stations be covered under CCTV cameras, to curb the menace of police brutality and custodial death.[238]

F. Other limitations on the right to life

Culturally, in the Indian context, of relevance is the practice of a religious sect of Jains, known as the practice 'Santhara' or 'Salekhanna', wherein a person stops consuming food and water and starves to death. There is public debate as to whether the practice is comparable to suicide. The matter is sub-judice before the Supreme Court.

236 Nilabati Behera v. State of Orissa and Ors. AIR 1993 SC 1960; Mohanlal Sharma v. State of Uttar Pradesh, (1989) 2 SCC 600.

237 D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

238 Paramvir Singh Saini v. Baljit Singh and Ors., (2020) 3 SCC (Cri) 150.

III. Expansive interpretations

A. Socio-economic dimensions

The constitutional right to life in India under Article 21 of the Constitution also contains socio-economic dimensions. Article 21A of the Constitution provides the right to free education to children ranging from six to fourteen years of age. This was inserted into the Constitution by way of the 86th Constitutional (Amendment) Act 2002. It was inserted after the Supreme Court took an expansive approach to interpret Article 21 in the case of *Mohini Jain v. State of Karnataka*.[239] Education is the gateway to the advancement of any nation. The Supreme Court read Article 21 of the Constitution with other Articles such as Articles 41, 45 and 46 to hold that free and compulsory elementary education to children is a fundamental right that is a part of Article 21. This right is enforced via a statute brought by the Parliament, which is the Right of Children to Free and Compulsory Education Act 2009.

In the *Bandhua Mukti Morcha case*,[240] the Supreme Court categorically expanded the scope of 'life' under Article 21 by stating that "*[i]t (Article 21) includes protection of health and strength of workers, men and women, and of tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief.*"

In *Olga Tellis v. Bombay Municipal Corpn.*,[241] the Supreme Court recognized the right to livelihood as a part of the right to life under Article 21 of the Constitution. The Supreme Court observed that the eviction of a person from a pavement or slum inevitably leads to deprivation of his means of livelihood. By emphasising the close relationship between 'life' and 'livelihood', the Court ruled that deprivation of the right to livelihood is equivalent to deprivation of the right to life.

Although the Court made it clear in the *Umadevi case*[242] that there is no right of employment, and it is for the employees to accept the terms and nature of employment on their own volition. In the landmark case of *Vishakha v. State of*

239 Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.

240 Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

241 Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545.

242 Secretary, State of Karnataka v. Umadevi and Ors., (2006) 4 SCC 1.

Rajasthan,[243] the Supreme Court declared that harassment of a working woman at her place of work amounts to violation of rights of gender equality and right to life and liberty which is a clear violation of Articles 14, 15 and 21 of the Constitution.

In *Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar*,[244] the Supreme Court came down heavily upon the laxity by authorities resulting in delay of trial of poor prisoners, who are unable to engage a counsel. In that case, the Court observed that "*...a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through trial without legal assistance, cannot possibly be regarded as just, reasonable and fair*."

Recently, in the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*,[245] the Supreme Court declared the right to privacy as a fundamental right, intrinsic to human dignity and liberty under Article 21 of the Constitution.

In *National Legal Services Authority v. Union of India*,[246] while recognizing the right to equality and right to life (under Articles 14 and 21 of the Constitution) of transgender persons, the Supreme Court directed the that such persons be accorded official recognition as the 'third gender' and gave certain guidelines for assistance to such persons.

In *Navtej Singh Johar v. Union of India*,[247] the Supreme Court decriminalized Section 377 of the IPC (which made homosexuality an offense), provided the parties are consenting adults. The Court observed that every individual, irrespective of their gender identity and sexual orientation has the right to live with dignity, guaranteed under Article 21 of the Constitution.

B. Environmental dimensions

The expansive interpretation of 'life' in Article 21 of the Constitution has led to the development of environmental jurisprudence in India. A person has a right to the enjoyment of the environment, free of pollution. To further this right, the Court relied upon Article 47 of the Constitution, which relates to the raising of the level of nutrition and the standard of living of the people and Article 48A of the

243 Vishakhaand Ors v. State of Rajasthan, (1997) 6 SCC 241.

244 Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, (1980) 1 SCC 81.

245 Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

246 National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

247 Navtej Singh Johar v. Union of India, (2018) 10 SCC 12.

Constitution, which relates to protection and improvement of the environment and the safeguarding of the forests and wildlife of the country. Article 51A(g) of the Constitution states that every citizen of India has the duty to protect and improve the natural environment and to have compassion for living creatures.

Apart from these provisions, several statutes have been enacted to preserve forests and wildlife and ensure a pollution-free, sustainable environment for people. Interestingly, all these acts provide forums to address the environmental issues at hand, but the Supreme Court has declared that it is the right of every citizen to take recourse to Article 32 (dealing with writ jurisdiction of the Supreme Court) and Article 226 (dealing with writ jurisdiction of the High Courts) of the Constitution if anything endangers or impairs quality of life in derogation of laws.[248]

The recognition of the right to a clean environment can be summarised in the following words, "*[h]ygienic environment is an integral facet of healthy life. The right to live with dignity becomes illusory in the absence of a humane and healthy environment*."[249] By including the right to live with dignity within the right to life,[250] under Article 21 of the Constitution, the Supreme Court paved the way for the recognition of various environmental rights for the wholesome development and well-being of the citizens.

In the landmark judgment of *Subhash Kumar v. State of Bihar*,[251] the Supreme Court declared that the right to life is a fundamental right under Article 21 of the Constitution and it includes the right to the enjoyment of pollution-free water and air for full enjoyment of life. In *M.C. Mehta v. Union of India*,[252] the Supreme Court ordered the closure of tanneries that were polluting water, in furtherance of the 'right to clean drinking water' guaranteed in Article 21 of the Constitution.

Further, in the case of *M.C. Mehta v. Union of India*,[253] the Supreme Court ordered the entire fleet of public transport buses to be run on CNG and not diesel in Delhi, to curb air pollution. Thereafter, the Supreme Court adopted the principle of sustainable development by stating that this (sustainable development) is based on the principle of inter-generational equity.[254] The Court further declared that the

248 Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.
249 State of M.P. v. Kedia Leather and Liquor Ltd., (2003) 7 SCC 389.
250 Kharak Singh v. State of U.P., AIR 1963 SC 1295.
251 Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.
252 M.C. Mehta v. Union of India, (1997) 2 SCC 411.
253 M.C. Mehta v. Union of India, (2001) 3 SCC 756.
254 T.N. Godavarman Thirumulpad v. Union of India, (2006) 5 SCC 47.

'Precautionary Principle' and the 'Polluter Pays Principle' are essential features of sustainable development.[255] In yet another landmark judgment[256] the Supreme Court adopted the Doctrine of Public Trust, which rests on the premise that certain natural resources like air, sea, and waters are meant for general use and cannot be restricted to private ownership. The natural resources of a nation are held in trust, for the benefit of the general public.

Additionally, in India, rights under Article 21 may be applied to right-holders other than human beings. For instance, the High Court of Uttarakhand declared that the rivers Ganga and Yamuna, their tributaries, streams, and the water flowing continuously or intermittently of these rivers will have the status of a legal person.[257] This is the first time in India where rivers have been recognized as living entities having their own rights.

Similarly, the expression 'person' in Article 21 of the Constitution has been read contextually, to include living organisms such as insects, birds, and animals. In this context, one of the grounds on which the Supreme Court declared the Tamil Nadu Regulation of Jallikattu Act 2009 as unconstitutional was that it amounted to cruelty against bulls, which would be in violation of the rights of the bulls under Article 21 of the Constitution.[258]

In the same vein, the High Court of Tripura has held that sacrificing animals in the temple is in violation of Article 21 of the Constitution of India.[259] It also held that animals too have a fundamental right to life under the Constitution.

C. Other expansive dimensions

The Supreme Court in 1981, in the case of *Kadra Pahadiya and Ors.v. State of Bihar*[260] directed that under-trial prisoners must be provided with legal representation by a competent lawyer, free of cost on grounds that legal aid in a criminal offence is a fundamental right implicit under Article 21 of the Constitution. Subsequently, the Parliament in consonance with Article 39A and

255 Nature Lovers Movement v. State of Kerala, (2009) 5 SCC 373.

256 M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.

257 Mohd. Salim v. State of Uttarakhand and others, Uttarakhand High Court, W.P.(C) No. 126 of 2017, order dt. 05.12.2016.

258 Animal Welfare Board of India v. A. Nagaraja and Ors., (2014) 7 SCC 547; Chief Secretary to the Government, Chennai, Tamil Nadu and Ors. v. Animal Welfare Board and Anr., (2017) 2 SCC 144.

259 Sri Subhas Bhattacharjee v. The State of Tripura, Tripura High Court, W.P.(C)(PIL) No. 2/2018, order dt. 27.09.2019.

260 Kadra Pahadiya v. State of Bihar, (1981) 3 SCC 671.

Article 29, enacted the Legal Services Authority Act 1987 which crystalized the right to free and competent legal services to vulnerable and marginalized sections of the society.

In *State of Himachal Pradesh v. Umed Ram*[261] the Supreme Court emphasized the importance of roads in hilly areas for the enjoyment of life.

In *Murli S. Deora v. Union of India*[262] the Supreme Court prohibited smoking in public places in India, in furtherance of the right to health in India.

The Supreme Court in *Parmanand Katara v. Union of India*[263] held that doctors cannot deny treating a victim on the ground that certain formalities are not completed. The Court held that it is the duty of doctors to conserve life irrespective of whether an individual is innocent or an accused person. The right to life cannot be given a mechanical interpretation, rather, its interpretation must include a humane approach to solve the problems that persist on the ground level.

The Supreme Court in *State of Bihar v. Lal Krishna Advani*[264] ruled that the right to reputation is a facet of the right to life of a citizen under Article 21 of the Constitution.

The Supreme Court, in the case of *In Re: Ramlila Maidan incident*,[265] held that right to have peaceful sleep is a fundamental right of every citizen under Article 21 of the Constitution. The Court observed that rather than being a luxury, the right to sleep is a fundamental right of every person. Reasonable regulations of place and time must be followed in exercising such a right.

In *Mr. X v. Hospital Z*[266] the Supreme Court stated that disclosure of HIV positive report to the prospective wife of the person is not an infringement of the right to privacy because the "*right to life under Article 21 would positively include, right to be told that a person with whom she was proposed to be married, was a victim of a deadly disease, which was sexually communicable*."

In *Sunil Batra v. Delhi Administration*[267] the Supreme Court reiterated that the

261 State of Himachal Pradesh v. Umed Ram, (1986) 2 SCC 68.
262 Murli S. Deora v. Union of India, (2001) 8 SCC 765.
263 Parmanand Katara v. Union of India, AIR 1989 SC 2039.
264 Supreme Court in State of Bihar v. Lal Krishna Advani, (2003) 8 SCC 361.
265 In Re: Ramlila Maidan incident, (2012) 5 SCC 1.
266 Mr. X v. Hospital Z, (1998) 8 SCC 296.
267 Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

protection of Article 21 of the Constitution extends to all persons, including persons accused of offenses, under-trial prisoners, prisoners undergoing jail sentences, etc. Therefore, such persons have the right to be treated with dignity and an adequate standard of living.

In *Joseph Shine v. Union of India*[268] the Supreme Court struck down Section 497 of the IPC, which criminalized adultery, holding it as violating Article 14 (right to equality) and Article 21 (right to life) of the Constitution. The Court observed that the said provision was derogatory to the dignity of women, by treating them as chattel.

Annex 1: List of cited legal provisions

1) Constitution of India (last amended 10 Aug. 2021)

- Article 14
- Article 15
- Article 19
- Article 20
- Article 21
- Article 22
- Article 25
- Article 32
- Article 39A
- Article 47
- Article 48A
- Article 51A(g)
- Article 72
- Article 134(1)
- Article 161
- Article 226
- Article 359

268 Joseph Shine v. Union of India, (2018) 2 SCC 189.

2) Legislative provisions

Code of Criminal Procedure, 1973 (last amended 11 Aug. 2018)

- Sec 41B
- Sec 41C
- Sec 41D
- Sec 46
- Sec 49
- Sec 50
- Sec 54
- Sec 55A
- Sec 56
- Sec 57
- Sec 60A
- Sec 76
- Sec 176
- Sec 235(2)
- Sec 303
- Sec 304
- Sec 354(3)
- Sec 366
- Sec 367
- Sec 369
- Sec 370
- Sec 379
- Sec 416
- Sec 433

Indian Penal Code, 1860 (last amended 11 Aug. 2018)

- Sec 303
- Sec 306
- Sec 309
- Sec 312
- Sec 313
- Sec 314
- Sec 315
- Sec 316
- Sec 317
- Sec 318
- Sec 377
- Sec 497

General Clauses Act, 1897

- Sec 3(42)

3) International provisions

Universal Declaration of Human Rights (1948)

- Article 1
- Article 3
- Article 5
- Article 6
- Article 12

International Covenant on Civil and Political Rights (acceded on 10 Apr. 1979)

- Article 6
- Article 7
- Article 9
- Article 10
- Article 16
- Article 17
- Article 19

Convention on the Rights of Child (acceded on 11 Dec. 1992)

Convention on the Elimination of All Forms of Discrimination against Women (ratified on 09 Jul. 1993)

Annex 2: List of cited cases

1. A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
2. ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.
3. Animal Welfare Board of India v. A. Nagaraja and Ors., (2014) 7 SCC 547.
4. Aruna Ramchandra Shaunbaugh v. Union of India, (2011) 4 SCC 454.
5. Bachan Singh v. State of Punjab, AIR 1980 SC 898.
6. Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
7. Chief Secretary to the Government, Chennai, Tamil Nadu and Ors. v. Animal Welfare Board and Anr., (2017) 2 SCC 144.
8. Common Cause 'A' Registered Society and Ors. v. Union of India and

Ors., AIR 2014 SC 1556.
9. Common Cause (A Regd. Society) v. Union of India and Another, (2018) 5 SCC 1.
10. D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
11. D. Rajeshwari v. State of Tamil Nadu and Ors., 1996 Cri.L.J. 3795.
12. F.K. Hussain v. Union of India and Ors., AIR 1990 Ker 321.
13. Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
14. Gaurav Jain v. Union of India, (1997) 8 SCC 114.
15. Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, (1980) 1 SCC 81.
16. In Re: Ramlila Maidan incident, (2012) 5 SCC 1.
17. Jagmohan Singh v. State of Uttar Pradesh, AIR 1973 SC 947.
18. Joginder Kumar v. State of U.P., (1994) SCC 4 260.
19. Joseph Shine v. Union of India, (2018) 2 SCC 189.
20. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
21. Kadra Pahadiya v. State of Bihar, (1981) 3 SCC 671.
22. Kharak Singh v. State of U.P., AIR 1963 SC 1295.
23. Kiran v. Govt of A.P., (1990) 1 SCC 328.
24. Lafarge Umiam Mining Ltd v. Union of India, (2011) 7 SCC 338.
25. M.C. Mehta (Child Labour matter) v. State of T.N., (1996) 6 SCC 756.
26. M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.
27. M.C. Mehta v. Union of India, (1987) 1 SCC 395.
28. M.C. Mehta v. Union of India, (1997) 2 SCC 411.
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30. M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.
31. Machhi Singh v. State of Punjab, AIR 1983 SC 957.
32. Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
33. Manoj v. State of Madhya Pradesh, 2022 SCC OnLine SC 677.
34. Mithu v. State of Punjab, AIR 1983 SC 473.
35. Mohanlal Sharma v. State of Uttar Pradesh, (1989) 2 SCC 600.
36. Mohd. Salim v. State of Uttarakhand and others, Uttarakhand High Court, W.P.(C) No. 126 of 2017, order dt. 05.12.2016.
37. Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.
38. Mr. X v. Hospital Z, (1998) 8 SCC 296.
39. Municipal Council, Ratlam v. Shri Vardhichand and Ors., (1980) 4 SCC 162.
40. Murli S. Deora v. Union of India, (2001) 8 SCC 765.
41. National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
42. Nature Lovers Movement v. State of Kerala, (2009) 5 SCC 373.
43. Navtej Singh Johar v. Union of India, (2018) 10 SCC 12.

44. Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.
45. Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545.
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47. Pardeep Gandhy v. State of Maharashtra, Special Leave Petition (Civil) Diary No. 11081/2020, order dt. 04.05.2020.
48. Parmanand Katara v. Union of India, AIR 1989 SC 2039.
49. People's Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 SCC 301.
50. Prem Shankar Shukla v. Delhi Admn., (1980) 3 SCC 526.
51. Rajendra Prasad v. State of Uttar Pradesh, AIR 1979 SC 916.
52. Secretary, State of Karnataka v. Umadevi and Ors., (2006) 4 SCC 1.
53. Sheela Barse v. Secy., Children's Aid Society, (1987) 3 SCC 50.
54. Sher Singh v. State of Punjab, AIR 1983 SC 465.
55. Shri Bhagwan Katariya and Ors. v. State of Madhya Pradesh, 2001 4 MPHT 20 CG.
56. Sri Subhas Bhattacharjee v. The State of Tripura, Tripura High Court, W.P.(C)(PIL) No. 2/2018, order dt. 27.09.2019.
57. State of Himachal Pradesh v. Umed Ram, (1986) 2 SCC 68.
58. State of M.P. v. Kedia Leather and Liquor Ltd., (2003) 7 SCC 389.
59. State of Maharashtra v. Madukar Narayan Mandikar, (1991) 1 SCC 57.
60. Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.
61. Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1.
62. Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.
63. State of Bihar v. Lal Krishna Advani, (2003) 8 SCC 361.
64. T.N. Godavarman Thirumulpad v. Union of India, (2006) 5 SCC 47.
65. Union of India and Ors. v. Mudrika Singh, Supreme Court of India, Civil Appeal No. 6859 of 2021, order dt. 03.12.2021.
66. Unni Krishnan J.P. and Ors. v. State of Andhra Pradesh and Ors., (1993) 1 SCC 645.
67. Virendar Gaur v. State of Haryana, (1995) 2 SCC 577.
68. Vishakhaand Ors. v. State of Rajasthan, (1997) 6 SCC 241.
69. Vishal Jeet v. Union of India, (1990) 3 SCC 318.
70. Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374.

4. Indonesia

Constitutional Court

Overview

The right to life can be found in the following constitutional provisions: Article 28A, Article 28B paragraph (2), and Article 28I. Indonesia has also ratified the International Covenant on Civil and Political Rights. The death penalty is stipulated as one of the main types of criminal punishment contained in Article 10 of the Criminal Code. The constitutionality of the death penalty has been confirmed in Decision No. 2-3/PUUV/2007. Regarding abortion, the Penal Code classifies it as a criminal activity. However, Law No. 23/1992 on Health provides for certain very specific exceptions. Indonesia's positive law does not fully and clearly regulate euthanasia, but several articles of the Criminal Code hint and remind the medical community that euthanasia is an act that violates the law and can be punished as a criminal offense. Suicide and attempted suicide are not explicitly illegal in Indonesia, but suicide is still considered as taboo and unjustified action in Indonesian customary law. People who help others to commit suicide will be subject to criminal law, as regulated in Article 345 Criminal Code. Regarding the use of force by authorities, Law No. 2 of 2002 on National Police, especially Article 16, is of relevance. Also, according to Article 47 of the National Police Chief No. 1 of 2009 on Use of Force, the use of firearms may only be carried out to protect human lives. In terms of socio-economic dimensions of the right to life, various aspects are covered by the socio-economic rights found in the Constitution, as well as constitutional adjudication concerning electricity, the right to water, and the right to education. Regarding environmental dimensions, relevant constitutional adjudication includes Decision No. 18/PUU-XII/2014.

Outline

I. Defining the right to life
- A. Recognition and basic obligations
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- C. Rights holders
- D. Limitations: General considerations

II. Limitations: Key issues
- A. Capital punishment
- B. Abortion
- C. Euthanasia
- D. Suicide and assisted suicide
- E. Lethal use of force during law enforcement
- F. Other limitations on the right to life

I. Defining the right to life

A. Recognition and basic obligations

The right to life is one of the most basic rights for every human being. Guarantees and recognition of the right to life have been confirmed in the Constitution and national regulations in Indonesia, namely:

a. The 1945 Constitution of the Republic of Indonesia ("the 1945 Constitution")
b. Law No. 39 of 1999 concerning Human Rights ("Human Rights Act")
c. Law No. 23 of 2002 in conjunction with Law No. 35 of 2014 concerning Child Protection ("Child Protection Act")
d. Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights ("ICCPR Ratification Act")
e. Law No. 8 of 2016 concerning Persons with Disabilities ("Persons with Disabilities Act").

In the 1945 Constitution, recognition of the right to life is guaranteed in Article 28A, Article 28B paragraph (2), and Article 28I, which state as follows:

- Article 28A
  "Every person shall be entitled to live and be entitled to defend his/her life and living."
- Article 28B paragraph (2)
  "Every child shall be entitled to viability, to grow up, and to develop as well as be entitled for protection against violence and discrimination."
- Article 28I paragraph (1)
  "The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right of religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted under a retroactive law are human rights that cannot be reduced under any circumstance whatsoever."

In the Human Rights Act, the recognition of the right to life is guaranteed in Article 4, Article 9 paragraph (1), and Article 53 paragraph (1) which state as follows:

- Article 4
  "The right to life, the right to not to be tortured, the right to individual freedom, to freedom of thought and conscience, religion, the right not to be enslaved, the right to be recognized as an individual and equal before the law, and the right not to be prosecuted retroactively under the law are human rights that cannot be derogated under any circumstances whoever."
- Article 9 paragraph (1)
  "Every person has the right to live, to sustain life, and to improve his/her standard of living."
- Article 53 paragraph (1)
  "Every child has the right to life, to maintain life and to improve his/her standard of living since in pregnancy."

In the Child Protection Act, the implementation of child protection is carried out with basic principles which include non-discrimination, the best interests of the child, the right to life, survival, and development, as well as respect for the opinion of the child. The guarantee of the right to life for children is regulated in Article 4 of this Law:

> *"Every child has the right to be able to live, grow, develop, and participate fairly in accordance with human dignity, and to receive protection from violence and discrimination*."

In the Persons with Disabilities Act, the recognition of the right to life is guaranteed in Article 5 paragraph (1) letter a, which states that "*Persons with Disabilities have the right to life*." The meaning of the right to life for Persons with Disabilities is explained in Article 6, which covers several aspects:

"*The right to life of Persons with Disabilities includes the right to:*

a. *respect for integrity;*
b. *not deprived of his life;*
c. *receive care and care that ensures their survival;*
d. *free from neglect, shackles, confinement, and ostracism;*
e. *free from threats and various forms of exploitation; and*
f. *free from torture, cruel, inhuman and degrading treatment and punishment*."

Guaranteeing the protection of the right to life is actually a strong commitment of the Indonesian state which has ratified the International Covenant on Civil and Political Rights (ICCPR 1966) through Law No. 12 of 2005. This Covenant emphasizes that the right to life is a fundamental right and cannot be violated in any way. This is stated in Article 6 paragraph (1) which states, "*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life*."

B. Constitutional status

As an archipelagic country, the Unitary State of the Republic of Indonesia is divided into provincial regions and those provincial regions are divided into regencies (*kabupaten*) and municipalities (*kota*). Provinces, regencies, and municipalities in Indonesia do not have their own local constitutions and therefore the 1945 Constitution applies to every citizen of Indonesia and throughout the territory of Indonesia.

Every province, regency, and municipality has its own regional government led by a democratically elected regional head and deputy regional head. In addition, it has a Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah*) whose members are elected through general elections. Furthermore, the regional governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks. Hierarchically, these regional regulations are under the 1945 Constitution, Laws or Act, Government Regulations, and Presidential Regulations.

The 1945 Constitution is the supreme law of the land, so that the guarantee and recognition of constitutional rights contained in the 1945 Constitution apply to all Indonesian citizens without exception. In addition to containing the constitutional rights possessed by Indonesian citizens, the 1945 Constitution essentially also contains a number of universally recognized human rights regardless of one's citizenship status, such as the right to life and the right not to be tortured or enslaved.

C. Right holders

Based on the provisions of the 1945 Constitution and the aforementioned Act, the right holder in the context of the right to life is for everyone. This is confirmed through the choice of words used in Article 28A of the 1945 Constitution and

Article 9 paragraph (1) of the Human Rights Law, namely "everyone", not using the phrase "every citizen of Indonesia."

In fact, to emphasize the guarantee of the right to life for vulnerable groups, the law guarantees the right to life for children and persons with disabilities. Every child, even during the mother's pregnancy, has the right to life and to defend his/her life and receive protection from the state, government, parents and family. Therefore, the state, government, family, and parents are obliged to ensure that children born will live, being protected from diseases that are the most difficult to deal with [Article 46 Child Protection Act].

Meanwhile, for persons with disabilities, the meaning of the right to life includes several aspects which are stated explicitly in the Persons with Disabilities Act. The right to life for persons with disabilities is meant that their lives cannot be taken away and have the right to be free from torture and cruel and degrading treatment and human dignity, and to be free from various threats and exploitation. The existence of special regulations for persons with disabilities that contain a number of rights possessed by persons with disabilities is a guarantee to get equal opportunities in an effort to develop themselves towards independence as human beings with dignity.

D. Limitations: General considerations

Limitations on human rights are possible if they are included in the derogable rights group. Both the 1945 Constitution and the ICCPR stipulate that the right to life is a right that cannot be limited or reduced under any circumstances (non-derogable rights). Even if the country is in a state of emergency, the right to life must still be guaranteed as stipulated in the Sircausa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles 1985).

Article 28J paragraphs (1) and (2) of the 1945 Constitution provide general considerations regarding the limitation of human rights, including the right to life. This article is also one of the considerations of the Indonesian Constitutional Court in deciding the debate on the retroactive principle of the Terrorism Law in the Bali bombing incident on October 12, 2002 in Decision No. 013/PUU-I/2003 and the debate on the death penalty in Decision No. 2-3/PUU-V/2007.

Article 28J paragraph (1) and (2)

"*(1) Every person shall respect human rights of the others in the order*

of life of the society, nation, and state.

(2) In the exercise of his/her rights and freedom, every person shall abide by the limitations to be stipulated by the laws with the purpose of solely guaranteeing the recognition as well as respect for the rights and freedoms of the others and in order to comply with just demands in accordance with considerations for morality, religious values, security, and public order in a democratic society."

II. Limitations: Key issues

A. Capital punishment

The death penalty is not a new form of punishment in Indonesia. The death penalty has been known since the days of the kingdom in Indonesia. The death penalty is a sentence or verdict handed down by a court or without trial as the heaviest form of punishment for a person due to his actions.

The death penalty is stipulated as one of the main types of criminal punishment contained in Article 10 of the Criminal Code which regulates punishment: 1. Basic Punishment: (a) Capital Punishment; (b) Imprisonment; (c) Light Imprisonment; (d) Criminal fines; (e) Undisclosed penitentiary. 2. Additional Punishment; (a) Deprivation of certain rights; (b) Forfeiture of specific property; (c) Publication of judicial verdict.

Article 10 of the Criminal Code confirms that the death penalty is a type of crime that is in the first order in the main criminal hierarchy. In addition to the Criminal Code, there are many regulations outside the Criminal Code that regulate capital punishment, which are known as special crimes, including Law No. 15 of 2003 on Criminal Acts of Terrorism, Law No. 26 of 2000 on Human Rights Courts, Law No. 5 of 1997 on Psychotropics and Law No. 35 of 2009 on Narcotics.

In addition, the regulation of the death penalty in the Criminal Code is also contained in Article 104 of the Criminal Code, Article 111 paragraph (2) of the Criminal Code, Article 124 paragraph (3) of the Criminal Code, Article 140 paragraph (3) of the Criminal Code, Article 340, Article 365 paragraph (4) of the Criminal Code, Article 368 paragraph (2) of the Criminal Code and Article 444 of the Criminal Code.

In Indonesia the implementation of capital punishment is carried out based on Presidential Decree No. 2 of 1964 which was declared as one of the Presidential Decrees in accordance with the conscience of the people, and therefore declared to remain valid and become law, under the name of Law No. 2/PNPS/1964. This Law No. 2/PNPS/1964 was issued with the consideration that, the provisions currently in force regarding methods of implementing capital punishment for people who are sentenced to death by courts in the general court environment, and good people military or non-military personnel who are sentenced to death by a court within the military court environment, are no longer in accordance with the development of the progress of the situation and the spirit of the Indonesian revolution. The execution of capital punishment imposed by the court in the general court or military court is carried out by being shot to death. This provision does not reduce the provisions contained in the criminal procedure law regarding the implementation of court decisions. So this provision automatically does not enforce the provisions on the implementation of capital punishment as regulated in Article 11 of the Criminal Code, namely by using a snare. Capital punishment is carried out in a place within the jurisdiction of the court that renders the decision in the first instance, unless otherwise determined by the Minister of Justice.

Based on Law No. 2/PNPS/1964, the procedure for implementing the capital punishment in Indonesia is carried out by being shot to death, by a firing squad, which is carried out somewhere within the jurisdiction of the court that renders the first-degree decision, unless otherwise determined by the Minister of Justice and Human Rights. Its implementation is attended by the regional police chief (Kapolres) or an officer appointed by him along with the responsible High Prosecutor or Prosecutor.

In its position as the guardian of the Constitution, the Constitutional Court through its Decision No. 2-3/PUUV/2007 provides the end point for the death penalty debate so far because the constitutionality of the death penalty has been increasingly confirmed. Even though the decision is in the context of a narcotics crime, however, this decision is the basis for genuine thought about the position of the death penalty and its constitutionality in Indonesia. The decision stated that the right to life is not absolutely enforced. The non-absolute right to life in Article 28I must be accompanied by Article 28J of the 1945 Constitution of the Republic of Indonesia, such as the enactment of the right not to be prosecuted based on retroactive law in the Constitutional Court Decision No. 065/PUU-II/2004. The laws and regulations that impose the death penalty are the Criminal Code and other special laws. According to the Criminal Code, crimes that are punished via a death sentence are acts that threaten state security in Article 104, Article 111 paragraph (2), Article 124 paragraph (3), crimes against friendly countries in

Article 139a, crimes against life in Article 340, theft in Article 365 paragraph (4), extortion and threats in Article 368 paragraph (2), shipping crimes in Article 444, and aviation crimes in Article 497k paragraph (2) and Article 497o paragraph (2). Meanwhile, the special laws that impose the death penalty are contained in the Narcotics Law, the Corruption Crime Act, the Terrorism Law, the Child Protection Act, the Atomic Energy Law, the Law on Human Rights Courts, the Indonesian Criminal Code, Military Crime, and many other laws.

Indonesia still adheres to the capital punishment as regulated in various laws and regulations. In this case, it is appropriate to question the constitutionality of the death penalty provision, given that the right to life according to Article 28I paragraph (2) of the 1945 Constitution in conjunction with Article 4 of Law No. 39 of 1999 on Human Rights are non-derogable rights. When viewed from international law, more and more countries in the world are no longer implementing or limiting the death penalty for certain things, such as war or other emergency situations. The 1989 ICCPR Second Optional Protocol in principle prohibits the death penalty except in certain circumstances. However, it remains to be questioned whether the death penalty is a violation of human rights under international law.

The International Convention on Civil and Political Rights (ICCPR) in 1966 which has been ratified by Indonesia states that the right to life is a fundamental right and cannot be violated under any circumstances. The ICCPR's exception to the right to life related to the capital punishment has several articles that regulate it, namely Article 6 paragraph (1) does not prohibit the death penalty, but Article 6 paragraph (2) and paragraph (6) places a number of restrictions on its application. Five specific restrictions on capital punishment can be identified from the provisions of Article 6 paragraph (2) and Article 6 paragraph (6), namely:

1. The first limitation is that the death penalty cannot be applied except for the most serious crimes and in accordance with the punishment in force at the time the crime took place. So, although Article 6 of the ICCPR does not abolish the death penalty, it does limit its role to the most serious crimes;
2. The second limitation is that the death penalty in Article 6 of the ICCPR is that there must be no deprivation of life that is contrary to the provisions of the Covenant, so that for example, there must be a guarantee of a fair trial, there must be no discrimination in severe punishments and the method of execution that does not result in torture or other forms of punishment, cruel, inhuman or degrading;
3. The third limitation is that the death penalty can only be carried out in

accordance with the final decision handed down by the competent court;
4. The fourth limitation is that anyone sentenced to death has the right to seek forgiveness or commutation of sentence and may be granted amnesty, pardon or legal remission;
5. The fifth limitation is that the death penalty cannot be imposed on juveniles under the age of 18 and cannot be carried out on pregnant women.

This is quoted from the statement of the Directly Related Party of the National Human Rights Commission (Komnas HAM) represented by its chairman Abdul Hakim Garuda Nusantara, S.H., LL.M., in the Constitutional Court's Decision No. 2-3/PUU-V/2007.

Another basic argument is also due to the right to life set forth explicitly in Article 28 A. Article 28, first paragraph 1 Second amendment of the 1945 Constitution Article 28 A of the 1945 Constitution states that: "Everyone has the right to live and to defend life and living." As for the content of Article 28, first paragraph 1 are: "The right to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be prosecuted on the basis of retroactive law is a human right that can not be reduced under any circumstances." While Article 28 A, paragraph 1 of the 1945 Constitution states that: "Every person shall respect the human rights of others in the orderly life of society, nation and country." While Article 9 paragraph (1) of Law No. 39 of 1999 on Human Rights restates that "everyone has the right to life, survival and improve the standard of living."

In the explanation of the article, it is explained that everyone has the right to have a life, maintain life, and improve their standard of living. This right is even owned by unborn babies or people on death row. However, in extraordinary circumstances, such as someone who is sentenced to death based on a court decision, the right to life can be limited.

Constitutional Court Decision No. 2-3/PUU-V/2007 examined the constitutionality of the death penalty in Law No. 22 of 1997 on Narcotics. Although acknowledging the spirit of the ICCPR is to abolish the death penalty, the Constitutional Court is of the opinion that the death penalty can still be imposed for the most serious crimes. The Constitutional Court is of the opinion that narcotics is a serious crime because it can affect the economic, political and cultural foundations of society. Therefore, based on the decision of the Constitutional Court in Decision No. 2-3/PUU-V/2007, it is stated that the legality of the death penalty does not conflict with the 1945 Constitution.

In 2014, Joko Widodo's government had already executed 14 prisoners (including 12 foreign citizens), the record number of executions in a single year during democratic Indonesia. The government had also conducted four further executions in 2016.

B. Abortion

According to Black's Law Dictionary, abortion is a miscarriage with the release of an embryo that is not solely because it occurs naturally, but is also intentional or occurs because of human intervention or provocation. Regarding abortion in Indonesia itself, it is actually prohibited according to the Criminal Code (KUHP) articles 299, 346, 347, 348, and 349 where these articles state that abortion is a crime and can be punished. However, according to article 75 paragraph (2) of Law No. 36 of 2009 on Health and article 31 of Government Regulation Number 61 of 2014 on Reproductive Health, it is stated that abortion can be carried out if there are indications of a medical emergency that threatens the life of the mother and/or fetus, pregnancy caused by rape, and can be done if the gestational age is 40 days at the longest, counting from the first day of the previous month.

In international law, there are no rules that explicitly state that abortion is a human right. However, the most clear and unequivocal statement regarding the right of women to access abortion is found in the text of the human rights treaty in the Protocol on the Rights of Women in Africa or also known as the African Women's Protocol, which was adopted by the African Union on 11 July 2003. According to General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights (ICCPR) on the right to life states that member states must provide safe, legal, and effective access to abortion where the life and health of pregnant women is at risk, and where the pregnancy will cause the pregnant woman pain or suffering, especially if the pregnancy results from rape or incest.

Based on Law No. 36 of 2009 on Health in Article 75 paragraph 2 there are exceptions. Abortion may be carried out as long as it fulfills several provisions that have become the main basis that must not be violated, both in the Criminal Code and special rules that have been set by the Government. Abortion is justified according to the provisions of the law because it is to save a person's health or life, for example if there is a pregnant woman whose pregnancy is outside the womb, then to save the mother's life, surgery needs to be carried out to remove the fetus outside the womb, because without surgery, the possibility of threats to the life of the pregnant woman cannot be ruled out.

It is emphasized again in Article 76 that in abortion with medical indications as referred to in Article 75 there are several things that become a requirement, including:

a. With the consent of the pregnant woman concerned or her husband or family.
b. Based on medical indications that require such action to be taken.
c. By health workers in accordance with the provisions of the rules.

1. Legal basis for unlawful abortion under the criminal code

There are several legal bases that can be drawn on to deal with the problems that have been stated above. According to the Criminal Code, a woman who intentionally aborts or terminates her pregnancy or orders another person to do so, is threatened with a maximum imprisonment of four years. Regarding abortion that is against the law, the following provisions in the Criminal Code are relevant:

1. Article 347 of the Criminal Code: (1) Whoever intentionally causes the abortion or death of a woman without the woman's permission, shall be sentenced to a maximum imprisonment of twelve years. (2) If because of this act the woman dies, she shall be sentenced to a maximum imprisonment of fifteen years.
2. Article 348 of the Criminal Code: (1) Whoever intentionally causes the abortion or death of a woman with the permission of the woman shall be sentenced to a maximum imprisonment of five years and six months. (2) If the woman dies because of this act, she is sentenced to a maximum imprisonment of seven years.
3. Article 349 of the Criminal Code: If a doctor, midwife or pharmacist assists in committing the crime referred to in Article 346, or commits or assists in committing one of the crimes described in Articles 347 and 348, the punishment specified in that Article may be increased by a third and may be deprived of the right to carry out the search in which the crime was committed.
4. Article 55 (1) of the Criminal Code: Shall be punished as the maker (dader) of a criminal act: The 1st those who commit, those who order to do it and who participate in the 2nd act of those who by giving or promising something by abusing power or dignity with violence or misdirection, or by providing opportunities, means or information, intentionally encouraging others to do something.

2. Legal basis of abortion according to Law No. 36 Year 2009 on Health

The legal basis or basis for abortion in accordance with the above provisions is contained in Article 75, in paragraph (1), prohibits for everyone the carrying out of an abortion. In paragraph (2) there are exceptions in terms of indications of medical emergencies, as well as situations of a personal emergency nature, namely pregnancy due to rape which can cause psychological trauma to the rape victim. This is done under the supervision and authority of health experts.

Article 76 of this rule contains a number of special requirements that must be complied with when having an abortion. So it cannot be done haphazardly. Whereas in Article 77 it is the obligation of the Government to provide protection and prevent women from having abortions that are of low quality, unsafe, and irresponsible as well as contrary to religious norms and statutory provisions.

3. Abortion in the Indonesian legal system

Abortion and related issues have been stipulated in Indonesian law. Two major laws that regulated abortion are Indonesian Penal Code and Law No. 23/1992 on Health. The implementations of both laws are supported by Indonesian Medical Doctor Code of Conduct. Detail statements of the laws as follow:

a. KUHP (Indonesian Penal Code): According to the Indonesian Penal Code, abortion is a criminal activity and will be punished under the law. The punishment varies, depending on who made the decision for abortion and the impact of the abortion to the mother. Who was involved in the abortion or who helped the abortion process also will be punished. If a physician, the midwife or pharmacists are involved in abortion, they will not only get legal punishment but also professional punishment (Indonesian Penal Code, Republic of Indonesia). Detailed abortion-related articles on the Indonesian Penal Code can be found at the annex.
b. Law No. 23/1992 on Health defines abortion as illegal except for specific purposes. Section 2, paragraph (1 and 2) states: In case of emergency, and with the purpose of saving the life of a pregnant woman or her fetus, it is permissible to carry out certain medical procedures. Medical procedures in the form of abortion, for any reason, are forbidden as they violate legal norms, ethical norms, and norms of propriety. Nevertheless, in case of emergency and with the purpose of saving the life of a pregnant woman and/or the fetus in her womb, it is permissible to carry out certain medical procedures.
c. Indonesian Medical Doctor Code of Conduct Section 7b mentions that

> Medical Doctors are not permitted to do abortion (abortus provocatus or induced abortion) except if abortion is the only way for saving the life of the mother. Medical indication regarding dangers for the pregnant woman resulting from her continued pregnancy could change as a result of time and advancement of medical technology. Tuberculosis or hypertension can't be used as indication to undergo abortion anymore. Decision to conduct abortion should be done by a minimum of two medical doctors with written agreement from the pregnant woman, her husband or other close family members. Abortion should be in a hospital which has enough appropriate facilities.

C. Euthanasia

The right to life or freedom of life is explicitly stated in Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) as follows: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." The right to life is categorized as a "supreme human right" because without guarantees of effective protection, other rights are meaningless.

The regulation of euthanasia is not found in a clear and complete manner in the laws and regulations of Indonesia. However, in carrying out euthanasia, doctors must consider two factors, namely professional ethics factors and statutory factors. The ethics of the medical profession are regulated in the IDI KB Decree No. 11/PB/A.4/2013 in Article 2 which stipulates that "a doctor must always make professional decisions independently and maintain a high level of professional behavior." This is referred to in professional decision making which is a combination of ethical medical decisions with technical decisions from patient care by conducting careful and accurate assessments and examinations with legal standards in the implementation of medical services. So that in terms of inadequate and not optimal service facilities in supporting the services provided to patients, making decisions with professional abilities requires the best decisions for the best interests of patients.

Although Indonesia's positive law does not fully and clearly regulate euthanasia, it is often associated with several articles, namely Article 344, Article 340, Article 345, Article 359, Article 304, Article 306 paragraph (2), and Article 531 of the Criminal Code. Article 344 of the Criminal Code, which stipulates that "anyone who kills another person's soul at the request of the person himself, which is stated clearly and seriously, is sentenced to a maximum imprisonment of 12 years"

so that in this case it must be clearly proven that the patient has been directly and earnestly requesting euthanasia which can be categorized as active euthanasia. Article 340 of the Criminal Code stipulates that "anyone who intentionally and premeditatedly kills another person's soul is sentenced to premeditated murder, with a death penalty or life imprisonment or a maximum imprisonment of 20 years."

The Criminal Code (KUHP) hints and reminds the medical community that euthanasia is an act that violates the law and can be punished as a criminal offense. This can be seen in Article 344 of the Criminal Code (KUHP), namely: Whoever removes the soul of another person at the request of the person himself, which he clearly and earnestly calls, is sentenced to twelve years in prison.

The interpretation shows the relationship between religious values, that such regulations represent the state's desire to protect the highest rights in a human being. Protection of the Almighty sacred gift aims for the people's benefit, namely to protect the life that exists for each individual. With the existence of regulations prohibiting euthanasia in Indonesia, based on the protection of life from the Almighty, the Indonesian Medical Code of Ethics (KODEKI) is a basic guideline for medical practice in Indonesia that prohibits euthanasia. In line with criminal law norms, based on religious values, KODEKI expressly admits the view that, based on statutory values, only the Almighty has the right to deprive a human of life. Thus, religious value is the dominant value in determining euthanasia as a prohibited action. However, the study of criminal law apart from religious values shows the same view as stated in Article 344 of the Criminal Code.

In 2014 Ignatius Ryan Tumiwa submitted a judicial review of Article 344 of the Criminal Code (KUHP). The inaugural trial of the case with No. 55/PUU-XIII/2014 was held by the Constitutional Court. In the principal petition, it is explained that his constitutional rights have been violated by the enactment of Article 344 of the Criminal Code. Article 344 of the Criminal Code states, "Whoever eliminates the soul of another person at the request of the person himself, which he mentions clearly and earnestly, is sentenced to a maximum imprisonment of twelve years."

The applicant explained that he did not have a fixed job and did not receive any allowances from the Government of Indonesia. He also felt that he had burdened the environment around him. For this reason, the applicant took the initiative to administer lethal injection to him. However, with this provision, the applicant cannot carry out his wish because it will result in a prison sentence. For this reason, the Petitioners ask the Constitutional Court to accept and grant

the Petitioners' Application and ask the Indonesian Government to immediately make an Implementing Regulation for the Lethal Injection Permit. But in the end the applicant withdrew his application so that the Constitutional Court did not consider further the subject of the application.

D. Suicide and assisted suicide

In Indonesia, the act of a person who commits suicide or attempts suicide is not regulated in the Criminal Code. However, people who help others to commit suicide will be subject to criminal law, as regulated in Article 345 Criminal Code, "Anyone who deliberately encourages, helps, or provides facility others to commit suicide, will be punished with imprisonment maximum 4 years, if the act of suicide occurs."

Although suicide and attempted suicide are not explicitly illegal in Indonesia, but that doesn't mean Indonesia recognizes the right to die. On the other hand, the 1945 Constitution strongly recognizes and guarantees the right to life as regulated in Article 28A, "Everyone has the right to live and has the right to defend his life" Therefore, suicide still considered as taboo and unjustified action in Indonesian customary law. This culture is mostly founded on religious perspectives that expressly forbids suicide.

As previously stated in the section euthanasia, the Constitutional Court receives judicial review petitions related to assisted suicide. Ignatius Ryan Tumiwa as petitioner requests a constitutional review of Article 344 of the Criminal Code in Court Decision No. 55/PUU-XIII/2014. The petitioner said that he was deeply depressed because he was jobless and didn't receive any salary, thus he felt like a burden to society. As a result, the applicant requests doctor to legally may provide a deadly injection to him. However, in the middle of the judicial process, he withdrawn his application because Tumiwa had rediscovered new passion for life.

E. Lethal use of force during law enforcement

The law enforcer shooting to death the perpetrator of criminal action may be possible only in condition when the police is forced into defence during its duty in the process of making arrests. The forced defence must be in accordance with Article 49 of the Criminal Code, which stipulates the reason being an attack or threat that is against the law.

Law No. 2 of 2002 on National Police, Article 16 explains that the police have the authority to make arrests, detentions, searches and confiscations and other authorities. Application of lethal force by police officer is one of discretionary authority which is stipulated in Article 16 paragraph (1) letter L in the National Police Act. This discretion has several requirements such as: (1) Not against a rule of law; (2) In accordance with the legal obligations; (3) Must be appropriate and reasonable; (4) Appropriate consideration based on compelling circumstances; and (5) Respect human rights.

The use of firearms by police is regulated in Regulation of the National Police Chief No. 8 of 2009 on the Implementation of Human Rights Principles and Standards in Duties of the National Police as well as in Regulation of the National Police Chief No. 1 of 2009 on Use of Force. Specifically, Article 47 stated that the use of firearms may only be carried out to protect human lives. Further conditions are also regulated that firearms may only be used in circumstances when defending from the threat of serious injury or death and preventing the occurrence of serious crimes.

Before using a firearm, police need to give a clear verbal warning to the target to stop and wait for the warning to be heeded. However, in some cases, warnings do not need to be given when the incident is so close that it is no longer possible to avoid it.

Unfortunately, there are no relevant Constitutional Court decisions regarding the use of lethal force by law enforcement officials.

F. Other limitations on the right to life

In Indonesia's legal system, there are no issues and examples concerning the deprivation of right to life besides Capital Punishment, Abortion, Euthanasia, Suicide, and Lethal Force as explained above.

III. Expansive interpretations

Article 28 of the 1945 Constitution stipulates that "*Every person shall have the right to live and to defend his/her life and existence.*" Constitutional interpretation has expansively constructed the scope of the right to life to cover certain socio-economic rights and environmental dimension. Therefore, this section will discuss the role of the Indonesian Constitutional Court in the Protection of the Right to Life in relation to Socio-Economic Rights and environmental dimension.

A. Socio-economic dimensions

The definition of constitutional rights in Indonesia can be found in the elucidation of Article 51 of the Law No. 24 of 2003 on the Constitutional Court of the Republic of Indonesia. It is stated that "*constitutional rights are rights that are regulated in the 1945 Constitution*." This means that all citizen rights stipulated under the Constitution can be categorized as constitutional rights without any exception.

According to the Constitution, constitutional rights are protected by Article 28 of the Constitution. It assures human dignity, the right to equality, personal liberty, civil and political rights, socio-economic rights, and other important fundamental citizen rights. More specifically, the protection of socio-economic rights is stipulated in the following provisions:

- The right to acquire education and to obtain benefits of science and technology, art, and culture [Article 28C (1) of the Constitution]
- The right to work and to obtain fair and proper remuneration and treatment in employment [Article 28D (2)] of the Constitution;
- The right to a healthy environment and receive medical care (Article 28H (1) of the Constitution]
- The right to social security [Article 28H (3) of the Constitution]

These constitutional safeguards have had a significant impact on the development of socio-economic rights in Indonesia today. However, the constitutional provisions concerning constitutional rights are considered insufficient to protect citizens' fundamental rights. For this reason, Indonesia also enacted some relevant Laws related to the protection of human rights. The protection of human rights and its implementation is further regulated in Law No. 39 of 1999 on Human

Rights and other legislation guarantees the recognition and respect of other person's rights and freedoms based on morality, religious values, security, and public order in a democratic society.

If placed in a more universal context, the rights as mentioned in the Indonesian Constitution and laws is following the spirit of the formulation of socio-economic rights as stated in international human rights treaties, including the Universal Declaration of Human Rights (UDHR) and the Law No. 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR). All of these international treaties guarantee socio-economic rights for everyone without discrimination. The consequences of this ratification are these treaties became national law, and the government was immediately obliged to respect, protect, implement and advance the human rights contained in them.

1. Electricity case

The principal issue of the Petitioners' petition in this electricity case (Decision No. 001-021-022/PUU-I/2003) concerning competition in the electrical power business which according to Law No. 20 Year 2002 is to be conducted separately (unbundled) by different business entities, will be assessed as to whether it contradicts the 1945 Constitution by considering two issues, as follows:

1. Whether the electrical power production branch is important to the state and affects the livelihood of many people, such that it must be controlled by the state;
2. If the state control in Article 33 of the 1945 Constitution is not anti-competition and not anti-market, how the state exercises such control by the state according to Article 33 of the 1945 Constitution.

Considering whereas with respect to the first problem whether the electrical power is an important branch for the state and affects the livelihood of many people, it is evident from the following:

1. During the hearings, in their written and oral statements, the government and the People's Legislative Assembly did not deny the argument of the Petitioners that electricity is a production branch which is important for the state and which affects the livelihood of many people;
2. Whereas electricity being an important production branch is also admitted by the legislators. This can be concluded from the "Considering" section Sub-Article a of Law No. 20 Year 2002 on Electrical Power which states,

"whereas the electrical power is very useful in promoting public welfare, improving the intellectual life of the nation, and improving the economy in the context of realizing a just and prosperous society in both material and spiritual terms evenly based on Pancasila and the 1945 Constitution";

3. Whereas the Experts presented by the government also admitted that electricity is very important for the state, whether as a commodity which is a source of revenue or as infrastructure which is necessary in implementing the tasks of development as needed by the people and which affects the livelihood of many people. As public service, the electricity is only second in importance to the need for food.

Considering whereas with the above facts, it has been proven that electricity is a production branch which is important for the state and affects the livelihood of many people. Therefore, in accordance with Article 33 paragraph 2, the electrical power production branch must be controlled by the state.

Considering whereas since it is clear that the electric power production branch must be controlled by the state, the Court has to consider, the two issues (the principal problems) in the a quo petition namely whether the electric power business activities being conducted competitively by treating the business players equally and by separate business entities (unbundled), is contradictory to the 1945 Constitution.

Considering whereas the interpretation of the Court on control by the government as described above must be assessed based on Article 33 of the 1945 Constitution, including the administration of national economy based on economic democracy, the principle of togetherness, efficiency with justice, and environmental insight which is interpreted that control by the state also means private ownership, which does not always have to be 100%. This means, the government ownership of shares in a business related to a production branch which is important for the state and/or which affects the livelihood of many people, can be of absolute majority nature (above 50 %) or of relative majority nature (under 50%), insofar as the government as the relative majority shareholder, still legally holds a key position in the decision making of the enterprise.

It must be understood that even though the government only owns relative majority shares in the State-Owned Enterprise (BUMN), the state's key position must be maintained in the decision making for policy setting in the enterprise concerned. This illustrates the control of the state which includes regulation, administration, management and supervision.

Based on the above consideration, the Court is of the opinion that to save, protect and further develop a more sound State-Owned Enterprise (BUMN) as an asset of the state and nation which has been providing commercial and non-commercial electricity services to the Indonesian public, nation and state as a form of control by the state, the provision of Article 16 of Law No. 20 year 2002 which orders the separation/split of the electric power business system (unbundling system) with different business actors will aggravate the State Owned Enterprise (BUMN) leading to the absence of guaranteed commercial and noncommercial electricity supply for all elements of the public. Therefore, it will be unfavorable for the public, nation, and state. The statements of experts presented by the Petitioner have explained empirical experience in Europe, Latin America, Korea and Mexico where electricity sector restructuring in fact was not beneficial and became a heavy burden for the state.

The Court is of the opinion that it is contradictory to Article 33 of the 1945 Constitution. Therefore, considering Law No. 20 Year 2002 being declared not having binding legal effect in its entirety, it is recommended that the legislators prepare a new draft law on electrical power in accordance with Article 33 of the 1945 Constitution.

2. The right to water

The right to water case (Decision No. 85/PUU-XI/2013) is constitutional Review of Article 6, Article 7, Article 8, Article 9, Article 10, Article 26, Article 29 section (2) and section (5), Article 45, Article 46, Article 48 section (1), Article 49 section (1), Article 80, Article 91, and Article 92 section (1), section (2) and section (3) of the Law No. 7 of 2004 regarding Water Resources against the 1945 Constitution. In this case, the petitioners argued that:

- The Law as such contains a domination and monopoly content of water resources contrary to the principle of control by the state and shall be utilized for the optimal welfare of the people.
- The Law as such which contains a content positioning that the water utilization tends to be in the commercial interest.
- The Law as such contains a content that triggers horizontal conflict.
- The Law as such eliminates the obligation of the state to fulfill the water need.
- The Law as such is a discriminative Law.

According to the Court, the Water Resources Law in its implementation must ensure the realization of the constitutional mandate regarding the state's right to

control water. The state's right of control over water can be said to exist when the state, which is mandated by the 1945 Constitution to make policies, has control in carrying out management actions, regulatory actions, and supervisory actions.

The state's right of control over water is the "spirit" or "heart" of the Law as mandated by the 1945 Constitution. Therefore, the next thing that must be considered by the Court is whether the implementing regulations for the Natural Resources Law have been drafted and formulated in accordance with the interpretation of the Court so as to ensure that the state's right of control over water will actually be realized in real terms?

The only way available to the Court to answer this question is to carefully examine the implementing regulations of the Water Resources Law, in this case, a Government Regulation. Taking this step does not mean that the Court is testing the statutory regulations under the Act against the Act, but solely because the constitutionality requirements of the Natural Resources Law being tested are dependent on compliance with the implementing regulations of the Act concerned in implementing the interpretation of the Court.

As implementing regulations for the Act, a Government Regulation is evidence that explains the real intent of the Act whose constitutionality is being tested before the Court. Therefore, if the intent is contrary to the interpretation given by the Court, it shows that the Law concerned is contrary to the Constitution.

3. The right to education

The importance of education for the Indonesian people makes education not only a citizen's right, but also a state obligation. In the Constitutional Court Decision No. 13/PUU-VI/2008 regarding Judicial Review of Law No. 16/2008 on the Amendment of Law No. 47 of 2007 on the State Budget for the Year of 2008 the applicants argue that the education budget in the 2008 Revised State Budget (APBN) Law is only 15.6%, so it does not meet the constitutional provisions that stipulate at least 20% of the state budget. Thus, the Court declared that the 2008 Revised State Budget (APBN) Law is contradictory to the 1945 Constitution.

The Constitutional Court considered that as long as the Constitution still requires to prioritize the education budget of 20% of the State Budget (APBN) and the Regional Budget (APBD), regardless of the calculation method, then for the Court – as the protection of the 1945 Constitution – cannot but state that a norm of law is contrary to the 1945 Constitution if such norm of law does not respect the obligation. By paying careful attention to the legal considerations in the four

decisions of the Court in the review of previous APBN Law, the Court regards that it is sufficient to provide legislators with the opportunity to formulate laws that guarantee compliance with the 1945 Constitution concerning education budget.

Therefore, in order to uphold the authority of the Constitution as the highest law in accordance with the principle of constitutionalism in the nation of laws, as referred to in Article 1 paragraph (3) of the 1945 Constitution, the Court must declare that all provisions of the 2008 APBN Revised Law concerning the education budget is contrary to the Constitution 1945. As a result of not meeting the calculation of the education budget of at least 20% of the State Budget (APBN), the overall calculation of the budget in the 2008 Revised APBN Law is unconstitutional.

However, the necessity in taking all aspects of the state's interests into consideration leads the Court to continue to consider the risk of chaos in the organization of state financial administration, so that the legal consequences of contradicting the provisions of the 2008 Revised APBN Law with the 1945 Constitution, that is not having legal force binding the provisions of the relevant law, will not necessarily be declared valid since this decision is pronounced but until the new APBN Law is made for budget year 2009. If later in the new APBN Law it turns out that the education budget does not reach a minimum of 20% of the State Budget (APBN) and of the Regional Budget (APBD) as well, the Court shall sufficiently appoint this decision in order to prove the unconstitutional provisions of the law in question.

In order to encourage all regions (provinces, regencies/cities) to prioritize education budget of at least 20% in their Regional Budget (APBD), and to prevent the reduction of the meaning of Indonesia as a nation of laws, and to avoid the delegitimating of the Constitution as the highest law, the Court needs once more to remind that the legislators should, at the latest in the APBN Law for Budget Year 2009, have fulfilled their constitutional obligations of providing a budget of at least 20% for education.

B. Environmental dimensions

In the case of environmental protection (Decision No. 18/PUU-XII/2014), the Indonesian Constitutional Court had granted the appeal on the Judicial Review of Law No. 32 of 2009 concerning Environmental Protection and Management of the 1945 Constitution of the Republic of Indonesia.

The appeal was submitted by Bachtiar Abdul Fatah, former General Manager of Sumatra Light South on PT Chevron Pacific Indonesia, who was also convicted for bio remediation corruption case on the same company. Fatah was sentenced with four years in prison and Rp 200 millions of fine by the Supreme Court, on October 2013. He was found guilty along with four other employees and two project contractors. The court found them guilty for causing the state to lose US$23,361 million or Rp 200 billion. Fatah submitted for a judicial review on one of the clauses which stated that toxic waste management should earn permit from the Minister, Governor, and Mayor/Head of district in accordance with their authorities. The Court had decided that it was unconstitutional for not giving chances for those applying for extended permits. Hence, the court added a sentence that for those still seeking to extend their permits and an on-going process must be considered had obtained permits.

As a result of the decision, for those still in the process to extend their permits if they have yet to receive their permits on expired date then 'it must be considered that they have obtained the permit.' In addition, the court had also granted the proposal that all violations must be charged under the minister of environment.

In its consideration, the Court considered that the establishment of Law 32/2009 as an implementation of a constitutional order takes into account that science and technology have improved the quality of life and changed human lifestyles. However, in addition to producing products that are beneficial to society, industrialization also has an impact, among others, the production of hazardous and toxic waste (B3), which if disposed of into the environment can threaten environmental sustainability, health and human survival as well as other living things. Recognizing the potential negative impacts that may arise as a consequence of development, efforts to control impacts are continuously developed, both pre-emptively, preventively, and repressively.

That the analysis of environmental impacts (amdal) is one of the pre-emptive tools for environmental management that is continuously strengthened through increasing accountability in the implementation of amdal preparation by requiring licenses for amdal assessors and implementing certification for amdal document drafters, as well as by clarifying legal sanctions for violators in the amdal field. Amdal is also one of the main requirements in obtaining an environmental permit which is absolutely necessary before obtaining a business license. Preventive efforts in the context of controlling environmental impacts need to be implemented by making maximum use of monitoring and licensing instruments. In the event that environmental pollution and damage have occurred, it is necessary to take repressive efforts in the form of effective, consistent, and consistent law

enforcement against environmental pollution and damage that has occurred. In this regard, it is necessary to develop a legal system for environmental protection and management that is clear, firm, and comprehensive in order to ensure legal certainty as the basis for the protection and management of natural resources and other development activities.

Annex 1: List of cited legal provisions

1) Constitutional provisions

1945 Constitution of the Republic of Indonesia (last amended 2002)

- Article 28A
- Article 28J
- Article 28B paragraph (2)
- Article 28I
- Article 28J paragraphs (1) and (2)

2) Legislative provisions

Child Protection Act

- Article 4
- Article 46

Criminal Code Act

- Article 49
- Article 104
- Article 111 paragraph (2)
- Article 124 paragraph (3)
- Article 140 paragraph (3)
- Article 299
- Article 340
- Article 344
- Article 345
- Article 346
- Article 347
- Article 348
- Article 349

- Article 365 paragraph (4)
- Article 368 paragraph (2)
- Article 444
- Article 531

Government Regulation Number 61 of 2014 on Reproductive Health

Health Act
- Article 75 paragraph (2)

Human Rights Act
- Article 4
- Article 9 paragraph (1)
- Article 53 paragraph (1)

Human Rights Courts Act

Narcotics Act

National Police Act
- Article 16

Persons with Disabilities Act
- Article 5 paragraph (1)
- Article 6

Presidential Decree No. 2 of 1964 on Procedure for Capital Punishment

Regulation of the National Police Chief No. 1 of 2009 on Use of Force

Regulation of the National Police Chief No. 8 of 2009 on the Implementation of Human Rights Principles and Standards in Duties of the National Police

Reproductive Health
- Article 31

Terrorism Act

3) International provisions

International Covenant on Civil and Political Rights

- Article 6

Annex 2: List of cited cases

Constitutional Court Decisions

1. 001-021-022/PUU-I/2003 (Electricity case)
2. 065/PUU-II/2004 (Retroactive law case)
3. 2-3/PUUV/2007 (Narcotics crime case)
4. 55/PUU-XIII/2014 (Euthanasia case)
5. 013/PUU-I/2003 (Bali bombing case)
6. 85/PUU-XI/2013 (Right to water case)
7. 13/PUU-VI/2008 (Education budget case)
8. 18/PUU-XII/2014 (Environmental protection and management case)

5. Kazakhstan

Constitutional Council

Overview

Paragraph 1 of Article 15 of the Constitution establishes that everyone shall have the right to life. Kazakhstan is a state party to the International Covenant on Civil and Political Rights (ICCPR) as well as the two Optional Protocols to the ICCPR. Kazakhstan ratified the Second Optional Protocol in 2021. Capital punishment was abolished in 2022 via constitutional amendment. On the issue of abortion, it can be carried out at the woman's request at up to 12 weeks of pregnancy, but certain exceptions may apply beyond this time limit. Euthanasia is prohibited in Kazakhstan. The Constitution does not provide for the regulation of issues related to suicide, but Article 105 of the Criminal Code criminalizes "incitement to suicide." Regarding the use of force by public authorities, Articles 33, 35 and 103 of the Criminal Code are of particular relevance, as well as the Law "On Law Enforcement Service" and the Law "On Martial Law." In terms of socio-economic dimensions of the right to life, it should be noted that Article 1 of the Constitution speaks of Kazakhstan as also being a "social" state. This means that Kazakhstan shall develop as a state that undertakes to mitigate social inequality by creating conditions for a decent life for its citizens and the free development of the individual. This aim is further reflected in a list of independent socio-economic rights found in Articles 24 to 31 of the Constitution. Also, according to Article 31 of the Constitution, Kazakhstan shall aim to protect the environment in favour of human life and health. In 2005 the Constitutional Council rendered a resolution regarding the protection of citizens affected by environmental disaster in the Aral Sea region.

Outline

I. Defining the right to life

A. Recognition and basic obligations

In accordance with paragraph 1 of Article 1 of the Constitution, the Republic of Kazakhstan proclaims itself as a democratic, secular, legal and social state, the highest values of which are a person, his life, rights and freedoms.

Paragraph 1 of Article 15 of the Constitution of the Republic of Kazakhstan establishes that everyone shall have the right to life. The Constitution of the Republic of Kazakhstan contains a clear provision on the right to life.

Key ratified international or regional human rights treaties that are especially relevant for the protection and interpretation of the right to life:

- The Universal Declaration of Human Rights, adopted by UN General Assembly resolution 217 A (III) of December 10, 1948;
- The International Covenant on Civil and Political Rights, adopted by United Nations General Assembly resolution 2200A (XXI) of December 16, 1966, ratified by the Law of the Republic of Kazakhstan No. 91-III of November 28, 2005;
- The International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on December 16, 1966, ratified by the Law of the Republic of Kazakhstan of November 21, 2005 No. 874;
- Convention on the Rights of the Child (New York, November 20, 1989).

The Constitutional Council, in its normative resolution No. 18/2 of December 21, 2001 "On the official interpretation of paragraph 1 of Article 1 of the Constitution of the Republic of Kazakhstan", stated that "for the Republic of Kazakhstan, according to paragraph 1 of Article 1 of the Constitution, the highest values are a person, his life, rights and freedoms." This general provision of Section I of the Constitution testifies to the priority of universal values for the Republic of Kazakhstan.

Section II of the Constitution of the Republic of Kazakhstan contains a list of human and civil rights and freedoms. According to paragraph 2 of Article 12 of the Constitution, human rights and freedoms shall belong to everyone by virtue of birth, be recognized as absolute and inalienable, define the contents and implementation of laws and other regulatory and legal acts.

The Constitutional Council in its normative resolution of October 28, 1996 "On the official interpretation of paragraph 1 of Article 4 and paragraph 2 of Article 12 of the Constitution of the Republic of Kazakhstan" stated: "that human rights and freedoms proclaimed by the Constitution are fundamental in the development and adoption of laws and other regulatory legal acts establishing the conditions and procedure for the exercise of these rights and freedoms. Laws establishing human rights and freedoms, with the exception of those listed in paragraph 3 of Article 39 of the Constitution, may be amended in accordance with the established procedure by the legislative body, based on the real socio-economic capabilities of the state." The Republic of Kazakhstan recognizes and guarantees human rights and freedoms in accordance with the Constitution.

B. Constitutional status

Article 15 of the Constitution of the Republic of Kazakhstan establishes that everyone shall have the right to life. No one shall have the right to arbitrarily deprive a person of life.

In the normative resolution No. 4 of December 15, 2020 "On the official interpretation of paragraph 2 of Article 15 of the Constitution of the Republic of Kazakhstan", the Constitutional Council of the Republic of Kazakhstan indicated that "The Constitution of the Republic of Kazakhstan and international acts recognize the right to life as the main value of a democratic society, determine its dominant status and establish the obligations of the state to guarantee this right for all people without any distinction (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child and others)."

According to paragraph 1 of Article 1 of the Constitution of the Republic, a person, his life, rights and freedoms are the highest values of the State.

Paragraph 2 of Article 15 of the Constitution provides that no one shall have the right to arbitrarily deprive a person of life. The death penalty is prohibited.

C. Rights holders

Section II of the Constitution of the Republic of Kazakhstan contains a list of human and civil rights and freedoms.

According to paragraph 2 of Article 12 of the Constitution, human rights and freedoms shall belong to everyone by virtue of birth, be recognized as absolute and inalienable, define the contents and implementation of laws and other regulatory and legal acts.

There is no definition in the legislation of the Republic of Kazakhstan when human life begins and ends.

According to paragraph 2 of Article 13 of the Civil Code of the Republic of Kazakhstan (General part) of December 27, 1994, the legal capacity of a citizen arises at the time of his birth and ends with death.

According to paragraphs 1 and 2 of Article 153 of the Code of the Republic of Kazakhstan of July 7, 2020 "On public health and healthcare system":

1. Biological death is the cessation of life processes in a living organism with complete loss of vital functions.

2. Biological death is determined by a medical professional on the basis of a combination of the following symptoms:

1) cardiac arrest;
2) respiratory arrest;
3) loss of functions of the central nervous system.

Paragraph 1 of Article 31 of the Constitution of the Republic of Kazakhstan establishes that the state shall aim to protect the environment in favour of human life and health.

Thus, we can say that the state assumes responsibility for environmental protection.

In addition, according to Article 12 of the Law of the Republic of Kazakhstan of July 9, 2004 No. 593-II "On the protection, reproduction and use of animal world", requirements for the protection of wildlife are established, the essence of which is as follows:

Activities that affect or may affect the state of the animal world, habitat, breeding conditions and migration routes of animals must be carried out in compliance with the requirements, including environmental ones, ensuring the preservation and reproduction of the animal world, its habitat and compensation for the

damage caused and inflicted, including the inevitable one. When carrying out activities that affect or may affect the state of the animal world and the habitat, the following basic requirements must be met: 1) preservation of biological diversity and integrity of wildlife communities in a state of natural freedom; 2) preservation of habitat, breeding conditions, migration routes and places of concentration of wildlife objects; 3) scientifically sound, rational use and reproduction of wildlife objects; 4) regulation of the number of objects of the animal world in order to preserve the biological balance in nature; 5) reproduction of the animal world, including artificial breeding of animal species, including valuable, rare and endangered, with their subsequent release into the habitat.

D. Limitations: General considerations

There are no constitutional limitations on the right to life in the Republic of Kazakhstan. At the same time, it should be noted that according to paragraph 1 of Article 13 of the Constitution of Kazakhstan, "everyone shall have the right to recognition of his legal personality and have the right to protect his rights and freedoms by all means not contradicting the law, including the necessary defense."

According to Article 32 of the Criminal Code:

- "Legitimate protection of the personality and rights of the defender and other persons, as well as the legally protected interests of society and the state from socially dangerous assault, or threats of assault including by causing harm to the assailant, is recognized as a necessary defense.
- All persons in equal measure shall have the right to necessary self-defense, regardless of their professional or other special training, or official position. This right shall belong to a person regardless of whether it is possible to avoid a socially dangerous assault, or to appeal for help to other persons or state bodies (part one).
- It is not a criminal offense to cause harm to an assailant in a state of necessary defense, that is, when protecting the person, home, property, land plot and other rights of the defender or other persons protected by the law of the interests of society or the state from socially dangerous assault by causing harm to the assailant, if at the same time it was not allowed to exceed the limits of necessary defense (part two).
- Protective acts manifestly disproportionate to the nature and the danger of the assault, which were not necessary in order to prevent or repel the assault and as a result of which harm is caused to the assailant, shall be considered as exceeding the limits of necessary self-defense. Criminal liability for such excessive acts applies only if harm has

been caused intentionally. Not recognized as exceeding the limits of necessary self-defense shall be causing of harm to the assailant who attempts to commit a murder or when repelling the assault involving: the use or an attempt to use weapons or other objects or devices threatening the life or health of the self-defending person or other persons; violence which endangers the life or health of the self-defending person or other persons or an immediate threat of such violence; unlawful entry by force into a dwelling or other premises (part three)."

II. Limitations: Key issues

A. Capital punishment

According to paragraph 2 of Article 15 of the Constitution, the death penalty is prohibited.

According to paragraph 2 of Article 15 of the Constitution, no one shall have the right to deprive life of a person arbitrarily.

Since gaining independence, Kazakhstan has been following a policy of gradual abolition of the death penalty.

The Criminal Code of the Kazakh SSR provided for the death penalty in the sanctions of more than thirty offenses, among which were particularly serious crimes against a person, property, management procedures, official, transport, military crimes, etc.

The current Constitution of the Republic, when adopted in 1995, limited the scope of application of the exceptional measure of capital punishment only to particularly serious crimes.

When the first Criminal Code was adopted in 1997, the number of articles establishing this type of punishment was reduced to 18 (1/3 of all especially grave crimes).

At the same time, the legislator increased the maximum sentence for premeditated murder from 15 to 20 years in prison, and for cumulative crimes - up to 25 years. Provisions were made to the effect that the death penalty could be imposed on

the perpetrator only by unanimous decision of all judges and that the sentence could not be carried out until one year after its entry into force. The Criminal Code banned the imposition of the death penalty on women, persons who had committed a crime under the age of 18, as well as men who had reached the age of 65 at the time of sentencing.

Subsequently, by Decree of the President of the Republic dated December 17, 2003, Kazakhstan introduced an indefinite moratorium on the execution of the death penalty pending a decision on its complete abolition.

In practice, until 2007, in 99% of cases, the death penalty was imposed for premeditated murder committed under aggravating circumstances. There were isolated cases for treason and assault on the life of a law enforcement officer.

The provisions of the Criminal Code on punishment in the form of life imprisonment as an alternative to the death penalty were introduced simultaneously from 1 January 2004. During the moratorium, the death penalty was imposed in 7 cases: 1 in 2004, 2 in 2005, 3 in 2006, 1 in 2016. After the moratorium was introduced for several dozen people sentenced to death, it was replaced by life imprisonment.

The constitutional reform of 2007 further narrowed the scope of application of the exceptional measure of punishment. Instead of all particularly serious crimes, the Constitution allows the establishment of the death penalty only for terrorist crimes involving the death of people, as well as for particularly serious crimes committed in wartime.

When the current Criminal Code was adopted in 2014, the death penalty was retained in the sanctions of 17 offenses.

This course of reducing the scope of the death penalty is consistently pursued in the policy of the Head of State. In December 2019, President Kassym-Jomart Tokayev instructed to start the procedure for joining the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

In accordance with the instructions of the President, on September 23, 2020, the Permanent Representative of the Republic of Kazakhstan to the United Nations, Kairat Umarov signed the Second Optional Protocol.

Subsequently, the President of the country appealed to the Constitutional Council

for an official interpretation of paragraph 2 of Article 15 of the Constitution.

In its normative resolution (dated December 15, 2020 No. 4), the Council determined that the provisions of paragraph 2 of Article 15 of the Constitution of the Republic do not prevent the ratification of the Protocol with the reservation it allows.

The Constitutional Council explained that paragraph 2 of Article 15 of the Constitution should be understood in such a way that the Parliament has the right, within the framework indicated by its constitutional provisions, to determine in the criminal law a specific list of crimes for which the death penalty is established, and, if necessary, reduce the range of criminal acts involved.

By the Law of January 2, 2021, Kazakhstan ratified the Second Optional Protocol. Upon ratification by Kazakhstan, a reservation was made that the Republic, in accordance with Article 2 of the Protocol, reserves the right to apply the death penalty in wartime after being found guilty of particularly serious crimes of a military nature committed in wartime.

The 2022 constitutional reform abolished the death penalty. Thus, according to paragraph 2 of Article 15 of the Constitution, no one shall have the right to arbitrarily deprive a person of life. The death penalty is prohibited.

Prior to abolition, there are two normative resolutions of the Constitutional Council that are especially worth mentioning.

The Constitutional Council of the Republic of Kazakhstan in its normative resolution dated January 30, 2003 No. 10 “On the official interpretation of paragraph 4 of Article 52, paragraph 5 of Article 71, paragraph 2 of Article 79, paragraph 3 of Article 83 and paragraph 2 of Article 15 of the Constitution of the Republic of Kazakhstan”, indicated, that paragraph 2 of Article 15 of the Constitution of the Republic of Kazakhstan in the part “the death penalty shall be established by law as an exceptional measure of punishment for especially grave crimes ...” should be understood as a restriction on the legislative establishment of the death penalty, which is provided for especially grave crimes, and not for other crimes of a lesser gravity. At the same time, the law may provide for punishments other than the death penalty for especially grave crimes.

The normative resolution of the Constitutional Council dated December 15, 2020 No. 4 “On the official interpretation of paragraph 2 of Article 15 of the Constitution of the Republic of Kazakhstan” stated that “The Constitutional

Council considers that the provisions of paragraph 2 of Article 15 of the Constitution in terms of establishing the death penalty for the criminal acts must be considered in conjunction with the norm of subparagraph 1) of paragraph 3 of Article 61 of the Constitution, according to which the Parliament has the right to issue laws that regulate the most important social relations, establish fundamental principles and norms regarding the legal personality of individuals and legal entities, civil rights and freedoms, obligations and liability of individuals and legal entities. These powers, which include the determination of the categories of criminal offences, crimes and punishments of acts based on their degree of danger to society and the criminal situation in the country, also cover the establishment of the death penalty for crimes, the list of which is defined in the Constitution. In the light of these factors, the highest representative body exercising legislative power, within the framework of constitutional requirements and only in the criminal law, may determine the necessity of imposing the death penalty for crimes provided for in paragraph 2 of Article 15 of the Constitution, including the narrowing of the circle. This is also confirmed by the practice of developing the criminal legislation of the country, which did not establish the death penalty for all the acts specified in the Constitution."

Thus, the Constitutional Council established that "paragraph 2 of Article 15 of the Constitution of the Republic of Kazakhstan should be understood in such a way that the Parliament of the Republic of Kazakhstan has the right, within the framework indicated by its constitutional provisions, to determine in the criminal law a specific list of crimes for which the death penalty is established, and, if necessary, to reduce the range of criminal acts included in it.

The norms of paragraph 2 of Article 15 of the Constitution of the Republic of Kazakhstan shall not prevent the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty, with the reservation allowed by it, and the harmonization of criminal legislation with the provisions of paragraph 1 of Article 2 of this international act."

As a result of the Constitutional Reform of 2022, this normative resolution will be revised.

B. Abortion

In accordance with Article 150 of the Code of the Republic of Kazakhstan dated July 7, 2020 No. 360-VI LRK "On the health of the people and the healthcare

system", a woman has the right to artificial termination of pregnancy (abortion).

Induced abortion at the woman's request shall be performed at the time of pregnancy up to twelve weeks. Artificial termination of pregnancy for reasons of social welfare is carried out at a gestational age of up to twenty-two weeks, and in the presence of medical indications and conditions threatening the life of the pregnant woman and (or) the fetus (in the presence of monogenic genetic diseases, uncorrected congenital malformations and fetal conditions incompatible with life), regardless of the gestational age. Artificial termination of pregnancy for minors is carried out with the consent of their parents or other legal representatives. Artificial termination of pregnancy for an adult who has been declared legally incapable, if she is unable to express her will because of her condition, may be ordered by a court decision taken at the request of her legal representative and with the participation of the adult who has been recognized incapable in accordance with the procedure established by law.

There have been no relevant decisions by the Constitutional Council on the issue of abortion.

C. Euthanasia

According to subparagraph 294) of Article 1 of the Code of the Republic of Kazakhstan dated July 7, 2020 No. 360-VI LRK "On the health of the people and the healthcare system", euthanasia is the satisfaction of a request to accelerate the death of an incurable patient by any actions or means, including the introduction of drugs or other means, as well as the termination of artificial measures to maintain his/her life in cases of an unfavourable outcome of the disease.

In accordance with Article 154 of the Code, euthanasia is prohibited in the Republic of Kazakhstan.

There have been no relevant decisions by the Constitutional Council on the issue of euthanasia.

D. Suicide and assisted suicide

Suicide is a cause of unnatural death and a long-term social problem that exists in many countries around the world. Committing suicide has always been frowned upon and is a big problem in any society.

The Constitution of the Republic of Kazakhstan does not provide for the regulation of issues related to suicide.

At the same time, it should be noted that the Criminal Code of the Republic of Kazakhstan contains an article on the "Incitement to suicide" (Article 105 of the Criminal Code of the Republic of Kazakhstan).

There have been no relevant decisions by the Constitutional Council on the issue of suicide.

E. Lethal use of force during law enforcement

The following are examples of relevant legal norms.

According to Article 33 of the Criminal Code of the Republic of Kazakhstan, "The causing of harm to the person who has committed a criminal act while carrying out the arrest in order to deliver him to the state bodies and to exclude the possibility of his committing new assaults, shall not be considered to be a criminal offence if it was not possible to detain the assaulter by other means, and if the actions taken for this purpose did not exceed the necessary measures (part one).

An excess of the measures necessary for the arrest of an assaulter is their evident disproportion to the character and degree of public danger of the crime committed by the person to be arrested and to the circumstances of the arrest, when obviously excessive harm is caused to a person without necessity. Criminal liability shall apply only in cases of deliberate causing of harm. (part two).

Victims of the assault and other citizens besides special authorized persons shall have the right to detain the assaulter (part three)."

In addition, Article 35 of the Criminal Code establishes that the offence against the interests protected by this Code, committed in the course of operational-investigative, counterintelligence measures or secret investigative actions in accordance with the Law of the Republic of Kazakhstan, by an employee of an authorized state body or by another person who collaborates with this body following its instructions shall not be regarded as a criminal offence if committed for the purpose of prevention, detection, exposure or investigation of the crimes committed by a group of persons, a group of persons by previous concert, criminal group, prevention, disclosure and suppression of intelligence and (or) subversive actions, as well as if the harm caused to legally protected interests

is less significant than the harm caused by these criminal infractions and if the prevention, solving or investigation and the exposure of the offenders could not be carried out by any other means. (part one). The provisions of the first part of this Article shall not apply to the persons who committed offences related to threat of lives or health of people, ecological disaster, public calamity or other grave consequences.

Article 103 provides for liability for "Murder committed upon excess of the measures, necessary detention of a person, committed a crime."

Chapter 8 (Articles 59-62) of the Law of the Republic of Kazakhstan dated January 6, 2011 No. 380-IV LRK "On Law Enforcement Service" regulates the use of firearms and other weapons, special ammunition and physical force by employees.

Article 60, for example, establishes that public officials shall have the right to use physical force, including combat fighting techniques, as well as handcuffs, rubber truncheons, lachrymatory agents, sound and light appliances of distractive effect, instruments for opening of premises, compulsory stoppage of transport, water cannons, animals, armored vehicles and other special transport vehicles, the list of which is determined by the Government of the Republic of Kazakhstan for:

1) holding off the attacks against individuals, public officials and other persons, doing official or public duty on protection of public order, public security protection and crime prevention;
2) hostages release, putting the end to mass disorders and group violations of public order (group violations of established regime of detention in the institutes of correctional system), as well as unlawful acts upon escape or detention of escaped persons from correctional institutions and detention facilities of convicted, suspected and accused persons;
3) holding off an attack against buildings, premises, constructions, transport vehicles, land plots, belonging to individuals, organizations and state bodies, and equally for their liberation from seizure;
4) apprehending offenders (convicted, suspected and accused persons and persons, committed administrative infractions), if they assist insubordination or resistance to public officials, other persons, fulfilling obligations on protection of public order, public security protection, imposed on them, for their bringing to law enforcement bodies, convoy and protection of detained persons, persons taken into custody, as well as persons, subject to administrative arrest, convicted, suspected and accused persons if there are reasonable grounds to consider, that they

may escape from prison or incur damage to wider public or themselves, as well as in relation to persons, preventing the carrying out of the obligations, imposed on them by the law intentionally;
5) holding off the attack with the purpose of self-defence by a civil servant or protection of his or her family members in justifiable threat of causing of him/her and (or) them serious harm to health or life;
6) necessary defence, extreme necessity;
7) bringing offenders, if it is necessary for the purpose of suppression of infraction, establishment of identity of the offender, as well as drawing up protocol on administrative infraction upon impossibility to drawn it up in place, if drawing up of protocol is compulsory;
8) stoppage of transport vehicles through their damaging, if a driver does not obey the legal requirements of an employee of the state to stop.

Article 61 provides for the use of firearms, where in addition to protection from attack and detention of dangerous persons (criminals caught red-handed, escaping from custody, etc.) there is only one subparagraph 5) of paragraph 1, which allows "stoppage of transport vehicles through their damaging, if a driver does not obey the legal requirements of a civil servant and put life and health of individuals at hazard."

Article 8 of the Law of the Republic of Kazakhstan dated March 5, 2003 No. 391-II "On Martial Law" establishes that in the performance of their duties, military personnel and employees of state bodies engaged to ensure the regime of martial law shall be granted the right to carry, keep, use weapons, military equipment, special means, as well as the use of physical force. Such persons shall not be held responsible for causing harm in connection with the use of physical force, special means, weapons and military equipment, if the harm inflicted corresponds to the nature and degree of the threatening danger.

Military personnel and employees of state bodies engaged to ensure the regime of martial law shall have the right to use physical force, special means, weapons or military equipment for: 1) holding off the attacks against State and military facilities, citizens and other persons; 2) putting the end to mass disorders that endangers the life and health of military personnel and employees of state bodies, as well as citizens and other persons; 3) detaining persons carrying weapons, ammunition, explosives, chemicals or poisonous substances; in cases where they are: caught committing a crime; do not comply with the legal requirements of military personnel or employees of state bodies; prevent military personnel and employees of state bodies from carrying out their official duties; 4) preventing attempts of illegal penetration into protected objects and places of deployment of troops; 5) for release of hostages, captured secured facilities, constructions,

transport vehicles and cargos, as well as for suppression of mass disorders and group violations of public order; 6) stoppage of transport vehicle if a driver doesn't obey the legal requirements; 7) giving an alarm or calling for help; 8) in other cases in accordance with the legislative acts of the Republic of Kazakhstan.

There have been no relevant decisions by the Constitutional Council on the above issues.

III. Expansive interpretations

A. Socio-economic dimensions

In accordance with paragraph 1 of Article 15 of the Constitution of the Republic of Kazakhstan, everyone shall have the right to life.

Paragraph 1 of Article 1 of the Constitution of the Republic of Kazakhstan stipulates that The Republic of Kazakhstan proclaims itself as a democratic, secular, legal and social state whose highest values are a person, his life, rights, and freedoms.

The Constitutional Council in the normative resolution dated December 21, 2001 No. 18/2 and in several of its other resolutions noted that paragraph 1 of Article 1 of the Constitution proclaims that "The Republic of Kazakhstan proclaims itself as a social state ..." This general provision of Section I of the Constitution means that Kazakhstan intends to develop as a state that undertakes to mitigate social inequality by creating conditions for a decent life for its citizens and the free development of the individual, adequate to the capabilities of the State.

This provision's content is reflected in various other norms of the Constitution, such as: the right of citizens to social protection against unemployment, to rest, to statutory working hours, days off and holidays, paid annual leave (Article 24); guaranteed a minimum wage and pension, social security in old age, in case of, disease, disability or loss of the main income-provider and encouragement of voluntary social insurance, creation of additional forms of social security and charity (Article 28); the right of citizens to health protection, to free, guaranteed, extensive medical assistance established by law (Article 29); guaranteed free secondary education, the right to obtain free higher education on a competitive basis (Article 30); state protection of the environment in favour of human life

and health (Article 31); state protection of the family, motherhood, fatherhood and childhood (Article 27); the creation by the state of conditions for providing citizens with housing, the provision of housing to those in need for an affordable price from state housing funds in accordance with the norms established by law (Article 25).

For the Republic of Kazakhstan, according to paragraph 1 of Article 1 of the Constitution, "the highest values are a person, his life, rights and freedoms." This general provision of Section I of the Constitution demonstrates to the priority of universal human values for the Republic of Kazakhstan.

Paragraph 1 of Article 1 of the Constitution of the Republic of Kazakhstan in terms of the words "The Republic of Kazakhstan proclaims itself ... a social state, the highest values of which are a person, his life, rights and freedoms" means that the Republic of Kazakhstan strives to fulfil the role of a social state in accordance with the real opportunities of the State. Kazakhstan recognizes and guarantees the rights and freedoms of individual and citizen in accordance with the Constitution.

B. Environmental dimensions

According to Article 31 of the Constitution, the Republic of Kazakhstan shall aim to protect the environment in favour of human life and health. Officials shall be held accountable for the concealment of facts and circumstances endangering the life and health of the people in accordance with the law.

On January 9, 2007, the Ecological Code was adopted in the Republic of Kazakhstan. The Ecological Code details and discloses the content of the environmental rights of citizens, enshrined in the Constitution of the Republic of Kazakhstan, regulates in detail the powers of state bodies in the field of nature protection, the application of the ecological mechanism of rational nature management, international cooperation in environmental protection, contains a wide list of environmental requirements for the activities of foreign and national nature users. The Republic has also adopted a number of codes and laws regulating the rights and obligations of citizens in the field of protection and use of land, water, forest resources, flora and fauna, and minerals.

The Republic of Kazakhstan has joined numerous international treaties and agreements in the field of nature protection and rational use of natural resources, ratified the most important environmental conventions, among which, in terms of protecting and ensuring the environmental rights of citizens, the "Aarhus

Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters" should be highlighted.

In the normative resolution of the Constitutional Council dated April 29, 2005 No. 3 "On the review of the constitutionality of Article 13 of the Law of the Republic of Kazakhstan on the social protection of citizens affected by the environmental disaster in the Aral Sea region", it is noted that the conditions of the place of residence and loss of health are independent criteria and can be considered both separately and in combination. This approach is justified because of the different nature of the impact on humans of harmful environmental factors and its consequences. The different level of social protection of persons living in the zone of ecological disaster and persons who left it does not entail discrimination against them on the basis of their place of residence, since the socially determined approach to the protection of these categories of the population does not restrict (does not diminish) their constitutional rights. The basis of this difference is not the place of residence itself in the geographical sense of the word, but the impact on human health of an unfavourable living environment. In this regard, the Constitutional Council believes that the differentiation of compensations and benefits depending on socially based criteria cannot be considered discrimination.

Annex 1: List of cited legal provisions

1) Constitutional provisions

The Constitution of the Republic of Kazakhstan, adopted at the republican referendum on August 30, 1995

- Article 1(1)
- Section II
- Article 12
- Article 13 (1)
- Article 15
- Article 24
- Article 25
- Article 27
- Article 28
- Article 29
- Article 30
- Article 31

2) Legislative provisions

Civil Code of the Republic of Kazakhstan (General Part) (dated December 27, 1994)

- Article 13

Law of the Republic of Kazakhstan "On Martial Law" (dated March 5, 2003 No. 391-II)

- Article 8 of Chapter 2 "Ensuring martial law"

Law of the Republic of Kazakhstan "On the Protection, Reproduction and Use of Animal World" (dated July 9, 2004 No. 593-II)

- Article 12

Ecological Code (dated January 9, 2007)

Law of the Republic of Kazakhstan "On Law Enforcement Service" (dated January 6, 2011 No. 380-IV LRK)

- Chapter 8 (Articles 59-63)

Criminal Code of the Republic of Kazakhstan (latest amendments 2018)

- Article 32
- Article 33
- Article 101
- Article 102
- Article 103
- Article 104
- Article 105

Code of the Republic of Kazakhstan "On the Health of the People and the Healthcare System" (dated July 7, 2020 No. 360-VI LRK)

- Article 1
- Article 150
- Article 154

Law of the Republic of Kazakhstan "On Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty", committed in New York on December 15, 1989 (dated January 2, 2021 No. 404-VI LRK)

3) International provisions

Universal Declaration of Human Rights, adopted by resolution 217 A (III) of the UN General Assembly of December 10, 1948

Convention on the Rights of the Child (Ratified by the Resolution of the Supreme Council of the Republic of Kazakhstan dated June 8, 1994 No. 77)

International Covenant on Economic, Social and Cultural Rights (ratified by the Law of the Republic of Kazakhstan dated November 21, 2005 No. 874)

International Covenant on Civil and Political Rights (ratified by the Law of the Republic of Kazakhstan dated November 28, 2005 No. 91-III)

Annex 2: List of cited cases

Constitutional Council

1. Normative Resolution "On the official interpretation of paragraph 1

of Article 1 of the Constitution of the Republic of Kazakhstan" dated December 21, 2001 No. 18/2

2. Normative Resolution "On the official interpretation of paragraph 4 of Article 52, paragraph 5 of Article 71, paragraph 2 of Article 79, paragraph 3 of Article 83 and paragraph 2 of Article 15 of the Constitution of the Republic of Kazakhstan" dated January 30, 2003 No. 10
3. Normative Resolution "On the review of the constitutionality of Article 13 of the Law of the Republic of Kazakhstan on social protection of citizens affected by an environmental disaster in the Aral Sea region" dated April 29, 2005 No. 3
4. Normative Resolution "On the review of the constitutionality of the first and fourth parts of Article 361 of the Criminal Code of the Republic of Kazakhstan at the request of the Kapshagay City Court of Almaty Region" dated February 27, 2008 No. 2
5. Normative Resolution "On the official interpretation of paragraph 2 of Article 15 of the Constitution of the Republic of Kazakhstan" dated December 15, 2020 No. 4
6. Message of the Constitutional Council of the Republic of Kazakhstan "On the state of constitutional legality in the Republic of Kazakhstan" (announced at a joint meeting of the Chambers of the Parliament of the Republic of Kazakhstan on June 21, 2021)

6. Republic of Korea

Constitutional Court

Overview

The Constitution of the Republic of Korea (hereinafter referred to as "Korea") does not contain an explicit provision on the right to life. However, the Constitutional Court of Korea recognized the right to life as an unenumerated constitutional right in 1996. Korea is state party to the International Covenant on Civil and Political Rights (ICCPR) and to the first Optional Protocol of the ICCPR. While capital punishment still exists in Korea, it has not been implemented since December 30, 1997. Regarding the issue of abortion, the Constitutional Court of Korea held in 2019 that legal provisions criminalizing abortion are nonconforming to the Constitution. However, the National Assembly has not yet made the relevant necessary legislative amendments. Active euthanasia is not allowed by law. Yet a doctor in charge may determine whether or not to terminate life-sustaining treatment of his or her patient under certain conditions. Although suicide itself is not prohibited by law, legislation enacted in 2011 prohibits the distribution of suicide-inducing information. On the issue of the use of force by public authorities, key legislation include the Act on the Performance of Duties by Police Officers. In terms of relevant adjudication, the Constitutional Court has dealt with cases concerning the use of water cannon by the police. Regarding socio-economic dimensions to the right to life, adjudication on the minimum cost of living and overcrowded detention centers are of relevance. Constitutional complaints in connection to climate change legislation are currently pending before the Constitutional Court, partly placing the right to life in the environmental context.

Outline

I. Defining the right to life

A. Recognition and basic obligations

1. Recognition in the constitutional text

The Constitution of the Republic of Korea (hereinafter referred to as "Korea") does not contain an explicit provision on the right to life. However, the Constitutional Court of Korea recognized the right to life as an unenumerated constitutional right in 1996. The Court held that "human life is noble and the source of the dignified human being that cannot be replaced by anything in the world. Such right to life, though not expressly provided in the Constitution, is a transcendental right granted by the law of nature based on the human instinct to survive and the purpose of human existence. It is thus considered as one of the most essential fundamental rights functioning as the prerequisite for all fundamental rights" (95Hun-Ba1, November 28, 1996).

2. Ratified international or regional human rights treaties

Korea has ratified a number of UN human rights treaties, the following are especially relevant to the right to life:

- International Covenant on Civil and Political Rights (ICCPR) – Effective as of July 10, 1990[269]
- Convention on the Rights of the Child (CRC) – Effective as of December 20, 1991

Article 6(1) of the Constitution prescribes that "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic

269 However, Korea has not acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

of Korea." Also, the Constitutional Court ruled that a treaty concluded upon the approval of the National Assembly shall have the same effect as domestic law under Article 6(1) of the Constitution and it is considered to have effect equivalent to that of laws (2000Hun-Ba20, September 27, 2001).

3. Obligations on the state regarding the right to life

The Constitutional Court recognizes the positive duties of the State concerning the right to life as well as its negative duties by concluding that "Any statute depriving a person's life without any reasonable reason that the Constitution permits must not be enacted. Moreover, the government has a duty to protect the people's right to life as much as possible by making legislative actions and other measures in order to prevent a person from committing crimes of killing its citizens" (2008Hun-Ka23, February 25, 2010).

Furthermore, the Court acknowledges the legislative formative power regarding the measures to implement the duty to protect the right to life by holding that "The state's duty to protect fundamental rights can be realized only through the enactment of relevant laws by the legislature, and the decision on to what extent the State should implement the duty falls, in principle, within the jurisdiction of the legislature which should make legislative decision taking into account the country's political, economic, social and cultural circumstances and financial situations" (90Hun-Ma,etc., January 16, 1997).

On that note, the Constitutional Court of Korea held that, "The State has the responsibility to devise various protective measures for fetuses as they have lives as human beings. However, such obligation of the State to protect basic rights does not lead to constitutional commitment that fetuses should also enjoy the capacity to rights as required by the Civil Act, whether they are prenatal or postnatal. The quest for legal stability stemming from a constitutional State requires that a clear time point be determined to the possible extent as to when the capacity to rights begins. In that sense, the formation of life of human beings may be recognized as starting from a certain point before birth, but it cannot be said that it is unconstitutional to view that life starts from birth" (2004Hun-ba81, July 31, 2008).

B. Constitutional status

1. Non-derogability of the right to life

The Constitutional Court viewed that "The right to life, is the most fundamental right and precondition to all the basic rights set forth in the Constitution" (95Hun-Ba1, November 28, 1996). Meanwhile, it considered that the right to life can also be subject to the general limitation provision in Article 37(2) of the Constitution by holding that "our Constitution does not explicitly recognize absolute fundamental rights and Article 37 Section 2 of the Constitution prescribes that any kind of people's freedom and right may be restricted by Act to the extent that it is necessary to protect national security, public order, or public welfare. It indicates that notwithstanding its absolute value in an ideal sense, human life may be subject to legal assessment on exceptional cases where protection of an individual's life directly requires restriction on another's life, or restriction on a particular person's life is compelled to protect the lives of the general public or a public interest of such great importance. The right to life, like any other rights, may be subject to the general statutory reservation under Article 37 Section 2 of the Constitution" (2008Hun-Ka23, February 25, 2008).

In the above-mentioned decision, the Constitutional Court explained that the government may conduct a legal assessment and take measures to restrict an individual's right to life in very exceptional circumstances where, 1) the aggressor's life needs to be restricted in self-defense to avoid unlawful, present and imminent threat to a life; 2) the right to life of a fetus needs to be restricted in order to save the mother's life; 3) the government's conducting a war is justified out of necessity to defend against the invasion by foreign enemy posing present and imminent threat to people's lives; 4) or imposing the most extreme penalty is unavoidable due to the necessity to prevent heinous crimes which take away other's life for no justifiable reason or violate a public interest of similarly great importance.

2. Special status of the right to life

The Constitution neither explicitly enumerates absolute fundamental rights nor fundamental rights which have priority over other constitutional rights. Nevertheless, the Court held that "the right to life is the precondition for all fundamental rights and is the most fundamental of all constitutional rights" (95Hun-Ba1, November 28, 1996; 2017Hun-Ba127, April 11, 2019; 2015Hun-Ma1149, April 23, 2020). However, there was a minority opinion which seemed to consider the "special status" of the right to life as an element of weighing the legal interests. It interpreted that while even the supreme basic right such as the right to life may be restricted by the statutes and thus the imposition of capital punishment is not in violation of the Constitution, the death penalty should be imposed only when it is necessary in light of the justice and fairness and in compliance with the

principle of proportionality and the principle of the least restrictiveness because the normative range of capital punishment must be significantly compromised or reduced considering the highly respected value of the right to life (2008Hun-Ka23, February 25, 2010).

C. Rights holders

1. Personal scope of the right to life

There are no explicit constitutional or legal provisions regarding the scope of a natural person who may be the subject of the right to life including the start and end of the period, and there are mixed views on this issue. With this regard, the Constitutional Court held that although a fetus has to rely on the mother for survival, the fetus itself is a life separate from the mother, it is likely to grow as a human unless there are special circumstances, and that the State has the duty to protect the life of a fetus in accordance with the second sentence of Article 10 of the Constitution (2017Hun-Ba127, April 11, 2019).

2. Rights holders other than human beings

There is no case law where the Constitutional Court explicitly noted that only a human being may be the subject of the right to life. However, the Court denied the constitutional complaint filed by a political party which is not the subject of the fundamental right on the grounds that only a natural person may be acknowledged as the subject of the fundamental rights of life and personal safety given their nature (2008Hun-Ma419, etc., December 26, 2008).

D. Limitations: General considerations

Since the right to life is also subject to the general statutory reservation under Article 37(2) of the Constitution, the Constitutional Court reviews the restriction on the right to life in accordance with the principle of proportionality. However, as the right to life, due to its nature distinctive from other rights, can never be partially taken away, any restriction on the right to life inevitably means its total deprivation. Accordingly, if any constraint on the right to life is deemed to go beyond the permissible limit on the restriction on the fundamental right because it violates the essential content of the individual's right to life, it would mean that the right to life is recognized as an absolute right which cannot be restricted at all. Accordingly, the Court viewed that the right to life may be justifiably restricted in

exceptional cases and in such cases, its deprivation should not be automatically deemed as an infringement on the essential content of a fundamental right. It also opined that if the restriction on the right to life may be justified under the principle of proportionality as it is imposed in exceptional cases where others' life of equivalent value or other public interest of such great importance necessitates such restriction, it would not be deemed as a violation of the essential content of a fundamental right (2008Hun-Ka23, February 25, 2010).

On the other hand, the Constitutional Court, from the perspective of separation of powers, applies the so-called "principle against insufficient protection" in reviewing the constitutionality of the State's legislative measures to fulfil its duty to protect the right to life. That is, the Court reviews whether the State took appropriate and efficient minimum protection measures for the sake of protecting people's fundamental rights. Therefore, the infringement on fundamental rights by legislative omission or incomplete legislation can be validated only when the legislators evidently violate their duty to protect fundamental rights. In other words, the Court can find the State to be responsible for violating its duty of protection only in cases where either the State did not take any protective measures for people's legal interests or the adopted measures were clearly inadequate or insufficient (2004Hun-Ba81, July 31, 2008).

II. Limitations: Key issues

A. Capital punishment

1. The existence and non-implementation of capital punishment

While capital punishment still exists in Korea as one of the kinds of punishment since the enactment of the Criminal Act in 1953 (under Article 41(i) of the Act), it has not been implemented since the last implementation on December 30, 1997.

Criminal Act
Article 41 (Kinds of Punishment) Kinds of punishment shall be as follows:
1. Death penalty;

2. Legal norms and current issues regarding capital punishment

a) Legal norms regulating capital punishment

i) Relevant regulations concerning death sentence

About 20 provisions including the crimes of insurrection (Article 87), spy (Article 98), setting fire to building which any person uses as a residence, etc. (Article 164(2)), and murder (Article 250) in the Criminal Act stipulate the death penalty as a statutory penalty. Among them, the crime of taking sides with an enemy country (Article 93) recognizes capital punishment as the only statutory penalty. In addition to the Criminal Act, there are about 100 provisions in about 20 legislations including the National Security Act, the Act on the Protection of Children and Youth against Sex Offenders, and the Narcotics Control Act which stipulate capital punishment as a statutory penalty. Among them, there are several provisions in the Military Criminal Act that provide for capital punishment as the only statutory punishment.

When the criminal defendant is indicted for a case punishable with the death penalty, the court may not sit without the defense counsel. If no defense counsel is available, the court shall appoint a defense counsel ex officio (Articles 282 and 33(1)(vi) of the Criminal Procedure Act). In the case of a death sentence, any case even under an extraordinary martial law may be appealed (Article 110(4) of the Constitution) and the criminal defendant cannot waive an appeal when he/she is sentenced to death (Article 349 of the Criminal Procedure Act). A juvenile who was less than 18 years old when the crime was committed may not be sentenced to death (Article 59 of the Juvenile Act).

Constitution of Korea
Article 110(4) Military trials under an extraordinary martial law may not be appealed in case of crimes of soldiers and employees of the military; military espionage; and crimes as defined by Act in regard to sentinels, sentry posts, supply of harmful foods and beverages, and prisoners of war, except in the case of a death sentence.

Criminal Procedure Act
Article 33 (Court-Appointed Defense Counsel)
(1) In any of the following cases, if no defense counsel is available, the court shall appoint a defense counsel ex officio:

6. When the criminal defendant is indicted for a case punishable with death penalty or imprisonment, with or without labor, for an indefinite term or for a minimum term of not less than three years.
Article 282 (Required Defense) With regard to any case referred to in Article 33(1) or to any case for which a defense counsel is appointed under the provisions of sections (2) and (3) of the same Article, the court may not sit without the defense counsel: Provided, That this shall not apply where only a judgment is pronounced.
Article 349 (Waiver and Withdrawal of Appeal) A prosecutor, the criminal defendant, or a person referred to in Article 339 may waive or withdraw an appeal: Provided, That the criminal defendant or a person referred to in Article 341 cannot waive an appeal where he/she is pronounced with death penalty or imprisonment, with or without labor, for an indefinite term.

Juvenile Act
Article 59 (Mitigation of Death Penalty and Life Sentence) Death penalty or life sentence to a juvenile who was less than 18 years old when the crime was committed, shall be reduced to 15 years of imprisonment.

The Supreme Court held that "Considering that capital punishment requires the taking of a life and is the ultimate form of the harshest punishment under the judicial system, sentencing a person to death should only be allowed under special circumstances deemed justified in light of an offender's degree of criminal liability and purpose of criminal punishment. Therefore, whether to render a death penalty should be decided by thoroughly examining the sentencing conditions — such as the offender's age, occupation and career, character and conduct, intelligence, education level, family background, criminal record, relation to the victim, motive of crime, existence of premeditation, preparedness, means and method, degree of cruelty and brutality, gravity of outcome, number of victims and assessment of damage, emotional state and attitude after commission of the crime, signs of regret and remorse, degree of damage recovery, recidivism risk, etc. — and then concluding that there exist circumstances justifiable beyond a reasonable doubt to warrant the death penalty" (2015Do12980, February 19, 2016 (en banc)).

ii) Relevant regulations concerning the implementation of the death penalty

The order to execute the death penalty shall be given within six months from the day when a judgment becomes final and conclusive (Article 465(1) of the

Criminal Procedure Act). In the event of the Minister of Justice having ordered the execution of the death penalty, such execution shall be carried out within five days (Article 466 of the Act), in the presence of the prosecutor, a secretary of a prosecutor's office, and the warden of a prison or detention house or his/her representative (Article 467(1) of the Act) at a place of execution in a correctional facility (Article 66 of the Criminal Act, Article 91(1) of the Administration and Treatment of Correctional Institution Inmates Act). However, in the case of a violation of the Military Criminal Act, a death penalty shall be executed by a firing squad at a place designated by the competent Chief of Staff (Article 3 of the Military Criminal Act).

If a person condemned to death penalty is devoid of mental capacity due to a mental disorder or a woman condemned to death penalty is pregnant, the execution shall be stayed by order of the Minister of Justice, and the penalty shall be executed by order of the Minister of Justice, subsequent to recovery from the mental disorder or after childbirth (Article 469 of the Criminal Procedure Act).

b) Current Issues

While Korea continues to impose a death sentence, it has not carried out any executions since December 30, 1997. Although Korea has not officially declared a moratorium on the death penalty, the country is classified by Amnesty International as an "abolitionist in practice," which means that it has not executed the death penalty for the past 10 years or longer. There are currently about 60 people on death row.

No official announcement has been made about the reasons for non-implementation. However, the following facts may be taken into account. The National Assembly of Korea has proposed bills to abolish the death penalty nine times since 1999. The National Human Rights Commission of Korea[270] has consistently pressed for abolishing capital punishment since 2005. When the country acceded to the European Convention on Extradition of the Council of Europe in 2011, it assured that the death penalty will not be carried out for criminals extradited to Korea from the State Parties, etc. to the Convention. Also, Korea, for the first time, voted for the resolution on a "Moratorium on the Use of the Death Penalty" at the 75th session of the UN General Assembly on December 16, 2020. Its main content includes expressing concerns about the continued

270 As a national institution established to deal with affairs to protect and improve human rights, it performs duties such as investigation and research on statutes, institutions, policies and practices related to human rights and presentation of recommendations or opinions on matters requiring improvement thereof (see Articles 3 and 19 of the National Human Rights Commission of Korea Act).

application of the death penalty; considering the accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and establishing a moratorium on executions with a view to abolishing the death penalty.

3. Constitutional adjudication on the issue of the death penalty

a) Decisions on the death penalty system itself

The Constitutional Court ruled a decision of constitutionality on the death penalty two times, in 1996 and 2010 (95Hun-Ba1, November 28, 1996; 2008Hun-Ka23, February 25, 2010). Another case arguing the unconstitutionality of the death penalty is currently pending (2019Hun-Ba59). In the 1996 decision, seven Justices ruled constitutional and two ruled unconstitutional. In the 2010 decision, five Justices ruled constitutional and four ruled unconstitutional. The following introduces the 2010 decision (2008Hun-Ka23).

The Constitutional Court viewed that "while the final decision on the constitutionality of capital punishment rests with the Constitutional Court, the issue of whether to maintain or abolish the statutes recognizing the capital punishment is a matter of legislative policy which should be decided by the legislature with democratic legitimacy. If we find that any of the heinous crimes can be sentenced to death without violation of the Constitution, capital punishment itself cannot be considered to be unconstitutional. In such case where a death sentence is allowed by the Constitution, only the extent of the crimes which can be subject to the death sentence would be an issue."

With this in mind, the Court concluded that "Capital punishment is a punishment that infringes on the legal interest of a criminal to a degree greater than life imprisonment or life sentence without parole, and it has a stronger criminal deterrence power than imprisonment. In the case of heinous crimes, imprisonment sentences such as life imprisonment are not only disproportionate to the responsibility of the criminal, but would also fail to meet the sense of justice of the victim's family and the general public. It is difficult to say that there is any other apparent punishment that infringes the legal interest of the criminal to a lesser degree than capital punishment while having the same effect as capital punishment. The problem of the possibility of a misjudgment cannot be construed as a problem inherent in the system of capital punishment itself, and should be solved through the institutional system, such as judicial tier system and retrial system, and the improvement thereof. Therefore, it is difficult to rule that the capital punishment violates the right to life."

The Court went on to find that "capital punishment, which is to be imposed limitedly only for heinous crimes such as the cruel murder of a number of people, cannot be considered an excessive punishment compared to the cruelty of the crime. Capital punishment is the outcome of the heinous crime that the criminal has voluntarily chosen, and thus, cannot be considered to infringe on the criminal's dignity and worth as a human being. Further, even if judges or prison officers who declare or execute capital punishment may suffer from a guilty conscience, it is difficult to say that, for this reason alone, the capital punishment system infringes on their human dignity and worth."

In addition to the majority opinion, there were 1) a supplementary opinion that the death penalty is not in violation of the Constitution as long as Article 110(4) of the Constitution implicitly acknowledges the death penalty; 2) an opinion of partial unconstitutionality that sentencing capital punishment in cases other than sentencing it by a military court under emergency martial law (Article 110(4) of the Constitution) is unconstitutional; 3) an opinion of unconstitutionality that the capital punishment system cannot be accepted under the Korean constitutional system that declares the protection of human dignity and worth and guarantees the right to life; 4) an opinion of unconstitutionality that capital punishment should be abolished on condition of introducing the most severe imprisonment restricting the possibility of parole, pardon, etc., and 5) an opinion of unconstitutionality that the capital punishment system infringes on the intrinsic nature of the right to life and physical freedom because the right to life is an absolute fundamental right which cannot be restricted under the Constitution.

b) Decision on specific crimes setting capital punishment as a statutory penalty

The Constitutional Court rendered a decision of unconstitutionality on a provision of the Military Criminal Act which provided for the death penalty as the only statutory punishment when a subordinate killed a superior (2006Hun-Ka13, November 29, 2007). In the decision, the Court held that the challenged provision uniformly punishes with the death penalty for a murder of a superior in the military based on the sole grounds of maintaining the line of command and preserving national defence without distinguishing between the time of war and peace and without considering the existence of the command and obedience relation between the perpetrator and the superior, and thus it is against the substantial ideas of the rule of law respecting and protecting the human worth and dignity and loses its legitimacy in the criminal penalty system by providing for a penalty that is extremely harsh and out of proportion to the gravity of the offence. Accordingly, Article 53(1) of the Military Criminal Act was amended on November 2, 2009 to add life imprisonment as an optional punishment for a

murder of a superior in addition to the death penalty.

B. Abortion

1. Legal norms regulating abortion

Criminal Act
Article 269 (Abortion)
(1) A woman who procures her own miscarriage through the use of drugs or other means shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding two million won.
(2) The provision of section (1) shall apply to a person who procures the miscarriage of a woman upon her request or with her consent.
Article 270 (Abortion by Doctor, etc., Abortion without Consent)
(1) A doctor, herb doctor, midwife, pharmacist, or druggist who procures the miscarriage of a woman upon her request or with her consent, shall be punished by imprisonment with labor for not more than two years.
(2) A person who procures the miscarriage of a woman without request or consent, shall be punished by imprisonment with labor for not more than three years.

Mother And Child Health Act
Article 14 (Limited Permission for Induced Abortion Operations)
(1) A medical doctor may perform an induced abortion operation with the consent of the pregnant woman herself and her spouse (including persons in a de facto marital relationship; hereinafter the same shall apply) only in the following cases:
[…]
Article 28 (Exemption from Application of the Criminal Act)
No person who undergoes or performs an induced abortion operation under this Act shall be punished, notwithstanding Articles 269(1) and (2) and 270(1) of the Criminal Act.

The former Criminal Act punished a pregnant woman for undergoing abortion. The punishment applied to those who procured the miscarriage of a woman upon her request or with her consent including doctors and other medical practitioners. However, there was an exception to the above provision as provided by the Mother and Child Health Act, etc. The Constitutional Court previously ruled that the challenged provision of the Criminal Act (regarding the part of “midwife” in

Article 270(1)) which punishes a midwife procuring the miscarriage of a female upon her request or with her consent is not against the Constitution based on the constitutionality decision on Article 269(1) of the Criminal Act which punishes a woman who procures her own miscarriage (2010Hun-Ba402, August 23, 2012).

However, the Constitutional Court held on April 11, 2019 that both 1) Article 269(1) of the Criminal Act which penalizes a pregnant woman who procures her own miscarriage and (2) the part concerning "doctor" in Article 270(1) of the Criminal Act which penalizes a doctor who procures the miscarriage of a woman upon her request or with her consent are nonconforming to the Constitution, and ordered temporary application of these provisions until the legislature amends them by December 31, 2020 (2017Hun-Ba127). However, the legal vacuum in the above provisions continues as the legislature failed to amend them by the deadline of December 31, 2020, which was set by the Constitutional Court in its decision.

2. Constitutional adjudication on the issue of abortion

In the decision of the case 2017Hun-Ba127, there were the constitutional nonconformity opinion of four Justices, the simple unconstitutionality opinion of three Justices, and the constitutionality opinion of two Justices.

The constitutional nonconformity opinion of four Justices acknowledged that the Self-Abortion Provision serves the legitimate purpose of protecting the life of a fetus, and imposing criminal punishment for an abortion procured by a pregnant woman is an appropriate means to deter abortion. However, the opinion stated that during a sufficient amount of time before the point of viability at around 22 weeks of gestation, during which the right to self-determination regarding whether to continue a pregnancy and give birth can be properly exercised (from the time of implantation to the end of this period will be hereinafter referred to as the "Determination Period"), the State's protection for fetal life may be different with respect to its level or means. It was of the opinion of four Justices that with certain exceptions set forth in the Mother and Child Health Act, the Self-Abortion Provision completely and uniformly compels pregnant women who, during the Determination Period, face the abortion dilemma arising from various and wide-ranging socioeconomic circumstances to continue the pregnancies and give birth and criminally punishes those undergoing abortions, and thus the Self-Abortion Provision does not satisfy the least restrictive means test because it restricts a pregnant woman's right to self-determination to an extent going beyond the minimum extent necessary to achieve its legislative purpose. The opinion further concluded that it also does not satisfy the balance of interests test because it gives unilateral and absolute priority to the public interest in protecting fetal

life. Accordingly, it violates the rule against excessive restriction and a pregnant woman's right to self-determination. By the same token, the Abortion by Doctor Provision, which penalizes a doctor who performs an abortion at the request or with the consent of a pregnant woman to achieve the same goal as the woman, violates the Constitution.

It was the stance of the constitutional nonconformity opinion that prohibition and criminal punishment of abortion to protect fetal life are not unconstitutional in themselves or in all cases and if the Court were to render decisions of simple unconstitutionality on the Self-Abortion Provision and the Abortion by Doctor Provision, the Court would be creating an unacceptable legal vacuum in which there is no punishment available for all abortions throughout pregnancy. Further, the Justices said that it is within the discretion of the legislature to remove the unconstitutional elements from these Provisions and decide how abortion is to be regulated.

The simple unconstitutionality opinion of three Justices went one step further, stating that abortion should be permitted without restriction as to reason and be left to the deliberation and judgment of the pregnant woman during the "first trimester of pregnancy" (about 14 weeks from the first day of the last menstrual period). It was the opinion of three Justices that decisions of simple unconstitutionality should be rendered on the Provisions at Issue. If the Court were to simply declare a statute restricting rights of freedom nonconforming to the Constitution for the reason that the statute's restrictions on fundamental rights go beyond the constitutionally permissible limits, this would eliminate the grounds for the existence of a rule that the Court must declare an unconstitutional law null and void, as well as the existence of the type of decision rendered based on this rule — a decision of simple unconstitutionality.

The constitutionality opinion of two Justices stated that the fetus must also be regarded as the subject of the constitutional right to life, and found it hard to believe that there are alternative means less restrictive of a pregnant woman's right to self-determination than, but equally effective in protecting a fetus's life as, the imposition of a general ban on abortion and criminal punishment for violations of this ban. The Justices did not see that the importance of the public interest in protecting fetal life varies according to the stages of fetal development, nor did they see that a pregnant woman's right to dignity or right to self-determination prevails at certain stages of pregnancy and is outweighed by a fetus's right to life at later stages. Accordingly, they said the Provisions at Issue do not violate the Constitution.

C. Euthanasia

1. Legal norms regulating euthanasia

Active euthanasia is not allowed by law. However, a doctor in charge may determine whether or not to terminate life-sustaining treatment of his or her patient under certain conditions (hereinafter referred to as the "decision to terminate, etc. life-sustaining treatment"). Korea enacted in 2016 and implemented in 2017 the Act on Hospice and Palliative Care and Decisions on Life-sustaining Treatment for Patients at the End of Life (hereinafter referred to as the "Act on Decisions on Life-Sustaining Treatment"). A doctor in charge may implement a determination to terminate, etc. life-sustaining treatment of his or her patient at the end of life in the following cases:

(1) where it is construed as the intention of the patient;
(2) where it is impossible to verify a patient's intention and the patient is in a medical condition that he or she cannot express intention, determination to terminate, etc. life-sustaining treatment;
(2-1) a legal representative (limited to a person of parental authority) of a patient who is a minor has expressed an intention to make a determination to terminate life-sustaining treatment and the doctor in charge and one medical specialist in the relevant field have verified such intention; or
(2-2) where all of the following patient's family members have unanimously expressed an intention to make a determination to terminate, etc. life-sustaining treatment and the doctor in charge and one medical specialist in the relevant field have verified such intention:
(a) the spouse; (b) lineal ascendants and descendants in the first degree; (c) lineal ascendants and descendants within the second degree, if the above persons do not exist; (d) siblings, if any of those persons exists (Articles 15, 17, 18, 19(1) of the Act on Decisions on Life-sustaining Treatment).

The term "end-of-life process" means a state of imminent death, in which there is no possibility of revitalization or recovery despite treatment, and symptoms worsen rapidly (Article 2 Item 1 of the Act).

2. Constitutional adjudication on the issue of euthanasia

Before the Act on Hospice and Palliative Care and Decisions on Life-sustaining Treatment for Patients at the End of Life was enacted, in an en banc Supreme Court decision, the majority opinion found that where the patient has lost all possibility of recovering consciousness and has entered an irrecoverable stage

of death, forcing a futile life-sustaining treatment can harm the patient's human dignity and fundamental value as a human being. Thus, such an exceptional circumstance, protecting the patient's dignity, value, and right to pursue happiness as a human being is consistent with social norms, and respecting the patient's decision to face death does not go against the constitutional spirit (2009Da17417).

Meanwhile, the Constitutional Court found that it is the right of self-determination for the dying patient to determine whether to withdraw his or her life-sustaining treatment (2008Hun-Ma385, November 26, 2009). The summary of the decision is as follows:

As the 'dying patient' can only extend his/her life with the help of medical equipment and probably become unable to extend his/her life even with the help of medical equipment as finally being in the irrecoverable stage due to the loss of other functions of body, the life-sustaining treatment for the 'dying patient' is, medically speaking, a mere continuation of meaningless intrusion upon a person's body without any possibility of effective cure of disease. Moreover, such treatment can be regarded not as preventing the process of death from starting, but as artificially extending the final stage of death during the process of death which has already been started in natural condition. Therefore, although the decision and actual practice of withdrawing life sustaining treatment shorten the patient's lifespan, this cannot be deemed a suicide as arbitrary disposal of life. Rather, this corresponds to the human value and dignity in that such practice is to leave one's life at the hand of nature, freeing the dying patient from non-natural intrusion on the body. Therefore, a patient can be regarded as being able to make a decision to deny or cease life sustaining treatment to keep one's dignity and value as human being when facing death and inform the medical staff of his/her decision or wishes in advance before being unable to communicate, and such a decision should be protected as one of the aspects of the self-determination right guaranteed by the Constitution.

D. Suicide and assisted suicide

Criminal Act
Article 250 (Murder, Killing Ascendant)
(1) A person who kills another shall be punished by death, or imprisonment with labor for life or for at least five years.

(2) A person who kills one's own or any lineal ascendant of one's spouse shall be punished by death, imprisonment with labor for life or for not less than seven years.
Article 252 (Murder upon Request or with Consent)
(1) A person who kills another upon one's request or with one's consent shall be punished by imprisonment with labor for at least one year up to ten years.
(2) The preceding section shall apply to a person who instigates or aids and abets another to commit suicide.

In the Korean legal system, suicide itself is not prohibited by law. The Korean Criminal Act does not stipulate the punishment for suicide or attempted suicide. In construing the crime of murder under Article 250(1) of the Act, a "person" who is the object of an act, only refers to others and the person him/herself is not included. However, the Criminal Act penalizes a person who kills another person upon one's request or with one's consent (Article 252(1) of the Act) and a person who instigates or aids or abets another to commit suicide (Article 252 (2) of the Act). The Constitutional Court has not reviewed these provisions in the Criminal Act on the merits.

Meanwhile, Korea enacted the "Act on the Prevention of Suicide and the Creation of Culture of Respect for Life" (hereinafter referred to as the "Act on the Prevention of Suicide") in 2011 and the Act was implemented in 2012. Under this Act, no person shall distribute suicide-inducing information through the information and communications network and a person who violates this provision shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won (Articles 19(1) and 25(3) of the Act on the Prevention of Suicide). The term "suicide-inducing information" means the following information used to actively encourage suicide or to assist suicide: (a) information on seeking suicide partners; (b) information suggesting specific methods concerning suicide; (c) documents, pictures, videos, etc. containing content on practicing or inducing suicide; (e) other information equivalent to those referred to in the above items, which obviously aims at inducing suicide (Article 2-2 Item 3 of the Act).

Under the Act on the Prevention of Suicide, where a citizen is, or finds himself or herself, at the risk of suicide, he or she has a right to request help from the State or a local government (Article 3(1)). Citizens shall fully cooperate with the State or a local government in establishing and implementing suicide prevention policies, and shall take measures to rescue a person who is found highly likely

to commit suicide (Article 3(2)). The State and each local government shall formulate policies necessary to actively rescue persons at suicide risk from the risk of committing suicide (Article 4(1)). The State and each local government shall formulate and implement policies on each stage of measures for suicide prevention, countermeasures against probable occurrences of suicide, and measures taken after a suicide or an attempted suicide. In such cases, measures to protect persons who attempted suicide and their family members or the bereaved family members of persons who committed suicide shall be included in such policies (Article 4(2)).

Act on the Prevention of Suicide and the Creation of Culture of Respect for Life
Article 4 (Responsibilities of the State and Local Governments)
(1) The State and each local government shall formulate policies necessary to actively rescue persons at suicide risk from the risk of committing suicide.
(2) The State and each local government shall formulate and implement policies on each stage of measures for suicide prevention, countermeasures against probable occurrences of suicide, and measures taken after a suicide or an attempted suicide. In such cases, measures to protect persons who attempted suicide and their family members or the bereaved family members of persons who committed suicide shall be included in such policies.

The State may be liable for compensation in case of a violation of the duty for the prevention of suicide. With regard to the prevention of suicide in the military, the Supreme Court recognized the State's liability to pay compensation for suicides in the military in its decision 2017Da211559 decided on May 28, 2020 and held as follows: "military unit commanders and relevant personnel, who are responsible for identifying persons likely to commit suicide, acquiring their personal details, managing and dealing with them, shall have the duty to 1) endeavour to identify soldiers at risk of suicide and acquire their personal details in observance of the Unit Management Directive and relevant regulations aimed at preventing soldiers from committing suicide; and 2) to take measures for managing appropriately soldiers who are identified to be at risk of suicide based on the diagnostic result of a psychiatric medical officer so as to prevent suicides and other accidents and help them recover their physical and mental health. Where a soldier under his/her command has committed suicide when measures necessary under the suicide-prevention regulations as stated above were not taken by the relevant personnel in the military unit, if the suicide was foreseeable and such measures could prevent

the suicide, unless there are special circumstances, the relevant personnel is deemed to have committed negligence in breach of his/her official duties, and thus the State is liable for damages under Article 2(1) of the State Compensation Act."

The Constitutional Court of Korea has not ruled on the constitutionality of suicide.

E. Lethal use of force during law enforcement

1. Legal norms concerning lethal use of force during law enforcement

The exercise of physical force to the point of serious or lethal injury during law enforcement usually occurs when police officers use lethal police equipment. It is prescribed by the Act on the Performance of Duties by Police Officers (hereinafter referred to as the "Act on Duties by Police Officers"), and its delegated Presidential Decree of "Regulations regarding Standards for Use of Lethal Police Equipment" (hereinafter referred to as "the Equipment Regulations") regulates the details.

a) Regulations before use

The kinds of lethal police equipment shall be prescribed by law (Article 10(6) of the Act on Duties by Police Officers and Article 2 of the Equipment Regulations). Before introducing new lethal police equipment, a safety inspection shall be conducted with participation by independent specialists to assess the impact on life and physical health and the inspection outcomes shall be submitted to the relevant standing committee of the National Assembly (Article 10(5) of the Act on Duties by Police Officers and Article 18-2 of the Equipment Regulations).

b) Regulations at the time of use

Police officers may use lethal police equipment after receiving necessary safety education and safety inspection (Article 10(1) of the Act on Duties by Police Officers, Articles 17 and 18 of the Equipment Regulations), and they shall not endanger life or inflict bodily harm by using equipment differently from how it is ordinarily used, by modifying police equipment without permission or attaching other equipment to police equipment (Article 10(3) of the Act on Duties by Police Officers).

The use of lethal police equipment shall be restricted to the necessary minimum (Article 10(4) of the Act on Duties by Police Officers). Articles 10-2 through 10-4 of the Act on Duties by Police Officers and Articles 6 through 16 of the Equipment Regulations prescribe detailed standards for use of police equipment

by type including police batons, electronic shockers, guns and water cannon vehicles. Among them, the table below shows the regulations related to water cannon vehicles.

Regulations on Standards for the Use of Lethal Police Equipment
Article 13-2 (Standards for the Use of Water Cannon Vehicles)
(1) Police officers may place and use water cannon vehicles according to the order of the chief of a provincial or city police agency, where the situation makes it impractical to eliminate or mitigate the danger with police equipment other than water cannon vehicles as it falls under any of the following items:
1. Where unrest poses a clear and direct threat to the legal interests of others and to public peace and order
2. Where an imminent risk arises from important national facilities designated under Article 21(4) of the United Defense Act being destroyed or suspending its functions by direct attack
(2) When operating the water cannon vehicles under Section 1, police officers shall fire water jets in accordance with the Standards for Water Pressure by Spray Distance as specified in Table (3). In this case, water jets shall be fired at the minimum range necessary to prevent causing serious damage to the life or body of a person.

[Table 3] The Standards for Water Pressure by Spray Distance
(concerning the first sentence of Article 13-2(2))

Spray Distance	Water Pressure
10 meters or less	3 bar or less
Above 10 meters to 20 meters	5 bar or less
Above 20 meters to 25 meters	7 bar or less
Above 25 meters	13 bar or less

(3) If police officers deem that it is impractical to eliminate or mitigate risks falling under any of the items in Section 1 by firing water jets in accordance with Section 2, they may fire water jets mixed with a solution of tear gas within the necessary minimum range according to the order of the chief of a provincial or city police agency. In this case, the procedures and methods for mixing water jets with a solution of tear gas shall be prescribed by the Commissioner General of the Korean National Police Agency.

c) Regulations after use

Where water cannon vehicles, spray guns, tear gas grenades, or weapons are used among lethal police equipment, a person responsible therefor shall make a record of the date, time, place, objects of use, person in charge of the scene, kinds, quantity, etc. and report it to the immediate supervisor and the immediate supervisor shall report it to the chief of a police agency. This record shall be kept for 3 years (Article 11 of the Act on Duties by Police Officers and Article 20 of the Equipment Regulations).

If a person is injured due to the use of lethal police equipment, medical aid and other necessary emergency measures shall be taken immediately (Article 21 of the Equipment Regulations). The State shall reasonably indemnify a person who suffers loss of life, bodily injury or loss of property due to the use of lethal police equipment if the person is not responsible for causing loss or the person responsible suffers such loss beyond the extent of his/her responsibility (Article 11-2(1) of the Act on Duties by Police Officers).

2. Constitutional adjudication on the issue of lethal use of force during law enforcement

a) Case on Using Water Cannons Containing Tear Gas Mixed with Water (2015Hun-Ma476, May 31, 2018)

The subject matter of review in this case was the conduct of the police spraying a water cannon containing a solution of tear gas mixed with water at the complainants who were demonstrators to disperse the demonstration (hereinafter referred to as "spraying a mixed solution").

The Constitutional Court deemed that "as the use of a water cannon to disperse assemblies or demonstrations poses a grave danger to the freedom of assembly and bodily freedom, the conditions and standards for the use of a water cannon should be based on statutes, and the use for lethal police equipment for purposes other than the designated purpose must be justified by law."

However, the method of spraying a mixed solution was solely based on the "Operation Manual on Water Cannons" which is not a statute but an internal rule of the police. Accordingly, the Court concluded that "the method of spraying a mixed solution is a new type of lethal police equipment not enumerated in statutes and there is no statute that delegates to the above Manual the authority to prescribe the legal grounds for using water cannons with mixed solutions.

Therefore, the Manual and the conduct of spraying a mixed solution solely based on the Manual violate the principle of statutory reservation and thus infringe upon the complainants' bodily freedom and the freedom of assembly."

Thereafter, the above Presidential Decree of the Equipment Regulations was amended on July 7, 2020 by adding Article 13-2 on standards for the use of water cannons. The added provision established legal grounds for using water cannons with mixed solutions (Section 3), specified the grounds for allowing the use of water cannons (Section 1) and provided for the standards for water pressure by spray distance (Section 2).

b) Case on Firing a Straight Jet of Water Directly at Demonstrators through Water Cannon (2015Hun-Ma1149, April 23, 2020)

The subject matter of review in this case was the conduct of the police operating a vehicle-mounted water cannon and firing a straight jet of water at the complainant, who was participating in a demonstration (hereinafter referred to as the "conduct of firing a straight jet of water"). At the time of the incident, when the complainant was pulling a rope attached to a police operations vehicle by himself separated from other demonstrators, a straight jet of water was being constantly fired directly at the head and other parts above his chest for 13 seconds. As a result, he was injured, went into a coma and died after being treated in a hospital for 10 months.

The Court noted that "in ordering the use of water cannon vehicles, the Respondents must ascertain the following information in order to accurately assess the situation at the scene: the size of the demonstration; tactics employed by demonstrators; presence of dangerous objects carried by demonstrators; presence of a violent clash between police and demonstrators; location of water cannon vehicles; distance between police and demonstrators; level of force used on demonstrators through water cannons; and presence of injuries caused by water cannons. Based on the information, they must next carefully examine whether demonstrators pose a clear and direct threat to the legal interests of others or to public peace or order and whether there is no alternative method of obviating the threat other than to fire a straight jet from a water cannon directly at demonstrators. If, as a result of the examination, it is found that there is a need to fire the jet directly at demonstrators, the Respondents must give specific instructions and safety recommendations on the firing, including details on its timing, range, distance, and direction as well as water pressure, in order to ensure that only a minimum level of force necessary to obviate the threat is employed. They must thereafter closely monitor the situation at the scene and must promptly

order a cessation of firing, change of water direction and pressure, or deployment of additional paramedical officers when the need for the firing terminates or when water cannons are being used in an excessive manner."

In light of the above, the Court found that "the conduct of the complainant did not pose a clear and direct threat to the legal interests of others or to public peace or order, and thus the necessity for the conduct of directly spraying a jet of water cannot be recognized." The Court went on state that "Rather, there was a need for the Respondents to order the cessation of the excessive use of the water cannon, change of water direction and pressure, or deployment of additional paramedical officers, as straight jets from water cannons which had been constantly fired directly at demonstrators' body parts above their chests were likely to inflict harm against demonstrators. Moreover, because an additional water cannon vehicle was urgently deployed to the scene in a rainy evening, the water cannon operators inside it had neither sufficient time nor adequate visibility to grasp the situation at the scene. Further they could not delicately manipulate the movement of the water cannon mounted on that vehicle because a lever controlling its left or right movement was malfunctioning, and they could not easily regulate the force of the water jet because a device restricting water pressure was also malfunctioning. Nevertheless, after deploying that vehicle, the Respondents including the Commissioner of the police agency simply ordered the water cannon to be used on demonstrators without properly assessing the situation at the scene, which ended up causing the death of the complainant. Therefore, the conduct of directly spraying a jet of water infringed the complainant's right to life and freedom of assembly by violating the rule against excessive restriction."

F. Other issues: Creation, storage and disposal of embryos

1. Constitutional adjudication on the issue of creation, storage and disposal of embryos

The Constitutional Court reviewed the provisions of the Bioethics and Biosafety Act which prescribe five years of embryo storage period and require disposal of all embryos after the storage period except for those that are to be utilized for the purpose of research aimed at curing rare or currently incurable diseases and infertility treatments (2005Hun-Ma346, May 27, 2010). The complainants were embryo creators who offered sperms or eggs to produce embryos for the purpose of pregnancy, and the embryos they created.

With regard to the request of constitutional review on embryos, the Constitutional

Court denied the complaint on the grounds that "Because early embryos are fertilized eggs, it would be possible to say that they took the first steps in the life formation process. However, at the contemporary level of scientific knowledge, it is hard to affirm the continuity of the entity from embryos to an independent human, unless they are implanted into a mother's womb or the embryological primitive streaks appear. Given the contemporary level of technological development, an embryo can be expected to develop into a human entity only after being implanted into a woman's womb. Moreover, there seems no social recognition that such early human embryos are regarded or should be treated as a human entity. Considering all the facts above, early human embryos created for artificial fertility treatments do not possess fundamental rights under the Constitution."

Concerning the request of constitutional review on embryo creators, while the Constitutional Court acknowledged that "embryo creators are those who provide parts of their bodies which contain their own genetic information and are expected to acquire the status of biological parents if the embryo is successfully implanted into the mother's womb and then born as a human being. Therefore, they have the right to self-determination regarding the management and disposal of the embryo. An embryo creator's right to self-determination is a constitutional fundamental right as a type of general personality right derived under Article 10 of the Constitution," it found that "Restriction on the right, however, is highly necessary, considering that the peculiar status of an embryo, as a developing life, requires active protection by the state, and that the management and disposal of embryos necessarily require evaluation in light of public welfare and socio-ethical values. The Provisions on Storage and Disposal of Embryos do not infringe on the embryo creators' right to self-determination, considering that remaining embryos are inevitably produced as it is usual practice to produce multiple fertilized eggs in the process of in vitro fertilization; and that it is necessary to decrease social costs caused by the increased number of remaining embryos and to prevent the remaining embryos from being used for improper research purposes."

2. Legal norms regulating the creation, storage, and disposal of embryos

The relevant provisions regarding the creation, storage and disposal of embryos in the Bioethics and Safety Act are as follows:

Bioethics and Safety Act
Article 2 (Definitions) The definitions of the terms used in this Act are as follows:

3. The term "embryo" means a fertilized human egg or a group of cells divided from the moment of fertilization at the point of time at which all organs of the given organism have developed in the embryo logically;
4. The term "residual embryo" means an embryo remaining after embryos produced as a consequence of in vitro fertilization are used for pregnancy;
Article 23 (Obligations regarding Production of Embryos)
(1) No person shall produce an embryo for any purpose other than pregnancy.
(2) No person shall conduct any of the following acts in producing an embryo:
1. Selecting an egg and sperm for fertilization with intent to choose a particular sex;
2. Fertilizing with a decedent's egg or sperm;
3. Fertilizing with a minor's egg or sperm: Provided, That cases where a married minor attempts to fertilize in order to have a child shall be excluded herefrom.
(3) No person shall provide or utilize embryos, sperms or eggs, or induce or assist in providing or utilizing them for the purpose of receiving monetary benefits, property interests or other personal benefits in return.
Article 25 (Storage and Disposal of Embryos)
(1) The storage period of embryos shall be five years: Provided, That if the period set by a person with the right to consent is less than five years, embryos shall be stored only for such period.
(2) Notwithstanding section (1), a person with the right to consent may extend the storage period beyond five years in cases specified by Ordinance of the Ministry of Health and Welfare, such as an anticancer therapy.
(3) An embryo-producing medical institution shall discard embryos that will not be used for the purpose of research under Article 29, among embryos for which the storage period set under section (1) or (2) ends.
Article 29 (Residual Embryos Research)
(1) A residual embryo for which the storage period set under Article 25 ends may be used in vitro for any of the following purposes of research only before the primitive streak appears during embryonic development:
1. Research for the development of therapies for infertility and technology for contraception;
2. Research on therapies for muscular dystrophy or other rare or incurable diseases specified by Presidential Decree;
3. Research specified by Presidential Decree after deliberation by the National Committee.

III. Expansive interpretations

A. Socio-economic dimensions

As noted above, the Constitution of Korea does not contain an express provision on the right to life. However, there are express provisions regarding the right of human worth and dignity (the first sentence of Article 10), personal liberty (the first sentence of Article 12(1)) and the right for a life worthy of human beings (Article 34(1)). Therefore, in constitutional practice, there is little need to interpret these rights in conjunction with the socio-economic aspects of the right to life. However, the Constitutional Court held that the right to life is "one of the most essential fundamental rights functioning as the prerequisite for all fundamental rights guaranteed under the Constitution" (95Hun-Ba1, November 28, 1996; 2017Hun-Ba127, April 11, 2019; 2015Hun-Ma1149, April 23, 2020). Accordingly, the socio-economic aspects of the right to life could be interpreted, on a case-by-case basis, as the prerequisite or the basis for all constitutional rights such as "human dignity and worth" and the "right for a life worthy of human beings." In this regard, the following section introduces two decisions rendered by the Constitutional Court, one concerning whether the 2002 minimum cost of living publicly notified by the Minister of Health and Welfare infringed upon the right to a life worthy of human beings of the complainants who are a disabled household (2002Hun-Ma328, October 28, 2004) and the other concerning whether the overcrowded confinement in correctional facilities infringed upon human dignity and worth of inmates (2013Hun-Ma142, December 29, 2016).

1. Case on Minimum Cost of Living (2002Hun-Ma328, October 28, 2004)

The complainants, who live together as a family consisting of a person with a disability and a person without a disability, were selected as the recipients of livelihood benefits under the National Basic Living Security Act. They filed the request of a constitutional complaint arguing that the minimum cost of living for the year 2002 publicly notified by the Minister of Health and Welfare did not take into account the additional expenses incurred due to disability and thus infringed upon the complainants' right to life worthy of human beings.

The Constitutional Court viewed that "The right to lead a life worthy of human beings guaranteed under Article 34(1) of the Constitution is a fundamental social right necessary to maintain the minimum material needs for a life worthy of human beings, and such a right is the statutory right that can only be recognized when they are concretized through legislation enacted in consideration of various

circumstances including national financial conditions."

Further, the Court held that the constitutionality of the subject matter shall be reviewed based on "whether other national institutions, i.e. the legislature or the executive, took the minimum measures objectively necessary for the people to lead a life worthy of human beings." Given that disabled households receive additional support compared to non-disabled households such as medical expense which is an item subject to governmental support for the minimum cost of living, thanks to various benefits and relief packages provided by laws and governmental policies, the minimum cost of living announced for the year 2002 cannot be deemed that the State has failed to fulfil its duty to objectively guarantee a minimum level of life worthy of human dignity.

2. Case on Overcrowded Detention Centers (2013Hun-Ma142, December 29, 2016)[271]

The Constitutional Court viewed that "overcrowded confinement in detention facilities leads to poor hygienic conditions and a higher possibility of transmission of diseases among inmates. Such an insufficient environment and condition for reformation and edification adversely affects the maintenance of order in correctional facilities, ultimately undermining the ultimate goal of correction which is the resocialization of inmates."

Accordingly, the Court held that "In judging whether the complainant's human dignity and worth have been infringed upon by being confined in correctional facilities lacking the basic requirements needed for human survival, it is necessary to consider, in addition to the confinement space available per person, various circumstances including the overall operation of the confinement facilities, for instance the number of convicted prisoners and prison wards; living conditions of convicted prisoners; the period of confinement; presence of amenities for visit, exercise and others; the cost of confinement; and national budget issues, among others. However, if the confinement space available per person in the correctional facility is excessively small, so as to make it difficult for the convicted prisoner to have the basic needs of a human being, then this exceeds the limitations on the exercise of a state's authority to punish and in itself is an infringement of the human dignity and worth of the convicted prisoner." As the confinement space provided per person is insufficient for a Korean male adult of average height of around 174 cm to comfortably stretch his limbs, the convicted prisoner "experiences severe distress of physical or mental health, or deprivation of the

271 Thirty Years of the Constitutional Court of Korea, p. 620.

requirements needed for the basic activities of a human being," infringing upon the human dignity and worth of the complainant.

B. Environmental dimensions

Constitution
Article 35
(1) All citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.
(2) The substance of the environmental right shall be determined by Act.

Framework Act on Environmental Policy
Article 2 (Basic Idea)
(1) The State, local governments, business entities and citizens shall ensure that the current generation of citizens can fully enjoy environmental benefits and future generations will continue to enjoy such benefits by endeavoring to maintain and create a better environment, by considering environmental preservation first while engaging in any activities utilizing the environment and by combining their efforts to prevent any environmental harms on the earth, such as climate changes, in view of the fact that the creation of a delightful environment through a qualitative improvement and preservation of the environment and the maintenance of harmony and balance between human beings and the environment therethrough are indispensable elements for citizens' health and enjoyment of a cultural life, for the maintenance of the territorial integrity and for the everlasting development of the nation.
(2) The State and local governments shall endeavor to realize environmental justice by ensuring all citizens' substantial participation in the enactment or amendment of environmental statutes, regulations, ordinances and rules or the formulation or implementation of policies, access to information about environment, equitable sharing of environmental benefits and burdens, and fair compensation for losses caused by environmental pollution or environmental damage.

Since the Constitution of Korea prescribes the right to environment in Article 35(1), there is not much need in judicial practice for considering the right to life

from an environmental perspective. Superior courts including the Constitutional Court and the Supreme Court have also yet to review the right to life from an environmental aspect. However, a constitutional complaint arguing that the Framework Act on Low Carbon, Green Growth regarding the total amount of national GHG emissions infringed upon the right to environment and the right to life (2020Hun-Ma389 and 2020Hun-Ma1516), and a constitutional complaint of a similar nature requesting the review of the Framework Act on Carbon Neutrality and Green Growth for Coping with the Climate Crisis (2021Hun-Ma1264) are currently pending before the Constitutional Court.

C. Other expansive dimensions

The Supreme Court has recently mentioned children's right to life in its decision on the right to birth registration (Supreme Court Decision 2020Seu575 decided on June 8, 2020). Under the former "Act on Registration for Family Relations" which regulates the procedures for birth registration, when the mother's personal information is unverifiable as is the case where the mother of a child born disappeared after childbirth and thus her whereabouts is unknown, it was difficult to file a report of birth of the child. The amended "Act on Registration for Family Relations" enacted to guarantee the right to life of the children who exist in the world but do not exist on paper added a provision that enables the natural father of the child to file a report of birth by obtaining confirmation from the Family Court "where personal information of the mother is unverifiable."

In the case where the interpretation of the above provision was at issue, the Supreme Court held that "If the State does not accept the birth registration of a child born as a national of the Republic of Korea, or it is difficult for the child's birth to be registered because of complicated procedures and prolonged processing duration, this is to infringe human worth and dignity, the right to pursuit of happiness, and the right to personality of the child by depriving the child of an opportunity to acquire social status (Article 10 of the Constitution). In modern society, social status such as resident registration ought to be prepared in order for an individual to use the system operated by the State, and the acquisition of social status starts from an individual's birth registration. A child born as a Korean national has 'the right to birth registration' immediately after birth. Such right is a fundamental human right that underlies the protection of all fundamental rights as 'the right to be recognized as a human before the law,' and thus cannot be restricted or violated even by Act."

Annex 1: List of cited legal provisions

1) Constitutional provisions

Constitution of Korea (last amended 29. Oct, 1987)

- Article 10
- Article 10(2)
- Article 12(1)
- Article 34(1)
- Article 35(1)
- Article 37(2)
- Article 110(4)

2) Legislative provisions

Act on the Performance of Duties by Police Officers (amended 24. Dec, 2018)

- Article 10, 10-2, 10-3, 10-4, 11, 11-2(1)

Act on the Prevention of Suicide and the Creation of Culture of Respect for Life (amended 7. Apr, 2020)

- Articles 2-2(iii), 3, 4, 19(1), 25(3)

Act on Hospice and Palliative Care and Decisions on Life-sustaining Treatment for Patients at the End of Life (amended 7. Apr, 2020)

- Articles 2(i) 15, 17, 18, 19(1)

Administration and Treatment of Correctional Institution Inmates Act (amended 4. Feb, 2020)

- Article 91(1)

Bioethics and Safety Act (amended 23. Apr, 2019)

- Article 2(iii), (iv), 23, 25, 29(1)

Criminal Act (amended 8. Dec, 2020)

- Article 41(1), 66, 250(1), (2), 252(1), (2), 269(1), (2), 270(1), (2)

Criminal Procedure Act (amended 8. Dec, 2020)

- Article 33(1)(vi), 282, 349, 465(1), 466, 467(1), 469

Framework Act on Environmental Policy (amended 29. Dec, 2020).

- Article 2(1)

Juvenile Act (amended 18. Sep, 2018)
- Article 59

Mother and Child Health Act (amended 24. Mar, 2020)
- Articles 14(1), 28

Military Criminal Act (amended 29. May, 2016)
- Article 3, 53(1)

3) International provisions

International Covenant on Civil and Political Rights (ICCPR)
- Article 6

Convention on the Rights of the Child (CRC)
- Article 37

4) Other

Regulations on Standards for the Use of Lethal Police Equipment (amended 7. Jan, 2021)
- Article 2, 6, 7, 8, 9, 10, 12, 13, 13-2, 14, 15, 16, 17, 18, 18-2, 20, 21

Annex 2: List of cited cases

Constitutional Court

1. 95Hun-Ba1, November 28, 1996
2. 2000Hun-Ba20, September 27, 2001
3. 2002Hun-Ma328, October 28, 2004
4. 2006Hun-Ka13, November 29, 2007
5. 2004Hun-Ba81, July 31, 2008
6. 2008Hun-Ma419, December 26, 2008
7. 2008Hun-Ma385, November 26, 2009
8. 2008Hun-Ka23, February 25, 2010

9. 2005Hun-Ma346, May 27, 2010
10. 2010Hun-Ba402, August 23, 2012
11. 2013Hun-Ma142, December 29, 2016
12. 2015Hun-Ma476, May 31, 2018
13. 2017Hun-Ba127, April 11 2019
14. 2015Hun-Ma1149, April 23, 2020

Supreme Court

1. 2009Da17417, May 21, 2009 (en banc)
2. 2015Do12980, February 19, 2016 (en banc)
3. 2020Seu575, June 8, 2020
4. 2017Da211559, May 28, 2020

7. Kyrgyz Republic

Constitutional Court

Overview

In accordance with Article 25 of the Constitution, everyone in the Kyrgyz Republic has an inalienable right to life. The Kyrgyz Republic is a state party to the International Covenant on Civil and Political Rights (ICCPR) as well as the two Optional Protocols to the ICCPR. The Kyrgyz Republic acceded to the Second Optional Protocol in 2010. In the same year, the death penalty was prohibited via amendment to Article 21 of the Constitution of the Kyrgyz Republic. In terms of abortion, it can be carried out at the request of a woman within the period of not more than 12 weeks, but certain exceptions may apply beyond this time limit. Legislation prohibits medical personnel from performing euthanasia, violation of such prohibition will result in criminal liability. The incitement and inducement to suicide are also criminalized. In relation to the use of force by public authorities, provisions in the Law "On serving in law enforcement bodies of the Kyrgyz Republic" are of particular relevance. Also, provisions in the Criminal Code regulate the criminal prosecution of police officials. In terms of socio-economic aspects that implement the right to life and development of citizens, these are provided for in Chapters II and IV of the Constitution, respectively dealing with "Socio-economic foundations of the constitutional order" and "Economic and social rights." The Constitution also provides for environmental aspects that implement the right to life and development of citizens, such as in Articles 16.2 and 49.1, dealing with issues of preserving a unified ecological system, sustainable development, and a favorable ecological environment.

Outline

I. Defining the right to life

A. Recognition and basic obligations

In accordance with the provisions of Article 25 of the Constitution of the Kyrgyz Republic, everyone in the Kyrgyz Republic has an inalienable right to life. Encroachment on personal life and health shall not be permitted. No one shall be arbitrarily deprived of life. The death penalty shall be prohibited. Everyone shall have the right to defend his life and health and the lives and health of others against unlawful encroachments, within the limits of necessary defense (Section Two. Human and civil rights, freedoms and duties. Chapter II. Individual rights and freedoms).

The Kyrgyz Republic has ratified the following international instruments, which are especially relevant to the right to life:

- UN Universal Declaration of Human Rights, 1948;
- International Covenant on Civil and Political Rights, 1966;
- International Covenant on Economic, Social and Cultural Rights, 1966;
- Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 1995;
- Convention on Standards of Democratic Election, Voting Rights and Freedoms in the Member States of the Commonwealth of Independent States, 2002;
- Commonwealth of Independent States Convention on providing the rights of persons belonging to ethnic minorities, 1994;
- Agreement on cooperation in addressing problems related to disability and disabled persons, 1996;
- The safeguards agreement of the rights of citizens in the field of payment of social benefits, compensation payments to families with children and the alimony, 1994;
- Agreement concerning the defense of participants in criminal proceedings, 2006;

- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989.

For example, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic (now the Constitutional Court of the Kyrgyz Republic), in its decision dated February 24, 2021, noted that, as follows from the provisions of the Universal Declaration of Human Rights (Article 3) and the International Covenant on Civil and Political Rights (Article 9) the right of everyone to life, liberty and personal integrity is inalienable, belongs to everyone from birth and is one of the fundamental human rights and freedoms.

Commitment to the observance of this right as the most significant social benefit has received international legal recognition, without which the dignity and value of the human person and the democratic, legal structure of society and the state are inconceivable.

In accordance with the provisions of the Constitution, everyone has the inalienable right to life. Encroachment on personal life and health shall not be permitted.

B. Constitutional status

In accordance with the provisions of Article 25 of the Constitution of the Kyrgyz Republic, everyone in the Kyrgyz Republic has an inalienable right to life. Encroachment on personal life and health shall not be permitted. No one shall be arbitrarily deprived of life. The death penalty shall be prohibited. Everyone shall have the right to defend his life and health and the lives and health of others against unlawful encroachments, within the limits of necessary defense.

The Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, in its decision dated March 10, 2021, noted that the right to life is a basic, inalienable, natural personal right of a person acquired by him by virtue of his birth. The constitutional content of this right is that the priority task of the state and all its bodies is to ensure the inadmissibility of arbitrary deprivation of human life or the threat thereof.

In this regard, the intention of the legislator in establishing procedures to guarantee the right to life is obvious. Saving lives and preserving human health are of the utmost importance, and therefore need to be carefully considered when comparing them to other tasks of the state in the sphere of organizing public life.

C. Rights holders

The legislation of the Kyrgyz Republic provides for the birth of a child, its registration with the execution of relevant documents (birth certificates).

Artificial termination of pregnancy (abortion) under certain conditions is carried out at the request of a woman or with her consent, as well as for medical reasons.

The right to life does not extend to rights holders other than human beings.

D. Limitations: General considerations

The Constitutional Court of the Kyrgyz Republic establishes and decides exclusively questions of law. Checking the constitutionality of the challenged normative legal act, the Court reviews the act's compliance with the Constitution of the Kyrgyz Republic in terms of:

- the content of the norms;
- the form of a regulatory legal act;
- the order of adoption, signing, publication and entry into force.

II. Limitations: Key issues

A. Capital punishment

In accordance with the provisions of Article 25 of the Constitution of the Kyrgyz Republic, the death penalty shall be prohibited. The death penalty is abolished in the Kyrgyz Republic.

Initially, the death penalty as a form of punishment for especially grave crimes was provided for by Article 18.4 of the Constitution of the Kyrgyz Republic of May 5, 1993, where the death penalty could be imposed only in exceptional cases by a court verdict, and everyone sentenced to death has the right to apply for pardon.

Accordingly, Article 50 of the Criminal Code of the Kyrgyz Republic of October 1, 1997 and up to June 25, 2007 provided for the death penalty as an exceptional measure of punishment only for especially grave crimes related to encroachment

on life. At the same time, the death penalty is not applied to minors and women.

Then, one year later, by Decree of the President of the Kyrgyz Republic of December 4, 1998 No. 369 "On measures related to the 50th anniversary of the Universal Declaration of Human Rights" established a moratorium on the execution of court sentences in relation to persons sentenced to an exceptional measure of punishment – the death penalty, for a period of two years, that is, until December 4, 2000.

Further, this period was extended by decrees of the President of the Kyrgyz Republic dated January 11, 2000 No. 6, February 24, 2002 No. 61, May 31, 2003 No. 172, January 10, 2005 No. 4 with a frequency of extension for a period of one year.

Decree of the President of the Kyrgyz Republic dated December 29, 2005 No. 667 extended the moratorium from January 1, 2006 until its complete abolition by law.

As part of measures to humanize criminal legislation, the death penalty was replaced by life imprisonment by the Law of the Kyrgyz Republic dated June 25, 2007 No. 91.

The Constitution of the Kyrgyz Republic as amended on October 23, 2007 (Article 14) established that in the Kyrgyz Republic every person has an inalienable right to life. No one can be deprived of life. At the same time, provisions on the death penalty were excluded from this version of the Constitution.

According to the Law of the Kyrgyz Republic dated March 16, 2010, the Kyrgyz Republic acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

Article 21 of the Constitution of the Kyrgyz Republic, as amended on June 27, 2010, provided that the death penalty was prohibited.

The current version of the Constitution of the Kyrgyz Republic, which entered into force on May 5, 2022, established that everyone has an inalienable right to life. Encroachment on personal life and health shall not be permitted. No one shall be arbitrarily deprived of life. The death penalty shall be prohibited.

B. Abortion

In accordance with the provisions of Article 16 of the Law of the Kyrgyz Republic "On the reproductive rights of citizens and guarantees for their implementation" dated July 4, 2015, artificial termination of pregnancy (abortion) for a period of not more than 12 weeks is carried out at the request of a woman. For social indications,[272] artificial termination of pregnancy can be performed up to 22 weeks with the consent of the woman, and for medical reasons - regardless of the duration of pregnancy.

There has not been any relevant constitutional adjudication on the issue of abortion.

C. Euthanasia

In the Kyrgyz Republic, the concept of euthanasia and its legal prohibition are established by the laws of the Kyrgyz Republic "On the protection of public health in the Kyrgyz Republic" (Articles 2 and 40) and "On the status of a medical worker" (Article 18).

Thus, Article 2 of the Law of the Kyrgyz Republic "On the protection of public health in the Kyrgyz Republic" determines that euthanasia is the voluntary death, with the approval of a doctor, of the incurable patient by means of special anesthetics, including the terminations of artificial measures for maintenance of life.

Article 40 of the same Law prohibits medical personnel from performing euthanasia – satisfying the patient's request to hasten his death by any actions or means, including the termination of artificial life-sustaining measures.

A person who deliberately induces a patient to euthanasia and (or) performs euthanasia shall bear criminal liability in accordance with the legislation of the Kyrgyz Republic.

Criminal liability for violation of this prohibition is provided for in Article 126 of the Criminal Code of the Kyrgyz Republic (imprisonment for up to six years).

272 List of social indications for artificial termination of pregnancy approved by the Resolution of the Government of the Kyrgyz Republic dated August 14, 2009 No. 522.

There has not been any relevant constitutional adjudication on the issue of euthanasia.

D. Suicide and assisted suicide

In the Kyrgyz Republic, incitement to suicide and inducement to suicide are prosecuted and criminalized in accordance with Articles 128 and 129 of the Criminal Code of the Kyrgyz Republic, with criminal liability up to six years imprisonment.

Thus, Article 128 of the said Code provides for a number of sanctions for incitement to suicide.

For threats of the use of violence dangerous to life and health, cruel treatment or humiliation of the personal dignity, which through negligence caused the victim to commit suicide or attempt to commit suicide, the guilty person shall be punished for a term up to six years imprisonment.

The same act towards a person materially or in other ways dependent on the offender, or against a child, as well as through the use of telecommunications networks, including the Internet, are punishable by imprisonment for a term of six to eight years, with or with no revocation of the right to hold certain position or be engaged in certain activities for up to three years.

Threats to use violence endangering the life and health of a person, cruel treatment or humiliation of the personal dignity of a person, committed with the aim of driving a person to suicide, which caused the victim to commit suicide, - shall be punishable by imprisonment for a term of eight to ten years, with or with no revocation of the right to hold certain positions or be engaged in certain activities for up to three years.

Under Article 129 of the above-mentioned Code, inducement to suicide, raising another person’s determination to commit suicide by persuasion, deception or in any other way, which caused the victim to commit suicide or attempt to commit suicide, is punishable by imprisonment for a term of up to six years.

There has not been any relevant constitutional adjudication on the issue of suicide.

E. Lethal use of force during law enforcement

The legislation of the Kyrgyz Republic provides for measures to prevent arbitrary deprivation of the life of citizens by law enforcement officials.

In particular, in relation to the law-enforcement bodies, it can be noted that their activities in this regard are regulated by the Law of the Kyrgyz Republic "On serving in law enforcement bodies of the Kyrgyz Republic" and other laws.

Thus, Article 55-58 of the said law provides that an employee or the head of a unit (group) is obliged to report in writing to the head of the relevant body at the place of his service or to the authorized head at the place of use within 24 hours about each fact of the use of physical force, special means, weapons, ammunition and military equipment from the moment of application.

For each fact of death as a result of the use of physical force, special means, weapons, ammunition and military equipment by an employee, the authorized head shall notify the territorial body of the prosecutor's office within 24 hours.

All the facts are being investigated by law enforcement officials authorized to conduct official investigations.

If, during an internal investigation, violations of the procedure for the use of physical force, special means, weapons, ammunition and military equipment provided for by law are established, a copy of the report is sent to the territorial body of the prosecutor's office at the place of use of physical force, special means, weapons, ammunition and military equipment to give legal assessment of established violations.

In the event of an appeal against the report of an internal investigation conducted by authorized officials of law enforcement bodies, further consideration of this fact is carried out by the prosecutor's office at the place of use of physical force, special means, weapons, ammunition and military equipment.

The decision of the prosecutor's office shall be appealed in the prescribed manner through the court.

In case of establishing the fact of violation of the procedure for the use of physical force, special means, weapons, ammunition and military equipment provided for by law, depending on the consequences that have occurred, the employee is liable in accordance with the Disciplinary Statute of law enforcement bodies and the

legislation of the Kyrgyz Republic about offenses and crimes.

For example, with Articles 337 and 338 of the Criminal Code of the Kyrgyz Republic (respectively dealing with the abuse of official position and excess of power by officials, including police authorities) regulate the criminal prosecution of police officials.

Thus, use by an official of his powers, contrary to the interests of the civil service, which intentionally or negligently caused serious harm - is punishable by a fine of 10,000 to 20,000 calculated indicators[273] or imprisonment for a term of five to eight years with confiscation of property, with deprivation of the right to hold certain positions or engage in certain activities for up to three years.

In case of excess of power, i.e. commission by an official or by his order, with his knowledge or consent of actions that go beyond his powers or connected with the use of violence, the use of weapons or special means, with the infliction of grievous harm, is punishable by a fine of 5,000 to 10,000 calculated indicators or imprisonment for a term of two to five years with confiscation of property, with deprivation of the right to hold certain positions or engage in certain activities for up to three years.

There has not been any relevant constitutional adjudication on the above issues.

III. Expansive interpretations

A. Socio-economic dimensions

In the Constitution of the Kyrgyz Republic, Chapters II “Socio-economic foundations of the constitutional order” (Articles 15-20) and IV “Economic and social rights” (Articles 40-50) provide for socio-economic aspects that implement the right to life and development of citizens.

Thus, Article 15 of the Constitution of the Kyrgyz Republic, in particular, provides that property is inviolable, no one shall be arbitrarily deprived of their property. The right of inheritance is guaranteed.

273 1 calculated indicator = 100 Kyrgyz soms

The seizure of property against the will of the owner is allowed only by a court decision in accordance with the procedure established by law.

Article 16 of the Constitution of the Kyrgyz Republic establishes that land and natural resources are used as the basis of life and activity of the people of the Kyrgyz Republic.

Article 19 of the Constitution of the Kyrgyz Republic stipulates that the state takes care of the welfare of the people and their social protection.

Article 20 of the Constitution of the Kyrgyz Republic determines that the family is the foundation of society. Family, fatherhood, motherhood and childhood are under the protection of society and the state.

Articles 41-42 of the Constitution of the Kyrgyz Republic establish that everyone has the right to economic freedom, free use of their abilities and their property for any economic activity not prohibited by law.

Everyone has the right to freedom of labor, the right to dispose of their abilities to work, to choose a profession and occupation, the right to protection and working conditions that meet health and safety requirements, and the right to receive wages not lower than the subsistence minimum established by law. Everyone has the right to rest.

Articles 43-44 of the Constitution of the Kyrgyz Republic provide that everyone has the right to health care and medical insurance, and in the manner and cases provided for by law, social security shall be guaranteed in the Kyrgyz Republic at the expense of the state in old age, in the event of illness, loss of the ability of work, loss of a breadwinner, and disability.

Articles 45-46 of the Constitution of the Kyrgyz Republic stipulates that everyone has the right to housing and education.

Article 49 of the Constitution of the Kyrgyz Republic establishes that everyone has the right to an ecological environment favorable for life and health, and everyone shall have the duty to protect and care for the natural environment, flora and fauna.

In the development of the above constitutional norms, the following laws of the Kyrgyz Republic, amongst others, have been adopted:

- "On the protection of the health of citizens in the Kyrgyz Republic"

- "On the reproductive rights of citizens and guarantees for their implementation"
- "On environmental protection"
- "On the protection of atmospheric air"
- "On protection of the ozone layer"
- "On the protection and use of flora"
- "On labor protection"

There has not been any relevant constitutional adjudication on the above issues.

B. Environmental dimensions

In the Constitution of the Kyrgyz Republic, Article 16.2 and Article 49.1 provide for environmental aspects that implement the right to life and development of citizens. These include the preservation of a unified ecological system and sustainable development, favorable ecological environment.

There has not been any relevant constitutional adjudication on the above issues.

C. Other expansive dimensions

The main aspects of the right to life are provided for in the above Articles of the Constitution of the Kyrgyz Republic and have been further developed in the relevant laws of the Kyrgyz Republic.

Examples include the Criminal Code and the Water Code, the laws of the Kyrgyz Republic already mentioned above "On the protection of the health of citizens in the Kyrgyz Republic", "On the reproductive rights of citizens and guarantees for their implementation", "On environmental protection", "On the protection of atmospheric air", "On the protection of the ozone layer", "On the protection and use of flora", "On labor protection" and others.

Annex 1: List of cited legal provisions

1) Constitutional provisions

The Constitution of the Kyrgyz Republic as amended on May 5, 2021
- Article 16(2)
- Articles 15-20
- Article 25
- Articles 49
- Articles 40-50

Constitution of the Kyrgyz Republic as amended on June 27, 2010
- Article 21

Constitution of the Kyrgyz Republic as amended on May 5, 1993
- Article 18(4)

2) Legislative provisions

Constitutional Law of the Kyrgyz Republic "On the Constitutional Court of the Kyrgyz Republic" dated November 15, 2021
- Article 17(2)

Criminal Code of the Kyrgyz Republic of October 28, 2021
- Article 126
- Article 128
- Article 129
- Article 337
- Article 338

Criminal Code of the Kyrgyz Republic dated October 1, 1997
- Article 50

Law of the Kyrgyz Republic "On the reproductive rights of citizens and guarantees for their implementation" dated July 4, 2015
- Article 16

Law of the Kyrgyz Republic "On the protection of the health of citizens in the Kyrgyz Republic" dated January 9, 2005
- Article 2

- Article 40

Law of the Kyrgyz Republic "On the status of a medical worker" dated May 28, 2013

- Article 18

Law of the Kyrgyz Republic "On service in law enforcement agencies of the Kyrgyz Republic" dated July 25, 2019

- Articles 55-58

3) International provisions

Universal Declaration of Human Rights 1948

- Article 3

International Covenant on Civil and Political Rights 1966

- Article 9

Annex 2: List of cited cases

1. Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic dated February 24, 2021.
2. Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic dated March 10, 2021.

8. Malaysia

Federal Court

Overview

The right to life in Article 5(1) of the Federal Constitution (FC) is one of the fundamental rights guaranteed by the Constitution. The right to life is not absolute, since it may be limited 'in accordance with law'. Yet this proviso found in Article 5(1) has been interpreted to mean that law enacted by the Parliament that has the effect of depriving life and liberty must not be contrary to the rule of law and the FC. Even though capital punishment remains a legitimate form of punishment for serious criminal offences, since July 2018 the Government has declared a moratorium on death penalty executions. Abortion is illegal in Malaysia, punishable under Chapter XVI of the Penal Code. However, a medically-related exception is found under section 312 of the Code. In Malaysia, euthanasia is prohibited and an attempt to commit suicide is still regarded as a criminal offence. In terms of the use of force by government authorities during law enforcement, an example of relevant legislation is the Police Act 1967. Another important legal source is section 15 of the Criminal Procedure Code, which governs the law on arrest. Regarding expansive dimensions of the right to life, the minority's decision in *Letitia* gave recognition to the meaning of 'life' under Article 5(1) of the FC to encompass various essential aspects of life ranging from the rudimentary needs of livelihood, education, and locomotion to the more advanced aspects of life. The application of these elements have been developed in subsequent adjudication. Within the environmental context, although a specific right to a healthy environment is absent from the FC, matters affecting the environment are regulated by the Environmental Quality Act 2012.

Outline

I. Defining the right to life

A. Recognition and basic obligations

The right to life is one of the many components of human rights.[274] Previous literatures referred to early religious and philosophical writings on matters relating to human rights. Some of the early writings in the history of human rights claimed that human beings are endowed with certain fundamental and inalienable rights because of their humanity.[275] One must, however, bear in mind that the right to life does not mean that the state has to keep any person alive indefinitely. At its core, the right to life prohibits unjustified killing by the state. However, contemporary interpretations of the right to life have expanded the scope of the right to life beyond the minimum threshold and are no longer limited to unjustified killings. A state is expected to perform positive duties to safeguard the lives of its subjects.[276] A liberal interpretation of the word 'life' has expanded the meaning beyond the act of breathing and living. It includes the right to live with human dignity and enjoy the quality of life.

The first international document that confers a formal recognition of the right to life is the Universal Declaration of Human Rights (UDHR). The UDHR was adopted by the General Assembly of the United Nations on 10 December 1948, shortly after the end of the Second World War. The enumeration of human rights was not simply frozen by the proclamation made in 1948. Instead, numerous treaties and intergovernmental declarations have supplemented the UDHR.[277] In this regard, the elevation of human rights to the international level after World War II demonstrates that all forms of behaviour can be judged not only against what the national law requires but also against the standards that reside outside

274 L. Dragne, 'The right to life-a fundamental human right' (2013) 2(2) *Social Economic Debates*, p 1.

275 A. Clapham, *Human Rights A very Short Introduction*, Oxford University Press, Great Clarendon Street, Oxford, UK, 2015, p 3.

276 E. Wicks, 'The Legal Definition of Death and the Right to Life' in *Interdisciplinary Perspectives on Mortality and Its Timings: When is Death?* S. McCorristine (ed.), Palgrave Macmillan, London, p 124.

277 A. Clapham, *Human Rights A very Short Introduction*, Oxford University Press, Great Clarendon Street, Oxford, UK, 2015, p 3.

a national system. In other words, every nation-state is subject to be scrutinised. Article 3 of the UDHR specifically confers the right to life, liberty and security of a person. The central tenets of the right to life have become the fundamental feature of most constitutions worldwide. The right to life permits individuals to rejoice in all other forms of rights and freedom guaranteed by the constitution.[278] At this juncture, it is cogent to proffer that the Federal Constitution (FC) corresponds to the international standard as it echoes the ethos of Article 3 of the UDHR.

Before delving further into the subject matter of this writing, it would be convenient to appraise the historical background of the FC in brief. In January and February 1956, the Federation of Malaya Constitutional Conference was convened in London. An agreement was reached that self-government and independence within the Commonwealth should be proclaimed by August 1957. It was also concluded that a Commonwealth Constitutional Commission (CCC) should be appointed to make recommendations for a Constitution for the Federation of Malaya. On 7 March 1956, by virtue of the Federation of Malaya White Paper No. 15 of 1956, Her Majesty the Queen of England approved the appointment of the CCC to make recommendations to form a constitution for the Federation of Malaya.[279] The CCC was intended to be a small quorum nominated by the United Kingdom, Canada, Australia, India and Pakistan. The members of the CCC were Rt. Hon. Lord Reid Lord of Appeal in Ordinary (Chairman), Sir Ivor Jennings (Master of Trinity Hall), Rt. Hon. Sir William McKell (former Governor-General of Australia), Mr B. Malik (former Chief Justice of the Allahabad High Court), and Mr Justice Abdul Hamid (West Pakistan High Court). However, a member appointed by Canada had to withdraw at the last moment due to health reasons.[280]

The CCC submitted its recommendations in the Report of The Federation of Malaya Constitutional Commission (Report) on 11 February 1957. In this Report, the CCC believed that the FC must guarantee certain fundamental individual rights.[281] Individual rights reflect the freedom and democratic way of life but may be subject to limited exceptions. The CCC also recommended that the FC shall be supreme. The courts are shouldered with the responsibility to enforce the individual rights and annul any attempt to subvert any of them, whether by legislative or administrative action or otherwise. The CCC stipulated that the individual rights must afford means of redress, readily available to any individual

278 L. Dragne, 'The right to life-a fundamental human right' (2013) 2(2) *Social Economic Debates*, p 4.

279 Report of The Federation of Malaya Constitutional Commission, Food and Agriculture Organisation of the United Nations, Rome, para 1-2, p 1-2.

280 Ibid.

281 Ibid, para 161, p 70.

against any unlawful infringements of personal liberty in any of its aspects. The form of rights explicitly recommended by the CCC were the liberty of a person, prohibition of slavery and forced labour, equality, prohibition of banishment and freedom of movement, freedom of speech, assembly and association, freedom of religion, rights in respect of education and rights to property. All of these rights are bundled together under the heading of the Fundamental Liberties in Part II of the FC. In this respect, the Federal Court in *Badan Peguam Malaysia v Kerajaan Malaysia*[282] observed that when the Reid Commission drafted the FC, they were heavily influenced by the position in England. This position explains why the FC shadows the Westminster Constitution.

The FC finally came into force on 27 August 1957, establishing in Malaya a parliamentary democracy establishing three organs of the government, namely a bi-cameral legislature, a cabinet-style executive and an appointed judiciary. The judiciary consists of the superior civil courts, namely the Federal Court (the apex court), the Court of Appeal and the High Court that are established under Article 121(1)(a) and (b) of the FC. The FC is the basic norm and the supreme law of the land. Constitutional interpretation resides only with the superior courts. In the case of *Abdul Kahar bin Ahmad v Kerajaan Negeri Selangor dan Kerajaan Malaysia (Pencelah) and Anor*[283] the Federal Court had pronounced that only the superior civil courts have the exclusive jurisdiction and power to interpret the FC. The supremacy of the FC is manifested in Article 4 of the FC, which reads:

> ***Supreme law of the Federation***
> *4.(1) This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.*

In a recent decision the Federal Court in the case of *Dhinesh a/l Tanaphil v Lembaga Pencegahan Jenayah*[284] emphasised that constitutional supremacy under Article 4 of the FC requires guarantees and execution which could only be achieved through the mechanism of judicial review.

The provision on the right to life is enshrined in Article 5 of the FC. It is apposite to accentuate that Article 5 of the FC contains the ethos of Article 3 of the UDHR. Article 5 of the FC is, by nature, a two-pronged constitutional provision that governs both the right to life and personal liberty. The right to life is generally

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282 *Badan Peguam Malaysia v Kerajaan Malaysia* [2008] 2 MLJ 285.

283 *Abdul Kahar bin Ahmad v Kerajaan Negeri Selangor dan Kerajaan Malaysia (Pencelah) and Anor* [2008] 3 MLJ 617.

284 *Dhinesh a/l Tanaphil v Lembaga Pencegahan Jenayah* [2022] 3 MLJ 356.

understood as the protection against taking away the life of any person illegally because life is essential to human survival. Whilst personal liberty is ordinarily linked to the protection against illegal detention. Despite the dual protection guaranteed by Article 5 of the FC, the scope of discussion of this chapter will be confined to the right to life only, so that the flow of discussion will be congruent to the research theme determined by the AACC SRD for this year, i.e. the right to life.

To understand the constitution, one must first appreciate the demarcation between a written constitution and the principle of constitutionalism. The interpretation of a written constitution would ordinarily be fashioned according to the understanding of the interpreter taking either a liberal or restrictive approach. Meanwhile, constitutionalism represents an ideal and a goal that embodies the very concept of the rule of law that ensures everyone is subject to the law and receives equal protection of the law. The constitution is *sui generis* where it requires its own way of interpretation not subject to the ordinary rules and presumptions of statutory interpretation. In this regard, the Federal Court in the case of *Dato' Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus (Othman Baginda)* [285] ruled that the FC is a living piece of legislation that must be construed broadly and not in a pedantic manner. The decision in *Othman Baginda* implies that the correct approach to interpret the FC is to adopt a flexible and generous approach so that the FC can suit the dynamic changes that are taking place in society. The method of constitutional interpretation enunciated in *Othman Baginda* had been cited with approval by the Federal Court recently in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors (CTEB),* [286] wherein the court ruled that a generous approach must be employed in interpreting the FC because the FC is a *living and organic document which is constantly being examined, explained and developed*. The Court of Appeal also firmly adopted the generous approach in interpreting the FC. In the case of *Dr. Mohd Nasir Hashim v Menteri Dalam Negeri Malaysia* [287] the Court of Appeal held that the courts are the guardian of constitutional rights and the court is empowered to interpret the constitutional provisions to ensure that citizens would benefit from the protections guaranteed by the FC. The court in that case had further emphasised the doctrine of rational nexus where the court is entitled to strike down a state action if the state's action was disproportionate to the object sought to be achieved in law.

The following discussion will further demonstrate the mode of interpretations devised by the Malaysian superior civil courts that brushed moral colours to the

285 *Dato' Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29.
286 *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] MLJU 888.
287 *Dr. Mohd Nasir Hashim v Menteri Dalam Negeri Malaysia* [2006] 6 MLJ 213.

phrase 'right to life.'

B. Constitutional status

Article 5(1) of the FC reads:

> ***Liberty of the Person***
> *5.(1) No person shall be deprived of his life or personal liberty save in accordance with law.*

The right to life in Article 5(1) of the FC is one of the fundamental rights guaranteed by the FC. A breach of any of the fundamental rights gives rise to a cause of action against the party occasioning such breach. The wording in Article 5(1) of the FC resembles Article 21 of the Indian Constitution except, Article 21 of the Indian Constitution contains the word 'procedure.' In contrast, the word 'procedure' is absent from Article 5(1) of the FC. Article 21 of the Indian Constitution reads:

> *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

There were gallant attempts made since the 1960s to expand the word 'law' under Article 5(1) to include procedures as well. However, series of cases demonstrated that early judges were unruffled by the move to recognise procedure as law. The decision of the Federal Court in *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia (Karam Singh)*[288] is a vivid example to illustrate this point. In this case, a warrant was issued against the appellant under section 368 of the Criminal Procedure Code and the appellant contended that there was a discrepancy in the warrant as there were several words missing from the warrant. The appellant submitted that the authority had failed to follow the required procedures, thus rendering the detention of the appellant unlawful. The Federal Court rejected the argument because the procedure does not form part of the wordings in Article 5(1) of the FC. The Federal Court drew a distinction between the Indian Constitution and the FC. In Malaysia, the power of detention relating to security issues is entrusted to the highest authority in the land, acting on the advice of the Ministers responsible to and accountable in Parliament. Whilst in India, the power is entrusted to comparatively minor officials, and strict compliance with the procedure is necessary in India. Further, although generally similar to Article 5(1)

288 *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129.

of the FC, Article 21 of the Indian Constitution provides that no person shall be deprived of his personal liberty except according to the 'procedure' established by law.

However, the Court of Appeal in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidik & Anor (Tan Tek Seng)* concluded that the narrow approach adopted by the court in *Karam Singh* was due to the limited number of written constitutional interpretations at that time.[289] The only pronouncement of any significance was that made by Gwyer CJ in an Indian case, *Re Central Provinces and Berar Sales Motor Spirit & Lubricants Taxation Act* [290] wherein the Indian court had employed the method of constitutional interpretation in the same manner as interpreting the statute.

The Court of Appeal's decision in *Tan Tek Seng* can be considered the genesis of active advocation on the right to life under Article 5(1) of the FC. It manifests the court's progressive approach to avail dynamic interpretation of the constitutional provisions particularly on fundamental liberties. In *Tan Tek Seng*, the appellant was a senior assistant of a primary school. The Education Department entrusted him with a sum of RM 3,179 being the unpaid salary of the school's gardener who did not turn up for work for several months. The Education Department later demanded the money to be returned, but the appellant falsely told that the monies were already sent to the Education Department. The appellant did send the monies to the Education Department eventually. The appellant was charged with two counts of criminal breach of trust by a public servant under section 409 of the Penal Code. The trial judge had sentenced the appellant to six months imprisonment. The High Court later upheld the conviction but the High Court made an order of binding the appellant to be of good behaviour for three years in the sum of RM 5,000 without sureties. The Education Service Commission later dismissed the appellant. Dissatisfied with the dismissal, the appellant initiated a separate legal action before the High Court against the Education Service Commission but the High Court upheld the appellant's dismissal. The appellant then appealed to the Court of Appeal.

The Court of Appeal in *Tan Tek Seng* had endorsed the dissenting judgment of Field J in the decision of *Munn v Illinois*[291] *on the right to life. In Munn v Illinois,* the US Supreme Court ruled that the term 'life' is more than mere animal existence. 'It has a much more extended operation than either court, State or

289 *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidik & Anor* [1996] 1 MLJ 261.
290 *Re Central Provinces and Berar Sales Motor Spirit & Lubricants Taxation Act* [1939] AIR FC 1.
291 *Munn v Illinois* [1877] 94 US 113, at 142.

Federal, has given it. The provision, it is to be observed, places property under the same protection as life and liberty.' The Court of Appeal in *Tan Tek Seng* had also accepted the expression of 'life' as set out by the Indian Court in the case of *Bandhua Mukti Morcha v Union of India & Ors* to include the protection of health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.[292] These are the minimum standards that must exist to enable a person to live with human dignity and a person has the right to take any action if these essentials are being deprived.

Against this background, the learned Gopal Sri Ram JCA (as he then was) in *Tan Tek Seng* ruled that the court in interpreting the FC must adopt a liberal approach to implement the true intention of the framers of the FC. Such objective may only be achieved if the expression of 'life' in Article 5(1) of the FC is given a broad and liberal meaning. Therefore, the Court of Appeal in *Tan Tek Seng* ruled that the expression of 'life' does not refer to mere existence but encompasses all facets that form an integral part of life and matters that form the quality of life. Two months later, the principles propounded in *Tan Teck Seng* were echoed in another Court of Appeal's decision in *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and Another Appeal*.[293] In this case, the Court of Appeal ruled that the expression of 'life' in Article 5(1) of the FC is wide enough to include the right to livelihood.

The right to life in Article 5(1) of the FC is not absolute but may be subject to limitations 'in accordance with law.' The FC does not offer any definition of 'in accordance with law.' However, the word 'law' has been defined by Article 160 of the FC to include 'written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof.' The expression 'written law' that appears in the definition of the word 'law' is defined by Article 160 of the FC as including 'the FC and the Constitution of any State.'

Early case laws indicated that the courts had adopted a narrow approach in defining the phrase 'in accordance with law.' For instance, in *Comptroller-General of Inland Revenue v NP(NP)*,[294] the learned judge defined the meaning 'in accordance with' as legislations that had been duly passed by the Parliament in the exercise of its function of legislating under the FC. The learned judge in *NP*

292 *Bandhua Mukti Morcha v Union of India & Ors* [1984] SC 802.

293 *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and Another Appeal* [1996] 1 MLJ 481.

294 *Comptroller-General of Inland Revenue v NP* [1973] 1 MLJ 165.

arrived at his decision after considering a Burmese case decided by the Supreme Court of Burma in *Tinsa Maw Naing v The Commissioner of Police Rangoon And Anor (Tinsa Maw Naing)*.[295] The adoption of the legal principles developed in *Tinsa Maw Naing* was not well-received because the pronouncement made by the Supreme Court of Burma in *Tinsa Maw Naing* focused on conflict of laws relating to the applicability of natural law and positive law. Whilst *NP* dealt with a dispute purely on the constitutionality of section 82 of the Income Tax Ordinance 1947 and Article 13(1) of the FC. The judge's approach in *NP* in defining the said words suffered disapprovals in a series of later cases. For instance, the Federal Court's decision in *S Kulasingam & Anor v Commissioner of Lands Federal Territory & Ors (S Kulasingam*) ruled that the word 'law' must not be restrictively defined like in *NP*. Still, it ought to be interpreted according to the approach taken by the court in *Ong Ah Chuan v PP*.[296]

In this respect, it would be helpful to have an outlook on the decision made in *Ong Ah Chuan* to appreciate the operational meaning of the phrase 'in accordance with law.' Lord Diplock in delivering the judgment of the Privy Council ruled that:

> *'In a constitution founded on the Westminster model particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to "law" in such context as "in accordance with law", "equality before the law", "protection of the law" and the like, in their Lordship's view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England…It would have been taken for granted by the makers of the Constitution that the "law" to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution would be a system of law that did not flout those fundamental rules.'*

Lord Diplock in *Ong Ah Chuan* accepted the method of constitutional interpretation based on the judgment by Lord Wilberforce in the case of *Minister of Home Affairs & Anor v Fisher*[297] that the way to interpret a constitution on the Westminster model is not to treat it as an Act of Parliament but as *sui generis*, calling for principles of interpretation of its own, suitable to its character and all presumptions applicable to legislations of private law would not be applicable. Therefore, generous interpretation must be employed to avoid the austerity

295 *Tinsa Maw Naing v The Commissioner of Police Rangoon And Anor* [1950] Burma Law Reports 17.
296 *Ong Ah Chuan v PP* [1981] 1 MLJ 64.
297 *Minister of Home Affairs & Anor v Fisher* [1980] AC 319.

of tabulated legalism. The generous approach propounded in *Ong Ah Chuan* was further adopted by the Federal Court in the case of *S Kulasingam & Anor v Commissioner of Lands Federal Territory & Ors (S Kulasingam)*.[298] In *S Kulasingam*, the Federal Court ruled that the word 'law' must not be strictly defined like what was done in *NP* but must be interpreted according to the approach taken by the court in *Ong Ah Chuan*.

The legal conundrum to afford a comprehensive definition of the phrase 'in accordance with law' was taken up to the Federal Court in 2019 through the case of *Alma Nudo Atenza v Public Prosecutor & Another Appeal (Alma Nudo)*.[299] In *Alma Nudo*, the issue before the Federal Court was on the constitutionality of section 37A of the Dangerous Drugs Act 1952 (DDA) which allows double presumption. First, the presumption of possession and knowledge; and second, the presumption of drug trafficking. In *Alma Nudo,* the Federal Court had set out three ground rules to interpret Articles 5 and 8 of the FC. Firstly, it is trite that the FC is *sui generis* governed by its own interpretive principles. Secondly, at the forefront of these interpretive principles is the principle that its constitutional provisions should be interpreted generously and liberally, not rigidly or pedantically. Thirdly, it is the duty of the courts to adopt a prismatic approach when interpreting the fundamental rights under Part II of the FC, in order to reveal the spectrum of constituent rights submerged in each article.

The Federal Court in *Alma Nudo* observed that Article 5(1) of the FC is not all-encompassing and each right protected in the FC has its own perimeters and cannot be over-emphasised. The Federal Court concluded that the word 'law' includes the common law of England based on Article 160(2) of the FC read with section 66 of the Interpretation Acts 1948 and 1967. Since the rule of law forms part of the common law of England, the word 'law' in Article 5(1) of the FC must conform to the concept of the rule of law and not rule by law. The central tenet of the rule of law is the equal subjection of all persons to the ordinary law. Thus, the Federal Court in *Alma Nudo* demands that the law must have the following non-exhaustive traits:

a) the law should be clear,
b) the law must be sufficiently stable,
c) generally prospective,
d) administered by an independent judiciary, and
e) the principles of natural justice and the right to a fair trial are observed.

298 *S Kulasingam & Anor v Commissioner of Lands Federal Territory & Ors* [1982] 1 MLJ 204.
299 *Alma Nudo Atenza v Public Prosecutor & Another Appeal* [2019] 4 MLJ 1.

In this regard, the Federal Court in *Alma Nudo* afforded a generous interpretation of the word 'law' in the phrase 'in accordance with law.' The laws must not be confined to just any laws validly enacted by the Parliament but the enacted laws must conform to the rule of law. Therefore, there must be explicit and specific laws that provide for the deprivation of life or personal liberty of any person. The law that deprives the right to life must not be unjust and tainted with arbitrariness or unfairness. Otherwise the law can be struck out by the court in exercising its judicial powers. Therefore, the powers exercised by other organs of the government – the executive or the legislature, must not be left unchecked in upholding the rule of law and good governance. This is when the role of the judicial power becomes engaged.

The judicial review is exercised through judicial power to control administrative actions. Black's Law Dictionary defines the term judicial review as the court's power to review the actions of other branches or levels of government, especially the power of the court to invalidate legislative and executive actions as being unconstitutional.[300] The FC does not offer any definition to the phrase 'judicial power.' The Federal Court in *SIS Forum (Malaysia) v Kerajaan Negeri Selangor & Majlis Agama Islam Selangor (Intervener) (SIS Forum)*[301] explained that judicial power refers to the sovereign authority to decide controversies between its subjects or between itself and its subjects, whether the rights relate to life, liberty or property.

Once a constitutional right is breached, the victim may assert his constitutional right before the court. In the case of *Koperal Zainal bin Mohd Ali & Ors v Selvi a/p Narayan (Koperal Zainal)*[302] the Federal Court expounded that the core elements that must exist in order to claim for a breach of constitutional right are:

a) The assertion or plea that the victim suffered an infringement of a constitutional right; preferably, the specific constitutional right should be identified;
b) The person or persons who deprived the victim of such right were acting under or for the State; and
c) As a consequence of such acts or omissions the victim suffered or lost the right constitutionally guaranteed.

The remaining question is on whether constitutional redress is available in the

300 B.A. Garner, *Black's Law Dictionary*, 9th ed., Thomson Reuters, St. Paul, USA, 2009, p 924.

301 *SIS Forum (Malaysia) v Kerajaan Negeri Selangor& Majlis Agama Islam Selagor (Intervener)* [2022] 1 LNS 218.

302 *Koperal Zainal bin Mohd Ali & Ors v Selvi a/p Narayan* [2021] 3 MLJ 365.

FC. In this respect, the Federal Court in the case of *Ketua Polis Negara & Ors v Nurasmira Maulat bt Jaafar & Ors (minors bringing the action through their legal mother and next friend Abra bt Sahul Hamid) and other appeals*[303] held that the FC does not contain a constitutional provision that entitles any person who alleges a breach of fundamental right under the constitution to seek redress from the courts. However, Zainun FCJ in her dissenting judgment ruled that where a wrong is committed by the state or an instrument of the state which has the effect of depriving the victim of his rights in a manner not in accordance with the law, the victim is entitled to an award of exemplary or aggravated damages.

C. Rights holders

The basic premise of the fundamental rights in the Malaysian FC is universal. The self-explanatory words in Article 5 of the FC that "*No person shall be deprived of his life...*" reflects its general application irrespective of race, social or political background and ethnicity. This position can be seen in the High Court's decision in *Maqsood Ahmad & Ors v Ketua Pegawai Penguatkuasa Agama & Ors (Maqsood)*.[304] The learned High Court Judge in *Maqsood* ruled that the freedom of religion that forms part of the fundamental liberties guaranteed by the FC is not limited to Malaysian citizens only, because the word 'person' would include permanent residents, migrant workers, tourists, international students, asylum seekers and refugees.

D. Limitations: General considerations

The right to life guaranteed by Article 5 of the FC is not absolute but may be suspended in accordance with law. The word 'law' in the proviso 'save in accordance with law' does not mean just any law validly enacted by Parliament. The law enacted by the Parliament that has the effect of depriving the life and liberty must not contrary to the rule of law and the FC. It has to be both substantively and procedurally fair, proportionate, reasonable and not arbitrary. The idea of this proposition was taken from a renowned Indian case of *Mrs Maneka Gandhi v Union of India and another (Maneka)*[305] that was cited with approval by Nallini Pathmanathan FCJ in *Letitia Bosman v Public Prosecutor and*

303 *Ketua Polis Negara & Ors v Nurasmira Maulat bt Jaafar & Ors (minors bringing the action through their legal mother and next friend Abra bt Sahul Hamid) and other appeals* [2018] 3 MLJ 184.

304 *Maqsood Ahmad & Ors v Ketua Pegawai Penguatkuasa Agama & Ors* [2019] 2 SHLR 1.

305 *Mrs Maneka Gandhi v Union of India and another* [1978] AIR SC 597.

other appeals (Letitia).[306]

Her Ladyship's dissenting judgment opined that, although Article 21 of the Indian Constitution is not in *pari materia* with Article 5 of the FC, Article 21 carries a similar resemblance regarding the protection against the deprivation of life and personal liberty except 'save in accordance with law.' The Federal Court in *Letitia* had approved the principles in *Lee Kwan Woh v Public Prosecutor*,[307] *Alma Nudo*, *Badan Peguam Malaysia v Kerajaan Malaysia*,[308] *Sivarasa Rasiah v Badan Peguam Malaysia & Anor*[309] *and Public Prosecutor v Gan Boon Aun*[310] that the term 'law' in the proviso to Article 5(1) of the FC encompasses:

a) 'Law' as defined in Article 160(2) of the FC, namely written law, the common law in so far as it is in operation in the Federation or any part thereof, any custom or usage having the force of law in the Federation or any part thereof,
b) 'common law' as defined under section 66 of the consolidated Interpretation Acts of 1948 and 1967 as 'the common law of England',
c) the rule of law which requires that law must therefore be clear, stable, generally prospective, of general application, administered by an independent judiciary and which incorporates the right to a fair trial, and includes
d) the rules of natural justice.

On the contrary, there are instances where the court is in no position to question the Parliament. This position was explained by the Federal Court in the case of *Public Prosecutor v Azmi Sharom (Azmi Sharom)*.[311] In this case, the Federal Court emphasised that it was not for the court to determine whether the restriction imposed by the legislature was reasonable or otherwise because the matter would be within the discretion of the legislature and outside the court's purview. However, the Federal Court in *Azmi Sharom* emphasised that the discretionary power of the legislature does not come without any limitations. The power of the legislature must be exercised within the prescribed limits and must pass the proportionality test. In this regard, the Federal Court in the case of *Sivarasa Rasiah v Badan Peguam Malaysia & Anor*[312] held:

306 *Letitia Bosman v Public Prosecutor and other appeals* [2020] 5 MLJ 277.
307 *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301.
308 *Badan Peguam Malaysia v Kerajaan Malaysia* [2008] 2 MLJ 285.
309 *Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2010] 2 MLJ 333.
310 *Public Prosecutor v Gan Boon Aun* [2017] 3 MLJ 12.
311 *Public Prosecutor v Azmi Sharom* [2015] 6 MLJ 751.
312 *Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2010] 2 MLJ 333.

[19] Accordingly, when state action is challenged as violating a fundamental right, for example, the right to livelihood or the personal liberty to participate in the governance of the Malaysian Bar under art 5(1), art 8(1) will at once be engaged. When resolving the issue, the court should not limit itself within traditional and narrow doctrinaire limits. Instead it should, subject to the qualification that will be made in a moment, ask itself the question: is the state action alleged to violate a fundamental right procedurally and substantively fair. The violation of a fundamental right where it occurs in consequence of executive or administrative action must not only be in consequence of a fair procedure but should also in substance be fair, that is to say, it must meet the test of proportionality ... However, where the state action is primary or secondary legislation, that is to say, an Act of Parliament or subsidiary legislation made by the authority of Parliament, the test of constitutionality is only based on substantive fairness: no question arising on whether the legislation is the product of a fair procedure. This is because the doctrine of procedural fairness does not apply to legislative action of any sort, see Bates v Lord Hailsham of St Marylebone & Ors [1972] 1 WLR 1373; Union of India v Cynamide India Ltd AIR 1987 SC 1802.

II. Limitations: Key issues

A. Capital punishment

Capital punishment (or the death penalty) has been a central issue in debates relating to the right to life. The retentionists of capital punishment view that the death penalty will serve as a general deterrence, preventing the would-be offenders from committing the same offence. The death penalty is also perceived as the highest and the most feared form of punishment. Meanwhile, the abolitionists advocate that the death penalty is a momentary spectacle that is a less efficacious method to deter others as compared to depriving the offenders' liberty through imprisonment. According to the abolitionists, capital punishment is a clear violation of universal human rights, since the right to life protects life against excessive as well as repressive and tortuous punishment. The move toward the prohibition of capital punishment has gained the support from the Western community which has been translated into a textual provision of Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

However, Malaysia is not a signatory to the ICCPR. Malaysia is a dualist country and international law is not *corpus juris*. Therefore, international law can only be operative in Malaysia, if it has been domesticated by a specific law promulgated by the Parliament.

At the moment, capital punishment is regarded as a legitimate form of punishment for serious criminal offences in Malaysia. The method of execution in Malaysia is by way of hanging by the neck, as stipulated by section 277 of the Criminal Procedure Code (CPC). However, two classes of persons are excluded from the imposition of capital punishment. Firstly, section 275 of the CPC provides that a death sentence shall not be passed on pregnant women. Secondly, the death sentence shall not be pronounced against a child under the age of 18 by virtue of section 97 of the Child Act 2001. The types of criminal offences that are punishable with the death penalty in Malaysia can be mandatory and discretionary in nature. The criminal offences that are prescribed with the death penalty in Malaysia can be summarised in the following table.

	Statute	Provision	Offence	Mandatory/ Discretionary
1	Penal Code	Sec. 302	Murder	Mandatory
2	Penal Code	Sec. 194	Giving false evidence with intent to procure conviction of capital offence	Discretionary
3	Penal Code	Sec. 305	Abetment of suicide of child or insane person	Discretionary
4	Penal Code	Sec. 376(4)	Rape or attempted rape resulting in death	Discretionary
5	Penal Code	Sec. 396	Gang robbery with murder	Discretionary
6	Firearms (Increased Penalties) Act 1971	Sec. 7	Trafficking in firearms	Discretionary
7	Firearms (Increased Penalties) Act 1971	Sec. 3A	Penalty for accomplice in case of discharge of a firearm	Mandatory
8	Dangerous Drugs Act 1952	Sec. 39B	Drug trafficking	Discretionary
9	Penal Code	Sec. 121	Waging or attempting to wage war or abetting the waging of war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri	Discretionary
10	Penal Code	Sec. 132	Abetment of mutiny, if mutiny is committed in consequence thereof	Discretionary

	Statute	Provision	Offence	Mandatory/ Discretionary
11	Penal Code	Sec. 307(2)	Person who causes injury while undergoing the sentence of attempted murder for 20 years life imprisonment	Mandatory
12	Penal Code	Sec. 121A	Offences against the person of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri	Mandatory
13	Penal Code	Sec. 130C	Committing a terrorist act - if the act results in death	Mandatory
14	Penal Code	Sec. 374A	Hostage-taking resulting in death	Mandatory
15	Firearms (Increased Penalties) Act 1971	Sec. 3	Discharging a firearm in the commission of a scheduled offence	Mandatory
16	Kidnapping Act 1961	Sec. 3(1)	Abduction, wrongful restraint or wrongful confinement for ransom	Discretionary

Recently, the Federal Court embarked on a judicial quest to explore the scope of the right to life from the aspect of capital punishment. *Alma Nudo* and *Letitia* are the on-point cases that offer explanation to the systemic collision between the power of the sovereign to impose capital punishment and the right to life of its subjects.

In *Alma Nudo*, the appellants were convicted for drug trafficking offences and sentenced to death by the High Court. On appeal, the Court of Appeal upheld the decision of the High Court affirming that the double presumption under section 37A of the DDA was constitutional. The appellants appealed to the Federal Court to challenge the constitutionality of section 37A of the DDA. The Federal Court in *Muhammed bin Hassan v Public Prosecutor*[313] *(Muhammed bin Hassan)* pronounced that double presumption is not allowed. However, presumption upon presumption could only be permitted if the wording of the intention of the Parliament is clear. Thus, Section 37A reads:

> *37A Application of presumptions*
> *Notwithstanding anything under any written law or rule of law, a presumption may be applied under this Part in addition to or in conjunction with any other presumption provided under this Part of any other written law*

The Federal Court further propounded that the presumption of innocence is

313 *Muhammed bin Hassan v Public Prosecutor* [1998] 2 MLJ 273.

housed in the right to life under Article 5(1) of the FC. By operation, section 37A of the DDA requires the prosecution to establish a prima facie case to prove custody and control on the part of the accused and the weight of the drug. The legal burden then shifts to the accused to disprove the presumptions of possession and knowledge and trafficking on the balance of probabilities. However, the Federal Court observed that section 37A of the DDA had violated the presumption of innocence since it permitted the accused to be convicted when a reasonable doubt may still exist. The Federal Court had evaluated the proportionality of Section 37A of the DDA through the three-staged test.

The first stage requires the determination on the importance of the objective to justify the infringement of the right to the presumption of innocence. Securing convictions of drug traffickers are considered a sufficiently important objective.

The second stage is to consider whether the means designed by the Parliament has a rational nexus with the objective it is intended to meet.

The third stage requires an assessment of proportionality. Any restriction of fundamental rights does not only require a legitimate objective but must be proportionate to the importance of the right at stake. Section 37A of the DDA invokes a presumption of trafficking not on the proof of possession but on presumed possession based on proof of mere custody and control. It constitutes a grave departure from the general rule that the prosecution is required to prove the guilt of an accused person beyond a reasonable doubt. Due to the above considered reasons, the Federal Court had struck down section 37A of the DDA due to its violation of Article 5(1) of the FC.

Meanwhile, in *Letitia*, the appellants were convicted and sentenced to death by the High Court for trafficking in dangerous drugs under section 39B of the DDA. At the time of the conviction, the only punishment prescribed under section 39B of the DDA was the mandatory death penalty. The appellants' appeal at the Court of Appeal was dismissed. Dissatisfied, the appellants appealed to the Federal Court. The issue at the Federal Court was whether the mandatory death penalty offended Articles 5, 8 and 121 of the FC. The Federal Court in deliberating on this issue propounded that a deprivation of the right to life necessarily results in the cessation of all other rights. The key factor in the construction of Article 5(1) of the FC lies in the proviso 'save in accordance with law.' The phrase must be given a literal or perfunctory reading. So long as the legislature follows the established procedure for the enactment of a statute, the deprivation of a person's life or personal liberty is permissible and valid.

Regarding the constitutionality of the death penalty under section 39B of the DDA, the Federal Court in *Letitia* held that the legislature is responsible for enacting laws and determines as a matter of policy, the nature of the law and the commensurate punishment for it. However, the legislature's rights are not infinite and the judiciary has the judicial power to examine such laws to ascertain whether the laws are just, fair and reasonable. The Federal Court in *Letitia* made a remarkable observation in stating that the DDA had some disparities, in the circumstances of the commission of the offence, the quantity involved and the types of persons involved. They were all grouped in one large class of 'traffickers' who are all consequently subject to the sole mandatory death punishment.

The Federal Court ruled that the classification made by the DDA was unreasonable because there were no intelligible criteria for classifying them together for the purpose of imposing the same punishment of mandatory death, save for the purpose of establishing culpability for the offence of trafficking. The imposition of the death penalty as the sole punishment for trafficking is unreasonable, unjust, unfair and devoid of any rational classification. Therefore, section 39B of the DDA is unconstitutional as it violated Article 5(1) of the FC. The law was argued to be arbitrary, and capricious, and is therefore unfair and not proportionate to qualify as 'law' as contemplated under Article 5(1) of the FC.

The courts in Malaysia are very optimistic in giving a generous interpretation to Article 5(1) of the FC. Reported cases discussed earlier suggest that the judiciary will be reluctant to disturb the executive or the legislative decisions unless in situations where the decisions made were unjust, unfair or arbitrary. The dissenting judgments of the Federal Court in *Alma Nudo* and *Letitia* provide a positive indication that the judiciary is taking seriously any matters that would curtail the enjoyment of the right to life. Since July 2018, the Government of Malaysia declared a moratorium on the death penalty executions. The Government of Malaysia is also looking into the proposals to consider abolishing death penalty laws in Malaysia.

B. Abortion

Abortion simply means separation of a nonviable human fetus from its mother.[314] Abortion has a long trail of history. Abortion may be spontaneous or induced. Spontaneous abortion, also termed as miscarriage, is a natural occurrence of separating the nonviable human fetus from its mother. Whilst induced abortion is

314 P.H. Richards & L.B. Curzon, *The Longman Dictionary of Law*, Eighth Edition, Pearson, Harlow, UK, 2011, p 2.

the one that is procured through artificial means such as medications or surgical procedures.

There is no specific law on abortion in Malaysia. However, abortion is illegal in Malaysia, punishable under Chapter XVI of the Penal Code. Sections 312, 313, 314, 315 and 316 of the Penal Code prescribe the laws dealing with abortion. Section 312 of the Penal Code stipulates that whoever voluntarily causes a woman with a child to miscarry shall be punished with imprisonment which may extend to three years. This provision, however, does not apply to a medical practitioner registered under the Medical Act 1971 who terminates a pregnancy based on his opinion in good faith that the continuance of the pregnancy would involve risk to the life of the pregnant woman or injury to the mental or physical health of the pregnant woman, these risks being greater than if the pregnancy were terminated.

Section 313 of the Penal Code provides that whoever commits the offence defined in section 312 without the woman's consent, whether the woman is quick with child or not, shall be punished with imprisonment which may extend to 20 years and shall also be liable to a fine. Meanwhile, in section 314 of the Penal Code, whoever with the intention to cause the miscarriage of a woman with child does any act which causes the death of such woman shall be punished with imprisonment which may extend to 10 years and a fine. Whilst if the act is done without the consent of the woman, it shall be punished with imprisonment up to 20 years. Section 315 of the Penal Code provides that whoever before the birth of any child does any act with the intention to prevent the child from being born alive or causing it to die after its birth shall be punished with imprisonment up to 10 years or with a fine or both. A person is regarded to have committed culpable homicide under section 316 of the Penal Code if he does any act that causes the death of the woman and the death of a quick unborn child.

There are not many recent cases on abortion reported in Malaysia. This could be a positive sign of effective legal governance for the protection of women and children in Malaysia. However, it is worth mentioning here that, some erstwhile cases can be cited here to illustrate the practical application of the above-mentioned sections in the Penal Code. In *Pendakwa Raya v Wong Ah Kean*,[315] the accused was asked by the victim (Fitriani) to terminate her pregnancy of more than three months. The accused agreed to carry out the abortion for a fee of RM 700. The accused subsequently carried out the abortion procedure which caused the victim to suffer from loss of blood. The accused prescribed some pills to the victim to stop the bleeding and told the victim to rest on a lazy chair.

315 *Pendakwa Raya v Wong Ah Kean* [2010] 7 MLJ 802.

Several hours later the victim died. The post-mortem report showed that the cause of the victim's death was 'excessive blood loss due to traumatic termination of pregnancy.' The accused was charged under section 312 of the Penal Code for the offence of terminating the pregnancy with the intent to cause miscarriage to Fitriani. The accused pleaded guilty to an alternative charge and the trial judge imposed the sentence of a fine of RM 6,000 and in default, six months imprisonment. However, on appeal the judge of the High Court found that the sentence meted out by the trial judge was manifestly inadequate, thus setting aside the imposition of a fine and imposing two years imprisonment instead.

In *PP v Dr Nadason Kanagalingam*,[316] the accused attempted to utilise the benefit of the exemption provided by section 312 of the Penal Code, i.e. to save life. In this case, the accused, an obstetrician and gynaecologist, was charged under section 312 of the Penal Code for voluntarily causing a woman with child to miscarry and such miscarriage was not done in good faith for the purpose of saving her life. At the close of the prosecution case, the learned judge found that the prosecution had proved all the three ingredients beyond any reasonable doubt, viz. (1) the woman who was caused to miscarry was pregnant; (2) the accused voluntarily caused her to miscarry; and (3) the miscarriage was not caused by the accused in good faith for the purpose of saving the life of the woman. The events showed that the accused had not given reasonable consideration and neither had he come to a reasonable conclusion that he had to cause the woman to miscarry in order to save her life. There was no indication that her life was or would be in danger if the pregnancy was allowed to continue. The woman had a tubal ligation done on her by the accused in 1977. She was examined by the accused on August 8, 1978 and was found to be about fourteen weeks pregnant and to have enlarged varicose veins. The accused instantly gave her an injection of 150 c.c. saline and told her that she would be in labour within 48 hours. The next day she was admitted to his clinic and on August 10, 1978 a male fetus was aborted. However the High Court Judge was not moved by the defence and imposed a fine of RM 3,500 and in default four months imprisonment. The learned judge opined that procuring an abortion is a serious matter and it should only be done as a last resort to save the life of a woman or to save a woman from becoming a mental wreck. The accused had not given reasonable thought and did not take enough steps to examine the woman further. The accused failed to throw any reasonable doubt on the prosecution case, and was therefore guilty as charged.

In the case of *Mary Shim v Public Prosecutor*,[317] the appellant was charged under

316 *PP v Dr Nadason Kanagalingam* [1985] 2 MLJ 122.

317 *Mary Shim v Public Prosecutor* [1962] 1 MLJ 132.

section 314 of the Penal Code. The appellant had inserted a stick in the womb of the deceased which caused the death of the deceased. The appellant was found guilty by the High Court and was sentenced to 9 months imprisonment. Another victim also suffered a similar fate in *Chan Phuat Khoon v Public Prosecutor*.[318] In this case, the appellant was prosecuted for causing the miscarriage of a woman named Pang Ngee Moi, an offence punishable under section 314 of the Penal Code. He was found guilty and convicted of that offence and sentenced to four years' imprisonment.

Finally, in *Munah binti Ali v Public Prosecutor*,[319] a legal question was brought before the Court of Appeal on whether in a charge of attempting to cause a woman to have a miscarriage contrary to sections 312 and 511 of the Penal Code it was necessary for the Court to be satisfied that the woman was with child before the Court proceeded to convict. The Court of Appeal ruled that in a charge of attempting to cause a woman to have a miscarriage, it would not be necessary for the Court to be satisfied that the woman has to be with child before the Court could proceed to convict.

C. Euthanasia

Euthanasia is a Greek word that connotes a good death. Good death encompasses various dimensions including active euthanasia (actions to induce death), passive euthanasia (withholding treatment), voluntary (by consent), and non-voluntary (consent from guardian). According to the Black's Law Dictionary, euthanasia is an act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition, especially a painful one, for reasons of mercy.[320] In Malaysia, euthanasia is prohibited. The prohibition of euthanasia is contained in the Code of Professional Conduct 2019 that binds all medical practitioners in Malaysia. The Code of Professional Conduct 2019 was issued by the Malaysian Medical Council by virtue section 29(1) of the Medical Act 1971. Section 1.14 of Part II of the Code of Professional Conduct 2019 reads:

> *"A practitioner must not be involved in euthanasia and/or assist in suicide of patients."*

Although the law relating to euthanasia is considered morally acceptable in

318 *Chan Phuat Khoon v Public Prosecutor* [1958] MLJ 159.

319 *Munah binti Ali v Public Prosecutor* [1958] 1 MLJ 159.

320 B.A. Garner (ed.), *Black's Law Dictionary*, 9th edition, West Thomson Reuters business, U.S., p 634.

certain compelling circumstances but the law has yet to reach a perfect balance. Euthanasia is very unlikely to be accepted in Malaysia due to religious sentiments, especially its prohibition under the Syariah laws. The discourse on euthanasia from the Islamic context was put to rest in December 2011 when the Department of Islamic Development Malaysia (JAKIM) issued the decision by the National Fatwa Council declaring that euthanasia or mercy killing is strictly prohibited in Islam. Islam is the religion of the Federation which is constitutionally guaranteed by Article 3(1) of the FC. Against this landscape, euthanasia is not only prohibited by law but also religiously forbidden especially in Islam. At the moment, there is no explicit provision declaring the illegality of euthanasia. Implying from the intention of the drafters of the Penal Code, an act of euthanasia would amount to culpable homicide under section 299 and section 301 of the Penal Code which shall be punishable with imprisonment and fine as set out in section 304 of the Penal Code.

D. Suicide and assisted suicide

Suicide is defined as the act of taking one's own life.[321] The coronavirus (COVID-19) pandemic presents us with unusual challenges to the global health system and economics. The pandemic may not have an immediate impact on suicide rates; however, given that it is likely to result in a confluence of risk factors for suicide and economic crisis, it is highly possible that it will lead to an increase of suicide rates in the long-run. This predicament is shared in Malaysia. The Royal Malaysian Police had recorded 468 suicides in the first five months of 2021, compared to 631 in 2020, and 609 in 2019. The three main causes cited were family problems, emotional pressure and finances.[322] In this regard, mental health professionals as well as policymakers have called for suicide attempts to be decriminalised. Responding to this call, the Home Ministry and the Attorney General's Chambers Malaysia had signalled their intention to abolish section 309 of the Penal Code which criminalises attempts to commit suicide.[323]

Nonetheless, as of the date of writing, section 309 of the Penal Code is still in force. Thereby an attempt to commit suicide is still regarded as a criminal offence in Malaysia. Section 309 of the Penal Code reads:

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321 B.A. Garner (ed.), *Black's Law Dictionary*, 9th edition, West Thomson Reuters business, U.S., p 1571.

322 Hazlin Hassan, Malaysia sees rise in suicides and calls to helplines amid Covid-19 pandemic, *The Straits Times*, 12 July 2021, https://www.straitstimes.com/asia/se-asia/malaysia-sees-rise-in-suicides-and-calls-to-helplines-amid-covid-19-pandemic retrieved on 12 May 2022.

323 The Athira Yusof & Arfa Yunus, Home Ministry, AGC agree to decriminalise attempt to commit suicide', New Straits Times, 7 October 2021, https://www.nst.com.my/news/nation/2021/10/734399/home-ministry-agc-agree-decriminalise-attempt-commit-suicide, retrieved on 12 May 2022.

> *Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.*

The application of section 309 of the Penal Code can be seen in the case of *Public Prosecutor v Musdar bin Rusli.*[324] The accused in this case was charged at the High Court for murdering his wife (the deceased) of 20 years and also for attempting to commit suicide after the murder by stabbing himself with the same knife that was used in the killing. On the evening of the incidents, the accused was vainly trying to stop his baby from crying. He was trying to get the baby to sleep but as the crying did not stop, the deceased came out from her kitchen, rocked the baby until it went to sleep and then returned to the kitchen, grumbling. The accused said that the nagging had brought him to a point where he pulled the deceased's hair and pushed her to the floor. He then took a knife and stabbed himself. The High Court rejected the accused's defence and held that there was overwhelming evidence to show that he had inflicted the injuries on the deceased. The trial court held that although there was evidence to show the accused intended to cause bodily injuries which were likely to have caused the deceased's death, there was no intention to kill; that the accused's stabbing of the deceased was the result of her nagging coupled with the fact that he was ill. For that reason, the trial judge reduced the charge to culpable homicide not amounting to murder and convicted and sentenced the accused to 25 years imprisonment. The accused was sentenced to a year's imprisonment on the attempted suicide charge.

The pertinent question now is how far does section 309 of the Penal Code correspond to the right to life as envisaged in Article 5(1) of the FC, the reason being that no person can be compelled to enjoy the right to life to his detriment. So far there is no judgment of the court that could set out a clear explanation on whether the right to die forms part of the right to life. Indeed, the answer to this question is not complicated if one wishes to look for the answers from the theological or deontological perspective. On the contrary, the legal quandary draws in when a legal solution is sought to solve this dilemma.

It is still unknown what the future holds for the decriminalisation of suicide in Malaysia. One may seek solace to the inkling of the Federal Court in *Letitia*. In this case, the Federal Court in majority ruled that whenever the court is confronted with matters concerning sensitive and controversial moral and social issues, the legislative would have the final words. In *Letitia*, the Federal Court had cited in approval the UK Supreme Court's decision in *Regina (AM) v Director of Public*

324 *Public Prosecutor v Musdar bin Rusli* [2017] 5 MLJ 628.

Prosecutions and others (CNK Alliance Ltd and others intervening).[325] Azahar Mohamed CJ (Malaya) had this to say:

> ***[96]*** *With respect, I fully agree with the views of Lord Sumption that generally matters concerning sensitive and controversial moral and social issues are inherently legislative questions, calling for the representatives of the general body of citizens to decide on them. As he observed the parliamentary process is a better way of resolving issues involving controversial and complex questions of fact arising out of moral and social dilemmas. His opinion can be viewed as a case in which the court attach weight to the judgment of the democratically elected Legislature.*

At the moment, attempted suicide is a criminal offence under the Penal Code. Regarding the question of decriminalising suicide, it would be best to leave the question for the Parliament to decide.

E. Lethal use of force during law enforcement

The lethal use of force during law enforcement is a criminal offence in Malaysia. There are many categories of law enforcement in Malaysia, but for this chapter, the discussion will only highlight the role of the Malaysian police in making an arrest. At the outset, the conduct of the Malaysian police is regulated primarily by the Police Act 1967. An arrest is the foremost stage in criminal law enforcement that often clashes with a person's right to life and personal liberty. In this respect, a police officer shoulders a legal duty to preserve the right of a person arrested without compromising his responsibility under the law. The law on arrest in Malaysia is governed by section 15 of the CPC. Section 15 of the CPC spells out the mode of arrest and how an arrest should be done:

> ***15.*** *(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action.*
> *(2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest such officer or other person may use all means necessary to effect the arrest.*
> *(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for*

325 *Regina (AM) v Director of Public Prosecutions and others (CNK Alliance Ltd and others intervening)* [2013] EWCA Civ 961.

life.

From the wordings in section 15 of the CPC, a lawful arrest will only be effective when the police officer physically touches or confines the body of the person to be arrested. If the person to be arrested puts up a struggle to avoid the arrest, the police officer may use reasonable force to effect the arrest. However, section 15 of the CPC gives no right to the person effecting the arrest to cause the death of the person to be arrested who is not accused of an offence punishable with death or life imprisonment.

The laws in Malaysia do not condone any unreasonable acts of the police to effect arrest. Any actions carried out by the police that contravene the law would entail serious legal repercussions. The question now is, how far can the police act to effect an arrest of an evading suspect? Perhaps, the decision of the High Court in the case of *Jenain Subi v PP*[326] could shed some light on this issue. In this case, the accused, a corporal with the Royal Malaysian Police was charged under section 304(a) of the Penal Code. He was found guilty, convicted and sentenced to five years' imprisonment. The facts revealed that at the material time, Corporal Azhar ('SP26') and Corporal Mohd Izham ('SP27') were on patrol duties in a mobile patrol vehicle ('MPV') when they were overtaken by a Proton Iswara ('the Iswara') which was driven by the deceased. Despite the order to stop, the deceased sped. Realising that the Iswara was not stopping, SP27 radioed for help and another MPV driven by SP28 with the accused inside, armed with a sub-machine gun, joined the chase. The Iswara was travelling at 130-140 km per hour and upon reaching a roundabout, SP27 fired at the right tyre of the Iswara. The Iswara began to lose air, but the deceased continued to drive and when the Iswara entered a road, SP27 heard shots being fired from the MPV where the accused was in. Despite the shots being fired, the Iswara continued to drive away but only for a short while before it lost control of the vehicle and hit a road kerb. Upon inspection of the Iswara, the accused conducted a body search on the deceased who was apparently dead. The trial judge found, inter alia, that the accused had the intention to cause the deceased's death since the accused had no justified reasons to fire at the Iswara, thereby finding him guilty to the charge and recorded a conviction. Hence, the accused appealed against his conviction and sentence. The question that arose for the court's consideration was whether the accused was actuated by a desire to kill the deceased when he fired at the Iswara.

Upon hearing the appeal, the High Court set aside the conviction made by the Sessions Court and acquitted the accused. The High Court observed that there

326 *Jenain Subi v PP* [2013] 2 CLJ 92.

had been an improper and insufficient judicial appreciation of evidence by the learned trial judge. The High Court Judge held that there is no hard and fast rule as to when the police can open fire at fleeing suspected criminals. It must depend on the facts and circumstances of each case but clearly the situation that the police were faced within the early hours on the material day warranted the discharge of firearms by both SP27 and the accused. The fact that only one out of 30 bullets hit the upper part of the car while the other 29 hit its lower back and underside showed that the single bullet that hit the back of the deceased's head was unintended. The accused's intention when he opened fire was to shoot at the Iswara and not at the deceased and his sole intention was to immobilise the car. The totality of the evidence could not support any suggestion that the accused intended to kill the deceased. Further, no prima facie case had been established and the defence should not have been called. The police would not have been justified to open fire at the Iswara if the deceased had not conducted himself like a dangerous criminal who was intending to evade arrest. The fact that the deceased was not a criminal is of no consequence if otherwise by the deceased's conduct, the deceased had led the police into believing that he was one.

F. Other limitations on the right to life

As explained in Part I.B. earlier on in this chapter, the right to life guaranteed by Article 5(1) of the FC is not absolute. It comes with a proviso that the right to life can be suspended with the condition that the suspension of the right to life is in accordance with law. However, by virtue of Article 121 of the FC, the superior court possesses the judicial power to exercise judicial review to ensure that the law is *intra vires* to the FC. This matter has been affirmed in *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors and Other Appeals*,[327] where the Federal Court ruled that judicial review is essential to the constitutional role of the court in scrutinising the constitutionality of any parliamentary enactments.

327 *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors and Other Appeals* [2018] 3 CLJ 145.

III. Expansive interpretations

A. Socio-economic dimensions

The minority's decision in *Letitia* gave recognition to the meaning of life under Article 5(1) of the FC to encompass various essential aspects of life ranging from the rudimentary needs of livelihood, education, and locomotion to the more advanced aspects of life. The array of rights is not exhaustive and remains open to further judicial interpretation as novel situations arise. The application of these elements can be seen from the facts taken from the decided cases below.

1. Livelihood

The right in employment for wages forms part of the right to livelihood. In the case of *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar*,[328] the respondent ('Muziadi') was convicted and fined in the magistrate's court for an offence under the Minor Offences Act 1955 while under the employment as a security guard with the second appellant ('the Majlis'). On learning about the conviction and fine four years later, the Majlis requested its disciplinary authority ('the first appellant') to study the matter and decide upon an appropriate punishment to be meted out to Muziadi under the Public Officers (Conduct and Discipline) Municipal Council of Province Wellesley Regulations 1995 ('the Regulations'). The first appellant subsequently notified Muziadi that his employment was terminated 'in the public interest' pursuant to Regulation 50 of the Regulations which entitled him to a full pension and retirement benefits. Muziadi rejected the decision, pointing out that he was never given any show-cause letter or the grounds for his termination or a chance to be heard before the decision to terminate him was taken. The first appellant then reconsidered the matter and then notified Muziadi that his termination under Regulation 50 had been revoked and that he was instead dismissed under Regulation 39(g) of the Regulations ('the decision'), which denied him any pension or retirement benefits. The High Court allowed Muziadi's judicial review application, quashed the decision and ordered damages payable to Muziadi to be assessed by the registrar. The High Court held that there was procedural impropriety on the first appellant's part in not giving Muziadi a show-cause notice and an opportunity to be heard pursuant to section 16(4) of the Local Government Act 1976. On appeal, the Federal Court ruled that in cases involving employment, the failure to give

328 *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar* [2019] 6 MLRA 307.

the employee the right to be heard prior to the making of decisions impacting the employee's employment amounted to a denial of procedural fairness mandated by Article 5 and Article 8 of the FC.

2. Education

The right to education is guaranteed by Article 12 of the FC. The Federal Court in the case of *Datuk Seri Anwar Ibrahim v Kerajaan Malaysia & Anor*[329] pronounced that the right to education under Article 12 of the FC is expressed in absolute language prohibiting the Parliament from circumventing it by ordinary laws.

To further illustrate on the right to education, the case of *Jakob Renner (An Infant suing through his father and next friend, Gilbert Renner) & Ors v Scott King, Chairman of Board of Directors of The International School of Kuala Lumpur & Ors*[330] is worth citing as an example. In this case, the first plaintiff, who suffered from some physical disability affecting his motor movements, studied at the defendant school at their Melawati campus for his elementary schooling for six years. He was, however, not allowed to continue studying at the respondents' school in Ampang on the ground of his physical handicap. The principal factor in excluding the first plaintiff was because of the apparent financial expenditure that was to be incurred in making the school disabled-friendly. The plaintiffs' appeals to the defendants were rejected and the plaintiffs applied for an interlocutory injunction to restrain the defendants from preventing the first plaintiff from continuing his education at the Ampang campus. Pending the disposal of the interlocutory injunction, the first plaintiff was granted an interim injunction. The plaintiffs contended that there was a serious question to be tried as their case was founded on the first plaintiff's legitimate expectation to continue with his education and that the balance of convenience leaned in favour of the first plaintiff.

The High Court in this case did not deal directly with Article 5 and Article 8 despite both provisions being raised by the parties during submission. The High Court instead ruled on the balance of justice, the apparent financial expenditure in making the school disabled-friendly was not legally tenable. As a matter of law and justice, financial considerations took a back seat and gave way to disabled children's basic rights to education and where the overriding educational needs of children were likely to be threatened, this would necessitate the tilting of the balance of justice in favour of providing continuance of education for the affected

329 *Datuk Seri Anwar Ibrahim v Kerajaan Malaysia & Anor* [2021] 6 MLJ 68.

330 *Jakob Renner (An Infant suing through his father and next friend, Gilbert Renner) & Ors v Scott King, Chairman of Board of Directors of The International School of Kuala Lumpur & Ors* [2000] 5 MLJ 254.

children. The balance of justice made it clear that the mere presence of an additional child like the first plaintiff in the school population of 1,222 would not make a material difference for teaching purposes. It was common ground that the first plaintiff (being cognitively normal) did not need any special teaching facilities that should affect the general teaching organisation of the school. The irreparable harm to the first plaintiff's education, and his rehabilitation as a disabled child, was overwhelming if the injunction were to be denied.

3. Locomotion

The decision of the Federal Court in *Maria Chin*, is a vivid example of the right to locomotion. In this case, the appellant (Maria Chin), who was the chairperson of a non-governmental organisation ('NGO'), was at the Kuala Lumpur International Airport on 15 May 2016, about to board a flight to South Korea when she was prevented from doing so by immigration officers. They merely told her, without giving any reason, that she had been banned from leaving the country. It was only when the appellant commenced judicial review proceedings to challenge her travel ban that she discovered that on the first respondent's instruction, she was blacklisted from leaving the country for a period of three years from 6 January 2016 on the ground she had disparaged/demeaned the Government of Malaysia in her speeches and actions at various forums and assemblies. The respondents lifted the blacklisting and travel ban on the appellant two days after she was prevented from leaving the country on 15 May 2016. The purpose of her trip to South Korea was to attend an international human rights conference where she was to give a speech and accept an award in her capacity as a member of the NGO. The appellant's judicial review application was premised on the ground that the decision to prevent her from leaving the country was baseless, unreasonable, irrational and unfair. She asserted that the respondents, or either one of them, had: (a) acted in excess of their jurisdiction because there was no provision either under the Immigration Act 1959/1963 ('the Immigration Act') and/or other relevant statutes to bar a citizen from travelling overseas in similar circumstances; (b) breached her fundamental liberties under Articles 5, 8 and 10 of the FC; (c) breached the principles of natural justice in not according her a right to be heard; (d) breached the requirements of procedural fairness in not informing her at any time of the travel ban and the reason for the same; (e) acted irrationally and in violation of her legitimate expectation to travel abroad since she had a valid passport. The reliefs the appellant sought were, inter alia: (i) an order of certiorari to quash the respondents' decision to prevent her from travelling abroad; (ii) declarations that the said impugned decision was in excess of jurisdiction and breached Articles 5, 8 and 10 of the FC and was therefore unconstitutional and void; (iii) a declaration that she could not be deprived of a right to be heard

under section 59 of the Immigration Act; and (iv) a declaration that section 59 and section 59A (which provided that no decision or action of the respondents under the Immigration Act could be judicially reviewed save with regard to non-compliance with any procedural requirement) were unconstitutional and void.

The majority in this case ruled that sections 59 and 59A were valid and constitutional. Conversely, Chief Justice Tengku Maimun, in delivering Her Ladyship's dissenting judgment to this case, ruled that the first respondent had no power to impose the travel ban on the appellant in the circumstances of the case. Personal liberty in Article 5(1) of the FC ought to be read prismatically and purposively, and encompasses the right to travel abroad. Further, 'life' in Article 5(1) of the FC is not confined to mere animal existence. It encompasses an entire spectrum of rights integral to meaningful human existence. A law necessarily impacts the life of any person and where he is affected by it and seeks to challenge it, no matter whether he be a pauper or an aristocrat, he has the same right as anyone else to approach the courts for a remedy.

4. Advanced aspects of life

Right to Privacy

The right to privacy is nowhere mentioned in the FC. However, the Federal Court in *Maria Chin* declared that the right to privacy has now been accepted to be part of Article 5(1) of the FC. Chief Justice Tengku Maimun in *Maria Chin* emphasised that where a right is not expressly enumerated in one particular Article, it may be housed in the generic words of 'life' and 'personal liberty' in Article 5(1). Just because one liberty is already provided for in one Article, it does not mean that another Article in Part II cannot enlarge the scope of that first-mentioned right. Just because a particular right is not expressly provided for in an Article, that right is not necessarily excluded.

Dignity

Human dignity is also part of the right to life. The Federal Court in the case of *N Indra a/p Nallathamby v Datuk Seri Khalid Bin Abu Bakar*[331] ruled that the right to life must include the right to live with human dignity. In this case, the dependant of the deceased claimed damages against the defendants for negligence for unlawfully killing the deceased whilst the deceased was detained by the police. The autopsy revealed that the deceased suffered 22 categories of external

331 *Nindra a/p Nallathamby v Datuk Seri Khalid Bin Abu Bakar* [2014] 8 MLJ 625.

wounds and suffered from pulmonary oedema. The Federal Court ruled that custodial torture or death is a naked violation of human dignity and degradation which destroys to a very large extent, the individual personality. It is a calculated assault on human dignity especially when it occurs in a police lockup or station and is committed by the police officers who are in charge of the law.

B. Environmental dimensions

The right to a healthy environment is not expressly mentioned in the FC. There was an effort made in 1992 where an expert committee was appointed by the Department of Environment to review the environmental laws. One of the major recommendations made by the said committee was to amend the FC to insert a specific provision on the right to a healthy environment. Unfortunately, the recommendation did not materialise. Although a specific right to a healthy environment is absent from the FC, matters affecting the environment are regulated by the Environmental Quality Act 2012. The Environmental Quality Act 2012 is a piece of environmental legislation that imposes strict regulations to control pollution in Malaysia. Apart from this Act of Parliament, the decided cases also suggest that the courts are very serious in upholding the quality of the environment. In *Wong Kin Hoong & Ors v Ketua Pengarah Jabatan Alam Sekitar & Anor*, the High Court ruled that the Director-General of Environmental Quality is responsible for coordinating all activities relating to the discharge of wastes into the environment and for preventing or controlling and protecting and enhancing the quality of the environment.[332] Meanwhile, in *Raub Australian Gold Mining Sdn Bhd v Hue Shieh Lee*, the Court of Appeal had adopted a pragmatic approach by holding that the duty of the court is to interpret the fundamental rights according to the values of the society. In this case, the Court of Appeal recognised that the right to life must include the right to live in a safe and healthy environment.[333]

C. Other expansive dimensions

1. Right to travel

The right to travel can be taken as one of the expansive dimensions of Article 5(1) of the FC. Previously, the court was reluctant to qualify the right to travel

332 *Wong Kin Hoong & Ors v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2010] MLJU 1032.

333 *Raub Australian Gold Mining Sdn Bhd v Hue Shieh Lee* [2016] MLJU 1781.

as a fundamental right. This could be seen in the judgment of the Federal Court in the case of *Government of Malaysia & Ors v Loh Wai Kong (Loh Wai Kong)* wherein the court had given a narrow interpretation of Article 5(1) of the FC. In this case, the respondent was charged with a criminal offence and the respondent surrendered his passport as a condition of bail. Subsequently, he applied for a new passport so that he could travel back to Australia. His application was denied by the Immigration Department on the ground that he had a pending criminal case. The Federal Court ruled that travelling abroad did not form part of fundamental rights, but the Federal Court allowed an exception that the government must act fairly and *bona fide* when considering applications for a new passport or for the renewal of a passport.[334] However in 2021, Nallini Pathmanathan FCJ in delivering the dissenting judgment of the Federal Court in *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor (Maria Chin)*, pronounced that the principles enunciated in *Loh Wai Kong* is no longer a good law.

2. Right to a fair trial

The right to a fair trial is another expansive component under the umbrella of the right to life guaranteed by Article 5(1) of the FC. In this regard, the Federal Court in the case of *Shamim Reza bin Abdul Samad v Public Prosecutor*[335] unanimously held that Article 5(1) of the FC includes the right to a fair trial. In this case, the appellant was convicted of murder by the High Court. On appeal, the appellant contended that he was not accorded a fair trial due to the incompetence of his counsel. The appeal was dismissed but the Federal Court acknowledged that the right to a fair trial forms part of Article 5(1) of the FC and the right to be represented by a competent counsel forms part of the right to a fair trial. A similar sentiment was also pronounced by the Federal Court in the case of *Public Prosecutor v Gan Boon Aun*[336] that the right to a fair trial and the right to be presumed innocent form part of the fundamental principles of the rule of law.

3. Right of aborigines to customary land

Another interesting area that demonstrates the expansive dimension of the right to life relates to the right of the aborigines to customary land in Malaysia. The decision of the Court of Appeal in *Kerajaan Negeri Selangor & Ors v Sagong Bin Tasi & Ors (Sagong)*[337] can be cited as an example. The arguments submitted before the Court of Appeal in this case did not touch specifically on the

334 *Government of Malaysia & Ors v Loh Wai Kong* [1979] 2 MLJ 33.

335 *Shamim Reza bin Abdul Samad v Public Prosecutor* [2011] 1 MLJ 471.

336 *Public Prosecutor v Gan Boon Aun* [2017] 3 MLJ 12.

337 *Kerajaan Negeri Selangor & Ors v Sagong Bin Tasi & Ors* [2005] 6 MLJ 289.

application of the right to life. However, the subject matter therein is sufficient to exemplify that the aborigines' right to livelihood is reflected from their right to customary lands. In *Sagong,* the respondents were the aboriginal peoples of the Temuan tribe settling in Bukit Tampoi, Dengkil Selangor. They were evicted from their customary lands to give way for the construction of an expressway linked to the construction of the Kuala Lumpur International Airport which was to be built by the respondents. One of the issues presented before the Court of Appeal was whether the respondents owned the land in question under a customary communal title. The Court of Appeal upheld the decision of the High Court that the respondents had the ownership of the lands in question under the customary title of a permanent nature. It was also held that the respondents had the right to the exclusive occupation of the land and the right to use its water, its land for grazing and hunting, and to exploit its natural resources above and beneath the surface. The Court of Appeal in this case ruled in favour of the respondents and ordered the appellants to pay damages for trespassing the respondents' land.

Similarly, the right to livelihood is also accorded to the natives in Sabah and Sarawak to protect the enjoyment of their customary rights to land in the virgin or primary forest. The closest example to illustrate this point can be seen from the Federal Court's decision in the case of *Director of Forest, Sarawak & Anor v TR Sandah ak Tabau & Ors (Sandah ak Tabau)*.[338] Although the native customary right was seriously deliberated, the Federal Court in *Sandah ak Tabau* did not directly touch on Article 5(1) of the FC. In this case, the respondents were Ibans and natives of Sarawak. The respondents claimed for an area measuring 5,639 hectares of land, alleging that they acquired native customary rights over the claimed area by virtue of the Ibans' custom of *pemakai menoa* and *pulau* which are supported by the principles of the common law. The appellants conceded that the respondents had valid native customary rights to 2,802 hectares of land comprising of cleared and cultivated land but disputed the remaining uncultivated areas.

The High Court ruled that, although the Iban customs were uncodified, it did not mean that such custom was no longer valid. The natives acquired native customary rights and usufructuary rights over the claimed area through the Iban customs of *pemakai menoa* (native customary right and usufructuary rights over the claimed area) and *pulau* (the right to roam in the primary forest for the native's livelihood). The High Court's decision was later affirmed by the Court of Appeal.

Dissatisfied, the appellants appealed to the Federal Court. Amongst the issues

338 *Director of Forest, Sarawak & Anor v TR Sandah ak Tabau & Ors.* [2017] 2 MLJ 281.

argued before the Federal Court was whether the native customary rights of the respondents over the land extends to include primary forest where the native used to roam to forage for their livelihood according to their customs of *pemakai menoa* and *pulau.* Although the pre-existing customs and usages to lands are recognised, the majority was not agreeable to the course taken by the High Court and the Court of Appeal in recognising Iban custom of *pemakai menoa* and *pulau* because both were not recognised by the Statues and Orders during the time of arrival of James Brooke. The majority disagreed with the findings made by the Court of Appeal and the High Court on *pemakai menoa* and *pulau.* Both customs did not have any force of law under the definition of Article 160(2) of the FC. Article 160(2) of the FC reads:

> *Law includes written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage* ***having the force of law (emphasis added).***

The majority in this case propounded that the words *having the force of law* in Article 160(2) of the FC were important as these words qualify the types of customs and usages which could come under the definition of law. These important words must be taken to mean not all customs or usages come within the definition, implying that there are customs and usages which do not have the force of law. For the adumbrated reasons, the majority ruled that the native customs of *pemakai menoa* and *pulau* could not be regarded as native customary rights to land in Sarawak.

However, Zainun Ali FCJ dissented and favoured the decisions of the Court of Appeal and the High Court. The judgment by Zainun Ali FCJ bears the pivotal points that could be utilised towards expanding the scope of right to livelihood of the natives in Malaysia. Her Ladyship was not moved by the positivist approach submitted by the appellant that customs are not law unless pronounced to be so. Instead, Her Ladyship adopted an English principle from an old case in *Tyson v Smith*, wherein Tindal CJ propounded that a native customary practice can attain the force of law if the practice is certain, reasonable in itself, commencing from time immemorial and continued without interruption.[339] Her Ladyship observed that the more nuanced view of respecting the pre-existence of customs assumes that customs are *sui generis* and will continue to exist and take effect unless there is a good reason not to. An example of the latter would be those that are against public policy, such as the custom of headhunting. Her Ladyship ruled that the natives ought to be given the *right to live on their land as their forefathers had lived*.

339 *Tyson v Smith* [1839] 112 ALL ER 1265.

> *"[137] By the term 'to live as their forefather had lived', such rights are not limited to the right of occupation or possession of ancestral lands but may extend to any types of land used by their forefathers in accordance with their customs. In this regard, the rights must be understood by examining and considering indigenous patterns of land usage…*
>
> *[142]…In considering whether occupation sufficient to the ground title is established, one must take into account the group's size, manner of life, material resources and technological abilities and the character of the lands claimed."*

Following the majority decision in *Sandah ak Tabau*, the Sarawak Land Code (SLC) was amended in 2018 to give statutory recognition to the customary practice of *Pemakai Menoa* and *Pulau.* Both customary practices are now having the force of law in section 6A but being termed as Native Territorial Domain for inclusiveness, on which a Native Communal Title in perpetuity will be conferred and be treated as any title granted under the Land Code and the propriety interest in that title would be indefeasible by virtue of section 132 of the SLC. This is clearly illustrated in *Busing ak Jali & Ors v Kerajaan Negeri Sarawak & Anor and Other appeals*[340] *where the customary practice of Pemakai Menoa* and *Pulau* had been given recognition by the court. In this case, the Federal Court ruled that the native customary rights of Pemakai Menoa and Pulau Galau were statutory communal rights governed independently under section 6A of the SLC. There would be issuance of native communal title in perpetuity, free of any premium, rent or other charges, in the name of a person or body of persons in trust for the native community named therein and would be treated as any title granted under the Land Code. The proprietary interest in that title would be indefeasible by virtue of section 132 of the SLC. Under section 6A of the SLC, for the purpose of inclusiveness, Pemakai Menoa and Pulau Galau were termed as native territorial domains. The native customary rights under sections 5 and 6A of the SLC were statutorily protected from alienation. They were to be excluded from provisional lease or a lease proper.

340 *Busing ak Jali & Ors v Kerajaan Negeri Sarawak & Anor and Other appeals* [2022] 2 MLJ 273.

Annex 1: List of cited legal provisions

1) Constitutional provisions

Federal Constitution of Malaysia (as at 15 October 2020)

- Article 3
- Article 4
- Article 5
- Article 8
- Article 12
- Article 13
- Article 121
- Article 121(1), (1B) and (1C)
- Article 160

Federation of Malaya White Paper No. 15 of 1956

Report of the Federation of Malaya Constitutional Commission (Report) on 11 February 1957

Indian Constitution

- Article 21

2) Legislative provisions

Child Act 2001

- Section 97

Criminal Procedure Code

- Section 15
- Section 275
- Section 277

Dangerous Drugs Act 1952

- Section 37A

Fire Arms (Increased Penalties Act) 1971

- Section 3
- Section 3A
- Section 7

Income Tax Ordinance 1947
- Section 82

Interpretation Acts 1948 and 1967
- Section 66 of the

Kidnapping Act 1961
- Section 3

Penal Code
- Section 121
- Section 121A
- Section 130C
- Section 132
- Section 194
- Section 299
- Section 301
- Section 302
- Section 304
- Section 305
- Section 307
- Section 309
- Section 312
- Section 313
- Section 314
- Section 315
- Section 316
- Section 374A
- Section 376
- Section 396
- Section 511

Police Act 1967

Sarawak Land Code
- Section 5
- Section 6A

3) International provisions

Universal Declaration of Human Rights 1948

- Article 3

International Covenant on Civil and Political Rights 1966

- Article 6

Annex 2: List of cited cases

1. Abdul Kahar bin Ahmad v Kerajaan Negeri Selangor dan Kerajaan Malaysia (Pencelah) and Anor [2008] 3 MLJ 617.
2. Alma Nudo Atenza v Public Prosecutor & Another Appeal [2019] 4 MLJ 1.
3. Badan Peguam Malaysia v Kerajaan Malaysia [2008] 2 MLJ 285.
4. Bandhua Mukti Morcha v Union of India & Ors [1984] SC 802.
5. Busing ak Jali & Ors v Kerajaan Negeri Sarawak & Anor and Other appeals [2022] 2 MLJ 273.
6. Chan Phuat Khoon v Public Prosecutor [1958] MLJ 159.
7. Comptroller-General of Inland Revenue v NP [1973] 1 MLJ 165.
8. CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] MLJU 888.
9. Dato' Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29.
10. Datuk Seri Anwar Ibrahim v Kerajaan Malaysia & Anor [2021] 6 MLJ 68.
11. Dhinesh a/l Tanaphil v Lembaga Pencegahan Jenayah [2022] 3 MLJ 356.
12. Director of Forest, Sarawak & Anor v TR Sandah ak Tabau & Ors. [2017] 2 MLJ 281.
13. Dr. Mohd Nasir Hashim v Menteri Dalam Negeri Malaysia [2006] 6 MLJ 213.
14. Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidik & Anor [1996] 1 MLJ 261.
15. Government of Malaysia & Ors v Loh Wai Kong [1979] 2 MLJ 33.
16. Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and Another Appeal [1996] 1 MLJ 481.
17. Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors and Other Appeals [2018] 3 CLJ 145.
18. Jakob Renner (An Infant suing through his father and next friend, Gilbert Renner) & Ors v Scott King, Chairman of Board of Directors of The International School of Kuala Lumpur & Ors [2000] 5 MLJ 254.

19. Jenain Subi v PP [2013] 2 CLJ 92.
20. Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia [1969] 2 MLJ 129.
21. Kerajaan Negeri Selangor & Ors v Sagong Bin Tasi & Ors [2005] 6 MLJ 289.
22. Ketua Polis Negara & Ors v Nurasmira Maulat bt Jaafar & Ors (minors bringing the action through their legal mother and next friend Abra bt Sahul Hamid) and other appeals [2018] 3 MLJ 184.
23. Koperal Zainal bin Mohd Ali & Ors v Selvi a/p Narayan [2021] 3 MLJ 365.
24. Lee Kwan Woh v Public Prosecutor [2009] 5 MLJ 301.
25. Letitia Bosman v Public Prosecutor and other appeals [2020] 5 MLJ 277.
26. Maqsood Ahmad & Ors v Ketua Pegawai Penguatkuasa Agama & Ors [2019] 2 SHLR 1.
27. Mrs Maneka Gandhi v Union of India and another [1978] AIR SC 597.
28. Mary Shim v Public Prosecutor [1962] 1 MLJ 132.
29. Minister of Home Affairs & Anor v Fisher [1980] AC 319.
30. Muhammed bin Hassan v Public Prosecutor [1998] 2 MLJ 273.
31. Munah binti Ali v Public Prosecutor [1958] 1 MLJ 159.
32. Munn v Illinois [1877] 94 US 113, at 142.
33. N Indra a/p Nallathamby v Datuk Seri Khalid Bin Abu Bakar [2014] 8 MLJ 625.
34. Ong Ah Chuan v PP [1981] 1 MLJ 64.
35. Pendakwa Raya v Wong Ah Kean [2010] 7 MLJ 802.
36. Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar [2019] 6 MLRA 307.
37. PP v Dr Nadason Kanagalingam [1985] 2 MLJ 122.
38. Public Prosecutor v Azmi Sharom [2015] 6 MLJ 751.
39. Public Prosecutor v Gan Boon Aun [2017] 3 MLJ 12.
40. Public Prosecutor v Musdar bin Rusli [2017] 5 MLJ 628.
41. Raub Australian Gold Mining Sdn Bhd v Hue Shieh Lee [2016] MLJU 1781.
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43. Regina (AM) v Director of Public Prosecutions and others (CNK Alliance Ltd and others intervening) [2013] EWCA Civ 961.
44. S Kulasingam & Anor v Commissioner of Lands Federal Territory & Ors [1982] 1 MLJ 204.
45. Shamim Reza bin Abdul Samad v Public Prosecutor [2011] 1 MLJ 471.
46. SIS Forum (Malaysia) v Kerajaan Negeri Selangor& Majlis Agama Islam Selagor (Intervener) [2022] 1 LNS 218.

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48. Tinsa Maw Naing v The Commissioner of Police Rangoon And Anor [1950] Burma Law Reports 17.
49. Tyson v Smith [1839] 112 ALL ER 1265.
50. Wong Kin Hoong & Ors v Ketua Pengarah Jabatan Alam Sekitar & Anor [2010] MLJU 1032.

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9. Mongolia

Constitutional Court

Overview

Article 16, paragraph 1 of the Constitution enshrined the right to life. As stipulated in Article 19, paragraph 2, the right to life is non-derogable. Mongolia has ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the two Optional Protocols to the ICCPR. Capital punishment was abolished via the adoption of a new Criminal Code in 2015, which came into effect in 2017. Abortion is legal in Mongolia, and being divided into an early stage (12 weeks) and a late stage (13 to 22 weeks). There are specific reasons that are required for performing a late abortion, these are defined in the Criminal Code and the Law on Health. In Mongolia, there is no legal regulation on euthanasia. However, if one takes into account the definition of murder as contained in the Criminal Code, euthanasia is forbidden. Although no relevant laws contain provisions on the definition of suicide and assisted suicide, Article 10, paragraph 4 of the Criminal Code classifies the incitement to commit suicide as a criminal offense. Regulations on the use of force by public authorities can be found in provisions in the Constitution, Criminal Code, Law on Criminal Procedure, Law on the Prosecutor, Law on Police, Law on State Special Protection, Law on the Procedure for Demonstration and Assembly, Law on Executive Work, and Law on Emergency. In terms of wider dimensions of the right to life, many socio-economic dimensions of life are found as separate socio-economic constitutional rights. Also, Article 16 of the Constitution guarantees that the right to live in a safe and healthy environment and protection from environmental pollution and ecological imbalance is a civil right enjoyed by all.

Outline

I. Defining the right to life

A. Recognition and basic obligations

The right to life is one of the fundamental rights stated in the Constitution. Article 16, paragraph 1 of the Constitution of Mongolia states that "the citizens are guaranteed to exercise the right to life. Deprivation of human life is strictly prohibited unless the highest measure of punishment, as prescribed by the Mongolian Criminal Code for the commission of the most serious crimes, is sentenced by a final judgment of the court." According to this provision, the deprivation of human life is strictly prohibited unless the death penalty is the final decision given by a competent court.

Mongolia became a fully-fledged member of the United Nations on 27 October 1961 and welcomed the Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights was ratified by the State Great Hural of Mongolia on 18 November 1974. The law on ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty, was adopted on 5 January 2012. Mongolia also joined the Convention on the Rights of the Child on 5 July 1990.

According to Article 19, paragraph 1 of the Constitution of Mongolia, the state is accountable to the citizens for the creation of legal and other guarantees ensuring human rights and freedoms and to fight against violations of human rights and freedoms. Paragraph 2 of this article provides that "In case of a state of emergency or war, the human rights and freedoms as prescribed in the Constitution and by other laws may be subject to limitation exclusively by law. Such law shall not affect the right to life."

For Mongolia, along with the Constitution and international treaties joined by Mongolia, the Criminal Code mostly provides the mechanism for accountability for violations of the right to life. Chapter 10 of the Law states that murder is punishable by imprisonment for a term from one to twenty-two years or by life-term imprisonment.

B. Constitutional status

Mongolia provides human rights not only for the citizens of Mongolia but for foreign citizens and stateless persons. "Human rights and freedoms" entitle not only the citizens of Mongolia but also foreign citizens and stateless persons to enjoy equal rights and duties without any discrimination.

Article 16, paragraph 1 of the Constitution of Mongolia states that the citizens are guaranteed to exercise the following fundamental rights and freedoms, "the right to life. Deprivation of human life is strictly prohibited unless the highest measure of punishment, as prescribed by Mongolian criminal law for the commission of the most serious crimes, is sentenced by a final judgment of the court." Thus, the right to life is categorized as a fundamental right.

As stipulated in Article 19, paragraph 2 of the Constitution, the right to life is non-derogable: "In case of a state of emergency or war, the human rights and freedoms as prescribed in the Constitution and by other laws may be subject to limitation exclusively by law. Such law shall not affect the right to life, the freedom of thought, conscience and religion, as well as the legal provisions concerning the right to not to be subjected to torture, inhuman, degrading or cruel treatment."

C. Rights holders

Article 14, paragraphs 1 and 2 states that "Civil legal capacity commences with the citizens' birth and is terminated with their death. It is prohibited to limit civil legal capacity."

According to Article 16, paragraph 1 of the Constitution of Mongolia, the right to life is for humans.

D. Limitations: General considerations

According to the Mongolian Constitution, the right to life is a fundamental human right guaranteed by the Constitution. The Constitutional Court could adjudicate applications on whether the constitutional clause on the right to life has been breached. However, the Court has not considered any such application so far.

II. Limitations: Key issues

A. Capital punishment

Article 16, paragraph 1 of the Constitution ensures the right to life for every citizen. The Criminal Code of Mongolia, except in cases where a valid court has imposed the highest penalty for the killing of another person, strictly prohibits the killing of human beings. However, Article 33, paragraph 1.8 of the Constitution gives the President, within the scope of his rights, the power to grant a pardon to death row prisoners. From 1994 to 2017, 44 people have been pardoned from the death penalty sentence upon their appeal to the President.

On 14 January 2010, the then President of Mongolia expressed his opposition to the death penalty at the State Great Hural session and promised to grant pardons to those who had been sentenced to death. In other words, the death penalty had become officially subject to a temporary moratorium.

On 1 January 2012, the State Great Hural ratified the Law on Accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights. Mongolia, complying with obligations set forth in the Second Optional Protocol to the International Covenant on Civil and Political Rights has abolished the death penalty in its new Criminal Code, effective as of 1 July 2017. With the adoption of the new Criminal Code on 3 December 2015, the de facto abolition of the death penalty became legal, thus officially being removed from the state's legislation.

From 1988 to 2005, more than 800 people had been sentenced to capital punishment.

Mongolia had a legal obligation to abolish the death penalty as a form of punishment with the adoption of the revised Criminal Code, based on the following four grounds: (1) Mongolia has an international obligation to abolish the death penalty; as the death penalty seriously violates fundamental constitutional values of (2) human dignity, (3) the right to life, and (4) the right to freedom from torture, inhuman, cruel, or degrading treatment or punishment. Furthermore, there are three additional grounds for abolishing the death penalty: (5) the risk of executing innocent people and (6) lack of deterrent effect on the commission of violent and serious crimes; (7) abolition of the death penalty has become a new global movement that recognizes death penalty as a denial of universal human rights to life and freedom.

Currently, by signing the Second Optional Protocol to the International Covenant on Civil and Political Rights, and within this framework with the revised Criminal Code, no amendments have been made to the Constitution yet.

B. Abortion

In Mongolia, abortion is not prohibited by law, and if a woman voluntarily goes for an abortion procedure at a designated hospital or clinic, it is not a criminal offense and is not punishable by criminal law. Mongolia regulates abortion under the Criminal Code, the Law on Health, and the Regulation on Abortion. The Criminal Code of Mongolia (2002) regulates forced abortion as a crime, this includes forced non-medical and forced non-professional abortions.

In recent years, in countries with a well-developed legal framework, abortion in the third trimester of pregnancy is seen as a violation of fetal rights, and as such the rights are included in the Criminal Code. The reason for this regulation is that in medical science it is believed that the fetus is fully viable in the last three months of gestation when the heart and brain are fully developed.

In Mongolia, the traditional view on abortion is of legal science rather than medical science. This view is based on the traditional notion that a person is born with legal capacity.[341]

According to the regulations on abortion, the procedure is divided into early and late stages. An early-stage abortion is a procedure to remove an embryo within the first twelve weeks of pregnancy, and a late abortion is a procedure to terminate a pregnancy within thirteen to twenty-two weeks of pregnancy. Early abortions are legal, firstly, at the woman's own request and expense, and secondly, free of charge by a doctor's consultation, while late abortions are performed by a woman with her consent and in consultation with a specialist. There are specific reasons that are required for performing a late abortion, which are clearly defined in the Criminal Code[342] and the Law on Health.[343]

341 Civil Code. Chapter Three. Article 14.1. Civil legal capacity shall commence with citizens' birth and terminates with their death. (Unofficial translation).

342 Criminal Code. Article 127. Forced abortion.

343 Law on Health. Article 32. Special rights of medical institutions.

C. Euthanasia

As a component of multifaceted social relations, euthanasia is a complex concept, which includes ethics, medical science, legal science, and customary norms. In Mongolia's case, euthanasia is in direct opposition to the right to life, but from a legal point of view, it refutes the socially dangerous nature of the crime. Therefore, euthanasia is perceived as an innocent action or non-action that kills a person by their own will or by those closest to them.[344]

In Mongolia, there is no legal regulation on euthanasia. In Chapter 10, Article 10.1 of the Criminal Code murder is punishable with a sentence of 8 to 15 years. Resolution no.105 of the Supreme Court of Mongolia rendered on 2020.02.17, defines murder as an intentional act of hurting another person resulting in death, and requires a causal link between the crime and the death of a victim. From these provisions, one can see that the Criminal Code forbids euthanasia. According to Article 43.1.4 of the Law on Health, except for infectious diseases, the patient has the right to refuse treatment, diagnosis, and testing.

D. Suicide and assisted suicide

In the Criminal Code and other relevant laws, there are no provisions on the definition of suicide and assisted suicide. However, Article 10, paragraph 4 of the Criminal Code states that incitement of a person to commit suicide is classified as a criminal offense. Causing a certain suicide by systemic violence, humiliation, battery, torture, and intimidation through the property, official position, familial dependent relationship, or other circumstances shall be punishable for a period of 2 to 8 years of imprisonment. "Familial dependent relationship" under this section shall include individuals with the relationship of family members, co-habitants of other reasons, divorced, or living separately for other reasons, guardians, aid providers, care service providers, and those in care of another.

E. Lethal use of force during law enforcement

In Mongolia, within the framework of law enforcement or the prevention and suppression of crimes and violations, maintaining public order, ensuring public safety and the implementation of legislation, the possibility to restrict human rights and to use physical force and coercion is not only available to the police,

344 Tserenbat Minjuur: The legal significance of euthanasia (legaldata.mn).

state special protection and border guards but, in some cases, to forest rangers and state inspectors.

The basis of the activities of the previous subjects is established and implemented separately by regulation and procedures approved by the head of particular organizations, whose duties and responsibilities are in the Constitution, Criminal Code, Law on Criminal Procedure, Law on the Prosecutor, Law on Police, Law on State Special Protection, Law on the Procedure for Demonstration and Assembly, Law on Executive Work, and Law on Emergency.

F. Other limitations on the right to life

A relevant case follows the events that occurred on June 30, 2008, after the Fifth State Great Hural elections. The People's Revolutionary Party had won majority seats with 41, the Democratic Party with 29, and other parties with 4 seats, and so the minority seat parties declared they would not accept these results. On July 1, the minority seat representatives called on the people to protest against the corrupt and unfair elections, and unhappy and unsatisfied citizens gathered at the main Sukhbaatar square to express their views.

The crowd outside the People's Revolutionary Party headquarter building demanded to meet and speak with a party spokesperson, but no one came out and police officers guarded the building against the crowd. The argument escalated into a riot when people tried to enter the building and the police barriers stopped them, then the rallied citizens turned violent by throwing stones, fighting and finally forcing their way in and setting fire to the building.

On the day, the President met with party leaders and at 00:00 hours declared a state of emergency, and subsequently, army soldiers were deployed in the capital city. Following the declaration, on the night of July 1, four people were shot and another person was killed in the fire. In relation to this matter, an investigation was launched and the regular court ruled on the case. As a result, some chiefs of the National Police Agency were sentenced to 2.6-3.6 years on the charges of negligence on duty.

III. Expansive interpretations

A. Socio-economic dimensions

The second chapter of the Constitution "Human rights and freedoms", enumerates the civil, political, economic, social, and cultural rights and freedoms protected in Mongolia. Many socio-economic dimensions of life are therefore found as separate socio-economic constitutional rights. These encompass the right to freely choose a profession, ownership or co-ownership of property, to run a private business, to work and unemployment protection, to be provided with favorable working conditions to receive equal pay for equal work, to receive fair remuneration to maintain one's personal and family livelihood, to join and form trade unions, to fairly acquire moveable and immovable property. Article 16 states the "right to fair acquisition, possession, and inheritance of movable and immovable property. Illegal confiscation and requisitioning of the private property of citizens are prohibited. If the State and its bodies appropriate private property on the basis of exclusive public need, they may only do so with due compensation and payment."

B. Environmental dimensions

The right to live in a healthy and safe environment is the foundation of human rights and freedoms. Humans, as biological beings and part of nature, need fresh air, fresh water, healthy soil, and healthy food. Therefore, not only the government, but private sectors as well, have the duties and responsibilities to ensure that citizens live in a healthy and safe environment, and protect the natural balance. Article 16 of the Constitution guarantees that the right to live in a safe and healthy environment the protection from environmental pollution and ecological imbalance is a civil right enjoyed by all.

Annex 1: List of cited legal provisions

1) Constitutional provisions

Constitution of Mongolia (last amended 14 Nov. 2019)
- Article 16, 19

2) Legislative provisions

Criminal Code (2015)
Criminal Procedure Law (2017)
Law on Accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights (2012)
Law on Emergency (1995)
Law on Executive Work (1997)
Law on Health (2011)
Law on Police (2017)
Law on the Prosecutor (2017)
Law on the Procedure for Demonstration and Assembly (1994)
Law on State Special Protection (1995)

3) International provisions

Universal Declaration of Human Rights
The International Covenant on Civil and Political Rights
The Second Optional Protocol to the International Covenant on Civil and Political Rights
The Convention on Rights of the Child

4) Other

Regulation on Abortion

Annex 2: List of cited cases

THE FINAL RESOLUTION OF THE DISPUTE ON THE VIOLATION OF THE CONSTITUTION BY THE PROVISIONS OF SECTION 2 OF ARTICLE 17 OF THE LAW ON POLICE ORGANIZATIONS

2002.06.06 Ulaanbaatar

Section 2 of Article 17, of the Law on Police Organizations states that "the Head of the Central Police Organization approves the 'Procedure for Sobering' in consultation with the General Procurator." Article Sixteen, Section 13 of the Constitution "established that the position ...arrest is prohibited, ... the limitation of freedom" is violated on the following grounds.

On the one hand, sobering is a measure that protects a person who has lost his ability to drive due to drunkenness to some extent, and prevents him from committing crimes and legal violations, harming others, and disturbing the peace of others. On the other hand, it is a coercive measure that violates the basic human rights stipulated in the Constitution on human inviolability and freedom.

The fact law establishes that health protection activities that restrict the fundamental rights and freedoms of a person provided for by the Constitution must be regulated in the manner approved by the head of the Central Police Organization in agreement with the Prosecutor General, and not by law, does not correspond to the concept and content of the Constitution, which restricts fundamental human rights and freedoms only by law.

ON BEHALF OF THE CONSTITUTION OF MONGOLIA, IT IS RESOLVED THAT:

1. Section 2, Article 17 of the Law on Police Organization of Mongolia states that the head of the Central Police Organization approves the "Procedure for Sobering" in consultation with the General Procurator. Article Sixteen, Section 13 of the Constitution of Mongolia "… It is forbidden to deliberately arrest or restrict the freedom of anyone" because it violates the provision, so it shall be dismissed.
2. Resolution number 10 of the Parliament of Mongolia issued 25th April 2002 on Conclusion number 02 of the Constitutional Court is to be dismissed.

10. Myanmar

Constitutional Tribunal of the Union

Overview

The right to life is enshrined in Section 353 of the Constitution. In Myanmar, even though the death penalty is retained, it has been subject to a moratorium for decades. The procedure of executing capital punishment is provided in the Criminal Procedure Code, Burma Code Manual and Burma Jail Manual. Apart from the death penalty, another specific limitation on the right to life is the right to self-defence. This is provided for in the Penal Code, from Sections 96 to 106. Also, the right to life is linked to personal self-determination. Three key issues are discussed in this context: Abortion, suicide, and euthanasia. Abortion is prohibited in Myanmar, with only very limited exceptions. The relevant provisions on the prohibition of abortion are found in Sections 312 to 316 of the Penal Code. Regarding suicide, it is incompatible and inconsistent with the concept of the right to life. Sections 305 and 306 of the Penal Code apply when suicide is in fact committed, whereas Section 309 of the Code applies where a person attempts to commit suicide. Euthanasia is also prohibited, since in Myanmar medical professionals must obey their medical professional ethics. It is prohibited to release a patient from suffering by providing treatment causing death. Overall, the right to life can be broadly interpreted, because it does not merely mean animal existence. The provision of the right to life includes various rights such as the right to go abroad, the right to privacy, the right against solitary confinement, the right to a speedy trial, the right to shelter, the right to breathe in an unpolluted environment, right to medical aid, right to education, etc.

Outline

I. Introduction

All human beings are born free and equal in dignity and rights. In the Myanmar community, every human being, even the embryo (foetus) in the womb of his/her mother, has the right to life and has legal protection. The right to life is an inherent right and is protected by the Criminal Law since 1861. "It is necessary to give valid judicial protection for the direct deliberate disposal of innocent human life."[345] In recent years, human rights violation problems are accelerating in the world, and human rights-watching institutions, including UN organs, have laid down the developing policies for guaranteeing human rights. The conception of human rights is now rooted not only in international agreements but also in the constitutions of countries all over the world.

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without any discrimination.

Before we talk about legal protection and the limitations of the right to life, we study the meaning of the right to life and personal self-determination. Firstly, one inquires what a right is. A right is a power or privilege held by the general public as the result of a Constitution, Statute, regulation, judicial precedent, or other types of law.[346] In the next step, the meaning of the wording of "life" is explained. Under the Penal Code, the wording "life" is the life of a human being unless contrary from the context.[347] In the Merriam-Webster Dictionary, "life" is the life of a particular person in existence at the time of the creation of a deed or trust or at the time of a testator's death.[348] Life is a long journey that is from the beginning of the foetus to the natural death. Therefore, the right to life is the belief that a being has the right to live and, principally, should not be killed by any other entity or institution, including his or herself.

Moreover, personal self-determination is the main perception that refers to each person's ability to make choices and manage their own life. In this sentence, the word "ability" plays an essential role in psychological health and well-being. Self-

345 Pope Pius XII, Address to Midwives on the Nature of Their Profession Papal Encyclical, October 29, 1951.

346 https://www.law.cornell.edu/wex/right

347 Section 45 of the Penal Code in Myanmar.

348 https://www.merriam-webster.com/legal/life%20in%20being#:~:text=Legal%20Definition%20of%20life%20in,%20see%20also%20rule%20against%20perpetuities

determination allows people to feel that they have control over their choices and lives. It also has an impact on motivation that people feel more motivated to take action when they feel that what they do will affect the outcome.

From the point of view of the religious, there are 5 Precepts of the Buddha; (i) Refrain from taking life that is not killing any living being including all species, (ii) Refrain from taking what is not given that is not stealing from anyone, (iii) Refrain from the misuse of the senses that is not having too much sensual pleasure, (iv) Refrain from wrong speech that is not lying or gossiping about other people, (v) Refrain from intoxicants that cloud the mind that is not drinking alcohol or taking any narcotic drugs, as these do not help one to think clearly. Therefore, Buddha recognized and protects the right to life. Myanmar accepts and recognizes this perception.

Before its independence, Myanmar exercised the Penal Code, which was promulgated by the Governor of British India. The Penal Code provided the protection of the right to life, body, property and personal freedom. It covered any person, there was no discrimination between citizens or non-citizens within the relevant territory. The Penal Code can apply extra-territorial jurisdiction to Myanmar citizens.

After Myanmar gained independence, it was one of the first United Nations Member states to adopt the Universal Declaration of Human Rights (UDHR) since December 10, 1948. At present, the UDHR is a part of international law and therefore obliges respect by all states. International human rights law lays down the obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Regarding the UDHR, it granted the right to life, freedom, and security.

The Myanmar government makes efforts to implement the protection of human rights. The Republic of the Union of Myanmar Constitution (2008) speaks of rights in Chapter I and Chapter VIII. The latter is entitled “Citizen, Fundamental Rights, and Duties of the Citizens.” Specifically, Section 353 of the Constitution grants the right to life and personal freedom, the same as Article 3 of the UDHR. Similarly, Article 21 of the Indian Constitution guarantees life and personal liberty as to the UDHR.

There have been three Constitutions in Myanmar. The Constitution of the Union of Burma (1947) and the Constitution of the Socialist Republic of the Union of Burma (1974) have not directly provided for the right to life and personal self-

determination although the Penal Code provided to protect the right to life since 1861 in Myanmar. These Constitutions have also provided for rights including cultural and educational rights, rights of freedom, and economic rights. The Myanmar Constitution of 2008 now has explicit provisions concerning the protection of the right to life, personal freedom, and security of every person.

The notion of a right to life arises in debates nowadays on issues including capital punishment, with some people seeing it as immoral; war, which is seen by some as a wrong and tragic act; abortion, where some feel an unborn life should not be ended prematurely; euthanasia, where persons suffering from diseases such as cancer, especially in case of the elderly, may wish for justified homicide to end their suffering. In Myanmar, due to the medical professionals' ethics, euthanasia is prohibited by criminal law. The medical profession can relieve the cancer patient from severe pain by means of oral or injection treatment with painkiller such as morphine, with the necessary limited dosage. However, medical ethics and the law does not allow over-dosage of such medicines to act as justifiable homicide in Myanmar.

The following information provided in this chapter will explain the protections and limitations of the right to life; and the distinction between the right to life and personal self-determination. In explaining the thematic concepts of these, this chapter recognizes the right to life as the pivot of all rights and picks it out from the beautiful array of human rights guaranteed in Myanmar and under the analyzed Myanmar Laws. Provisions of statutes, materials from judicial precedents, legal texts, journals, and newspapers, including the cyber world were drawn on in discussing the issues contained in this chapter. The findings revolve around the fact that the constitution was drawn up to protect the right to life and also allows killing in some cases of the right to defence of property and life.

II. The right to life: An overview

A. Legal protection of right to life

The right to life is an inherent right for every person in Myanmar. However, there is, sometimes, a situation where somebody threatening the life of or committing serious injury to another person shall be liable to punishment under the penal code. The state has the responsibility to guarantee the protection of the rights of its people. Therefore, the Government has the responsibility to prevent harm to and

protect its citizens and non-citizens who were living within its territory by means of law and the practice of law enforcement.

B. Constitution

The Constitution of the Republic of the Union of Myanmar (2008) confers rights, not only fundamental rights but also human rights, in Chapters I and VIII. There is an explicit provision for the right to life not only for citizens but also for any person. It was provided that any person shall not harm life and personal freedom except in accordance with existing laws.[349] The clause "except in accord with existing laws" means that the Penal Code provided that in instances causing dangerous threats or serious injuries, or death, to his or her life or property, the victims can have the right to self-defence until the dangerous situation ends.

The right to life includes the right to live with human dignity and all that goes along with it, namely, basic necessities of life such as food to get adequate nutrition, clothing, and shelter. In addition, educational and health facilities, and work guaranteed without any discrimination are also included as fundamental necessities. For any person to live with dignity, the Government has to implement policies to fulfill the fundamental requirements of their people. Myanmar obeys the basic and eternal principles of Justice, Liberty, and Equality in the Union. The Constitution of the Republic of the Union of Myanmar (2008) also promulgated fundamental rights for the fundamental necessities of its people. Moreover, the violation of human dignity is forbidden by the Myanmar Constitution (2008).[350]

The 1947 Constitution and 1974 Constitution did not explicitly mention the right to life and personal self-determination. However, as the right to life is the right to a live, these constitutional texts provided for rights such as cultural and educational rights, rights of freedom, and economic rights. In Myanmar, the current Constitution guarantees the right to health care with the health policy laid down by the Union.[351] With the Myanmar government's deep respect and implementation for the right to life, during a situation such as a coronavirus pandemic the Myanmar Government is taking precautionary measures to control and limit the risk of spreading the coronavirus in Myanmar in line with the Laws, Regulations and guidelines.

349 Section 353 of the Constitution of the Republic of the Union of Myanmar (2008).

350 Section 44 the Constitution of the Republic of the Union of Myanmar (2008), "No penalty shall be prescribed that violates human dignity."

351 Section 367 of the Constitution of the Republic of the Union of Myanmar (2008).

Concerning remedies of infringement of fundamental rights, under Article 25 of the 1947 Constitution, rights of constitutional remedies to the people in respect of their fundamental rights which were mentioned in the Constitution were given by means of submitting the relevant Writs to the Supreme Court. By Article 133 of this Constitution, justice throughout the Union shall be administered in Courts established by this fundamental law or by law and by judges appointed in accordance therewith.

In the same way, Sections 296 and 378 of the 2008 Constitution have vested the power to the Supreme Court to issue "Writs" when a citizen makes an application to obtain a right provided by the Constitution in the part on the "Citizen, Fundamental Rights, and Duties of the Citizens."

The 1974 Constitution mentioned the basic principles regarding and ensured the fundamental rights of the citizens. The body to safeguard these fundamental rights of the citizens was the State Council under Article 73(m). And also under this Constitution, the *Pyithu Hluttaw* promulgated the Citizens' Rights Law to protect and safeguard the rights and privileges of the people. The Council of People's Attorneys was the safeguarding body to protect and safeguard the rights and privileges of working people under Article 112(b). Regarding the remedies for the infringement of fundamental rights, there were "Writs" in both the 1947 Constitution and the 2008 Constitution, however, there were no "Writs" in the 1974 Constitution.

Therefore, the Myanmar Constitutions respect and cover human rights and dignity. Rights and obligations stand together. Every person can enjoy their rights, similarly, they have to abide by the provisions of the Constitution. When one enjoys the basic rights, one has to know that it is necessary to obey the laws and regulations.

C. Domestic laws

In Myanmar, in relation to human rights, there are legal protections derived from the domestic laws, including those promulgated before independence, the Constitution, and international treaties that have been adopted, signed or ratified, such as the UDHR, ICESCR, CEDAW, CRC and so on. The Penal Code promulgates and protects the right to life, body, and property and the right to personal freedom. The Myanmar Penal Code protects the rights of any person who lives within Myanmar and also citizens of Myanmar abroad. The Penal Code was promulgated by the Governor of British India in 1861 and derived from the

British India colonial era. There are 23 Chapters in the Penal Code.

It specifically promulgated punishments in respect of acts or omission of stipulated offences. Myanmar protects the right to life but this right has limitations. Generally, by enjoying his or her own rights, one does not violate the rights of any other person. However, an act or omission causing danger to the body or properties or life or mind of another person is an offence and the endangered person has the right of private defence. Concerning the rights of private defence of the body or properties, it is stipulated in Sections 96 to 106 of the Penal Code. When a person makes an act in the exercise of the right of private defence, potentially even causing death, it does not amount to liability to be punished as an offence.

The Penal Code also provides in Chapter 16 for the prevention of the case of endangered life or body including the causing of miscarriage, of injuries to unborn children, the exposure of infants, and of the concealment of births. Then, in the Child Law of Myanmar, it is stipulated that every child has the inherent right to life.[352] The state recognizes that every child has the right to survival, development, protection, and care and to achieve active participation within the community.[353] The main objectives of the Child Law are to implement the rights of the child recognized in the United Nations Convention on the Rights of the Child, to protect the rights of the child fully, and to allow the full enjoyment of children's rights.

What follows is a brief overview of punishments in Myanmar that are consistent with human rights standards. Punishments differ depending on the offences. There are four kinds of punishments in Myanmar, which are –

(a) death,
(b) transportation,
(c) imprisonment which is of two descriptions, namely: rigorous that is with hard labour or simple,
(d) fine.

According to Sections 122, 132, 194, 302(1), 305, 307(2), 396 of the Penal Code, a person shall be punished with death when he/she commits the following offences, –

(i) high treason, or

352 Section 9(a) of the Child Law in Myanmar.
353 Section 8 of the Child Law in Myanmar.

(ii) abetment of mutiny, or
(iii) giving or fabricating false evidence with intent to procure conviction, or
(iv) murder while serving a sentence of imprisonment for a term of twenty years or with premeditation or while serving a prison term which may extend to seven years, or
(v) abetment of suicide of child or insane person, or
(vi) attempted murder while serving a sentence of imprisonment for a term of twenty years, or dacoity with murder.

At this juncture, can be argued that "the death penalty is in line with the standard of the right to life as mentioned in the Universal Declaration of Human Rights?" Article 3 of the Universal Declaration of Human Rights (UDHR) provided that "Everyone has the right to life, liberty and security of person." It covers the lives, liberty and security of all people. One of the objectives of the Universal Declaration of Human Rights (UDHR) is to abolish the death penalty. Even though Myanmar has the death penalty as punishment, Myanmar recognizes and respects the right to life. Myanmar needs to retain the death penalty due to laws and orders and to prohibit terrorist acts. In light of the above, the death penalty has been subject to a moratorium in practice in Myanmar. The moratorium was put in place over thirty years ago,[354] and it extends up to the present.

D. International law

Myanmar joined the UN soon after gaining independence, thus becoming the 58th member state of the UN on April 19, 1948. Ever since acceding to the UN, Myanmar has committed to adhering to the values and goals of the UN, such as promoting international peace and security, and encouraging respect "For human rights and fundamental freedoms of all without distinction as to race, sex, language, or religion."[355] For Myanmar, there would be nationwide benefits arising from the ratification of international human rights treaties. Ratification would improve respect for human rights, the rule of law, and the credibility of the Government.

The foundation of international human rights is rooted in the UN Declaration of Human Rights (UDHR), which universally recognizes the basic fundamental freedoms inherent to all human beings. Though not legally binding itself, the

354 In Myanmar, there is no officially notified and announced date or year of the exercising of moratorium. It is known that the moratorium was exercised about 1989 but there is no official evidence for it. So one can say it has been exercised since over thirty years.

355 Charter of the United Nations, Article 1, available online https://www.un.org/en/about-us/un-charter/full-text

UDHR is the basis for numerous legally binding international human rights treaties and compels UN member states to adhere to its principles. As a UN member state, Myanmar has pledged its faith in fundamental human rights and to achieve, in cooperation with the UN, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Though Myanmar is a party to relatively few international treaties, it nevertheless retains certain obligations under customary international law, including the laws on state responsibility, as well as international humanitarian law and international criminal law. Customary International Law (CIL) is binding law that arises from international customs and "General principles of law recognized by civilized nations." CIL obligates all states to respect certain peremptory norms or jus cogens that include, for example, the prohibition of slavery, torture, apartheid, and genocide.

Myanmar derives treaty responsibilities through its membership in the Association of Southeast Asian Nations (ASEAN). Myanmar has been a member of ASEAN since 1997 when it signed the ASEAN Charter, which codifies the norms, rules, and values of its members. States that are party to the ASEAN Charter must adhere to the principles and provisions as stated in Article 2, which states that ASEAN and its Member States shall "Adhere to the rule of law, respect fundamental freedoms, and promote and protect human rights." Myanmar must fulfill its obligations enshrined in the ASEAN Charter, which forms the basis for its membership in the organization and guarantee the rights of its citizens. Signing and ratifying core international human rights treaties such as the UNCAT and ICCPR would be conducive to this obligation.

The Universal Declaration of Human Rights (UDHR) forms a part of customary international law. Myanmar voted in favor of the Declaration on December 10, 1948. The UDHR is a milestone document in the history of human rights. Myanmar has ratified various international conventions on human rights and humanitarian law, and as a state party, it must respect its international obligations. Myanmar has ratified the Geneva Conventions in 1992, Convention on the Prevention and Punishment of the Crimes of Genocide in 1949, Convention for the Elimination against all Forms of Discrimination Against Women in 1997, Convention on the Rights of the Child in 1991, and Convention concerning Forced or Compulsory Labor in 1955, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC) on 27th September 2019, and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC) on 16th January 2012.

Concerning the protection of women's rights, Myanmar, as a member of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) since 22 July 1997, has obligations to punish a person who commits violence against women, and to rehabilitate the women who suffer from violence and to provide access to the mechanism of justice. In accordance with this, relevant legal norms in Myanmar include Sections 347 and 348 of the Constitution and Sections 312, 313, 314, 354, 366, 372, 373, 376, 493, 498, and 509 of the Penal Code and Sections 52, 382, 488, 489, 497, and 552 of the Code of Criminal Procedure, as well as Sections 53 (a), (b), (c), (d) of the Child Law. All of these are in line with the international standards prescribed in the human rights instruments.

As well as respecting its international obligations, Myanmar has a responsibility to respect and comply with customary international norms. The right to life has been stressed by international, regional, and national documents. For example, Article 3 of the Universal Declaration of Human Rights says: "everyone has the right to life, liberty, and security of person." Section 353 of the Constitution of the Republic of the Union of Myanmar (2008) provided that nothing shall be detrimental to the life and personal freedom of any person except in accord with existing laws. The right to life guaranteed by the Myanmar Constitution is not merely a fundamental right but a basic human right.

Relating to international law, Myanmar under its international obligations never fails to implement on it and never sees its exhaustion of its domestic local remedies with its law enforcement and judicial systems.

III. Specific limitations on the right to life

The Myanmar Constitution guarantees the right to life mentioned in Article 353 under Chapter VIII. No person shall injure life and personal freedom except by the existing laws. The provision only provides for the right to life of the citizens.[356] Myanmar became an independent state in 1948, so before the independence, the British government promulgated the Penal Code in 1861. The Penal Code provides the protection of the right to life and property of any person within the territory and extraterritorial jurisdiction for citizens of Myanmar since 1861.

356 See supra note 349.

The right to life is the most precious, inalienable, and fundamental of all the fundamental rights of the citizens and any person. For every right, there is a corresponding obligation. Rights and obligations are related closely and cannot be separated from each other just like two sides of the same coin. Although any right of every person is protected by laws, the obligation will be borne if the person acts beyond his or her rights of self-defence which is allowed by the law. If the state gives the right to life to a person, it also imposes an obligation on him not to expose his life to dangers, as well as to respect the life of others. Thus, the state has to implement policies to protect the right of citizens and to stipulate the obligation of the citizens. This means each and every person enjoying their rights must not at the same time infringe on another person's rights. Even a woman cannot injure the right to life of the foetus, the latter meaning a human being who is not self-standing by him or herself, by exercising her right of self-determination.

The term, "limitation" means "the act or process of controlling or reducing it. It is a period of time, fixed by statute, during which legal action can be brought, as for settling a claim."[357] Moreover, limitation protects the right of any person as well as provides the liability of any person. What follows provides information on the limitations imposed by the law of the constitution and other legislation on the rights and obligations of the citizens. In Myanmar, the Penal Code provides for the prevention of the causes of harm to the life or body and property of any person under the common law legal system.

A. Right of self-defence

The meaning of self-defence means "the use of force to protect oneself, one's family, or one's property from a real or threatened attack. Generally, a person is justified in using a reasonable amount of force in self-defence if he or she believes that the danger of bodily harm is imminent and that force is necessary to avoid this danger."[358]

Regarding with the right of private defence, Sections 96 to 106 of the Penal Code provide for it. According to these Sections, every person has the right to defend not only life or body but also the property of himself or another. In the right of private defence of property, moveable or immovable are included. Sections 100 to 102 of the Penal Code mention the right of private defence of the body.

357 https://www.collinsdictionary.com/dictionary/english/limitation

358 Black's Law Dictionary, 7th Edition, 1999, p. 1364.

Moreover, Section 103 to 105 of the Penal Code states the right of private defence of property. Section 99 of the Penal Code provides the restriction upon the right of private defence.

As regards the start of the right of private defence of the body, it starts when a reasonable apprehension arises from an attempt or threat to commit the offence and it is coterminous with the duration of such apprehension. In such a case, the reasonable apprehension of causing death will be taken into account the following considerations-

- the weapon used,
- the manner of using it,
- the nature of assault (i.e. rape or house-breaking by night or robbery, etc.),
- other surrounding circumstances[359] (i.e. (i) the accused must be free from fault in bringing about the encounter, (ii) there must be present an impending peril to life or of great bodily harm, (iii) there must be no safe or reasonable mode of escape by retreat and (iv) there must have been a necessity for taking life).[360]

The right of private defence of property starts when a reasonable apprehension of danger starts to the property. In the case of Maung Ka Ton vs The Union of Myanmar,[361] the exercise of the right of private defence is not an offence. If a person attacks another, the person who is under attack has the right to defend him or herself against the violator in return from the moment of attack until the violator can no longer intend to act again to, for example, attempt to murder or attempt to seriously harm the body and property.

When a person is attacked by another, he or she has the right to protect him or herself, even causing death in the process. The act of the attacking person must cause apprehension of death or grievous hurt to the body or property of the attacked person until protection through assistance by public authorities becomes available. The right of private defence of the body extends to voluntarily causing the death of a person in the following circumstances of assault namely:

(a) an assault which reasonably causes death or grievous hurt,
(b) an assault which commits rape,
(c) an assault which satisfies unnatural lust,

359 Ratanlal and Dhirajlal, Law of Crimes, Bharat Law House, New Delhi, 25th edn, 2002, p. 377.
360 Ibid, p. 375.
361 1948 B.L.R, 661.

(d) an assault which commits kidnapping or abducting, and
(e) an assault with the intention of wrongfully confining a person.[362]

The right of private defence of property extends to causing death in the situation of an offence which commits robbery, house-breaking by night, mischief by fire committed on any building, tent, or vessel and the theft, mischief or house-trespass which causes worry of reasonably causing death or grievous hurt.[363]

There are six fundamental principles about the right of private defence-

"(1) That the society undertakes and in the great majority of cases is able to protect private persons against unlawful attacks upon their person or property.
(2) That where its aid can be obtained, it must be resorted to.
(3) Where its aid cannot be obtained, the individual may do everything that is necessary to protect himself.
(4) That violence used must be in proportion to the injury to be averted and must not be employed for the gratification or vindictive or malicious feeling.
(5) Everyone has right to defend one's person and property and the law does not require anyone to be coward or to run away in the face of peril; and
(6) The right of self-defence cannot be exercised for causing more harm than necessary or for taking revenge."[364]

Among these principles, the leading case of Maung Ka Ton vs The Union of Myanmar applied one of these basic principles. The right of private defence of the body or property does not extend to causing death when there is no reasonable apprehension of death or grievous hurt. Besides, when a person exercises his right of private defence, he cannot exceed the right given by the law.

The right of self-defence is not an absolute right and it can only be applied when a person faces threats against his or her life or body and property. Thus, the exercise of this right is restricted by the limitations. Regarding this limitation, Section 99 expresses that "there is no right of defence against an act done by or by the direction of the public servant. The public servant must do or attempt or direct in good faith. Moreover, there is no right of private defence in a case which there is time to have the protection of the public authority. Then, the private defence

362 Section 100 of the Penal Code.
363 Ibid, Section 103.
364 Ratanlal and Dhirajlal, supra note 359, p. 336.

cannot extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence."

According to the practice of the common law legal system in Myanmar, there are case laws relating to the limitation of self-defence. The right of self-defence is not applicable in the case where persons quarrel with each other through armed weapons. This right of private defence is available when any person is suddenly faced with the immediate necessity to prevent an impending danger, he can defend himself to avoid getting into danger.[365] Moreover, one cannot be allowed to take advantage of the right to kill with a vengeful motive.

The primary duty of the state is to protect the life and property of its citizen and any person within the territory but the fact is that the state cannot watch each and every minute of every activity of citizens and any person. When an individual citizen or his property is faced with a dangerous moment and a dangerous situation, in this instance if he or she cannot get immediately any protection by the law enforcement body or other person, the victim is entitled to protect his life and his property by exercising his right of private defence, without running away, in accordance with the law.

Thus, one can observe that every person has the right to life equally. However, when a person's life or body or property is threatened, such threats must lead to reasonable apprehension about causing death, one can defend oneself to the utmost to protect his life until getting the assistance of another person or the law enforcement bodies or until the ending of the dangerous situation. When the victim assumes that there is no hope to obtain assistance from another person or persons, he or she can defend his or her life until the dangerous situation ends or whenever the violator is unable to carry out the violating act anymore, or till death of the attacker. Therefore, the right of private defence may be a limitation on the right to life of the attacker until the ending of his acts during the coterminous.

B. Punishment

Punishment means "the sanction imposed on the offender for the infringement of the law. When a person is tried for an offence and found guilty, it is the duty of the court to impose on him such sentence, as is prescribed therefore. The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or

365 U Aye Maung vs The Union of Myanmar, 1978 B.L.R 130.

all of these aims."[366] There are various punishments depending upon the offences. Myanmar exercises four kinds of punishment namely –

(a) death,
(b) transportation,
(c) imprisonment including rigorous or simple, and
(d) fine.

1. Capital punishment

Capital punishment is the highest level of punishment granted in any society to maintain law and order. Some states imposed capital punishment as punishment for a serious crime. Different states have different procedures and laws regarding capital punishment.

In Myanmar's legal system, the punishment of the death sentence is mentioned in the Penal Code and Special Criminal Laws. The sections and such laws are as follows-

(1) The Penal Code –
  (a) High Treason (Section 122 of the Penal Code),
  (b) Abetting mutiny (Section 132 of the Penal Code),
  (c) Giving or fabricating false evidence which an innocent person suffers death (Section 194 of the Penal Code),
  (d) Murder by Section 302 subsection (1) of the Penal Code,
  (e) Abetment of suicide of a minor or insane or intoxicated person (Section 305 of the Penal Code),
  (f) Attempt to murder by a person under a sentence of imprisonment for a term of twenty years (Section 307(2) of the Penal Code),
  (g) Dacoity with murder (Section 396 of the Penal Code).
(2) Special Criminal Laws -
  (a) production, distribution, selling, export or import of the narcotic drugs and psychotropic substances (Section 20 of Narcotic Drugs and Psychotropic Substances Law, 1993),
  (b) stealing, selling or giving and attempt to commit these acts of the government's arms (Section 2(1) of the Arms (emergency punishment) (Temporary) Act, 1949),
  (c) trafficking in person accompanied with a sentence of imprisonment for a term of four years and above, or (Section 29 of the Anti-

366 Ratanlal and Dhirajlal, supra note 359, p. 163

Trafficking in Person Law, 2005),

(d) terrorism acts against the state's building, vehicle, embassy or consulate and terrorism acts relating to the aircrafts (Section 49 of the Anti-terrorism Act, 2014).

The procedure of executing capital punishment is provided in the Criminal Procedure Code, Burma Code Manual and Burma Jail Manual. When speaking of the Myanmar legal system's penalty of death sentence, one has to explain a little regarding the procedure of the Court. The death penalty shall be sentenced by a District Judge originally. However, such District Judge must submit his decision to the Supreme Court in order to obtain the latter's confirmation.[367]

When the confirmation of the sentence is submitted, the Supreme Court of the Union may or appoint a Court to, make a further inquiry or take additional evidence which proves the guilt or innocence of the convicted person.[368] After the submission of the death sentence for confirmation to the Supreme Court of the Union, it may confirm the sentence or pass any other sentence or annul the conviction or order a new trial or acquit the accused person.[369]

In accordance with this part, one can see that the law protects the value of human life and the right to life and personal freedom of any person. For example, pregnant women cannot be subjected to the death penalty, and their punishment may be transformed to any other suitable penalty (Section 382 of the Criminal Procedure Code). Myanmar respects human life, so, the convicted person is entitled to the right of submitting a petition for mercy to the President of the Union (Section 401 of the Criminal Procedure Code).

The President has the power to grant a pardon. He has also the power to grant amnesty in accordance with the recommendation of the National Defence and Security Council.[370] If the death sentence has been passed, the government may reduce it to other punishments (such as imprisonment for life) or suspend the

367 Section 374 of the Criminal Procedure Code, "When the Court of Session passes sentence of death, the proceedings shall be submitted to the Supreme Court of the Union and the sentence shall not be executed unless it is confirmed by the Supreme Court of the Union."

368 Section 375(1) of the Criminal Procedure Code, "If, when such proceedings are submitted, the Supreme Court of the Union thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made of taken by the Court of Session."

369 Section 376 of the Criminal Procedure Code, "In any case submitted under 374, the Supreme Court of the Union (a) may confirm the sentence, or pass any other sentence warranted by law, or (b) may annul the conviction, and convict the accused of any offence of which the Distinct Court might have convicted him, or order a new trial on the same or an amended charge, or (c) may acquit the accused person."

370 Section 204 of the Constitution, 2008.

execution of the death sentence or revoke the whole or any part of this sentence.[371]

2. Moratorium

A moratorium is the temporary suspension of executions of the death penalty. Capital punishment has been used in almost every part of the world. Nowadays, the large majority of countries have either abolished or discontinued the practice. Alternatively, more than two-thirds of the countries in the world have now abolished the death sentence in law and practice. In the independent states, 195, there are 108 countries for abolitionist for all crimes, 7 countries abolished for ordinary crimes, 26 countries abolished for practice and 54 countries retained the capital punishment.[372] In Myanmar, capital punishment is retained by the laws but subject to a moratorium. For the ground of respecting and recognizing the right to life, Myanmar has not been executed since over thirty years.[373] Therefore, capital punishment remains on the laws and courts have continued to impose death sentences, but these are not carried out as a result of the moratorium practiced by the government.

IV. The right to life and personal self-determination

The right to life is included in the category of human rights, which are inalienable rights that belong to every human being. By virtue of the right to life, any human being enjoys all other rights which are guaranteed by the Constitution. This enshrinement in the Constitution is proof of the fact that the fundamental right to life is protected by the state by means of specific mechanisms.

The Constitution of the Republic of the Union of Myanmar, Section 353 guarantees the right to life of every person and the personal freedom of any person. Accordingly, controversy may be raised about the issues between the right to life and personal freedom. Regarding the protection of the right to life, such protection may infringe the right of personal freedom in the case of abortion and suicide.

371 Section 54 of the Penal Code, Section 401 and 402(1) of the Criminal Procedure Code.

372 https://en.wikipedia.org/wiki/Capital_punishment

373 In Myanmar, there is no officially notified and announced date or year of the exercising of moratorium. It is known that the moratorium was exercised about 1989 but there is no official evidence for it. So one can say it has been exercised since over thirty years.

A. Abortion

Today, many states have enacted feticide statutes that focus on the viability of the foetus. Once it can be shown that the foetus is viable and that it could live independently if it were born – then anyone who causes its death has committed feticide.[374]

But there are many differences in the protection of the foetus. In some countries, a woman possesses a limited right to abort a foetus she carries during the first eight weeks.

In Myanmar, the protection of the right to life of the foetus and unborn child or children is a guarantee in Penal Code, from Sections 312 to 318. These Sections aim to offer protection to both a foetus and a pregnant woman. Sections 312, 313, 314, 315, and 316 are concerned with the protection of the right to life during the foetus-carrying by the mother. Section 317 deals with the exposure and abandonment of the child.

Section 312 makes it an offence for a person to take action that "voluntarily causes a woman with child to miscarry" unless the miscarriage is caused "in good faith for the purpose of saving the life of the woman." Causing miscarriage may be with or without the consent of the woman. Section 312 of the Penal Code also concerns the consent of the woman and a woman who causes herself to miscarry is within the meaning of this Section. The punishment for these offences is the imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.[375]

In this Section, a woman with a child means pregnancy. It is not necessary to show that quickening, that is the perception by the mother of the movements of the foetus, has taken place or that the embryo had assumed a foetal form. The stage to which pregnancy has advanced and the form which the ovum or embryo may have assumed are immaterial.[376] Therefore, the meaning of the woman with

374 Daniel E. Hall, DJ., Ed.D, Criminal Law and Procedure, fifth edition, p. 99.

375 Section 312 of the Penal Code, 1861, "Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. A woman who causes herself to miscarry is within the meaning of this section."

376 Ratanlal and Dhirajlal, Law of Crimes, Bharat Law House, New Delhi, 25th edition, 2002, p. 1632.

a child includes mature pregnancy (quick with child) and unmatured pregnancy (with child). Quick with a child means a woman about the fourth or fifth month of pregnancy.

Section 313 deals with causing miscarriage without the consent of a woman. The provision of that Section mentions that whoever causes miscarriage to the woman who is quick with a child or not shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[377]

Sadly, women sometimes die as a consequence of illegal abortions, and unborn children sometimes die as a result of assaults on a pregnant woman. Section 314 deals with death caused by an act done with intent to cause miscarriage. This Section provides that a person who attempts to bring about a miscarriage, but in fact kills the mother, will be guilty of an offence.
Section 315 and 316 are concerned with causing the death of unborn children and Section 317 is concerned with the exposure and abandonment of a child.

Section 315 provides that it is an offence to intentionally prevent a child from being born alive or to cause it to die after its birth unless the acts in question are done in good faith to save the mother's life. The punishment for this Section is ten years imprisonment with a fine, or both.[378]

Section 316 concerns the causing of the death of a quick unborn child by knowingly acting to cause death to a pregnant woman. Such action shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[379]

In Myanmar's legal system, the right to life is protected starting from the foetus and during his or her whole life to the natural end of life. According to the Penal Code, the foetus cannot be killed, with or without consent of the mother, and this

377 Section 312 of the Penal Code, 1861, "Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

378 Section 315 of the Penal Code 1861, "Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both."

379 Section 316 of the Penal Code 1861, "Whoever without lawful excuse does any act knowing that he is likely to cause death to a pregnant woman, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

also applies to a situation where the mother herself dies. A mother who killed her foetus shall be punished under the law. Some countries permit to abort the unmatured pregnancy, although the Myanmar Penal Code does not permit to abort the pregnancy at any time i.e. whether mature pregnancy or not. Therefore, according to the Penal Code, the right to life is more favorable than personal self-determination concerned with human life.

Moreover, viewing from the perspective of the religious, there are five precepts that are said by the Buddha. Among them is to refrain from taking a life, to not kill any living being. Thus, life includes the life of a person and the life of species, all persons refraining from killing any living being.

The Myanmar Penal Code protects the unborn child and pregnant woman by restricting abortion. But there are weaknesses on this restriction. The weakness on the restriction of the abortion is found in the abandonment of a child. Therefore, in order to restrict the abandonment of a child, the Penal Code Section 317 provides that: "Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention wholly abandoning such child shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."[380]

This Section is not intended to prevent the trial of the offender for murder or culpable homicide, as it is a preventive measure for the life of an abandoned child who is incapable of defence against even pesticides and poisonous dangerous animals endangering his or her own life.

In the case of Maung Kyaw Ngwe vs the Union of Myanmar, the meaning of "expose or leave" in Section 317 means to deposit or discard unprotected out of doors subject to risk. The child must have been left to its fate. There must be an intention to abandon or to discard it. The word "abandoning" implies relinquishment of claim. It must be remembered that the place where the child was alleged to have been abandoned was not on a barren heath or an unfrequented place but inside one's own compound. The Myanmar Penal Code mainly looks to the intention of the accused rather than to the consequences of the act done which form the essential element of the offence under English law. If there is the

380 Section 317 of the Penal Code 1861, "Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention wholly abandoning such child shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Explanation. - This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure."

intention of wholly abandoning, he would not have dropped the child inside his own compound and certainly would not have picked it up immediately or minutes after it has been dropped.[381] Section 317 will not apply to a case of mere neglect or temporary abandonment

Moreover, the rights of children are provided in Myanmar with the Law of the Protection of the Right of Child. According to Section 18 of the Child Right's Protection Law, "every child has the right to life, safety and development."[382] These rights recognized by the state derive from the Convention on the Rights of Child (1990). Then, every child has the inalienable right to life, to live together with their parents. There is to be no discrimination against the child and the state has the duty to protect their dignity.[383]

In Myanmar, there has been no adjudication regarding abortion. Although, one can find abandonment of child cases. These are issues of poverty, lack of sex education. All these cases have already relevant criminal provisions in the concerned laws.

B. Suicide

The right to life is a valuable right of any person. This right is recognized by the Universal Declaration of Human Rights as inherent dignity and of the equal and inalienable right of all members of the human family. Thus, the state has the responsibility to respect and protect human life of any person against others as well as him or herself. The right to life is an absolute right and every person has the duty to respect the right of others while exercising their rights. Moreover, the state also has the obligation to enact the relevant laws and mechanisms to protect the life of any person within the state's territory and exercise extra-territorial jurisdiction regarding their citizens.

There has been an issue raised between the right to life and personal freedom. Does it also confer a right to a person to end their life by suicide?

Sections 305 and 306 apply when suicide is in fact committed, whereas Section 309 applies where a person attempts to commit suicide.

381 Maung Kyaw Ngwe vs the Union of Myanmar, Criminal Appeal No. 29, CC, 1967.

382 Section 18 of the Law of the Protection of Rights of Child, 2019.

383 Section 19 of the Law of the Protection of Rights of Child, 2019.

In this regard, Section 305 of the Penal Code mentions about the abetment of suicide of a child or an insane person. In the case of suicide of a person under eighteen years of age, of any insane person, of any delirious person, of any idiot, or of any person in a state of intoxication, whoever abetted the commission of such suicide shall be punished with death or imprisonment for a term of twenty years, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.[384]

Moreover, Section 306 is concerned with the abetment of suicide, whoever abets the commission of the person who commits suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[385]

Human life is a precious resource of the human community of a civilized nation. Death is permanent and complete cessation of life. But a man is a social animal. As a member of society, every person has duties towards society, community, neighbors, family and friends. Their life is useful not only to himself but to his or her community.

Every civilized legal system recognizes the right to life as a basic right which has been treated as fundamental by the constitution. Article 353 of the Constitution mentions that no person shall be deprived of his life or personal liberty except according to procedure established by law. Section 309 of the Penal Code makes an attempt to commit suicide an offence punishable with imprisonment up to one year or with fine or with both. Thus, right to life is also considered to be a duty to live. Ordinarily, therefore, an individual has no right to unnaturally end his life. They have to perform their duties towards themselves and towards the society at large.

All persons living in the country are the resource of the state. Thus, the state has the responsibility to protect the endangering of the lives of people in order to prevent by the killing of one person by another or by him or herself. Accordingly, relevant Sections are provided in the Penal Code. Generally, one can say each and every person has a personal freedom to determination by his or herself. Generally seen, suicide is within the scope of personal determination. However,

384 Section 305 of the Penal Code, 1861, "If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for a term of twenty years, or imprisonment for a term not exceeding ten years, and shall also be liable to fine."

385 Section 306 of the Penal Code, 1861, "If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

the Myanmar legal community does not allow a person to commit suicide.

Therefore, the right to life is a natural right embodied in Section 353 of the Constitution but suicide is an unnatural termination of life by his or herself. Therefore, suicide is incompatible and inconsistent with the concept of the right to life.

As a normal rule, every human being has to live and continue to enjoy the fruits of life till nature intervenes to end it. The right to life means the right to live peacefully as an ordinary human being with human dignity up to the end of natural life. It is the fundamental right of everyone and to live with human dignity free from exploitation.[386] Thus, the government has the responsibility to fulfil the basic need of the people such as to promote the interest of the workers and farmers, to improve education and health of the people, to reduce unemployment among the people. These are the minimum requirements which must exist in order to enable a person to live with human dignity. In Myanmar's Constitution, these basic needs are provided in chapter I of the Constitution under the title of Basic Principles of the Union.

C. Euthanasia

Euthanasia is the termination of the life of a person who is terminally ill or in a permanent vegetative state (like coma). Regarding the right to die, in the book of Law of Crimes, authors Ratanlal and Dhirajlal define that "If a person has right to enjoy his life, he cannot also be forced to live that life to his detriment, disadvantage or disliking. If a person is living a miserable life or seriously sick or having incurable disease, it is improper as well as immoral to ask him to live a painful life and to suffer agony. It is an insult to humanity. Right to live means right to live peacefully as ordinary human being. Appreciation on this theory, an individual may not be permitted to die with a view to avoiding his social obligations. He should perform all duties towards the community. But at the opposite site, if he is suffering from unbearable physical ailments or mental imbalances, if he is unable to take normal care of his body or has lost all the senses and if his real desire is to quit the world, he cannot be compelled to continue with torture and painful life."[387] However, in Myanmar, medical professionals have been permitted to provide their patients suffering from severe pain with relief from suffering by means of oral or injection treatment of painkillers, such as morphine,

386 Ratanlal and Dhirajlal, Law of Crimes, Bharat Law House, New Delhi, 25th edition, 2002, p. 1627.
387 Ibid.

in necessary limited dosage. This is only to release their suffering, there is no right to treatment to terminate their life although the causing of death would result in ending his suffering. Medical professionals must obey their medical professional ethic and there is no permission to treatment by causing death in order to release his suffering.

The scope of the right to life defines that life does not mean animal existence. The provision of the right to life includes various rights such as right to go abroad, right to privacy, right against solitary confinement, right to speedy trial, right to shelter, right to breathe in an unpolluted environment, right to medical aid, right to education, etc. Thus, life does not mean mere living, but glowing vitality, the feeling of wholeness with a capacity for continuous intellectual and spiritual growth.[388]

In the case of Martui Shripati Dubal, the High Court of Bombay held that a person has a positive right to live and also a negative right not to live. Considering various forms of suicide. The court observed that fundamental rights have their positive as well as negative aspects. For example, freedom of speech and expression includes freedom not to speak. Freedom of association and movement includes not to join any association or move anywhere. Freedom of business would include not to do business. Therefore, it must logically follow that the right to life will include the right not to live, i.e. right to die or to terminate one's life. In the case of Mckay v Bergstedi, the courts decided after balancing the interest of an individual against the interest of the state. It is necessary to enact a suitable law providing adequate safeguards to prevent any possible abuse.[389]

Some author's opinion is that when an individual is suffering from incurable disease or severe pain, mercy killing should be permitted to see that his agony comes to an end. In Myanmar's legal system, there is no provision that permits the right to die. Regarding this situation, any other special enacted laws or case laws are not provided.

388 Ibid, p. 1626.

389 Ibid, p. 1627.

V. Conclusion

The right to life is the basic right among the human rights recognized by the Universal Declaration of Human Rights. States also recognize these rights as fundamental rights by expressing it in their constitution. In Myanmar, Section 353 of the Constitution guarantees the rights to life and personal freedom. Right to life is an absolute right and personal freedom is the individual liberality to do anything as he pleases. But it may be limited for interest of the society. According to the Constitution, the right to life has been guaranteed within the boundary of law.

Every person has to enjoy rights and must comply with obligations. Rights and obligations are closely associated with each other. A person enjoys his right but he cannot injure the right of another. There is a limitation of the right to life when a person is endangered in terms of life or body by another. Everybody can protect his or her life, body or property and can defend him or herself, even thereby causing death to another, following the limitations under the Penal Code.

Another fact of the limitation on the right to life is punishment. In Myanmar there are four kinds of punishment. In terms of capital punishment, the death penalty is the highest level of punishment. The procedure of executing the death sentence is provided in the Criminal Procedure Code, Jail Manual and Court Manual of Burma. However, the Myanmar legal system exercises a moratorium on the death penalty.

Nowadays, all over the world the right to life is developed. Simultaneously, freedom of expression and freedom of speech are more in demand in liberal democratic countries. Human rights are inherent rights without discrimination, and include the right to life, liberty, freedom of opinion and expression. So, each and every human being has to enforce their rights without violation of another human life, including that of a foetus.

Regarding the right to life, there may be conflicts with personal self-determination. Concerning the right of abortion and a mother's self-determination, some countries grant the right of abortion (before eight weeks) although some countries do not permit the right of abortion. In the United States of America, the right of abortion concept is different between their States. About these differences, recently there have been protests about the leak of the draft decision of the Supreme Court of United States, which was considering the right to abortion, a

right that was first established in the United States through the case Roe v Wade.[390]

The leak of Court's draft decision represents an extremely rare breach of the court's secretive deliberation process. And that may cause intervention in judicial independence and impartiality. As a standard of democracy, everyone has the right of freedom of speech and expression. Although that such freedom of speech and expression concern the event of demonstration before the Supreme Court on the demand regarding the abortion right, it seems like an intervention in the impartiality and independence of judges. Thus, the extreme exercise of human rights can threaten the good result for human life. Moreover, extreme exercise of freedom of expression threatens the right to life. Human rights can be enjoyed by all human beings. The foetus is also a human being and it can possess the right to life. By not taking into account the feelings of one particular side, one helps to protect the human life of the foetus or infant or child, who are not independent by him or herself. Thus, there must be the equal right and protection of right to life.

In Myanmar, the life of every person has been protected starting from the foetus to during the whole life under the Penal Code. In such case, the protection of the life of the foetus shall restrict the personal self-determination of the mother. Because, according to the Myanmar legal system, the mother has no right to abortion, by her consent or not. Moreover, a pregnant woman is also protected against death caused by illegal abortions. Therefore, in Myanmar's legal system there is no room for legal or illegal abortion but only room for prohibition.

Everyone wants to fulfil their basic needs during their lifetime. Accomplishment of basic needs gives a satisfaction for them. But as a result of serious illness, not everyone may accomplish their basic goals. Therefore, such persons may wish to die as soon as possible and they attempt suicide. But, Myanmar's legal system does not permit suicide because of the right to life. This right is a natural right and suicide is an unnatural end of life.

As regard with the right to life, the government has the obligation to fulfil the basic needs such as right to education, right to health care, and right to work. Regarding the infringement of the fundamental rights, the Union Supreme Court has the vital role to protect these rights by means of writs. The Union Supreme Court has the authority to issue writs when a citizen applies to remedy the infringement of their fundamental rights.

Universal Declaration of Human Rights (UDHR) is a symbol of the law of

390 Roe v Wade (1973), Supreme Court of United States.

nations. It mentions a variety of human rights, the most important of human rights is the right to life.

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11. Pakistan

Supreme Court

Overview

The right to life is enshrined in Article 9 of the Constitution, and Pakistan has ratified the International Covenant on Civil and Political Rights. The right to life is non-derogable but not absolute. Pakistan retains capital punishment as an integral part of its penal system, and constitutional adjudication has clarified the relevant safeguards for preventing the arbitrary implementation of the death penalty. Abortion is a penal offence in Pakistan, although some limited exceptions are recognized. So far, no questions relating to euthanasia or the right to die have been brought before the Constitutional Courts of Pakistan. Regarding the use of force by public authorities during law enforcement, a series of constitutional adjudication has addressed this issue. Relevant instances include cases dealing with provisions of the Anti-Terrorism Act, the actions of a federal paramilitary force in Karachi, and government responsibilities in the insurgency-hit province of Balochistan. In terms of expansive interpretations of the right to life, the constitutional jurisprudence of Pakistan has extensive experience in elaborating on the socio-economic, environmental and various other dimensions of this right. For example, the issue of climate change plays a central role in the cases *Asghar Leghari v Federation of Pakistan* and *DG Khan Cement Company Limited v Government of Punjab*. Overall, the right to life has been subject to dynamic interpretation and has thereby been expanded to recognize a number of unenumerated rights.

Outline

I. Defining the right to life

A. Recognition and basic obligations

1. Express constitutional guarantee of the right to life in Pakistan

The right to life is a guaranteed constitutional right in Pakistan. The Constitution of the Islamic Republic of Pakistan 1973 ("Constitution") explicitly recognizes the right to life in the constitutional text. The relevant provision is found in the chapter of "Fundamental Rights." Article 9 in Chapter 1 of Part II of the Constitution provides:

> **9. Security of person**
> No person shall be deprived of life or liberty save in accordance with law.

The text of Article 9 of the Constitution does not by itself determine the scope of the right to life. The constitution makers perhaps thought it better not to limit within certain definitional bounds the right guaranteed by Article 9 of the Constitution. This has led to progressive and liberal interpretation of the right to life by the Constitutional Courts[391] in Pakistan and this aspect will be discussed later in this chapter under the relevant heading.

2. Human rights conventions ratified by Pakistan

Human rights conventions ratified by Pakistan that become relevant for the protection and interpretation of the right to life, in view of the expansive interpretation of Article 9 of the Constitution by the courts, include the Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Suppression and Punishment of the Crime of Apartheid, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Rights of the Child (CRC), Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, Convention on the Rights of Persons with

391 The Supreme Court and the High Courts are usually collectively referred to as the Constitutional Courts in Pakistan although there is another constitutional court with a specific and limited jurisdiction called the Federal Shariat Court.

Disabilities (CRPD), International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Geneva Conventions 1949, Hague Convention for the Protection of Cultural Property 1954, Hague Protocol for the Protection of Cultural Property 1954, and Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention.[392]

3. Pakistan is a dualist state

Pakistan traditionally operates as a dualist state insofar as international law is concerned. Dualism approaches national and international law as separate entities that only overlap when international law is incorporated through legislative action into national law. In Pakistan, for international instruments to have the same status as domestic law, implementation through legislation is required. Where treaty provisions are not incorporated through legislation into the formal law of the State, they do not have the effect of altering the existing laws which means rights arising therefrom called treaty rights cannot be enforced and the courts are not vested with the power to do so. Article 175(2) of the Constitution provides "no Court has any jurisdiction unless conferred by or under any law or the Constitution." It is well-established that the provisions of an international treaty to which Pakistan is a party do not form part of Pakistani law unless those provisions have been validly incorporated into Pakistan's municipal law by statute. International treaties, thus, become applicable in Pakistan only after they have been validly incorporated in the statute book. The Constitution brings within the legislative competence of federal legislature the matters relating to the international treaties, conventions etc.[393] The relevant portions of the Fourth Schedule Federal Legislative List are items three and thirty-two viz. external affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to governments outside Pakistan and international treaties, conventions and agreements and international arbitration.

4. Reference to international human rights norms in interpretation of the right to life

The Constitutional Courts of Pakistan sometimes refer to international human rights norms while interpreting constitutional rights. The Supreme Court in *Safia Bano v Government of Punjab*[394] considered the question whether a mentally

392 Conventions/Treaties signed/ratified by Pakistan. <http://mofa.gov.pk/mous-agreements/>

393 The Constitution of the Islamic Republic of Pakistan 1973, art 70 (4) and Fourth Schedule.

394 PLD 2021 Supreme Court 488.

ill condemned prisoner could be executed. The Court noted that international human rights law was relevant to the case. It considered among other things the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities (CRPD), Resolution 2000/65 adopted by the United Nations Commission on Human Rights in the year 2000 whereby all states who sustained the death penalty were urged not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person, and Rule 109 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Supreme Court held that if a condemned prisoner, due to mental illness, was found to be unable to comprehend the rationale and reason behind his or her punishment, then carrying out the death sentence would not meet the ends of justice.

The Lahore High Court in *Hafiz Junaid Mahmood v Government of Punjab*[395] interpreted fundamental rights of persons with disabilities in the light of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and observed that the rights to life, dignity and equality were further emboldened, illuminated and vitalized when interpreted in the context of the Convention. The Court said that the rights to life and dignity were epicentres of the constitutional architecture and recognized the importance of accessibility to physical, social, economic and cultural environment, to health and education, and to information and communication. The Court held that the fundamental right to life enabled persons with disabilities to fully enjoy all human rights and fundamental freedoms, and a disabled person, like every human being, had an inherent right to life and its effective enjoyment at par with others. Significant use of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) was also made while interpreting Article 9 of the Constitution in *Muhammad Yousaf v Chairman FPSC*[396] and the government was directed to move to a more inclusive policy to accommodate persons with disabilities in all of Pakistan's civil service.

The Supreme Court in *National Commission on Status of Women v Government of Pakistan*,[397] while hearing a plea that the existence of informal custom-driven parallel bodies or kangaroo courts deprived the individuals involved therein, women in most of the cases, of their right to enjoy their right to life, liberty and justice and equal protection of the law and the right to be treated in accordance with the law, referred to international human rights norms to remind the government of its obligations. It observed that Articles 7 and 8 of the

395 PLD 2017 Lahore 1.

396 PLD 2017 Lahore 406.

397 PLD 2019 Supreme Court 218.

Universal Declaration of Human Rights (UDHR) 1948, Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) 1966, and Article 15 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979, placed a responsibility on the State of Pakistan to ensure that all women in Pakistan had access to courts or tribunals, were treated equally before the law and that in civil matters identical legal capacity and opportunities were accorded to them as those accorded to men and they be treated equally in all stages of procedure in courts and tribunals. The Court said that whenever any complaints were received with regard to danger to life, liberty or property of a person on account of the decisions of parallel informal legal bodies, immediate action should be taken by the police by firstly substantiating the veracity of the complaint and then by taking stringent action against all those found to be involved in the convening and operation of such parallel informal bodies as well as those aiding in the execution of their decisions.

The courts make use of international human rights instruments while recognizing unenumerated constitutional rights arising out of Article 9 of the Constitution. The Sindh High Court in *Getz Pharma (Pvt) Ltd v Federation of Pakistan*[398] observed that the Constitution did not explicitly recognize the 'right to health.' However, the right to life was enshrined under Article 9 of the Constitution and when it was read with Article 14 of the Constitution, which granted the right to 'dignity of man' the same gave birth to the 'right to health' as a fundamental right. Such 'right to health' was also covered by several international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Pakistan, which recognized the right of nationals to the enjoyment of the highest attainable standard of physical and mental health.

5. Positive and negative nature of the fundamental rights

The Constitution has conferred fundamental rights in positive as well as negative language.[399] The Supreme Court has expounded the positive and negative nature of the fundamental rights. In *Province of Sindh v M.Q.M.*,[400] Chief Justice Tassaduq Hussain Jillani, speaking for the Court, observed, "Human rights law makes a distinction between positive and negative rights, wherein positive rights usually oblige action and negative rights usually oblige inaction. Similarly, many of the fundamental rights granted by our Constitution pertain to both positive and negative rights. The holder of a negative right is entitled to noninterference, while

398 PLD 2017 Karachi 157.

399 *Justice Qazi Faez Isa v President of Pakistan* CMA No. 1243 of 2021 in Civil Review Petition No.296 of 2020 (Per Maqbool Baqar, Mazhar Alam Khan Miankhel and Syed Mansoor Ali Shah, JJ).

400 PLD 2014 Supreme Court 531.

the holder of a positive right is entitled to provision of some good or service. . . Negative rights place a duty on the state not to interfere in certain areas where individuals have rights. The right holder can thereby exercise his right to act a certain way or not to act a certain way and can exercise his or her freedom of choice within the existing right. . . Negative rights extend to all civil and political rights . . . Positive rights place a positive duty on the state and include social and economic rights." The Supreme Court, with this elaboration, held that many of the fundamental rights granted by our Constitution pertained to both positive and negative rights.

Article 9 of the Constitution, which guarantees the right to life, is couched in negative language. It imposes a limitation on the power of the State and declares the corresponding guarantee as to the entitlement of the people to that right. However, we see that the Supreme Court in a recent case while interpreting the right to life proclaimed a positive obligation of the State in terms of Article 9 of the Constitution, "the State is required, as mandated in the Constitution, to ensure that all aspects of citizens' life are protected and dealt with by the State. . . The provision of drinking water, is a right to life; provision of electricity, is a right to life; provision of education, is a right to life; provision of health facility, is a right to life; provision of civic infrastructure and civil infrastructure, is a right to life; so is the subject of transportation of the citizens, is a right to life, for without transportation neither can the citizen get education, engage in his trade, business or profession, nor can a citizen reach the healthcare institutions nor can a citizen obtain necessities of life, like, food, clothes, etc. and such needs keep on going 'ad infinitum'."[401]

Additionally, Article 8 of the Constitution, i.e., the first Article of the chapter of fundamental rights, in clause (2) has provided for a negative obligation of the State in respect of fundamental rights, that is, the obligation to refrain from making any law which takes away or abridges fundamental rights. It commands, "The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void."

401 *Naimatullah Khan Advocate v Federation of Pakistan* 2020 SCMR 622.

B. Constitutional status

1. The right to life is non-derogable though not absolute

The Constitution does not expressly specify whether the right to life is non-derogable or not. However, it is, as provided in the Constitution, not absolute. There may be a deprivation of life but it is to be only in accordance with law. No public functionary or private person may interfere with the life of a person unless he has a legal warrant to do so. Article 9 of the Constitution, in fact, amounts to a declaration that no person is to take the life of another person except under a law authorizing him to do so. The person whose life is threatened is entitled to require the person seeking to deprive him of the right to life to show the legal authority under which the latter is purporting to act.[402]

The operation of Article 9 of the Constitution, like other fundamental rights, may be suspended on the proclamation of emergency.[403] Clause (5) of Article 8 provides: "The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution." The provisions in the Constitution which permit the suspension of the fundamental rights are contained in Part X titled "Emergency Provisions", which part comprises Articles 232 to 237. Article 232 empowers the President, on being satisfied that a grave emergency exists in which the security of Pakistan or any part thereof, is threatened by war or external aggression, or by internal disturbance beyond the power of provincial government to control, to issue a proclamation of emergency. Article 233 by its clause (1) permits the State to make any law or to take any executive action while a proclamation of emergency is in force, in contravention of Articles 15, 16, 17, 18, 19 and 24; and clause (2) of that Article provides that while a proclamation of emergency is in force, the President may by order declare that the right to move any court for the enforcement of such of the fundamental rights as may be specified in the order shall remain suspended during the period of emergency under Article 232.

It is noticeable that Article 9 is not mentioned in clause (1) of Article 233, that is to say, that while a proclamation of emergency is in force, the State is not competent to make any law or to take any executive action in contravention of the fundamental rights guaranteed by Article 9 though enforcement of Article 9 may be suspended under clause (2) of Article 233 of the Constitution.

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402 Muhammad Munir, *Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan,* 1973 (Law Publishing Company Lahore 1975) 105.

403 *Habiba Jilani v Federation of Pakistan* PLD 1974 Lahore 153.

However, the Constitution guarantees rights other than those specified as fundamental rights as well. The most important constitutional provision in this regard is Article 4. It provides:

> **4. Right of individuals to be dealt with in accordance with law, etc.**
> (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan.
> (2) In particular—
> (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
> (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
> (c) no person shall be compelled to do that which the law does not require him to do.

There is no difference between Article 9 which provides that no person shall be deprived of life or liberty save in accordance with law and Article 4(2)(a) which prohibits all action detrimental to the life, liberty, body, reputation or property of any person except in accordance with law. Rather, Article 4(2)(a) is wider in scope and includes the protection of Article 9. Moreover, it remains in full force even during an emergency. Neither its operation can be suspended nor are any proceedings founded on it in any way affected.[404] Article 4, which embodies the rule of law, affords a more substantial right as compared to fundamental rights. So predominant is the position of Article 4 that it furnishes the only guarantee or assurance to the citizens when the fundamental rights stand suspended. While the fundamental rights can be suspended, the right given by Article 4 cannot. Therefore, this Article confers a right which is more basic than fundamental rights.[405]

Article 4 reflects the will of the People of Pakistan, that is, to enjoy the protection of law and to be treated in accordance with law is the inalienable right of not only the citizens of Pakistan, but of every other person who is for the time being in Pakistan. As per mandate of Article 4, a foreigner living for the time being in Pakistan is also entitled to protection of law and no action detrimental to his life, liberty, body, reputation or property can be taken except in accordance with law. Nor can he be prevented from or be hindered in doing that which is not prohibited by law and be compelled to do that which the law does not

404 Muhammad Munir, *Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan,* 1973 (Law Publishing Company Lahore 1975) 104-105.

405 Justice Fazal Karim, *Access to Justice in Pakistan* (Pakistan Law House First Edition 2003) 8-9.

require him to do. Article 4 of the Constitution is a restraint on the legislative, executive and judicial organs of the State to abide by the rule of law. It is an original contribution as its equivalent is not to be found in the American or Indian Constitutions.[406] It embodies an important charter and prevents the government from taking any action in this country for which there is no legal sanction and at the same time it debars the legislature from creating an authority whose acts are not subject to law.[407] Even while the proclamation of emergency is in force, no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law as provided by Article 4 of the Constitution.[408]

2. The right to life is the most sacred of all fundamental rights

The right to life is the most fundamental of all human rights. Islam, which is a religion of peace and tolerance, stands for safety, security and sanctity of human life.[409] This aspect of the Islamic teachings is reflected in Article 9 of the Constitution.[410] The Supreme Court emphasized the primacy of the right to life in *Human Rights Case No. 17599 of 2018*,[411] "fundamental rights such as the right to free speech or information are of no use to those struggling with malnutrition, hunger and starvation. Economic prosperity is thus a sine qua non for the implementation of all fundamental rights, the paramount right being that of life." The Court observed that Article 9 of the Constitution did not merely protect the right to 'exist' or 'live' but embodied the right to live a meaningful life with a minimum standard of living. The Supreme Court in *Naimat Ullah Advocate v Federation of Pakistan* held that the right to life was the most sacred of the fundamental rights enumerated in the Constitution.[412] The High Court of Sindh also termed the right to life as the most precious of all fundamental rights.[413]

406 Mohammed Munir, *Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan 1973* (Law Publishing Company Lahore 1975) 82.

407 ibid 83.

408 *Ch Manzoor Elahi v Federation of Pakistan* PLD 1975 Supreme Court 66 (Per Muhammad Yaqub Ali, J).

409 *Watan Party v Federation of Pakistan* PLD 2011 Supreme Court 997.

410 Justice Fazal Karim, *Judicial Review of Public Actions* (Pakistan Law House Second Edition 2018) Vol 2, 802.

411 2019 SCMR 247.

412 *Naimatullah Khan Advocate v Federation of Pakistan* 2020 SCMR 622.

413 *Asma Nadeem v Federation of Pakistan* PLD 2022 Sindh 264.

C. Rights holders

1. Definition of 'life' in the Pakistan Penal Code

Section 45 of the Pakistan Penal Code 1860 defines life: "The word 'life' denotes the life of a human being, unless the contrary appears from the context." And, Section 46 of afore-referred law defines death: "The word 'death' denotes the death of a human being, unless the contrary appears from the context." However, no definition of the beginning and end of human life is provided in the laws of Pakistan.

2. Rights holders other than human beings

The Islamabad High Court recently opened up new vistas in recognition of animal rights while interpreting the constitutional right to life guaranteed by Article 9 of the Constitution.[414] The Court has held that like humans, animals also have natural rights which ought to be recognized. An 'animal' is not merely a 'thing' or 'property.' It is a sentient being. It has emotions and can feel pain or joy. It is a right of each animal, a living being, to live in an environment that meets the latter's behavioural, social and physiological needs. It is also a natural right of every animal to be respected because it is a living being, possessing the precious gift of 'life.' Humans cannot arrogate to themselves a right or prerogative of enslaving or subjugating an animal because the latter has been born free for some specific purposes. It is a natural right of an animal not to be tortured or unnecessarily killed because the gift of life it possesses is precious and its disrespect undermines the respect of the Creator. Moreover, the Court held that the right to life of humans is dependent on the welfare, wellbeing, preservation and conservation of all animal species. Any treatment in violation of the provisions of the Prevention of Cruelty to Animals Act or subjecting an animal to unnecessary pain or suffering, is an infringement of the right to life guaranteed under Article 9 of the Constitution. Kaavan, an elephant housed in a zoo, was ordered to be relocated to an appropriate elephant sanctuary, in or outside the country.

The Supreme Court, while hearing a dispute concerning the legality of a government decision banning expansion of cement activity in a designated zone, alluded among other things to 'environmental legal personhood.'[415] The Court opened up a window for extending rights to natural objects. It may mark a departure from the prevailing attitude of protecting nature by way of human

414 *Islamabad Wildlife Management Board v Metropolitan Corporation, Islamabad* PLD 2021 Islamabad 6.
415 *DG Khan Cement Company Limited v Government of Punjab* 2021 SCMR 834.

interests only. Any harm to the environment may be taken into consideration in its own right. There may be a jurisprudential re-visit of a human-centred rights regime in the cases of protection of nature. However, the nature and extent of conferring legal personhood on the environment will be an issue to be adjudicated by the Court in the near future.

D. Limitations: General considerations

The Supreme Court in the recent case of *Chairman NAB v Nasar Ullah*[416] observed, "No doubt, the right to life and liberty guaranteed by Article 9 of the Constitution is 'subject to law' but the law, which can curtail this right, means a law that promotes larger public interest and not a law that impedes 'fair trial' and limits 'due process'." The courts while adjudicating on the constitutionality of limitations on the right to life may examine if a right balance has been struck between the public interest and the individual right to life or not.

II. Limitations: Key issues

A. Capital punishment

1. Pakistan retains capital punishment as an integral part of its penal system

The country inherited from the colonial rulers a legal system patterned on the Anglo-Saxon model making provision for the death penalty for a number of crimes. Subsequently, Pakistan was constitutionally declared an Islamic State.[417] All existing laws were to be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and the Sunnah, the practice of the Prophet Muhammad (PBUH),[418] and no law could be enacted which was repugnant to such injunctions.[419] The Islamic injunctions allow the State to grant capital punishment in various cases to satisfy the parameters of justice. In 1990, Pakistan amended the penal law to incorporate the Islamic law in the provisions relating to offences

416 *Chairman NAB v Nasar Ullah* Civil Petitions No.1809 to 1814 of 2020 (Decided on 19.04.2022) https://www.supremecourt.gov.pk/downloads_judgements/c.p._1809_2020.pdf (Accessed on 20.05.2022).

417 The Constitution of the Islamic Republic of Pakistan 1973, art 2.

418 Peace Be Upon Him.

419 The Constitution of the Islamic Republic of Pakistan 1973, art 227.

against human body and life in accordance with the Holy Quran and Sunnah as a result of the decision of the Supreme Court in *Federation of Pakistan v Gul Hasan Khan.*[420]

2. Penal laws providing for imposition of death penalty

There are many penal laws in Pakistan which provide for imposition of the death penalty. The words "save in accordance with law" in Article 9 of the Constitution allow for enactment of a law making provision for award of the death penalty. Numerous crimes are punishable with the death penalty. They may be grouped under three different heads. The first category includes those crimes for which the death penalty is awarded under the principles of Islamic laws in the cases of *Qisas*,[421] *Hadood*,[422] blasphemy etc. The second category comprises of those crimes which seriously threaten the law and order of the State like terrorism, intentional killing etc. The third category has nearly two dozen crimes like anti-narcotics, crimes against railway, etc. for which the death sentence can be awarded.

3. Method of carrying out death penalty

Capital punishment is carried out by hanging the convict by the neck till he is dead.[423] Death sentence awarded as *Qisas* shall be executed by causing death of the convict as the court may direct.[424] If a person is convicted and sentenced to death for committing *zina* (rape) under the *Hadood* law, the punishment will be carried out by stoning the convict to death and while stoning is being carried on, he may be shot dead, whereupon stoning and shooting shall be stopped.[425]

4. Safeguards against arbitrary award of death penalty

The words "in accordance with law" used in Article 9 of the Constitution provide a safeguard against any arbitrary award of the death penalty. These words mean that unless the competent legislative authority has determined, in advance, that an act or omission is punishable with such sentence as may be prescribed, no act or omission, however morally or ethically reprehensible, is culpable.[426] Secondly

420 PLD 1989 Supreme Court 633.

421 *Qisas* refers to laws of retaliation for homicide and personal injury drawn from the religious texts.

422 *Hadood* refers to fixed crimes and punishments specified by the foundational texts of Islam.

423 The Code of Criminal Procedure 1898, s 368.

424 The Pakistan Penal Code 1860, s 314 (1).

425 The Offence of Zina (Enforcement of Hudood) Ordinance 1979, s 5 (2) (a) and 17.

426 Justice Fazal Karim, *Judicial Review of Public Actions* (Pakistan Law House Second Edition 2018) Vol 2, 801-802.

what is at stake is life or liberty, and if this is considered with the possible punishment that a person can suffer in a criminal case, the procedural aspect will become evident. Punishments for a criminal offense fall, in the context of this Article, into two categories of relative severity. Imprisonment, which means loss and deprivation of liberty; and death, which means loss and deprivation of life.[427] Another procedural safeguard has been recognized in the shape of the fundamental right to fair trial under Article 10A of the Constitution which provides, "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process." Further, a sentence of death passed by a Sessions Court is to be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.[428] Besides, there are stages of appeal(s) to higher courts and mercy petition to the President available to a death row prisoner.

We see that the Constitutional Courts of Pakistan seek to ensure that all safeguards against arbitrariness must be satisfied before a convict is sent to the gallows. For instance, in the *Safia Bano* case,[429] though all appellate and mercy petition stages had been exhausted, the Supreme Court held that executing a condemned prisoner who due to mental illness was found to be unable to understand the reason behind his or her punishment would not meet the ends of justice.

The Supreme Court has also upheld the rule of expectancy of life. In *Sikandar Hayat v State*,[430] the Court held that the right of expectancy of life was a right of a convict sentenced to death who while consciously pursuing his judicial remedies provided under the law had remained incarcerated for a period equal to or more than that prescribed for life sentence. Such delay in the final judicial determination of a convict's fate is considered to be one of the mitigating circumstances for commuting the sentence of death to life imprisonment. However, the courts were not to blindly apply the rule of expectation of life on every such claim made by a condemned convict but were to consider each case according to its peculiar facts and circumstances. The courts were to adjudge such claim, if found to be genuine, not to be the sole ground but as one of the mitigating circumstances for commuting a capital sentence to a lesser punishment.

The rise of terrorist activities in the recent past led to the passage of a constitutional amendment, effective for a specific time period, which empowered the military courts to try a certain class of civilians. The Supreme Court held that any decision

427 ibid.

428 The Code of Criminal Procedure 1898, s 374.

429 PLD 2021 Supreme Court 488.

430 PLD 2020 Supreme Court 559.

to select, refer or transfer the case of any accused person for trial before the military court and any order passed, decision taken or sentence awarded by the military court was subject to judicial review by the Constitutional Courts on the grounds of coram non judice, being without jurisdiction or suffering from mala fides including malice in law.[431]

The decisions of military tribunals came up before the Constitutional Courts for scrutiny. The Peshawar High Court in *Muhammad Ayaz v Superintendent District Jail, Timergara, District Lower Dir*[432] held that the Court in its constitutional jurisdiction could positively interfere with the decision of the military courts on three fundamental grounds only; if the case of the prosecution was based, firstly, on no evidence, secondly, insufficient evidence and thirdly, absence of jurisdiction. Nevertheless, the Court observed that the accused could not be punished for an offence he was not charged for and this principle of safe administration of justice could not be lost sight of even in cases tried by the military court. Moreover, where two penal provisions prescribed two distinct punishments for the same offence, principle of safe administration of criminal justice provided that in such a situation the accused was to be charged for the offence carrying the lesser punishment. Sentence of death awarded to one of the accused was set aside and the case was remanded back to the military court either to revisit the quantum of punishment awarded or to alter the charge framed against the accused and thereafter proceed against him under the law.

In *Abdur Rashid v Federation of Pakistan*,[433] several accused persons were tried in military courts on charges of being involved in terrorist activities. All of them allegedly confessed to their guilt and accordingly were awarded sentences of death. The Peshawar High Court after considering the record observed that proceedings before the military courts were a complete prosecution show and the accused were denied their legal and fundamental right of engaging a private counsel at their own expense. The cases were cases of no evidence, if the alleged confessional statements made without any independent advice after months/ years of confinement, were subtracted from the entire proceedings. The Court set aside convictions and sentence of death awarded to all the accused persons by the military courts and gave directions to set them free.

It is pertinent to observe that the Holy Quran and the Sunnah attribute a paramount importance to the right to life, presumption of innocence, repentance

431 *District Bar Association Rawalpindi v Federation of Pakistan* PLD 2015 Supreme Court 401.

432 PLD 2018 Peshawar 1.

433 PLD 2019 Peshawar 17.

and reformation. The procedure adopted by the Prophet of Islam (PBUH) to implement punishments grants maximum benefit to the offender on the principle that to acquit a criminal is better than to punish an innocent person. The penalties prescribed in the Quran are not readily meant for random, arbitrary or spontaneous implementation. These considerations find expression in the statute and case law of Pakistan.

B. Abortion

The cases involving the questions of right to abortion have never been brought before the Constitutional Courts of Pakistan perhaps due to the reason that Pakistan is an Islamic State with a predominant Muslim population.

1. Islamic view on abortion

Abortion is an exception to the right to life. The Islamic view on abortion is based on the very high priority the faith gives to the entity of life. The Holy Quran declares: "Whoever takes a life – unless as a punishment for murder or mischief in the land – it will be as if he killed all of humanity; and whoever saves a life, it will be as if he saved all of humanity."[434] Muslims generally regard abortion as forbidden except in certain limited cases.

2. Abortion is a penal offence in Pakistan

The Pakistan Penal Code 1860 establishes two stages of pregnancy for punishment purposes in relation to abortion. The stages are when the organs of the child have not been formed and when the organs of the child have been formed. In the first stage, whoever causes abortion shall be liable to imprisonment for a term which may extend to three years if abortion is caused with the consent of the pregnant woman, or with imprisonment for a term which may extend to ten years if abortion is caused without the consent of the woman.[435] Whoever causes abortion in the second stage, shall be liable to pay compensation and imprisonment for a term which may extend to seven years.[436] A woman who causes herself to miscarry is also amenable to the penal consequences of the afore-referred provisions of law.

434 Surah Al-Ma'idah (5) verse 32.

435 The Pakistan Penal Code 1860, s 338A.

436 ibid s 338C.

3. Exceptions

The offences dealing with both stages recognize exceptions i.e. the miscarriage is caused in good faith for the purpose of saving the life of the pregnant woman or providing necessary treatment to her in case of first stage and the miscarriage is caused in good faith for the purpose of saving the life of the pregnant woman in case of second stage.

C. Euthanasia

There has not been any instance of a question relating to euthanasia being agitated before the Constitutional Courts of Pakistan and it may also be explained by the fact that Pakistan is an Islamic State with a predominant Muslim population.

D. Suicide and assisted suicide

The cases involving the questions of a right to die have also never been brought before the Constitutional Courts of Pakistan. The reasons, once again, could be the Islamic nature of the constitutional and social fabric of the country. At the moment, the attempt to commit suicide is a criminal offence in Pakistan punishable with simple imprisonment for a term which may extend to one year, or with fine, or with both.[437]

E. Lethal use of force during law enforcement

The Constitution of Pakistan only provides one exception to the right to life: a person can only be deprived of life in accordance with law. Any use of force during law enforcement is to be backed by a sanction of law. If a person forcibly resists arrest or attempts to evade the arrest, the police officer may use all means necessary to effect the arrest.[438] It is also provided, however, that this does not grant a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life. The law prohibits an arrested person from being subjected to more restraint than is necessary to prevent his escape.[439] It is also provided that force may be used to disperse an assembly.[440]

437 ibid s 325.

438 The Code of Criminal Procedure 1898, s 46.

439 ibid s 50.

440 ibid s 128.

This may extend to the use of firearms under the specific directions of an officer of the police not below the rank of an Assistant Superintendent or Deputy Superintendent of Police. Such a police officer may also call on the armed forces to disperse the assembly.[441]

Heavy responsibility lies upon the law enforcing agencies to ensure that life and property of the people in terms of Article 9 of the Constitution is protected by them.[442] The Supreme Court in *Mehram Ali v Federation of Pakistan*[443] said that Section 5(2)(i) of the Anti-Terrorism Act 1997 was invalid to the extent it authorised the officer of police, armed forces and civil armed forces charged with the duty of preventing terrorism, to open fire or order for opening of fire against person who in his opinion in all probability was likely to commit a terrorist act or any scheduled offence, without being fired upon. The Supreme Court has held that the right to life is "a sacred right, which cannot be violated, discriminated or abused by any authority."[444]

The Supreme Court took suo motu notice of the killing of an unarmed citizen at the hands of Sindh Rangers, a federal paramilitary force called in aid of the police and civil administration, in Karachi.[445] The Court termed the incident "a classical case of high handedness of the law enforcing agencies" which clearly indicated barbarism because once the victim had been overpowered, as evident from the video clip of the event recorded by a journalist, he was not to be fired upon in any case and at maximum the Rangers personnel could have handed him over to the police, if there was any allegation of his being involved in the commission of some offence. A Deputy Inspector General of Police was directed to take over the charge of the investigation and the trial court was directed to conduct proceedings on day to day basis and conclude trial expeditiously without being influenced in any manner from the proceedings of the Supreme Court.[446] The culprits were later convicted and sentenced.

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441 ibid s 129.

442 *In the matter of: For Arrest of Accused of Murder of Her Daughter Waheeda* 2014 SCMR 83.

443 PLD 1998 Supreme Court 1445.

444 *Benazir Bhutto v President of Pakistan* PLD 1998 Supreme Court 388 (Per Saleem Akhtar, J).

445 *Suo Motu Case No. 10 of 2011: In the matter of Brutal Killing of a Youngman by Rangers* PLD 2011 Supreme Court 799.

446 The Supreme Court took suo motu notice under Article 184(3) of the Constitution as a question of public importance with reference to the enforcement of fundamental rights was involved. The Supreme Court's concern was that the investigation and trial of the incident be conducted fairly and expeditiously. However, there was no deviation from normal procedure: investigation was to be conducted by police and the accused were to be tried in relevant criminal trial court. The Supreme Court passed appropriate directions to ensure transparent investigation and fair trial, and disposed of suo motu case.

The Supreme Court observed in *Watan Party v Federation of Pakistan*,[447] "Islam is a religion of peace and tolerance and it stands for safety, security and sanctity of human life. Islam abhors unlawful killing of innocent people and strictly prohibits it in a number of Quranic verses and Ahadith." This aspect of the Islamic teachings finds expression in Article 9 of the Constitution.[448]

The Supreme Court in *President Balochistan High Court Bar Association v Federation of Pakistan*[449] observed, in the context of allegations of high handedness on the part of law enforcement agencies in the insurgency-hit province of Balochistan, that it was the duty of the State to enforce fundamental rights of citizens and protect their life, liberty and property. In case of any charge for any offence against anyone, he was to be dealt with in accordance with law by providing fair trial and due process. The Court gave directions that the Federal Government should ensure immediate action under the Constitution to provide security to the people of the province against all criminal aggression including the recovery of mutilated dead bodies, missing persons, target killings, abduction for ransom and sectarian killings; that the Provincial Government should accelerate the process of registration of cases in respect of said criminal aggression and should make payment of compensation to the heirs of persons whose dead bodies were recovered; that the Provincial Government should prepare a scheme for the purpose of providing maintenance etc. to the families of those persons who had been killed; that the Federal and Provincial Governments should immediately take steps for the rehabilitation of Internally Displaced Persons (IDPs) in the province and necessary steps should be taken not only for the restoration of their properties but also by providing security to their lives and property and restore civil administration such as schools, hospitals, courts, police stations etc.

The High Court of Sindh in *Asma Nadeem v Federation of Pakistan*[450] held that the right to life is the most precious of all fundamental rights of the citizens protected by the Constitution and it is the duty of the State to ensure that such right is protected. Pakistan is a democratic country governed by the Constitution. The practice of enforced disappearance of citizens must be put to an end. The State is duty bound to protect its citizens, and has the power and ability to prevent the practice of enforced disappearances and to pass appropriate legislation to such effect.

447 PLD 2011 Supreme Court 997.

448 Justice Fazal Karim, *Judicial Review of Public Actions* (Pakistan Law House Second Edition 2018) Vol 2, 802.

449 2012 SCMR 1958.

450 PLD 2022 Sindh 264.

III. Expansive interpretations

A. Socio-economic dimensions

1. Recognition of unenumerated constitutional rights

Article 9 of the Constitution guaranteeing the right to life is a brief provision which only provides that nobody shall be deprived of life save in accordance with law. The Constitution does not explicitly contain a provision authorizing the recognition of unenumerated constitutional rights. It, however, does not mean that constitutional rights in Pakistan are only limited to those expressly stated in the chapter on fundamental rights. There are other sources like the Preamble, the Objectives Resolution[451] and Principles of Policy (Articles 29-40) which espouse constitutional values, and coupled with broad contours of certain fundamental rights, recognize certain constitutional rights which, though not specified in the Constitution, have been granted by the Courts. The Supreme Court in *Benazir Bhutto v Federation of Pakistan*[452] held, "Articles 3, 37 and 38 of the Constitution juxtapose to advance the cause of socio-economic principles and should be given a place of priority to mark the onward progress of democracy. These provisions become in an indirect sense enforceable by law and thus, bring about a phenomenal change in the idea of co-relation of Fundamental Rights and directive principles of State Policy. If an egalitarian society is to be formed under the rule of law, then necessarily it has to be by legislative action in which case it would be harmonious and fruitful to make an effort to implement the socio-economic principles enunciated in the Principles of Policy, within the framework of the Fundamental Rights, by enlarging the scope and meaning of liberties, while judicially defining them and testing the law on its anvil and also, if necessary, with the co-related provisions of the Objectives Resolution which is now a substantive part of the Constitution. The liberties, in this context, if purposefully defined, will serve to guarantee genuine freedom; freedom not only from arbitrary restraint of authority, but also freedom from want, from poverty and destitution and from ignorance and illiteracy."

451 A resolution popularly known as the Objectives Resolution was passed by the nascent constituent assembly in March 1949. It laid the foundation of the future constitution and indicated the broad outlines of its structure. Objectives Resolution later served as the preamble to the Constitutions of 1956, 1962 and 1973. In 1985, it became a substantive part of the Constitution through the insertion of Article 2A in the Constitution of 1973.

452 PLD 1988 Supreme Court 416.

2. The word 'life' is not restricted only to the vegetative or animal life

The Supreme Court in *Shehla Zia v WAPDA*[453] held, "The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally."

3. The right to life has been expanded to recognize a number of constitutional rights

The Constitutional Courts have expanded the right to life guaranteed by Article 9 of the Constitution to recognize a number of constitutional rights. It has been laid down that Article 9 of the Constitution which guarantees life and liberty according to law is not to be construed in a restrictive manner, rather, life has larger concept which includes the right of enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights.[454] It has been held that the fundamental right to life includes the right to pure and unpolluted water,[455] the right to basic health care,[456] the right to livelihood,[457] the right to safe and health-friendly environment,[458] protection against adverse effects of electromagnetic fields,[459] the right to enjoy pollution-free air,[460] the right of access to justice,[461] the right to food,[462] the right to provision of electricity and gas,[463] education, civic and civil

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453 PLD 1994 Supreme Court 693.

454 *Employees of Pakistan Law Commission v Ministry of Works* 1994 SCMR 1548.

455 *West Pakistan Salt Miners Labour Union, Khewra v Director, Industries and Mineral Development, Punjab* 1994 SCMR 2061, *Shahzada Sikandar ul Mulk v Capital Development Authority* PLD 2019 Islamabad 365, *Zeenat Salim v Pakistan Naval Farms* PLD 2022 Islamabad 138.

456 *Suo Motu Case No. 19 of 2016* 2017 SCMR 683.

457 *Pir Imran Sajid v Telephone Industries of Pakistan* 2015 SCMR 1257, *Abdul Wahab v HBL* 2013 SCMR 1383, *National Bank of Pakistan v Nusrat Perveen* 2021 SCMR 702, *Jet Green (Pvt.) Limited v Federation of Pakistan* PLD 2021 Lahore 770.

458 *Barrister Zafarullah Khan v Federation of Pakistan* 2018 SCMR 2001, *West Pakistan Salt Miners Labour Union Khewra v Director, Industries and Mineral Development, Punjab* 1994 SCMR 2061, *Suo Motu Case No. 10 of 2010 (Contamination of Water of Mancher Lake due to Disposal Effluent from MNV Drain now converted into RBOD)* 2011 SCMR 73, *Shahab Usto v Government of Sindh* 2017 SCMR 732, *Shehla Zia v WAPDA* PLD 1994 Supreme Court 693, *Sheikh Asim Farooq v Federation of Pakistan* PLD 2019 Lahore 664, *Shehri v Province of Sindh* 2001 YLR 1139, *Shahzada Sikandar ul Mulk v Capital Development Authority* PLD 2019 Islamabad 365, *Zeenat Salim v Pakistan Naval Farms* PLD 2022 Islamabad 138.

459 *Shehla Zia v WAPDA* PLD 1994 Supreme Court 693.

460 *Haji Mullah Noor Ullah v Secretary Mines and Minerals* 2015 YLR 2349.

461 *Government of Balochistan v Aziz Ullah Memon* PLD 1993 Supreme Court 341, *Al-Jehad Trust v Federation of Pakistan* PLD 1997 Supreme Court 84, *Asfandyar Wali v Federation of Pakistan* PLD 2001 Supreme Court 607, *Munir Hussain Bhatti v Federation of Pakistan* PLD 2011 Supreme Court 407.

462 *Muhammad Ahmad Pansota v Federation of Pakistan* PLD 2020 Lahore 229.

463 *OGRA v Midway II, CNG Station* 2014 SCMR 220, *Iqbal Zafar Jhagra v Federation of Pakistan* PTD 2014

infrastructure and transportation.[464]

B. Environmental dimensions

The right to life as interpreted in Pakistan has environmental dimensions as well. It has been held that the right to life includes the right to safe and health-friendly environment.[465]

Following are the landmark cases that recognized, defined and delineated the environmental dimensions of the right to life in Pakistan.

1. *Shehla Zia v WAPDA*[466]

It was a ground-breaking case which recognized the environmental dimensions of the right to life. Some citizens had expressed apprehension against construction of a grid station in their locality. The Court found that the matter raised two questions namely whether any government agency had a right to endanger the life of citizens by its actions without the latter's consent and whether zoning laws vest rights in citizens which could not be withdrawn or altered without the citizen's consent. It was held that the right to a clean environment was a fundamental right of all citizens of Pakistan covered by the right to life. They were entitled to protection of law from being exposed to hazards of electromagnetic field or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Opinion of scientists and scholars was that likelihood of adverse effects of electromagnetic fields on human health could not be ruled out. The Court observed that in such circumstances the balance should be struck between the rights of the citizens and also the plans which were to be executed by the government agency for the welfare, economic progress and prosperity of the country and if there were threats of serious damage, effective measures should be taken to control it and it should not be postponed merely on the ground that the scientific research and studies were uncertain and not conclusive. With the consent of both the parties, the Court appointed a commission to examine the plan and the proposals/schemes of the

Supreme Court 243.

464 *Naimatullah Khan Advocate v Federation of Pakistan* 2020 SCMR 622.

465 *Barrister Zafarullah Khan v Federation of Pakistan* 2018 SCMR 2001, *West Pakistan Salt Miners Labour Union Khewra v Director, Industries and Mineral Development, Punjab* 1994 SCMR 2061, *Suo Motu Case No. 10 of 2010 (Contamination of Water of Mancher Lake due to Disposal Effluent from MNV Drain now converted into RBOD)* 2011 SCMR 73, *Shahab Usto v Government of Sindh* 2017 SCMR 732, *Shehla Zia v WAPDA* PLD 1994 Supreme Court 693.

466 PLD 1994 Supreme Court 693.

government agency in the light of complaint made by the citizens and submit its report and if necessary to suggest any alteration or addition which may be economically possible for construction and location of the grid station.

2. *West Pakistan Salt Miners Labour Union, Khewra v Director, Industries and Mineral Development, Punjab*[467]

The petitioners sought enforcement of the right of residents to have clean and unpolluted water. Their apprehension was that in case coal mining activity extending in the water catchment areas was allowed to continue, the watercourse, reservoir, and the pipelines would get contaminated. The Court entertained the petition in its original jurisdiction and held that water was a source of life and the right to have unpolluted water was the right of every person wherever he lived. It issued a number of directions to the concerned departments and directed the miners to shift within four months, the location of the mouth of the specified mine at a safe distance from water reservoir in such a manner that it was not polluted by mine debris, carbonised material and water spilling out from the mines.

3. *In re: Human Rights Case (Environment Pollution in Balochistan)*[468]

The Supreme Court took suo motu notice of the news item that nuclear or industrial waste was to be dumped in the coastal areas of Balochistan as it would be in violation of Article 9 of the Constitution. The Court directed that the authorities charged with the duty to allot the land on the coastal area should insert a condition in the allotment letter that the allottee shall not use the land for dumping, treating, burying or destroying by any device waste of any nature including industrial or nuclear waste in any form.

4. *Adeel-ur-Rehman v Federation of Pakistan*[469]

The authorities declined to release some consignments of importers for the reason that according to laboratory reports the same were infested to varying degrees and were not fit for human consumption. The Supreme Court refused to grant leave to appeal. The right to life guaranteed by Article 9 of the Constitution was further broadened by the Court. “It is the duty of the State to see that the life of a person is protected as to enable him to enjoy it within the prescribed limits of law. Pollution, environmental degradation and impure food items also fall in the

467 1994 SCMR 2061.
468 PLD 1994 Supreme Court 102.
469 2005 PTD 172.

category of deprivation of life."

5. *Suo Motu Case No. 10 of 2005 (Re: Environmental hazard of the proposed New Murree Project)*[470]

The Court emphasized the need of sensitizing the general public about the fundamentals of sustainable development so as to achieve the goal of healthy environment, not only for present population but also for future generations.

6. *Ali Steel Industry v Government of Khyber Pakhtunkhwa*[471]

The Peshawar High Court observed that the right to life as enshrined in the Constitution means a right to a healthier and cleaner environment. Protection of the environment which emerges from the right to life, liberty and dignity guaranteed under Articles 9 and 14 of the Constitution, the Court observed, is an inalienable right and perhaps more fundamental than the other rights. It was also said that environmental justice is an amalgam of the constitutional principles of democracy, equality, social, economic and political justice guaranteed under the Objectives Resolution, the fundamental right to life, liberty and human dignity which include the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter- and intra-generational equity and public trust doctrine.

7. *Shahab Usto v Government of Sindh*[472]

A constitutional petition was filed before the Supreme Court to ensure provision of clean drinking water and safe environment to the people of the province of Sindh. The Court held that provision of clean water for drinking was the duty of the State. A commission was formed to record findings on the issue. The Court directed that visuals and footage recorded by the commission should be sent to the Speaker of the Provincial Assembly who may arrange its viewing in the Provincial Assembly to enable the peoples' representatives to have a clear view of the prevailing situation in the province; that a task force formed to comply with the recommendations of the commission shall immediately start its work under the supervision of the provincial Chief Secretary and shall report to the commission; that the commission shall have further powers to ensure compliance of the recommendations made in its report and shall continue taking all steps to

470 2010 SCMR 361.
471 2016 CLD 569.
472 2017 SCMR 732.

achieve the objective for which the commission was formed, etc.

8. *Asghar Leghari v Federation of Pakistan*[473]

The petitioner (an agriculturist) approached the Court as a citizen for the enforcement of his fundamental rights threatened by the rising trend of climate change. The Lahore High Court held that the Court could be approached for an appropriate order for the enforcement of the fundamental rights of the people in the context of climate change. "Climate justice links human rights and development to achieve a human-centred approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the world's resources. . . Climate Change has moved the debate from a linear local environmental issue to a more complex global problem. In this context of climate change, the identity of the polluter is not clearly ascertainable and by and large falls outside the national jurisdiction. Who is to be penalized and who is to be restrained? On the global platform the remedies are adaptation or mitigation." It was further observed that water justice is a sub-concept of climate justice. "Water justice refers to the access of individuals to clean water. More specifically, the access of individuals to clean water for survival (drinking, fishing, etc.) and recreational purposes as a human right. Water justice demands that all communities be able to access and manage water for beneficial uses, including drinking, waste removal, cultural and spiritual practices, reliance on the wildlife it sustains, and enjoyment for recreational purposes. Right to life and right to human dignity under Articles 9 and 14 of the Constitution protect and realize human rights in general, and the human right to water and sanitation in particular. In adjudicating water and water-related cases, we have to be mindful of the essential and inseparable connection of water with the environment, land and other ecosystems." The High Court constituted a Standing Committee on Climate Change to act as a link between the Court and the Executive and to render assistance to the Federal and Provincial Governments and Agencies concerned in order to ensure that the National Climate Change Policy, 2012 and the Framework for Implementation of Climate Change Policy (2014-2030) continued to be implemented.

473 PLD 2018 Lahore 364.

9. *DG Khan Cement Company Limited v Government of Punjab*[474]

The Supreme Court was hearing a dispute concerning the legality of a government decision banning expansion of cement activity in a designated zone. The Court referred to precautionary principle, in dubio pro natura, environmental legal personhood, climate change and climate justice, and water justice. "Robust democracies need to be climate democracies in order to save the world and our further generations from being colonized at the hands of climate change. The preambular constitutional value of democracy under our Constitution is in effect climate democracy, if we wish to actualize our Constitution and the fundamental rights guaranteed under the Constitution for ourselves and our future generations. . . Sustainable development means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs and it is in step with our constitutional values of social and economic justice." The Court held that the governmental approach of placing an embargo on expansion of cement manufacturing in a delineated area is constitutionally compliant as the courts are to protect the fundamental rights of the public and in this case the right to life, sustainability and dignity of the community surrounding the negative zone[475] remains paramount till such time that the government is of the view that cement activity has no adverse environmental effects.

C. Other expansive dimensions

1. Dynamic interpretation of the right to life

The fundamental rights guaranteed by the Constitution of Pakistan are not static but pregnant with immense energy to address the growing complexities of modern democracy.[476] The Constitutional Courts endeavour to discover unwritten constitutional nuances which make the Constitution an evergreen and living document. The right to life as envisaged by Article 9 of the Constitution includes all those aspects of life which go to make a man's life meaningful, complete and worth living[477] including one's tradition, culture and heritage.[478]

474 2021 SCMR 834.

475 Negative zone refers to an area where establishment of new cement plants, and enlargement and expansion of existing cement plants, was banned by the government.

476 *Mansoor Sarwar Khan v ECP* 2015 CLC 1477.

477 *NESPAK v Kamil Khan Mumtaz* 2018 SCMR 211.

478 ibid (Per Maqbool Baqar, J).

2. Alarmingly high population growth rate

The Supreme Court took notice of the alarmingly high population growth rate in the country.[479] It was observed that the right to life and several other rights were meaningless if owing to overpopulation, people were deprived of basic amenities such as food, water, etc. Pakistan, being one of the most populated countries in the world, needed to realize its responsibility and play its role in curbing its uncontrolled and unplanned population before starvation, malnutrition, illiteracy, poverty and unemployment became the fate of a large segment of its population. The Court issued recommendations to accelerate government efforts to reduce population growth rate, lower the total fertility rate, and increase the contraceptive prevalence rate.

3. Pandemic of coronavirus

The Supreme Court took suo motu notice of the situation developing in the wake of the outbreak of the pandemic of coronavirus (COVID-19) and expressed apprehension that the health sector may become overwhelmed owing to the large number of infected patients. However, the Court observed that the people of the country despite a struggling economy had a fundamental right, namely, right to life, under which the government was required to provide them safe and healthy living conditions.[480] The Court further observed that no law had been made at the national level for dealing with the pandemic and its effects on the citizens and that making of laws at the national level was essential for dealing with the cases of coronavirus.[481] The Lahore High Court held that the fundamental right to life envisaged that the authorities must chalk out all necessary standard operating procedures ("SOPs") for safety of the students who were appearing in examination taking place during the outbreak of coronavirus, convey the same to the students, which were binding on them being sovereign command within the meaning of Article 5(2) of the Constitution and most importantly ensure that the SOPs were being observed by the students and those conducting examinations at the examination centers.[482]

4. Not all legal rights terminate on death

The Supreme Court in *National Bank of Pakistan v Nusrat Perveen*[483] held

479 *Human Rights Case No. 17599 of 2018* 2019 SCMR 247.

480 *Suo Motu Action Regarding Combating the Pandemic of Corona Virus (COVID -19)* 2020 SCMR 1006.

481 *Suo Motu Action Regarding Combating the Pandemic of Corona Virus (COVID -19)* 2020 SCMR 1036.

482 *Mahnum Hussain v British Council Pakistan* 2021 CLC 1583.

483 2021 SCMR 702.

that not all legal rights terminated on death. "Fundamental rights under the Constitution do not only protect and safeguard a citizen but extend beyond his life and protect and safeguard his survivable interests by being equally available to his legal heirs." The Court observed that the fundamental right to life includes the right to livelihood, and so ensures the security of the terms and conditions of the civil service; fundamental right to property ensures security of the pecuniary and pensionary benefits attached to the service; fundamental right to dignity ensures that the reputation of the civil servant is not sullied or discredited through wrongful dismissal, termination or reversion etc; and fundamental right to fair trial and due process, inter alia, safeguards and protects the survivable interest and ensures continuity of the legal proceedings even after the death of the civil servant, equipping the legal heirs to purse the claim. "It is reiterated that other than pecuniary and pensionary benefits that inure to the benefit of the legal heirs, the right to restore one's reputation is also a survivable right and flows down to the legal heirs to pursue and take to its logical conclusion. Any slur on the reputation of a civil servant impinges on his human dignity and weighs equally on the dignity and honour of his family."

5. Restitution under employment law

The Supreme Court stated the principle regarding the grant of back benefits in employment disputes in the light of fundamental rights including the right to life in *Muhammad Sharif v Inspector General of Police*.[484] The Court observed that an employee whose "wrongful dismissal or removal has been set aside goes back to his service as if he were never dismissed or removed from service. . . The employee stands restored to his post with all his perks and benefits intact and will be entitled to arrears of pay as would have accrued to him had the penalty not been imposed on him. This general principle of restitution fully meets the constitutional requirements of fair trial and due process (Articles 4 & 10A) besides the right to life (Article 9) which includes the right to livelihood ensuring all lawful economic benefits that come with the post."

6. Minimum wage

The Supreme Court interpreted the right to life to emphasize the importance of the minimum wage in *Federation of Pakistan Chamber of Commerce, Karachi v Province of Sindh*:[485] "Our Constitution emphasizes on distributive justice with constitutional values of social, economic and political justice. It calls for

484 2021 SCMR 962.

485 PLD 2022 Supreme Court 298.

'elimination of exploitation' and enjoins to protect the 'economic interests' of the workers and ensure 'equitable adjustment of rights between employers and employees.' Right to life including right to livelihood under Article 9 ensures just and favourable remuneration for workers. Right to dignity under Article 14 ensures decent work for workers i.e., working conditions and wages that enhance rather than undermine workers' self-respect and social standing. . . Wage fixation is an important social welfare measure to be determined in the light of the economic reality of the situation and the minimum needs of the worker with an eye to the preservation of his efficiency as a worker. It is a delicate task, a fine balance is to be achieved. The demands of social justice, necessitating that the workers receive their proper share in the national income they help to produce, need to be balanced against the depletion, every increase in wages brings in the profits of the industry. The central character in this process remains the worker who deserves to get a fair share in the deal, as far as that can be, without at the same time impinging on the vital interests of the industry whose continuity and success are also the mainstay of labour."

7. The right to life of the local community and intergenerational justice

The Supreme Court in addition to upholding the right to life, sustainability and dignity of the local community also reflected on intergenerational justice in *DG Khan Cement Company Limited v Government of Punjab*:[486] "The tragedy is that tomorrow's generations aren't here to challenge this pillaging of their inheritance. The great silent majority of future generations is rendered powerless and needs a voice. This Court should be mindful that its decisions also adjudicate upon the rights of the future generations of this country. It is important to question ourselves; how will the future generations look back on us and what legacy we leave for them? This Court and the Courts around the globe have a role to play in reducing the effects of climate change for our generation and for the generations to come. Through our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times. Democracy, anywhere in the world is pillared on the rule of law, which substantially means rights based rule of law rather than rule based; which guarantees fundamental values of morality, justice, and human rights, with a proper balance between these and other needs of the society. Post climate change, democracies have to be redesigned and restructured to become more climate resilient and the fundamental principle of rule of law has to recognize the urgent need to combat climate change."

486 2021 SCMR 834.

The Lahore High Court in a case of public interest litigation filed for protection of endangered species held that the right to life guaranteed under the Constitution includes the right to live in a world that has an abundance of all species, not only for the current generation but also for its progeny.[487]

8. Mainstreaming persons with disabilities

It was observed in *Malik Ubaidullah v Government of the Punjab*[488] that the triangular construct of the right to life, dignity and equality under the Constitution provided a robust platform for mainstreaming persons with disabilities. The Court emphasized that a fair and equitable representation of persons with disabilities in every tier of the government service be ensured. The Supreme Court has also held that the use of pejorative words like crippled or disabled for persons with disabilities or persons with different abilities seriously offends the right to be a person thereby infringing constitutional guarantees like right to life, right to human dignity and right to non-discrimination of persons with disabilities.[489]

9. The right to food

The Lahore High Court recently held that the right to life included the right to food.[490] The Court observed that the right to life could only be enforced if certain ingredients were present, food being the first and foremost. The right to food was a necessity of life and thus an extension of the right to life. The right to life clearly meant the right to food including protection against wastage of excess food. Providing its citizens with food, especially those who did not have access to it and/or could not afford it was a primary obligation of the State, violation of which would not only breach the right to food but also the right to life, security and dignity. When one violated the right to food, the enjoyment of other human rights, such as the right to health, education, life, adequate housing, work and social security may also be marred and vice versa. "Pakistan has ratified international human rights treaties which enshrine the right to food. The language of these agreements signifies that Pakistan has agreed to work within an international human rights framework and has an obligation to take steps to respect and fulfill such rights. This creates moral, legal and ethical imperatives to bring this human right framework home by developing a domestic food policy infrastructure based on the right to food." The State was duty bound to legislate to protect the wastage of excess food and to start awareness campaigns to sensitize the people in such

487 *Ali Imran v Forest, Wildlife and Fishery Department* PLD 2020 Lahore 24.

488 PLD 2020 Supreme Court 599.

489 *Beena v Raj Muhamad* PLD 2020 Supreme Court 508.

490 *Muhammad Ahmad Pansota v Federation of Pakistan* PLD 2020 Lahore 229.

regard to achieve the target of food security.

10. Denial of identity is breach of the right to life

The Islamabad High Court observed that paternity is the state of being a father and is not necessarily linked to a valid marriage because a child could be born even out of wedlock.[491] The Court said that the identity of an individual depends on accurate determination of parentage and knowing one's biological father's identity has nexus with emotional and psychological needs of a person. Denial of such knowledge can have profound consequences in context of quality of life and such denial is in breach of the fundamental right to life guaranteed under Article 9 of the Constitution. Knowledge of paternity is crucial and related to self-esteem, identity, respect and privacy and is an integral part of the fundamental right to inviolability of dignity of a person under Article 14 of the Constitution. The law leans in favour of presumption of paternity rather than illegitimacy unless proved by strong evidence.

11. Virginity test is violative of the right to life

The Lahore High Court declared that two finger test and the hymen test carried out for the purposes of ascertaining the virginity of a female victim of rape or sexual abuse is unscientific having no medical basis and is, therefore, of no forensic value in cases of sexual violence.[492] The Court observed that virginity test by its very nature is invasive and an infringement on the privacy of a woman, to her body and is blatant violation of the dignity of a woman. Conclusions drawn from such tests about a woman's sexual history and character constitute a direct attack on her dignity and lead to adverse effects on social and cultural standing of a victim. Such test is also discriminatory as it is carried out primarily to ascertain whether or not the victim is sexually active for which there is no justification as being sexually active is irrelevant to incident of rape or sexual abuse. If at all there is any testing of status of the hymen, it can only be for medical purposes with respect to injury or treatment, there is no justification for such information to be used for the purposes of determining whether or not incident of rape or sexual abuse took place. The Court further declared that virginity test offends the personal dignity of the female victim and therefore is against the right to life and right to dignity enshrined in Articles 9 and 14 of the Constitution.

491 *Urooj Tabani v Federation of Pakistan* PLD 2021 Islamabad 105.

492 *Sadaf Aziz v Federation of Pakistan* 2021 PCrLJ 205.

Annex 1: List of cited legal provisions

1) Constitutional provisions

The Constitution of the Islamic Republic of Pakistan 1973

- Preamble
- Article 2
- Article 2A
- Article 3
- Article 4
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2) Sub-constitutional provisions

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The Offence of Zina (Enforcement of Hudood) Ordinance 1979
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International Covenant on Civil and Political Rights (ICCPR) 1966
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Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979
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2. *Abdur Rashid v Federation of Pakistan* [PLD 2019 Peshawar 17, 18 October 2018]
3. *Adeel-ur-Rehman v Federation of Pakistan* [2005 PTD 172, 17 May 2004]
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12. *Benazir Bhutto v Federation of Pakistan* [PLD 1988 Supreme Court 416, 20 June 1988]
13. *Benazir Bhutto v President of Pakistan* [PLD 1998 Supreme Court 388, 29 January 1997]
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16. *DG Khan Cement Company Limited v Government of Punjab* [2021 SCMR 834, 15 April 2021]
17. *District Bar Association Rawalpindi v Federation of Pakistan* [PLD 2015 Supreme Court 401, 5 August 2015]
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19. *Federation of Pakistan Chamber of Commerce, Karachi v Province of Sindh* [PLD 2022 Supreme Court 298, 26 January 2022]
20. *Federation of Pakistan v Gul Hasan Khan* [PLD 1989 Supreme Court 633, 5 July 1989]
21. *In the matter of: For Arrest of Accused of Murder of Her Daughter Waheeda* [2014 SCMR 83, 24 July 2013]
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30. *Islamabad Wildlife Management Board v Metropolitan Corporation, Islamabad* [PLD 2021 Islamabad 6, 21 May 2020]
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33. *Mahnum Hussain v British Council Pakistan* [2021 CLC 1583, 21 April 2021]
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65. *Watan Party v Federation of Pakistan* [PLD 2011 Supreme Court 997, 13 September 2011]
66. *West Pakistan Salt Miners Labour Union Khewra v Director, Industries and Mineral Development, Punjab* [1994 SCMR 2061, 12 July 1994]
67. *Zeenat Salim v Pakistan Naval Farms* [PLD 2022 Islamabad 138, 7 January 2022]

12. Philippines

Supreme Court

Overview

The 1987 Constitution codified the inherent right to life to emphasize its primacy in the roster of rights. The key provisions are found under Article III (Bill of Rights), particularly Sections 1, 2 and 19. Provisions in Article II (Declaration of Principles and State Policies) and Article XIII (Social Justice and Human Rights) are also of relevance. The Philippines has ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the two Optional Protocols to the ICCPR. The death penalty was abolished in 2006, and efforts initiated to reinstate the death penalty have not been successful. Abortion in the Philippines is, in the absence of medical necessity, a criminal act. Regarding the issue of euthanasia, the Philippines has no specific law that governs or penalizes euthanasia. Under Philippine penal laws, anyone who kills another with evident premeditation, regardless of the motive, will be liable for murder. Suicide or the intentional taking of one's own life is not a crime under Philippine laws. However, giving assistance to suicide is a crime under Article 253 of the Revised Penal Code. In relation to the use of force by public authorities, two particularly relevant special rules of procedure are the Rule on the Writ of Amparo and the Rules on the Use of Body-Worn Cameras in the Execution of Warrants. The right to life also encompasses other issues, such as those affecting the quality of life and the minimum standards of living of individuals. For example, in *Imbong v. Ochoa* the Supreme Court declared that "a component to the right to life is the constitutional right to health." The right to life is also understood to encompass the right of the people to a healthy environment, a landmark case being *Oposa v. Factoran*.

Outline

I. Defining the right to life
- A. Recognition and basic obligations
- B. Constitutional status
- C. Rights holders
- D. Limitations: General considerations

II. Limitations: Key issues
- A. Capital punishment
- B. Abortion
- C. Euthanasia
- D. Suicide and assisted suicide
- E. Lethal use of force during law enforcement
- F. Other limitations on the right to life

I. Defining the right to life

A. Recognition and basic obligations

The Philippines' commitment to protect the right to life is consistently evident from the 1935 Constitution,[493] the 1973 Constitution,[494] and currently in the 1987 Constitution. While the right to life has always been considered as inherent in every human being, the framers of the 1987 Constitution made sure provisions securing every aspect of this right are embedded in the current version of the constitution. Foremost of these provisions can be found under Article III entitled the Bill of Rights, which provides (1) guarantee against the deprivation of the right to life, liberty and property without due process of law;[495] (2) right against unreasonable searches and seizure;[496] and, (3) right against cruel, degrading and inhuman punishment.[497]

Constitutional provisions manifesting the expansive interpretation of the right to life can also be found under Article II on the Declaration of Principles and State Policies, specifically Section 11 on the value for the dignity of every human person and guarantee of full respect for human rights;[498] Section 12 recognizing the sanctity of family life and guarantee on the equal protection of the life of the mother and that of the unborn from conception;[499] Section 15 on the protection

493 1935 Constitution of the Philippines, Article III, Section 1.

494 1973 Constitution of the Philippines, Article IV, Section 1.

495 Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

496 Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

497 Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading, or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty shall be reduced to *reclusion perpetua*.

498 Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

499 Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from

and promotion of the right to health;[500] Section 16 on the right to a balanced and healthful ecology;[501] and, Article XIII on social justice.[502]

In addition to the various constitutional provisions, the Philippines is signatory to several human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR),[503] the Universal Declaration of Human Rights (UDHR),[504] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[505] Having acceded to these international instruments, the Philippines is bound to abide by the principles contained therein. Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.[506] The transformation method is illustrated through Section 21 of Article VII which provides that no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate; while Section 2 of Article II applies the incorporation method by providing that the Philippines adopts the generally accepted principles of international law as part of the law of the land. Clearly, the Philippines is duty-bound to take measures protecting the right to life as mandated by its Constitution and as treaty obligation.

B. Constitutional status

Having mentioned the various provisions related to right to life incorporated in

conception.

500 Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

501 Section 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

502 Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

503 The Philippines became party to the ICCPR on December 19, 1966 while the Philippine Congress ratified it on October 23, 1986; UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN

504 The Philippines voted yes to the adoption of the UDHR on December 10, 1948; United Nations Digital Library. https://digitallibrary.un.org/record/670964?ln=en&p=Resolution+217%28III%29+A

505 The Philippines became party to the ICESCR on December 19, 1966 while the Philippine Congress ratified it on June 7, 1974; UN Treaty Body database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN

506 *Pharmaceutical and Health Care Association v. Duque III*, G.R. No. 173034, [October 9, 2007], 561 PHIL 386-451.

the 1987 Philippine Constitution, there can be no doubt that the right to life is on the top of the hierarchy of rights protected by our constitution. In her separate opinion which was made an integral part of the Supreme Court decision in *Almonte v. People*,[507] Justice Estela Perlas-Bernabe pointed out that "There is no quibbling that courts are duty-bound to recognize a person's right to life, and grant permissible reliefs despite, and to reiterate, the silence, obscurity or insufficiency of our laws. This command is founded on none other than the fundamental law, particularly in our Bill of Rights enshrined in the Constitution."[508]

In the case of *Imbong v. Ochoa*,[509] the Supreme Court held that "it is a universally accepted principle that every human being enjoys the right to life. Even if not formally established, the right to life, being grounded on natural law, is inherent and, therefore, not a creation of, or dependent upon a particular law, custom, or belief. It precedes and transcends any authority or the laws of men."

C. Rights holders

In the case of *Ocampo v. Enriquez*[510] the Supreme Court held that "as a party to the United Nations (UN) Charter and the International Covenant on Civil and Political Rights (ICCPR), the Philippines is bound to comply in good faith with our obligations therein pursuant to the principle of *pacta sunt servanda*." The Supreme Court emphasized that the principles, such as the promotion, protection and fulfilment of human rights norms, and the promotion of "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" as embodied in the UN Charter were institutionalized as a concrete obligation through Article 56 of the Charter, which mandates the states to take joint and separate action in cooperation with the UN for the achievement of its purposes.

As regards the ICCPR, the Supreme Court pointed out that Article 2(1) of the covenant obligates states parties to respect and ensure the human rights of all individuals within its territory.[511] The Supreme Court went further to explain that "in interpreting this provision, the United Nations Human Rights Committee 131 (UNHRC) issued General Comment No. 31 declaring that the obligation in

507 G.R. No. 252117, [July 28, 2020].

508 Perlas-Bernabe, J., Separate Opinion, *Almonte v. People*, G.R. No. 252117, [July 28, 2020].

509 *Imbong v. Ochoa*, G.R. No. 204819, April 18, 2014.

510 *Ocampo v. Enriquez*, G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120 & 226294, [November 8, 2016], 798 PHIL 227-715.

511 *Id.,* citing Article 2(1) of the ICCPR.

Article 2(1) is owed not just to individuals as the rights holders under the ICCPR, but to every state party therein. The duty to respect basic human rights is likewise considered an *erga omnes* obligation in view of the importance of the rights involved. In other words, it is an obligation towards the international community as a whole."[512]

In relation to the Universal Declaration of Human Rights (UDHR), the Supreme Court declared in certain terms that it is considered as the most important human rights document in the world, enumerating the human rights that states are bound to respect, which includes the right to life, liberty, and security of persons; the prohibition against torture and arbitrary arrest or detention; and the right to freedom from interference with one's privacy, family, home, or correspondence. The Court went on to state that while not a legally binding treaty, the UDHR is generally considered a codification of the customary international law on human rights. Hence, it binds all nations including the Philippines.[513]

Prior to its pronouncements in *Ocampo*, the Supreme Court in the case of *Government of Hongkong Special Administrative Region v. Olalia, Jr.*[514] already recognized the modern trend in public international law placing primacy on the worth of the individual person and the sanctity of human rights, pointing out that the recognition that the individual person may properly be a subject of international law is slowly taking root. In this case, the Court re-examined its decision in *United States of America v. Hon. Guillermo G. Puruganan and Mark B. Jimenez*,[515] and abandoned its previous ruling that limited the exercise of the right to bail to criminal proceedings in light of the various international treaties giving recognition and protection to human rights, particularly the right to life and liberty. To summarize, it ruled that while the time-honored principle of *pacta sunt servanda* demands that the Philippines honor its obligations under the Extradition Treaty entered into with the Hong Kong Special Administrative Region, it does not necessarily mean that in keeping with its treaty obligations, the Philippines should diminish a potential extraditee's rights to life, liberty, and due process, especially since these rights are guaranteed, not only by our Constitution, but also by international instruments such as the UDHR, to which the Philippines is a party. Thus, the Court declared that an extraditee cannot be deprived of his right to apply for bail, provided that a certain standard for the grant is satisfactorily met.

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512 *Id.*

513 *Id.*

514 *Government of Hongkong Special Administrative Region v. Olalia, Jr.*, G.R. No. 153675, [April 19, 2007], 550 PHIL 63-77.

515 G.R. No. 148571, September 24, 2002, 389 SCRA 623, 664.

As to who are entitled to the protection of right to life, Article II Section 12 of the 1987 Constitution is clear in dictating that protection begins from conception.[516] In affirming this provision, the case of *Spouses Imbong v. Ochoa, Jr.* clarified that "whether it be taken from a plain meaning, or understood under medical parlance, and more importantly, following the intention of the Framers of the Constitution, the undeniable conclusion is that a zygote is a human organism and that the life of a new human being commences at a scientifically well-defined moment of conception, that is, upon fertilization."[517]

D. Limitations: General considerations

The general considerations regarding constitutionally permissible limitations to the right to life are found under Article III Section 1[518] which requires (1) due process of law and (2) equal protection of laws,[519] that is, laws are to be applied equally to all individuals in the same manner as others who are in similar condition and circumstances. As these are found in the Bill of Rights, these restrictions are directed against the state in the exercise of its police power which is subject to judicial inquiry insofar as it may affect the life, liberty or property of any person.[520]

In the Philippines, there are two kinds of due process, that is, substantive and procedural. Substantive due process is a guarantee against the exercise of arbitrary power even when the power is exercised according to proper forms and procedure.[521] As for procedural due process, there are different requirements for due process in judicial and administrative proceedings under Philippine laws. It is clear, however, that be it a judicial or administrative proceedings, the heart of procedural due process is the need for notice and an opportunity to be heard.[522] Fr. Joaquin Bernas, a known constitutionalist and one of the framers of the 1987 Constitution, commented that "as a rule of fairness, procedural due process helps achieve two purposes. Instrumentally, it contributes to accuracy and thus

516 Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

517 *Spouses Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563, [April 8, 2014], 732 PHIL 1-99.

518 *Supra* Note 495.

519 This is more commonly referred to as the Equal Protection Clause.

520 The 1987 Constitution of the Republic of the Philippines: A Commentary, Bernas, S.J. (2009), p. 105., citing *Ermita-Malate Hotel and Motel Operators Association v. City Mayor*, G.R. No. L-24693, July 31, 1967.

521 The 1987 Constitution of the Republic of the Philippines: A Commentary, Bernas, S.J. (2009), pp. 118.

522 The 1987 Constitution of the Republic of the Philippines: A Commentary, Bernas, S.J. (2009), pp. 116.

minimizes errors in deprivations. More intrinsically to the person who is subject of the deprivation, it gives him a sense of rational participation in a decision that can affect his destiny and thus enhances his dignity as a thinking person."[523]

II. Limitations: Key issues

A. Capital punishment

Prior to the promulgation of the 1987 Constitution, the Philippines retained capital punishment as among the imposable penalties allowed under the Revised Penal Code (RPC). The Revised Penal Code was enacted through Act No. 3815 on December 8, 1930, or almost ninety-two years ago and was patterned after the old Spanish Penal Code. Article 25 of the RPC classified the death penalty as a form of capital punishment, which can only be imposed in crimes or offenses as provided by the law, *e.g*. parricide, rape, kidnapping, arson. Article 47 of the RPC provided for the following instances when the death penalty shall not be imposed:

1. When the guilty person be more than seventy years of age; and,
2. When upon appeal or revision of the case by the Supreme Court, all the members thereof are not unanimous in their voting as to the propriety of the imposition of the death penalty. For the imposition of said penalty or for the confirmation of a judgment of the inferior court imposing the death sentence, the Supreme Court shall render its decision *per curiam*, which shall be signed by all justices of said court, unless some member or members thereof shall have become disqualified from taking part in the consideration of the case, in which event the unanimous vote and signature of only the remaining justices shall be required.

During the deliberations for the 1987 Constitution, majority of the members of the 1986 Constitutional Commission voted for the constitutional abolition of the death penalty citing that capital punishment is inhuman for the convict and his family who are traumatized by the waiting, and the fact that there is no evidence that shows that the death penalty is a deterrent to the commission of crimes. Eventually, the Commission, through Section 19(1), Article III of the 1987 Constitution, agreed to abolish the death penalty but allowed Congress the option to revive it at its discretion by providing that the death penalty "shall not be

523 The 1987 Constitution of the Republic of the Philippines: A Commentary, Bernas, S.J. (2009), pp. 116-117.

imposed, unless, for compelling reasons involving heinous crimes, the Congress provides for it and that any death penalty already imposed shall be reduced to *reclusion perpetua*."[524] Thus, since the passage of the 1987 Constitution the death penalty was not imposed by the courts even for heinous crimes until it was reinstated in 1993 by way of Republic Act No. 7659 (R.A. 7659). The law's objective was "to foster and ensure not only obedience to [the State's] authority, but also to adopt such measures as would effectively promote the maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare which are essential for the enjoyment by all the people of the blessings of democracy in a just and humane society."[525] Under RA 7659 the following crimes are punishable by death:

1. Treason;
2. Piracy and Mutiny on the high seas or in Philippine waters;
3. Qualified Bribery;
4. Parricide;
5. Murder;
6. Infanticide;
7. Kidnapping and serious illegal detention;
8. Robbery with violence against or intimidation of persons;
9. Destructive Arson;
10. Rape (when victim is under 18 years of age and offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the 3rd civil degree, or the common-law-spouse of the parent of the victim)

From 1993 until 2004, the Supreme Court assumed direct appellate review over all criminal cases in which the penalty imposed is death, *reclusion perpetua* or life imprisonment pursuant to Article VIII, Section 5 which provides for the Supreme Court's power to review, revise, reverse, modify, or affirm on appeal or certiorari, the final judgments and orders of lower courts in all criminal cases in which the penalty imposed is *reclusion perpetua* or higher, as the law or the Rules of Court may provide.

In the 2004 case of *People v. Efren Mateo y Garcia*,[526] the Supreme Court noted that statistics show that since the re-imposition of the death penalty in 1993, the trial courts have imposed capital punishment in approximately 1,493 cases of

524 The Intent of the 1986 Constitution Writers, Bernas, S.J., (1995), pp. 218-219.

525 Section 1, Republic Act No. 7659, December 13, 1993.

526 G.R. No. 147678-87, July 7, 2004 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/45535>.

which 907 have been reviewed by the Court. Judgment of death has either been modified or vacated in 71.77% of the total of reviewed death penalty cases. This means that out of the 907 appellants, 651 have been saved from lethal injection.

Thus, the Supreme Court ruled that "while the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review." For purposes of ensuring "utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed" the Supreme Court deemed it "wise and compelling" to provide in these cases a review by the Court of Appeals prior to its elevation to the Supreme Court. The Supreme Court justified the amendment to the Rule by stating that "where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone."

Since then, prior determination by the Court of Appeals on the factual issues, is done first. If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty, as the circumstances so warrant, but should refrain from entering judgment and must elevate the entire records of the case to the Supreme Court for its final disposition.[527] This ruling is now reflected as an amendment to the Revised Rules of Criminal Procedure.[528]

In the 1998 case of *Leo Echegaray v. The Secretary of Justice*,[529] the Supreme Court ruled that "the death penalty *per se* is not a cruel, degrading or inhuman punishment" and that "any infliction of pain in lethal injection is merely incidental in carrying out the execution of death penalty and does not fall within the constitutional proscription against cruel, degrading and inhuman punishment." The Supreme Court further pointed out that Article 6(2) of the International Covenant on Civil and Political Rights explicitly recognizes capital punishment as an allowable limitation on the right to life, subject to the condition that it be imposed for the "*most serious crimes.*"

Leo Echegaray was the first convict to be executed after the reinstatement of the death penalty in 1993. The death penalty was again abolished through Republic

527 *People of the Philippines v. Efren Mateo y Garcia*, G.R. No. 147678-87 [July 7, 2004] <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/45535>.

528 Sections 3 and 10, Rule 122, Revised Rules of Criminal Procedure, as amended by A.M. No. 00-5-03-SC effective October 2005.

529 G.R. No. 132601, October 12, 1998 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/36499>.

Act No. 9346 dated June 24, 2006, repealing or amending all laws, executive orders and decrees, insofar as they impose the death penalty. In effect, the rule on automatic review of death penalty cases as ruled in *People v. Efren Mateo* and under Rule 122 of the Rules of Court was rendered ineffective.[530] Efforts initiated to reinstate the death penalty have not been successful up to this day.

B. Abortion

The Philippines' stand against abortion was clear as early as ninety-two years ago when it defined and penalized intentional abortion; unintentional abortion; abortion practiced by the woman herself or by her parents; abortion practiced by a physician or midwife and dispensing of abortives.[531] In *Geluz v. Court of Appeals*, the Supreme Court held that abortion, without medical necessity to warrant it, is a criminal act, and neither the consent of the woman nor that of the husband would excuse it.[532] Note that this decision was rendered in 1961, prior to the enactment of the 1987 Constitution which made it a state policy to "equally protect the life of the mother and the life of the unborn from conception."[533] The framers of the 1987 Constitution recognized that human life and the corresponding obligation to preserve the same, begins at conception even if there is yet no person, as the child is yet to be born.[534] The policy was adopted with the intention of preventing the state from adopting the then prevailing doctrine in the United States Supreme Court decision of *Roe v. Wade*[535] which liberalized abortion laws up to the sixth month.[536]

The Supreme Court had the opportunity to affirm this policy in the 2014 case of *James Imbong, et al., v. Hon. Paquito N. Ochoa, Jr., et al.*,[537] wherein in the Court struck down a provision in the Implementing Rules and Regulations (IRR) of the Responsible Parenthood and Reproductive Health Act of 2012[538] for being *ultra vires*. Speaking through Justice Jose C. Mendoza, the Court held that following

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530 *People of the Philippines v. Alexander Olpindo y Reyes*, G.R. No. 252861, February 15, 2022, <https://sc.judiciary.gov.ph/26688/>.

531 See Articles 256, 257, 258 and 259, Revised Penal Code (enacted on December 8, 1930).

532 G.R. No. L-16439, July 20, 1961.

533 Section 12, Article II, 1987 Constitution.

534 The Intent of the 1986 Constitution Writers, Bernas, S.J., (1995), p. 119.

535 The ruling in this case had been overturned by the United States Supreme Court in the case of *Dobbs, et al., v. Jackson Women's Health Organization, et al.*, No. 19-1392, June 24, 2022, <https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf>.

536 The 1987 Constitution of the Republic of the Philippines: A Commentary, Bernas, S.J. (2009), p. 84.

537 G.R. No. 204819, April 8, 2014<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/56973>.

538 Republic Act No. 10354, December 21, 2012 <https://www.officialgazette.gov.ph/2012/12/21/republic-act-no-10354/>.

the constitutional policy prohibiting abortion, and in line with the principle that laws should be construed in a manner that its constitutionality is sustained, the RH Law and its implementing rules must be consistent with each other in prohibiting abortion. The Court struck out the word "primarily" in Section 3.01(a) and (j) of the RH-IRR as void, ratiocinating that to uphold the validity of Section 3.01(a) and (j) of the RH-IRR and prohibit only those contraceptives that have the primary effect of being an abortive would effectively "open the floodgates to the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution."

C. Euthanasia

The Philippines has no specific law that governs or penalizes euthanasia. Euthanasia, also known as mercy killing, is an act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures.[539] Under Philippine penal laws, anyone who kills another with evident premeditation, regardless of the motive, will be liable for murder.[540] A person who kills his or her father, mother, or child even if he or she was moved by wanting to spare the family member from pain or suffering will still be liable for parricide.[541]

D. Suicide and assisted suicide

Suicide or the intentional taking of one's own life is not a crime under Philippine laws. However, giving assistance to suicide is a crime under Article 253 of the Revised Penal Code which provides that any person who shall assist another to commit suicide shall suffer the penalty of *prision mayor*, and if such person lends his assistance to another to the extent of doing the killing himself, he shall suffer the penalty of *reclusion temporal*. If the suicide is not consummated, the law only imposes the penalty of *arresto mayor* in its medium and maximum periods. Note that the penalty imposed on someone who assisted to the extent of doing the killing himself is the same as someone who commits homicide which is one degree lower *(reclusion temporal)* compared to someone who commits murder or parricide, which are both punishable by *reclusion perpetua*.

539 https://www.britannica.com/topic/euthanasia.

540 See Article 248, Revised Penal Code.

541 See Article 246, Revised Penal Code.

E. Lethal use of force during law enforcement

Law enforcement, being an exercise of governmental power, is always subject to compliance with Sections 1 and 2 of the Bill of Rights of the 1987 Constitution. Section 1 guarantees that no person shall be deprived of life, liberty and property without due process of law. Section 2, on the other hand, mandates the right of the people against unreasonable searches and seizures. These rights were invoked by the Supreme Court in numerous cases where it is called upon to rule on the constitutionality of acts done by the government, through any of its instrumentality or official.

In the exercise of its rule-making power guaranteed under the 1987 Constitution,[542] the Supreme Court has had the opportunity to issue two special rules of procedure for the protection of the rights mentioned, namely: (a) The Rule on the Writ of Amparo[543] (*Amparo* Rule); and, (b) The Rules on the Use of Body-Worn Cameras in the Execution of Warrants.[544]

The adoption of the *Amparo* Rule surfaced as a recurring proposition in the recommendations that resulted from a two-day National Consultative Summit on Extrajudicial Killings and Enforced Disappearances sponsored by the Court on July 16-17, 2007. It was promulgated "in light of the prevalence of extralegal killing and enforced disappearances." The promulgation of the *Amparo* Rule was the Court's first opportunity to exercise its expanded power to promulgate rules to protect the people's constitutional rights, which made its maiden appearance in the 1987 Constitution in response to the Filipino experience of the martial law regime.[545] It provides for a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ's coverage is limited to extralegal killings and enforced disappearances or threats thereof.[546] The petition may be filed on any day and at any time with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. Unlike other processes issued by the courts, the writ once issued is enforceable anywhere in the Philippines.[547]

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542 See Section 5(5), Article VIII, 1987 Constitution.

543 A.M. No. 07-09-12-SC, September 25, 2007<https://sc.judiciary.gov.ph/2697/>.

544 A.M. No. 21-06-08-SC <https://sc.judiciary.gov.ph/19803/>.

545 *Secretary of National Defense, et al., v. Raymond Manalo and Reynaldo Manalo*, G.R. No. 180906 [October 7, 2008] <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/47121> citing Rule on Amparo: Annotation, p. 47.

546 See Section 1, A.M. No. 07-09-12-SC, September 25, 2007<https://sc.judiciary.gov.ph/2697/>.

547 See Section 3, A.M. No. 07-09-12-SC, September 25, 2007<https://sc.judiciary.gov.ph/2697/>.

Acknowledging the urgency in the remedy sought, the court, justice or judge are required to docket the petition and act upon it immediately without need for payment of docket fees.[548] The writ of *amparo* serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action. In the long run, the goal of both the preventive and curative roles is to deter the further commission of extralegal killings and enforced disappearances.[549]

The Supreme Court had its first opportunity to apply the *Amparo* Rule in the case of *Secretary of National Defense, et al., v. Raymond Manalo and Reynaldo Manalo*, wherein the Court affirmed the factual findings of the Court of Appeals, largely based on respondent Raymond Manalo's affidavit and testimony. The Court likewise concluded that respondents' right to security as "freedom from threat" is violated by the apparent threat to their life, liberty and security of person. Their right to security as a guarantee of protection by the government is likewise violated by the ineffective investigation and protection on the part of the military. It is for these reasons that the Court allowed the respondents the relief prayed for, requiring petitioners to: (1) furnish respondents all official and unofficial reports of the investigation undertaken in connection with their case, except those already in file with the court; (2) confirm in writing the present places of official assignment of M/Sgt. Hilario a.k.a. Rollie Castillo and Donald Caigas; and, (3) produce to the Court of Appeals all medical reports, records and charts, and reports of any treatment given or recommended and medicines prescribed, if any, to the Manalo brothers, to include a list of medical personnel (military and civilian) who attended to them from February 14, 2006 until August 12, 2007. The Court, in the same case, also pointed out that everyone has the right to life, liberty and security of persons, the Philippines being a signatory to both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) which guarantee the right to security of person or the "freedom from fear."[550]

Another special rule of procedure promulgated by the Supreme Court for the protection of the rights is the Rules on the Use of Body-Worn Cameras in the Execution of Warrants. This was the Court's response to growing concerns for

548 See Section 4, A.M. No. 07-09-12-SC, September 25, 2007<https://sc.judiciary.gov.ph/2697/>.

549 See *Secretary of National Defense, et al., v. Raymond Manalo and Reynaldo Manalo*, G.R. No. 180906 [October 7, 2008] <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/47121>.

550 See *Secretary of National Defense, et al., v. Raymond Manalo and Reynaldo Manalo*, G.R. No. 180906 [October 7, 2008] <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/47121>.

increasing reports of alleged civilian deaths resulting from the execution of warrants issued by the trial courts.[551] Promulgated on June 29, 2021, it mandated the use of advances in technology, particularly the availability and use of body-worn cameras or alternative recording devices, to support law enforcement and to guarantee the protection of fundamental rights. The Supreme Court emphasized that this body of rules is only supplementary to the principal rule governing criminal procedure as it provided for additional requirements in the execution of warrants (warrant of arrest and search warrant) issued by the trial courts.[552]

In the 2021 case of *Calleja v. Executive Secretary*, the Supreme Court was called upon to decide on the constitutional validity of Section 29 of the Anti-Terrorism Act (ATA) for allegedly allowing supposedly inordinately long detention period without a valid warrant of arrest issued by a court or on mere suspicion, which is violative of a person's right to life, liberty or property without due process of law. Section 29 reads in part as follows:

"The provisions of Article 25 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 23 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel."

In upholding the provision's validity, the Court's construction is that under Section 29, a person may be arrested without a warrant by law enforcement officers or military personnel for acts defined or penalized under Sections 4 to 12 of the ATA but only under any of the instances contemplated in Rule 9.2, *i.e.*, which mirrors Section 5, Rule 113 of the Rules of Court. Once arrested without a warrant under those instances, a person may be detained for up to 14 days, provided that the Anti-Terrorism Council (ATC) issues a written authority in favor of the arresting officer pursuant to Rule 9.1, upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of said person. If the ATC does not issue the written authority, then the arresting officer shall deliver the suspected

551 Note: This statement seems to imply "death warrants" which have not been the intention of judges in issuing warrants.

552 See Rules 112, 113, and 126 Revised Rules of Criminal Procedure, as amended [December 1, 2000].

person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code (RPC) – the prevailing general rule. The extended detention period is therefore considered as an exception to Article 125 of the RPC based on Congress' own wisdom and policy determination relative to the exigent and peculiar nature of terrorism and hence, requires, as a safeguard, the written authorization of the ATC, an executive agency comprised of high-ranking national security officials. The Court likewise clarified that Section 29 does not allow warrantless arrest based on mere suspicion. Since Section 29 applies to warrantless arrests, the processes, requisite, and rigorous standards applicable to such kind of arrests, as developed by rules and jurisprudence also apply to Section 29, which include among others, the requirement of personal knowledge and the existence of probable cause. It further emphasized that in making the arrest, no violence or unnecessary force shall be used, and any person to be arrested shall not be subject to a greater restraint than is necessary, as provided under Section 2, Rule 113 of the Rules. The arresting officer is also reminded to keep in mind the importance of Section 12(1), Article III of the Constitution, as the provision guarantees that persons to be arrested have the right to be informed of their right to remain silent, their right to have competent and independent counsel of their choice, and their right to be provided with counsel if they cannot afford the services of one.[553]

F. Other limitations on the right to life

The Supreme Court never hesitates to invoke the right to life in cases where the strict interpretation of the law would have the effect of infringing on a person's right incidental to the enjoyment of the right to life. In the case of *Mariano R. Basa v. Workmen's Compensation Commission and the Republic of the Philippines (DOJ)*,[554] the Court seemed to see the denial of the second request for reimbursement of medical expenses as akin to euthanasia as it will have the effect of depriving a permanently disabled employee the right to seek medical assistance as the nature of his injury or ailment may require. Reversing the decision of the Workmen's Compensation Commission in denying the second claim for reimbursement of medical expenses of a retired judge, the Court speaking through former Chief Justice Felix V. Makasiar, ratiocinated that in much the same way that euthanasia is not even prescribed as the extreme remedy for what appears to be a terminal case, the Court should not be oblivious to the possibility that medical science may devise somehow, sometime during the lifetime of the

553 *Atty. Howard M. Calleja, et al., v. Executive Secretary, et al.*, G.R. No. 25278, December 7, 2021, <https://sc.judiciary.gov.ph/24370/>.

554 G.R. No. L-43098, March 30, 1981.

disabled employee, a remedy to banish his pain and to completely rehabilitate him physically, mentally and socially.

III. Expansive interpretations

A. Socio-economic dimensions

The right to life is not only confined to the very concept of life itself but is also understood to encompass other issues that affect or improve the quality of life and the minimum standards of living of individuals. In this sense, right to life is interpreted to involve socio-economic dimensions, such as, the right to health and social justice. The expansive interpretation of the right to life to include other relevant rights is understood to stem from the concept of human dignity as it is a declared policy of the Philippines that the state values the dignity of every human person and guarantees full respect for human rights.[555]

The State is mandated to protect and promote the right to health of the people and instill health consciousness among its people.[556] In *Imbong v. Ochoa*[557] the Supreme Court declared that "a component to the right to life is the constitutional right to health." In upholding the validity of the Reproductive Health Law (RH Law), the Court went further to state that through the years, the use of contraceptives and other family planning methods evolved from being a component of demographic management, to one centered on the promotion of public health, particularly, reproductive health. The two cornerstone principles of Philippine national population program have always been grounded on the "principle of no-abortion" and the "principle of non-coercion," which are not merely grounded on administrative policy, but rather, originate from the constitutional protection expressly provided to afford protection to life and guarantee religious freedom.

The Philippine Congress has passed legislations that focus on the right to health which include, among others, Republic Act No. 11223 or the "Universal Health Care Act" which mandates that most Filipinos, especially the "poorest of the poor" should be covered by health insurance; and, Republic Act No. 10606 or "An

555 Section 11, Article II of the 1987 Constitution of the Philippines.

556 Section 15, Article II of the 1987 Constitution of the Philippines.

557 *Imbong v. Ochoa*, G.R. No. 204819, April 18, 2014, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/56973>.

Act Amending Republic Act No. 7875 Otherwise Known as the National Health Insurance Act of 1995" wherein the law provides a wider coverage of PhilHealth beneficiaries to indigents. Republic Act No. 11494 or the "Bayanihan to Recover As One Act" is a more recent legislation and serves as a measure to reduce the adverse impact of the COVID-19 pandemic on the socio-economic well-being of all Filipinos through the provision of assistance, subsidies, and other forms of socio-economic relief.[558]

Under the context of social justice, the State is mandated to provide a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.[559] "In essence, social justice is both a juridical principle and a societal goal. As a juridical principle, it prescribes equality of the people, rich or poor, before the law. As a goal, it means the attainment of decent quality of life of the masses through humane productive efforts. The process and the goal are inseparable because one is the synergistic cause and effect of the other — legal equality opens opportunities that strengthen equality which creates more opportunities. The pursuit of social justice does not require making the rich poor but, by lawful process, making the rich share with the government the aim to realize social justice."[560]

Significantly, the concept of social justice is intertwined with the concept of human dignity. The enactment of measures in protecting and enhancing the welfare of the people, more importantly of the workforce, is given the highest priority of the State. The Constitution mandates that the Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.[561] By jurisprudence, social justice means the promotion of the welfare of the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

558 Section 3(a), Republic Act No. 11494.

559 Section 1, Article XII of the 1987 Constitution of the Philippines.

560 Azucena (2013). The Labor Code: with Comments and Cases (Vol. 1).

561 Section 1, Article XIII, 1987 Constitution of the Philippines.

B. Environmental dimensions

The right to life is also understood to encompass the right of the people to a healthy environment. The Constitution mandates the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.[562]

In the landmark case of *Oposa v. Factoran*,[563] the Court declared that the right to a balanced and healthful ecology unites with the right to health and that while this right is found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation, the advancement of which may even be said to predate all governments and constitutions. The Court went further to state that "these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life."[564]

One of the most notable legislations in protecting the environment is Republic Act No. 9003, also known as the Ecological Solid Waste Management Act of 2000. In the case of *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay,*[565] the Supreme Court reiterated the mandate of the Constitution in advancing the right of the people to a balanced and healthful ecology through vital pieces of legislation. Corollary to this mandate of the Constitution is the Public Trust Doctrine which also finds basis in our Constitution, particularly the State's ownership over the nation's natural resources and its right and duty to regulate the same as provided under Article XII, Section 2. In the case of *Maynilad Water Services, Inc. v. The Secretary of Environment and Natural Resources, et al.,* the

562 Section 16, Article II, 1987 Constitution of the Philippines.

563 *Oposa v. Factoran*, G.R. No. 101083 [July 30, 1993].

564 *Ibid.*

565 *Metropolitan Manila Development Authority (MMDA) v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48 [December 18, 2008] <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/48335>.

Supreme Court declared water management as a Public Trust in which there is an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water and emphasized that "[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust."[566]

C. Other expansive dimensions

Another expansive interpretation of the right to life in the Philippines is the right of a person to an unimpaired reputation and good name. In one case, the Supreme Court declared that the innate right of a person to an unimpaired reputation and good name is no less a constitutional imperative than that which protects his life, liberty or property. Thus, the law imposes upon him who attacks another's reputation, by slanderous words or libelous publication, a liability to make compensation for the injury done and the damages sustained.[567]

Annex 1: List of cited legal provisions[568]

I. Defining right to life

A. Constitutional provisions

1. 1935 Constitution of the Philippines
   a. Article III, Section 1
2. 1973 Constitution of the Philippines
   a. Article IV, Section 1
3. 1987 Constitution of the Philippines
   a. Article III, Section 1
   b. Article III, Section 2
   c. Article III, Section 19(1)
   d. Article II, Sections 11

566 *Maynilad Water Services Inc. v. The Secretary of Environment and Natural Resources*, G.R. No. 202897, August 6, 2019 < https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65416>.

567 *MVRS Publications v. Islamic Da'wah Council of the Philippines*, G.R. No. 135306 [January 28, 2003], <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/48023>.

568 The list displays cited legal provisions in the order in which they have been cited in each of this chapter's sections.

e. Article II, Sections 12
f. Article II, Sections 15
g. Article II, Sections 16
h. Article XIII, Section 1

B. International instruments

1. International Covenant on Civil and Political Rights (ICCPR)
2. Universal Declaration of Human Rights (UDHR)
3. International Covenant on Economic, Social and Cultural Rights (ICESCR)

II. Limitations: Key issues

A. Constitutional provisions

1. 1987 Constitution of the Philippines
   a. Article II, Section 12
   b. Article VIII, Section 5(5)

B. Laws

1. Revised Penal Code (Act No. 3815, December 8, 1930)
   a. Article 25
   b. Article 47
   c. Article 248
   d. Article 246
   e. Article 125
   f. Article 253
   g. Article 256
   h. Article 257
   i. Article 258
   j. Article 259
2. An Act to Impose the Death Penalty on Certain Heinous Crimes (Republic Act No. 7659, December 13, 1993)
3. An Act Prohibiting the Imposition of Death Penalty in the Philippines (Republic Act No. 9346, June 24, 2006)
4. Reproductive Health Act of 2012 (Republic Act No. 10354, December 12, 2012)
5. Anti-Terrorism Act of 2020 (Republic Act No. 11479, July 3, 2020)

C. Issuances

1. Revised Rules of Criminal Procedure, as amended (A.M. No. 00-5-03-SC, December 1, 2000)
   a. Rule 112
   b. Rule 113
   c. Rule 122, Sections 3 and 10
   d. Rule 126
2. Implementing Rules and Regulations of the Responsible Parenthood and Reproductive Health Act of 2012
   a. Section 3.01(a) and (j)
3. Rule on the Writ of Amparo (A.M. No. 07-09-12-SC, September 25, 2007)
   a. Section 1
   b. Section 3
   c. Section 4
4. Rules on the Use of Body-Worn Cameras in the Execution of Warrants (A.M. No. 21-06-08-SC, June 29, 2021)

III. Expansive interpretations

A. Constitutional provisions

1. 1987 Constitution of the Philippines
   a. Article II, Section 11
   b. Article II, Section 15
   c. Article XII, Section 1
   d. Article XIII, Section 1
   e. Article II, Section 16

B. Laws

1. Responsible Parenthood and Reproductive Health Act of 2012 (Republic Act No. 10354, December 21, 2012)
2. Universal Health Care Act (Republic Act No. 11223, February 20, 2019)
3. An Act Amending Republic Act No. 7875, Otherwise Known as the "National Health Insurance Act of 1995" (Republic Act No. 10606, June 19, 2013)
4. Bayanihan to Recover As One Act (Republic Act No. 11494, September 11, 2020)
5. Ecological Solid Waste Management Act of 2000 (Republic Act No.

9003, January 26, 2001)
6. An Act To Regulate The Sale, Dispensation, and/or Distribution of Contraceptive Drugs and Devices (Republic Act No. 4729, June 18, 1966)
7. The Population Act of the Philippines (Republic Act No. 6365, August 16, 1971)
8. The Magna Carta of Women (Republic Act No. 9710, August 14, 2009)

Annex 2: List of cited cases[569]

I. Defining right to life

1. Pharmaceutical and Health Care Association v. Duque III, G.R. No. 173034 [October 9, 2007]
2. Almonte v. People, G.R. No. 252117 [July 28, 2020]
3. Imbong v. Ochoa, G.R. No. 204819 [April 18, 2014]
4. Ocampo v. Enriquez, G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120 & 226294 [November 8, 2016]
5. Government of Hongkong Special Administrative Region v. Olalia, Jr., G.R. No. 153675 [April 19, 2007]
6. United States of America v. Hon. Guillermo G. Puruganan and Mark B. Jimenez, G.R. No. 148571 [September 24, 2002]
7. Ermita-Malate Hotel and Motel Operators Association v. City Mayor, G.R. No. L-24693 [July 31, 1967]

II. Limitations: Key issues

1. People v. Efren Mateo y Garcia, G.R. No. 147678-87 [July 7, 2004]
2. Leo Echegaray v. The Secretary of Justice, G.R. No. 132601 [October 12, 1998]
3. People of the Philippines v. Alexander Olpindo y Reyes, G.R. No. 252861 [February 15, 2022]
4. Geluz v. Court of Appeals G.R. No. L-16439 [July 20, 1961]
5. James Imbong, et al., v. Hon. Paquito N. Ochoa, Jr., et al. G.R. No. 204819 [April 8, 2014]
6. Secretary of National Defense, et al., v. Raymond Manalo and Reynaldo

569 The list displays cases in the order in which they have been cited in each of this chapter's sections.

Manalo, G.R. No. 180906 [October 7, 2008]
7. Mariano R. Basa v. Workmen's Compensation Commission and the Republic of the Philippines (DOJ), G.R. No. L-43098 [March 30, 1981]
8. Calleja v. Executive Secretary, G.R. No. 25278 [December 7, 2021]

III. Expansive interpretations

1. James Imbong, et al., v. Hon. Paquito N. Ochoa, Jr., et al. G.R. No. 204819 [April 8, 2014]
2. Calalang v. Williams, et al., G.R. No. 47800 [December 02, 1940]
3. Oposa v. Factoran G.R. No. 101083 [July 30, 1993]
4. Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, G.R. Nos. 171947-48 [December 18, 2008]
5. Maynilad Water Services, Inc. v. Secretary of Environment and Natural Resources, G.R. No. 202897 [August 6, 2019]
6. Government of Hong Kong Special Administrative Region v. Olalia, G.R. No. 153675 [April 19, 2007]
7. MVRS Publications v. Islamic Da'wah Council of the Philippines, G.R. No. 135306 [January 28, 2003]

13. Russia

Constitutional Court

Overview

The right to life is enshrined in Article 20 of the Constitution, the first among the listed personal rights and freedoms. The Russian Federation is state party to the International Covenant on Civil and Political Rights (ICCPR) and to the first Optional Protocol of the ICCPR. While Russia is not a party to the Second Optional Protocol to the ICCPR, the death penalty has not been carried out since 1996. In 2009 the Constitutional Court identified the irreversible process of aiming to abolish capital punishment. Abortion is legal when the term of pregnancy is under 12 weeks. However, where there are social or medical indications, abortion may be performed at a later date. In the Russian legal order, active euthanasia qualifies as murder, whereas passive euthanasia should be correlated with the right of patients to refuse medical operation. In Russia, there is no criminal responsibility for suicide or attempted suicide. However, the criminal law establishes liability for actions of other persons causing suicide or making it (or its attempt) possible. Regarding the use of force by state authorities, examples of relevant legislation include the Federal Laws "On Police" and "On Countering Terrorism." In terms of expansive dimensions of the right to life, the socio-economic values ensuring a minimum standard of living are guaranteed not by the right to life, but by other constitutional rights. Yet taking into account relevant adjudication, it is possible to conclude that the constitutional right to life does include certain socio-economic aspects. In terms of environmental rights, the right to a favourable environment is guaranteed under Article 43 of the Constitution. This right has a value on its own, but it is also related to other rights, including the right to life.

Outline

I. Defining the right to life

A. Recognition and basic obligations

The Constitution of the Russian Federation enshrines the right to life using concise wording of its Article 20: "Everyone shall have the right to life (part 1)"; "capital punishment until its complete abolition may be established by federal law as an exclusive form of punishment for particularly grave crimes against life, and the accused shall be granted the right to have his case examined by a court with the participation of a jury (part 2)."

The provisions of the Constitution of the Russian Federation that guarantee the right to life are located in its Chapter 2. This means that these provisions are "unchangeable." Under Article 135 of the Constitution of the Russian Federation, any change to the said Chapter requires adoption of a new Constitution. The right to life is of universal nature; its introduction to the Constitution of the Russian Federation was conditioned *inter alia* by the reaction of the constitutional legislator to the negative experience of the previous historical periods. The legislator thought to establish the direct prohibition to deprive a human of his life within the Russian legal system.

The contents of Article 20 of the Constitution of the Russian Federation correspond to international instruments relevant to the legal system of Russia. Among those one can note the Universal Declaration of Human Rights (adopted by the UN General Assembly on 10 December 1948), which reflects general recognition of the right to life, establishing that: "Everyone has the right to life (Article 3)." Another part of legal regulation of the right to life in Russia is the International Covenant on Civil and Political Rights (adopted on 16 December 1966 by the Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly; ratified by the Decree of the Presidium of the High Council of the USSR of 18 September 1973 № 4812-VIII). The Covenant emphasises not only the inherent nature of this right, but also the prohibition of arbitrary deprivation of life (Article 6).

The constitutional norm guarantees the right to life for "everyone," i.e. any individual. Article 20 part 1 of the Constitution contains no additional wording, but the content of constitutional regulation of the right to life can be further detailed through its interconnections with other constitutional provisions.

The right to life is based upon the prohibition for anyone to violate this right - in other words it is prohibited to take a life (negative aspect). Observance of this prohibition is ensured in particular by imposing legal liability for attack against life. Particular importance of the right to life as a fundamental legal value is underlined e.g. by the structure of the Criminal Code of the Russian Federation. This Code begins to list crimes from the crimes against life. The Constitutional Court of the Russian Federation has repeatedly emphasised that any crime and punishment for it must be clearly defined in the law in such a way that would allow anyone to foresee criminal consequences of one's actions or omission directly on the basis of the relevant norm – if needed, with the help of its interpretation by courts (judgments of 27 May 2008 No. 8-P, of 13 July 2010 No. 15-P and others).

In addition, the negative aspect of the right to life is also guaranteed by the strictly limited list of situations, when competent officials are entitled to use weapons dangerous to life.[570]

With regard to use of force by the law-enforcement officials one can also mention the Code of Conduct for Law Enforcement Officials (adopted on 17 December 1979 by the UN General Assembly Resolution 34/169 at its 106 Plenary Session). The Supreme Court of the Russian Federation pointed to the possibility of taking this Code into account in the law-enforcement practice (Ruling of the Plenum of the Supreme Court of the Russian Federation of 25 December 2018 No. 47 "On certain questions arising before courts considering administrative cases connected to violation of conditions of detention of persons placed in involuntary detention institutions").

At that, the right to life guaranteed by the Constitution of the Russian Federation encompasses certain obligations imposed on the state, without which full realisation of the discussed right becomes inconceivable (positive aspect). The obligations to ensure realisation and protection of this constitutional right imposed on the Russian Federation include both the necessity of developing and implementing a set of measures creating conditions excluding any danger for the life of people and preventing harm to health, and the necessity to take

570 See also Section II.E.

measures for compensation of harm inflicted upon life and health (Decision of the Constitutional Court of the Russian Federation of 27 December 2005 No. 523-O).

Apart from this, it can be said that discharging positive obligations of the state includes introduction of the said liability for attacks against life. On the one hand, this ensures non-interference with this right; on the other hand it can be seen as activity of the state to protect the right to life.

Thus, the Constitution of the Russian Federation establishes first of all the right to physical existence and implies prohibition to deprivation of life; until full abolition of capital punishment the Constitution allows its imposition only exceptionally, when criminal attempt is made against the same value (against the life).

Of course, positive obligations of the state encompass creation of the system of effective investigations of attacks on life, and of bringing the guilty persons to relevant liability. Thus, in its Judgment of 13 January 2020 No. 1-P the Constitutional Court of the Russian Federation underlined that the legal regulation performed by the legislator must ensure discharging by the state of its positive obligations, including the protection of the right to life in its aspect of investigation into the death of a patient.

The right to life guaranteed by the Constitution of the Russian Federation represents the necessary condition for realisation of all other human and civil rights and freedoms, and therefore it is the highest personal value, obliging the state represented by its public authorities to ensure its protection according to Articles 45 and 46 of the Constitution of the Russian Federation, including the court protection (Judgment of the Constitutional Court of the Russian Federation of 6 November 2014 No. 27-P).

The Constitutional Court of the Russian Federation has noted that the obligation imposed on the Russian Federation to ensure realisation and protection of the right to life includes the necessity to take measures remedying the harm inflicted to life.[571] The provisions of the Civil Code of the Russian Federation correspond

571 "The rights recognised and protected by the Constitution of the Russian Federation include first of all the right to life (Article 20, part 1) as a highest social value protected by law, this right being fundamental, inalienable and belonging to everybody since birth; and the right to protection of health (Article 41) as an inalienable value. The obligation imposed on the Russian Federation to ensure realisation and protection of the said constitutional rights includes both the necessity of developing and implementing a set of measures creating conditions excluding any danger for the life of people and preventing harm to health, and the necessity to take measures for compensation of harm inflicted upon life and health." Second paragraph of item 2 of the Decision of the Constitutional Court of the Russian Federation of 27 December 2005 No. 523-O (see URL: http://doc.ksrf.ru/decision/KSRFDecision31536.pdf).

to this conclusion since they see life as an object of civil rights that cannot be transferred by any means, and establish liability for attack against life in the form of obligation to pay for burial of the deceased, to compensate his or her dependent persons the loss of support and moral suffering (Articles 150-151, and provisions of § 2 of Chapter 59).

The Constitution declares among the aims of the state policy the creation of conditions ensuring worthy life and free development of Man (Article 7, part 1).[572] Thereby the provisions of the Constitution of the Russian Federation result in an obligation of the state to guarantee the right to life, but moreover to seek enhancement of the quality of life. Apart from this, the Constitution of the Russian Federation in view of the value of human and his or her life (Articles 2 and 20) obliges the federal legislator to foresee liability for officials for hiding the facts of circumstances creating danger for life and health of people (Article 41, part 3).

B. Constitutional status

The constitutional provisions guaranteeing the right to life (Article 20) are the first among the personal rights and freedoms. In fact these provisions start the list of constitutional human and civil rights and freedoms. Such placement of the right to life is due to its meaning as the necessary condition for existence of all the other rights and freedoms.

The Constitution of the Russian Federation understands human life and health as a highest value, without which many other benefits and values lose their meaning; therefore, the care for their preservation and strengthening becomes one of the basic constitutional obligations of the state (Judgment of the Constitutional Court of the Russian Federation of 25 December 2020 No. 49-P).

The particular property of the right to life is that it is not subject to limitation, unlike the other rights that can be limited by the federal law insofar as this corresponds to constitutionally important goals (Article 55, part 3). This is conditioned by the very essence of the right to life which excludes any decrease of its scope. In addition, in the constitutional legal order limitation of the right to life (as a highest value) cannot be justified by any public interests. It is not permissible to limit the right to life in the conditions of a state of emergency (Article 56 of the Constitution of the Russian Federation, part 3).

572 See Section III.A.

Therefore, any limitations of the right to life, a right that has an absolute nature, would represent undermining this right, unacceptable under Article 55, part 2 of the Constitution of the Russian Federation.

The only limitation of the right to life mentioned in the Constitution of the Russian Federation is capital punishment. But the text of the Constitution emphasises that this limitation shall be subject to abolition. Therefore, the constitutional legislator proceeded from the understanding that capital punishment is a measure contravening the absolute nature of the right to life, and that it shall be subject to abolition in time. As a result, presently the constitutional legal order of the Russian Federation excludes capital punishment following the interpretation provided by the Constitutional Court of the Russian Federation.[573]

C. Rights holders

In the Russian legal system, criteria for beginning and end of human life are established in the legislation on protection of citizen's health. They must be applied in particular upon providing relevant types of medical help, as well as upon resolving of the issues related to criminal protection of life and realisation of certain rights in the sphere of social care, inheritance, family relations, etc.

Basic regulation of criteria for the beginning and end of human life is established by the Federal Law of 21 November 2011 No. 323-FZ "On the Fundamentals for the Protection of Health of Citizens in the Russian Federation" (Health Protection Act). Subordinate acts (including those adopted at ministerial level) ensure its further detailing.

Under Article 53 of the above Federal Law the moment of birth of the child is the moment when a foetus is separated from the mother's organism by way of birth. A foetus can separate from the mother alive or dead. This leads to different legal consequences and order of registration of relevant legal facts. The obligations of medical personnel with regard to emergency help to newborn babies also depends on that, including when they are born with low or extremely low body weight.

From 1 January 1993 Russia has applied the criteria of live birth recommended by the World Health Organisation (the WHO). Presently the same criteria are established by the Order of the Ministry for Healthcare and Social Development of the Russian Federation (Ministry of Health) of 27 December 2011 No 1687n.

573 See Section II.A.

Live birth is the moment of separation of a foetus from the mother's organism when the pregnancy has lasted for 22 weeks or more, and the newborn weighs 500 grams or more (or less than 500 grams when multiple foetuses are born), or where the weight of the newborn is unknown its body length is 25 centimetres or more, if the baby demonstrates signs of life (breathing, heartbeat, pulsating umbilical cord or arbitrary muscle movements irrespective of cutting the umbilical cord or placental separation). Where at least one of these signs of live birth is present, medical personnel is obliged to start first-hand reanimating actions, i.e. the saving of life.

Respect of human life at the time of its appearance and throughout its span encompasses creation of conditions for overcoming the risks to life. In particular, where a threat to human life is present the medical personnel must strive to preserve it until reanimation is recognised as fully hopeless. At that time, criteria for the end of life must be applied.

Article 66 of the Health Protection Act defines the moment of death of a person as the moment of the death of brain or the moment of biological death (irreversible death). The thin line between these two conditions is very important in the context of post-mortem donation of organs and body tissue. This is possible only upon establishment of the brain death, only upon observance of chronological intervals ensuring preservation of the transplant.

Brain death occurs when its functions stop completely and irreversibly, such stop is to be registered when the heart works and lungs are artificially ventilated. Such condition of a human organism can be identified only under specific procedure faced by rather strict requirements as regards collegiality and competence of participating specialists. Death of brain can be diagnosed by a medical council in the medical organisation where the patient is situated. The council must include an anaesthesiologist-reanimatologist (intensivist) and a neurologist. Both these specialists must have at least 5 years of experience in their respective specialty.

Since the person in whose respect the reanimation proved futile can potentially be seen as a donor, the medical council must not include any specialists involved in organ extraction or transplanting.

The reanimation activities are of high social value since they are the means of saving human life. Therefore, main requirements for their performance and criteria for their termination are established directly by law. Thus, Article 66 (part 6) of the said Federal Law establishes that reanimation efforts aimed to restore critical functions can be terminated if they are futile for 30 minutes. With

regard to a newborn the reanimation (artificial lung ventilation, heart massage, administering of drugs) can be terminated if there is no heartbeat after 10 minutes from the start of reanimation.

Where death is pronounced on the basis of brain death (including situations where full range of reanimation means to support life were applied to no avail) the reanimation efforts cease.

Legislative prescriptions regarding reanimation and pronouncing death of person are detailed by the secondary legislation which *inter alia* approves forms of documents establishing relevant legal facts and medical procedures. Rules of determining the time of death, including criteria and procedure for determining death, are approved by the Decree of the Government of the Russian Federation of 20 September 2012 No. 950. The order of establishing the diagnosis of brain death is established by the Order of the Ministry of Health of 25 December 2014 No. 908n. This Order has foreseen consecutive determination of clinical criteria of brain death and conduction of several functional examinations (electroencephalography, contrast digital panangiography of the four great vessels of the head). It is established that the medical council shall include specialists in functional and radio diagnostics that have at least five years of experience. Also it precisely details conditions, that, when observed simultaneously, give the council grounds to diagnose the death of brain.

Such detailed regulation for termination of reanimation and diagnosing the death of brain is dictated by the necessity to exclude legal risks when a decision is taken to extract organs of a person after his or her death is pronounced in order to further transplant the organ to a recipient. The Law of the Russian Federation of 22 December 1992 No. 4180-I "On Transplantation of Human Organs and (or) Tissues (Transplantation Act)" differs between cadaveric donation and intra-vital donation. It also establishes conditions for provision of this type of advanced-technology medical help. Transplantation of organs and (or) tissues is a way to save life and restore health. It can be applied only where other methods of treatment cannot ensure achievement of these goals.

Legal regulation of the relations arising therefrom implies ensuring balance of rights and interests of donors and recipients, and this is equally important for intra-vital and cadaveric donations. Cadaveric donation has priority, while extraction of organs and tissues from a life donor has its natural limits in terms of transplantation objects (pair organs, part of an organ, or tissue lack of which does not lead to irreparable harm to health), and in terms of other requirements, medical or genetic. In general, condition of extraction of transplant from a donor

is the presence of genetic connection to recipient (exception is made only for bone marrow), as well as the conclusion of the medical council as regards the possibility of extraction. Extraction of organs or tissues from a life donor is possible only upon his informed approval. Intra-vital donation is possible only after a person reaches 18 years of age (except for bone marrow transplantation). A person that is legally incompetent cannot be a donor.

Free will criterion is important even for cadaveric donation. In Russia, there is a presumption of consent to extraction of organs and tissues from a human body after death. Under Article 8 of the Transplantation Act extraction of organs and (or) tissues from a cadaver is not allowed if at the time of extraction the healthcare institution was informed that when a person was alive he or his close relatives or legal representative declared that he is against extraction of his organs and (or) tissues after death for transplantation. The same criteria are also established in Article 47 (part 10) of the Health Protection Act.

These requirements are further detailed in the other provisions of Article 47 of the Health Protection Act, according to which the able-bodied adult citizen is entitled to declare in any form suitable to him (orally in presence of witnesses or in writing against certification of the head of a medical organisation or of a notary) his agreement or denial to have organs or tissues extracted. Where no such declaration was made, the right to state denial with regard to the said actions is afforded to his spouse, and where there is no spouse – to one of close relatives (children, parents, adoptees, brothers and sisters, grandchildren or grandparents).

An exception to general presumption of agreement is provided under Article 47 (part 8) of the Health Protection Act in respect of extraction of organs or tissues from a body of a minor or legally incompetent person. This is possible only after agreement of one of the parents is obtained.

The Constitutional Court of the Russian Federation has received several complaints challenging constitutionality of Article 8 of the Transplantation Act which established presumption of agreement to post-mortem extraction of organs and tissues. In assessing their admissibility the Court noted that such model of legal regulation is not exceptional when compared to international practice; it is in conformity with the fundamental principle of the human right to personal inviolability that extends beyond human life and ensures necessary prerequisites for legal protection of a body of the deceased person. Some countries use the model of "obtained consent" ("presumption of disagreement") allowing extraction of organs and tissues only when a consent in an established form is given by the donor when he is alive, and when there was no declared position the consent must

be obtained from another competent person, generally a family member of the deceased.

The Constitutional Court has concluded that both these normative models are acceptable as seen from the constitutional requirements and international instruments. The Court noted that within the complex nature of relations between a donor and a recipient, and in view of the possible conflict of their interests, such balance of constitutionally important values and protected rights must be achieved, so as to take into account different aspects of transplantation as a type of medical intrusion, to reflect existing social (ethical, moral, religious) particularities and preferences. Achieving this goal can be facilitated by widely informing the population about legal regulations of organ donation and transplantation, possibilities for citizens to exercise their rights; by inviting the civil society to take part in the discussion on the possibility of further improvement of legal regulations in this sphere (detailing the procedure of consent by a citizen to extraction of organs and tissues after his death; registering such consent and informing medical organisation thereof, etc.) (Decisions of 4 December 2003 No. 459-O and of 10 February 2016 No. 224-O).

D. Limitations: General considerations

The Constitution of the Russian Federation established that Man, his rights and freedoms are the highest value (Article 2), the rights and freedoms define the sense, meaning and application of laws, actions of the legislature, the executive, local self-government, and are ensured by the judiciary (Article 18). These constitutional requirements are fully applicable to the right to life. This right implies that the state shall take necessary measures to ensure free realisation of this right and its protection.

It follows from the nature of the right to life that it is based upon the prohibition to intrude into this life. Given this special feature it should be noted that the right to life is absolute and is not subject to any limitations, since any diminishing of the scope of this right would lead to elimination of its essence. Therefore, for example, the proportionality test that is traditional for constitutional supervision is not applicable to this right, since it includes assessment of proportionality of limitation of a right.

At the same time, in the Russian Federation there exist legal norms regarding the right to life both in the context of prohibition to invade it (e.g. established liability for attacks against life) and in the aspect of positive obligations of the state (e.g.

establishing obligation to provide medical help in order to preserve and support life).

This legal regulation can be assessed in light of standards applied within constitutional supervision, such as the principle of legal certainty.

Legal certainty, as a constitutionally important property of normative acts, ensures stability of legal relations regulated by them, thereby allowing foreseeing actions of public authorities, assessing their legality, and awareness of the legal remedies applicable in case of violation of basic rights and freedoms. This principle was not established directly in the Constitution of the Russian Federation, but it is widely used in the practice of the Constitutional Court of the Russian Federation.

Already in one of its first rulings, the Constitutional Court has pointed out that potentially arbitrary understanding and application of norms of law is a violation of the constitutionally recognised equality of all before the law and courts. The general legal principle of certainty, clarity, unequivocal understanding of a legal norm flows from the constitutional principle of equality of everybody before law and courts, since such equality can be ensured only on condition of unified understanding and interpretation of norms by all who enforce the law (Judgment of 25 April 1995 No. 3-P).

This position has been further developed in other rulings of the Constitutional Court of the Russian Federation. In particular it was noted that the general legal criterion of formal determination, clarity, unequivocal understanding of a legal norm (formal determination of law) which is conditioned by the nature of normative regulation in legal systems based on the rule of law directly follows from the constitutionally established principles: legal equality, superiority of the Constitution and federal laws based thereupon. Lack of clarity of content of legal norms leads to their ambiguous understanding, and therefore to ambiguous application, creating possibility of unlimited discretion in law enforcement, and to arbitrariness, therefore arriving to breach of the said constitutional principles, the realisation of which cannot be ensured without unified understanding and interpretation of a legal norm by all who enforce law (Judgments of the Constitutional Court of the Russian Federation of 15 July 1999 No. 11-P, of 21 January 2010 No. 1-P and other).

These legal positions are defining for assessment of constitutionality of legislation allowing use of force that potentially can lead to infliction of death. According to the meaning of Article 20 (part 1) and in accordance with the principle of legal certainty such matters must be clearly and unambiguously defined in the law.

II. Limitations: Key issues

A. Capital punishment

In guaranteeing the right to life to everyone, the Constitution of the Russian Federation of 1993 in its Article 20 (part 2) established that capital punishment until its complete abolition may be established by federal law as an exclusive form of punishment for particularly grave crimes against life, and the accused shall be granted the right to have his case examined by a court with the participation of a jury. Thereby the Constitution establishes parameters for legislative regulation of this issue – abolition of death penalty, and pending that – exclusive instances of application of this type of criminal punishment conditioned by affording the accused the right to have his case considered with participation by a jury panel.

Under these constitutional instructions, in the Criminal Code of the Russian Federation (CC of the Russian Federation) that was adopted in 1996 and came into force in 1 January 1997, the federal legislator has foreseen capital punishment as an exclusive type of criminal punishment that can be imposed only for particularly grave crimes against life (Article 59, part one). Among such crimes the Code lists murder under aggravating circumstances, attempts against life of certain categories of persons – state figures or public persons, persons administrating justice or preliminary investigation, a law-enforcement official, and genocide, i.e. actions aimed at full or partial elimination of national, ethnic, racial or religious groups as such by way of killing its members, inflicting grave harm to their health, forcible prevention of the birth of children, forcible taking of children, forcible relocation, or creation of other living conditions aimed at physical elimination of members of this group (Article 105, part two; Articles 277, 295, 317, 357 of the CC of the Russian Federation).

At that, after adoption of the CC of the Russian Federation and since the Judgment of the Constitutional Court of the Russian Federation of 2 February 1999 No. 3-P came into force there was a moratorium imposed on application of capital punishment. This punishment could not be imposed by the courts until jury trial would be introduced throughout the territory of the Russian Federation.

The Decision of the Constitutional Court of the Russian Federation of 19 November 2009 No. 1344-O-R regarding clarification of this Judgment identified the irreversible process of aiming to abolish capital punishment as a form of extraordinary punishment that is of temporary nature. Thereby the moratorium in fact was made unlimited in time and retains its meaning until the present.

Last time, the death penalty was carried out in the Russian Federation in 1996.

Refusal to apply death penalty was directly conditioned by the rulings of the Constitutional Court of the Russian Federation.

By the end of the 1990s, not all constituent entities of the Russian Federation had implemented jury trials (in fact, only in nine regions did such trials started working). Therefore, in those constituent entities where jury trials were still not functioning, the citizens were deprived of the possibility to choose such a form of trial, even in those cases where capital punishment could be imposed. This became a reason for several applicants to apply to the Constitutional Court of the Russian Federation, including citizens already sentenced to death and without real possibility of access to a court with jury panel.

In its Judgment of 2 February 1999 No. 3-P the Constitutional Court proceeded from the subject of consideration of the case, i.e. from the necessity to ensure equal access of citizens to consideration of their cases by a court with participation of jury panel throughout all the territory of the Russian Federation. The Court concluded that from the date of its Judgment coming into force and to the date of the coming into force of federal law practically ensuring the right to a jury trial for every person accused of commission of a crime for which federal legislation provides punishment in the form of death penalty, this exclusive punishment cannot be imposed, regardless of the composition of a court considering the case, including a court with participation of jury panel, a panel of three professional judges or a court including a judge and two people's assessors.

In this Judgment of the Constitutional Court the prohibition to impose capital punishment was motivated procedurally: the fact that there were no jury trials in at least some parts of the territory of the Russian Federation. Over time, the legal potential of these grounds has expired, since the process of creation of jury trials throughout all the territory of the Russian Federation was completed by 1 January 2010.

In this regard the Supreme Court of the Russian Federation lodged a request with the Constitutional Court seeking to officially clarify the Judgment of 2 February 1999 on the capital punishment moratorium. The Supreme Court based its request on the fact that after the jury trial was introduced throughout the territory of Russia (i.e. on 1 January 2010) the judges might have had questions regarding the possibility to impose capital punishment. In other words, the following issue had arisen: whether the moratorium introduced by the Constitutional Court of the Russian Federation in its Judgment with respect to imposition of capital

punishment would remain in force.

In clarifying the order of execution of the Judgment of 2 February 1999 No. 3-P upon the request of the Supreme Court of the Russian Federation in the context of tendencies as regards the issue of capital punishment, inter alia with due regard of international obligations of the Russian Federation on the moratorium on its imposition, the Constitutional Court of the Russian Federation in its Decision of 19 November 2009 No. 1344-O-R has pointed out the following. In the Russian Federation, as the result of a lengthy moratorium with regard to imposition of death penalty, sustainable guarantees of the human right not to be subjected to capital punishment have formed, and a stable constitutional legal regime has been developed within which, taking into account the international obligations of the Russian Federation, the inevitable process takes places towards the abolition of capital punishment as an extraordinary measure of punishment which has a temporary nature ("until its complete abolition") and can only be acceptable for a certain transition period, i.e. until achievement of the goal established under Article 20 (part 2) of the Constitution of the Russian Federation; this means that execution of Judgment of the Constitutional Court of the Russian Federation of 2 February 1999 No. 3-P in part concerning introduction of jury trial throughout the territory of the Russian Federation does not open possibility to impose capital punishment, including where the sentence is based on a jury verdict.

The Judgments adopted by the Constitutional Court of the Russian Federation are directly applicable and remain in force.

B. Abortion

In the Russian Federation, legal regulation of artificial termination of pregnancy is based on the system of terms and the system of indications (Article 56 of the Health Protection Act). When the term of pregnancy is under 12 weeks, a woman can choose to terminate it. There is a minimum time period between the application of a woman to a medical organisation and performing the medical operation depending on the term of pregnancy. When such term is 4-7 or 11-12 weeks (but not before the 12th week ends) the pregnancy can be terminated not earlier than after 48 hours from the moment of application. If the term of pregnancy is 8-10 weeks such period cannot be less than 7 days after the application of a woman to the medical organisation.

Such regulation seeks to ensure that a woman takes a weighted, conscious decision as regards preserving or terminating the pregnancy, while at the same

time minimizing the risk of missing the term where the relevant medical operation is acceptable.

Where there are social or medical indications, artificial termination of pregnancy may be performed at later terms. Thus, when there are social indications abortion is possible until the 22nd week of pregnancy, and where medical indications are present abortion can be performed regardless of the pregnancy term.

Pregnancy terms allowing its termination under *social* indications correlate with the live birth criteria (see section I.C.). If the foetus separated from the mother after the 22nd week of pregnancy demonstrates signs of live birth, it acquires legal personality as a newborn, and its right to life becomes protected under the relevant legal rules and regulations.

Social indications for artificial termination of pregnancy are defined by the Government of the Russian Federation. Presently the only such indication is pregnancy resulted from rape (Decree of the Government of the Russian Federation of 6 February 2012 No. 98 "On the Social Indication for Artificial Termination of Pregnancy"). This indication allows termination of pregnancy in many countries, including those with rather harsh anti-abortion legislation. In Russia, this indication was initially part of the list of social indications for artificial termination of pregnancy which had been repeatedly reviewed and shortened.

Thus, such list approved in 1996 included 12 more indications related to family and social status of the woman and (or) her husband, economic conditions of the family, etc. Social indications included, for example, disability of I-II grades, death of husband during pregnancy, multiple children (3 and more), a disabled child in the family, lack of registered marriage or marriage dissolution during pregnancy, lack of home, dormitory accommodation, family income for each member less than the established subsistence rates for relevant region, etc. (Decree of the Government of the Russian Federation of 8 May 1996 No. 567).

In 2003, the list of social indications included (apart from pregnancy as the result of rape) the following: court decision on deprivation or limitation of parenting rights, woman serving the sentence in penitentiary institutions, disability of husband of I-II degree or death of husband during pregnancy (Decree of the Government of the Russian Federation of 11 August 2003 No. 485).

Consistent narrowing of the list of social indication for abortion reflects a more strict position in respect of artificial termination of pregnancy with the term of more than 12 weeks. Such abortion can be conditioned only by extraordinary

circumstances allowing disregard of the legal protection of the foetus in favour of the right of woman to physical integrity and personal dignity.

The list of *medical* indications for artificial termination of pregnancy was approved by the Order of the Ministry of Health of 3 December 2007 No. 736. It includes different medical conditions that make bearing and giving birth to a child dangerous for life and health of the woman (for example, if she suffers from chronical renal insufficiency, ciliary arrhythmia, etc.), of the foetus (where abnormal development, deformities or chromosome irregularities are found). Some of these indications are circumstantial; therefore the issue of termination of pregnancy (taking into account also its term) is decided individually by a medical council.

Artificial termination of pregnancy can be done only upon informed free consent of the woman. The Order of the Ministry of Health of 7 April 2016 No. 216n establishes the form for such consent, which reflects information that must be presented to the woman before she decides. For example, information must be given (and, if necessary, clarified and explained) as regards possible negative consequences of the medical operation. Since the procedure of deciding on abortion and its carrying out includes such necessary stages as consultation with regard to psychological and social assistance, informing of the possibility not to resort to abortion and of the preferable choice to bear and give birth to a child, ultrasonic scanning of pelvic organs with possible demonstration of the foetus and its heartbeat (if present), all these information is reflected in the filled-in document.

The Russian health protection legislation ensures rather versatile regulation of artificial termination of pregnancy. It proceeds from the understanding that the Constitution of the Russian Federation does not recognise the foetus as a rights holder, since under Article 17 (part 2) the fundamental human rights and freedoms are inalienable and belong to everyone since birth. Within this approach, criminal legislation views the foetus as part of the mother, e.g. establishing more strict punishment for murder of a pregnant woman if the pregnancy was known to the murderer, or seeing artificial termination of pregnancy resulting from a criminal attempt as grave harm to health (Article 105, part 2, item “d”; Article 111, part 1 of the Criminal Code of the Russian Federation). Simultaneously, the civil and social care legislation essentially recognise limited legal personality of an unborn baby, allowing its inheritance rights, provisions of pension and some other social allowance after birth (Article 1116, part 1 of the Civil Code of the Russian Federation; Article 7, item 2 of the Federal Law of 24 July 1998 No. 125-FZ “On the Obligatory Social Insurance against Accidents at Working Place

and Professional Diseases," etc.). Legal protection of the foetus (along with the protection of health of the mother) is the goal of the norms of the Labour Code affording the pregnant woman the right to leave for pregnancy and giving birth, and certain privileges with regard to regulation of working hours, rest, protection of labour, etc. (Articles 254, 255, 259 and other)

The case-law of the Constitutional Court of the Russian Federation did not consider issues related to abortion.

C. Euthanasia

The Constitution of the Russian Federation contains no provisions on euthanasia. Issues related to it were also not considered in the practice of the Constitutional Court of the Russian Federation.

The Health Protection Act, same as the previously in force Foundations for Legislation of the Russian Federation on Protection of Health of Citizens, directly prohibits euthanasia. It defines euthanasia as speeding up the death of the patient upon his request by any actions (omission) or means, including by way of discontinuing artificial measures to support the life of the patient (Article 45). At that, the Oath of a doctor obliges to express highest respect to human life and never perform euthanasia (Article 71). The Oath is pronounced by every person who completed the higher education program on medical education upon receipt of document confirming education and qualification.

Possibility to legalise euthanasia requires wide discussions in society as a whole, and particular professional, social and religious groups. Presently such a perspective has not received clear assessment in Russian expert societies (lawyers, doctors, philosophers, etc.). Formally there is no discussion on the matter. At the same time efforts are deployed to develop palliative help as a set of measures including medical operations, psychological measures and care with the aim to improve the quality of life of incurable patients in order to ease the pain and other grave symptoms of the disease (Article 36 of the said Federal Law).

It is common knowledge that euthanasia can be active, such as administering a deadly dose of a certain drug to a patient, or passive, which is performed by way of termination of life support.

Legal assessment of *active* euthanasia in the Russian legal order is clear. It qualifies as murder, i.e. intentional infliction of death to another human. Motive

for this crime can be seen as mitigating circumstance, but it cannot prevent punishment (Article 61, part 1, item "e"; Article 105 of the Criminal Code of the Russian Federation).

Speaking of *passive* euthanasia, it should be correlated with the right of patients to refuse medical operation. The Russian legislation affords the patient the right to self-determination based on the constitutional prescriptions regarding personal dignity and the right of everybody to personal inviolability, but also on the ethical principles of the medical profession.

The principle of voluntary medical intrusion represents the most important part of the patient's right to self-determination. In the structure of the legal status of the patient this principle corresponds to the right of the patient to consent to medical intrusion (operation) or to refuse it. These rights are exercised only in connection with the right to information of one's health (Article 20 of the Health Protection Act).

Preliminary condition for any medical operation is the informed voluntary consent of the patient. Patient is afforded the right to refuse medical operation, or to demand its termination. Exercise of this right implies understandable explanations to the patient of the possible consequences of such refusal, with reflection of such actions in the medical documents.

If medical help is needed for the person who did not reach the established age (15 years in general, 16 years for drug addicts, 18 years for transplantation of organs or tissues) or who is legally incapacitated, then the consent or refusal must be declared by the legal representative of this person.

Importantly, the right of the patient or his legal representatives to refuse medical intervention can be limited in certain cases taking into account the requirements of Article 55 of the Constitution of the Russian Federation. This provision allows possibility of limitation of human rights and freedoms only insofar as it is necessary for protection of fundamentals of the constitutional system, morals, health, rights and lawful interests of others, ensuring defence of the country and security of the state.

The exhaustive list of situations allowing medical intervention without consent of a citizen, one of his parents or another legal representative, is established in Article 20, part 9 of the Health Protection Act. Departure from the principle of voluntary medical interventions is possible with regard to persons suffering from severe psychiatric problems. In this situation the Law of the Russian Federation

of 2 July 1992 No. 3185-I "On the Psychiatric Help and Guarantees of Rights of Citizens upon its Administering" applies. This Law provides for involuntary treatment of such persons who are suffering from severe psychiatric disease and present immediate threat to themselves or others. Involuntary treatment is also foreseen for those who committed publicly dangerous acts (crimes). The relevant relations are regulated by the Criminal and Criminal Procedure Codes of the Russian Federation. Refusal of medical intervention is impossible when forensic medical or forensic psychiatric examinations are conducted. Palliative treatment can be administered without consent of a citizen if his condition does not allow expressing his will, and there is no legal representative.

The right of patient to refuse medical intervention can also be limited if he suffers from a disease dangerous to others. The list of such diseases is approved by the Decree of the Government of the Russian Federation of 1 December 2004 No. 715, which includes several infectious and parasitary diseases, including the coronavirus infection.

Medical intervention required urgently to eliminate threat to life of the patient can be performed if the patient's condition prevents him from stating his will, and there are no legal representatives.

The decisions to administer involuntary medical help must be taken by the medical council or commission (for example in respect of persons requiring palliative help), or by the court in accordance with the order established by procedural legislation with regard to relevant administration of psychiatric help or certain types of medical help to citizens suffering from diseases dangerous to others (for example anti-tuberculosis stationary treatment). Special regulation is established in respect of situations where legal representatives refuse medical intervention necessary to save lives of relevant categories of patients.

Observing the established rules for legal support of taking and carrying out the decision of the patient to refuse treatment allows distinguishing such situations from euthanasia directly prohibited by the Russian legislation.

Similarly, observing the procedural requirements upon administering medical help without consent of the citizen or his legal representative in relevant situations creates necessary legal conditions for saving the life of the patient, and to ensure health, safety, rights and interests of others.

D. Suicide and assisted suicide

In Russia, there is no criminal responsibility for suicide or attempted suicide. Therefore, the actions of a person who commits suicide do not fall under criminal legal regulation. At that, the Russian criminal law establishes liability for actions of other persons making the suicide (or its attempt) possible.

Initially (at the time of its adoption in 1996) the Criminal Code of the Russian Federation had foreseen in its Article 110 only the crime of "Incitement to Suicide" (can be translated also as "Driving to Suicide"). This norm criminalised incitement of a person to suicide or to attempted suicide by way of threats, cruel treatment or systematic degrading of the victim's personal dignity. Yet, later there were a large number of suicides and their attempts in Russia. This suicide rate was conditioned particularly by appearance in the territory of the Russian Federation of so-called "groups of death" or other informal groups inciting people to commit suicide.[574] This situation demanded taking new measures of criminal regulation. Therefore, the Federal Law of 7 June 2017 No. 120-FZ "On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation with Regard to Establishing Additional Mechanisms for Combatting the Activities Aimed to Incite Children to Suicidal Behaviour" has amended the criminal law.

Firstly, Article 110 of the Criminal Code was supplemented with part 2, establishing aggravating (qualified) indications of the crime of inciting to suicide: commission of this crime against a minor or a person who is in a helpless state as known to the perpetrator, or who is materially or otherwise dependent on the perpetrator; against a woman who is pregnant as known to the perpetrator; against two or more persons; committed by a group of persons acting in conspiracy or by an organised group; committed in a public speech, publicly demonstrated piece of art, in the media or on the information-telecommunications networks (including the Internet).

Secondly, the criminal law was supplemented by new Articles 110.1 "Inducement to Committing Suicide[575] or Aiding to Committing Suicide" and 110.2 "Organisation of Activities Aimed to Incitement to Commit Suicide." These articles recognised as separate criminally liable actions the instigation to commit suicide and aiding in its commission. The contents of this norm was additionally

574 See: Explanatory note "On the draft Federal Law "On amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation with Regard to Establishing Additional Mechanisms for Combatting the Activities Aimed to Incite Children to Suicidal Behaviour.""

575 Can also be translated as "Swaying to Commit Suicide."

clarified by the Federal Law of 29 July 2017 No. 248-FZ "On Amendments to the Criminal Code of the Russian Federation."

The current wording of Article 110.1 of the Criminal Code of the Russian Federation establishes liability for inducing commitment of suicide by way of persuasion, offerings, bribes, lies or otherwise where there are no indications to incitement to commit suicide (part one); for aiding suicide by way of advice, instructions, offering information, means or tools to commit suicide, or by eliminating obstacles to commit suicide, or by promise to hide the means or tools for suicide (part two). This article also establishes aggravating (qualifying) indications for inducing suicide or aiding in commission of suicide, that are identical to those listed in part two of Article 110 of the Criminal Code of the Russian Federation that establishes such indications for incitement to suicide (part three). Article 110.1 also additionally establishes liability for actions foreseen by parts one and two of the same article, that have resulted in actual suicide or attempted suicide (part four); that have resulted in actual suicide or attempted suicide of a minor, or the person in helpless condition as known to the perpetrator, or who is materially or otherwise dependent on the perpetrator, or of a woman who is pregnant as known to the perpetrator (part five); as well as for the actions listed in its parts one, two or three resulting in suicide of two or more persons (part six).

In its turn, Article 110.2 of the Criminal Code of the Russian Federation has criminalised the organisation of activities aimed to induce suicides by way of distributing information about ways to commit suicide or calling to commit suicide (part one). This norm has also established liability for the same action combined with public speech, using publicly demonstrated piece of art, the media or information-telecommunication networks (including the Internet).

Additionally, the note to Article 110.2 of the Criminal Code of the Russian Federation establishes that the person who committed the crime foreseen by this article who has voluntarily ceased the relevant criminal activities and actively helped solving and (or) prevention of the crimes foreseen by the Articles 110, 110.1 or Article 110.2 shall be absolved of criminal liability if his actions do not amount to another crime.

While it is obvious that the reasons for suicides are not always criminal, it can be said that supplementing the criminal law became an adequate measure of protection of the right to life. During the period of existence of these norms in their current edition, more than 20 persons are brought to liability under these articles annually, including in 2021. An exception was the year 2020 when only

8 persons were brought to justice for commission of the crimes foreseen by the relevant norms.[576]

As regards "help" to commit suicide it should be noted that such aid can exceed the scope of actions established by Article 110.1, part two of the Criminal Code of the Russian Federation, i.e. exceed the scope of "aiding." It can, for instance, manifest in the action directly aimed to inflict death to a person who wants to commit suicide but for some reasons has no means to commit suicide himself. In this situation the relevant action under the Russian criminal law will be within the intentional infliction of death to another person, i.e. to murder (Article 105 of the Criminal Code of the Russian Federation).

At that, item "e" of Article 61 of the Criminal Code views commission of crime on the basis of compassion as a mitigating circumstance, applicable also to murder.

Suicide of a victim or his attempt to commit suicide are reflected in the Criminal Code not only in the form of separate crimes (Articles 110-110.2), but also as a consequence of other crimes, seen as aggravating circumstance under the general definition "grave consequences."

In particular, suicide or attempt of a suicide by the victim can be taken into account as an aggravating circumstance in general (Article 63, part one, item "b"), or as an aggravating (qualifying) indication of several crimes. The Criminal Code of the Russian Federation lists more than 70 different crimes which foresee criminal liability in connection with grave consequences, including: crimes against freedoms, honour and dignity of person; against sexual inviolability and sexual freedoms of person; against property; against public security; against public health and public morals; against constitutional foundations and security of state; against state power, civil or municipal service; against justice; against military service.

Consequence in the form of suicide of the victim or attempted suicide is directly listed by the Plenum of the Supreme Court of the Russian Federation as a qualifying (aggravating) indication with regard to such crimes as the following:

- rape (Article 131, part three, item "b" of the Criminal Code of the Russian Federation) and coercive sexual activities (Article 132, part three, item "b") –

576 According to the court statistics prepared by the Judicial Department at the Supreme Court of the Russian Federation. URL: http://www.cdep.ru.

item 13 of the Ruling of the Plenum of 4 December 2014 No. 16 "On the Court Practice on the Cases Regarding Crimes Against Sexual Inviolability and Sexual Freedom of Person";
- inducing to take drugs, psychedelic substances or their analogues (Article 230, part three, item "b" of the Criminal Code) – item 28 of the Ruling of the Plenum of 15 June 2006 No. 14 "On the Court Practice on the Cases Regarding Crimes Connected to Drugs, Psychedelic Substances, Potent or Toxic Substances";
- abuse of official powers (Article 285, part three of the Criminal Code), abuse of official powers in carrying out the state defence contract (Article 285.4, part two, item "b"), exceeding of official powers (Article 286, part three, item "c") – item 2 of the Ruling of the Plenum of 16 October 2009 No. 19 "On the Court Practice on the Cases Regarding Abuse of Official Powers and Exceeding Official Powers."

The case-law of the Constitutional Court of the Russian Federation did not consider these issues.

E. Lethal use of force during law enforcement

In accordance with Article 1, part 1 of the Federal Law of 7 March 2011 No.3-FZ "On Police (The Police Act)" the aim of the police is to protect life, health, rights and freedoms of the citizens of the Russian Federation, foreign citizens and stateless persons, to counter crime, to protect public order, property and to ensure public safety. Accordingly, one of the important functions of the police is the protection of life; this is necessary in respect of anyone, including those who break the law. In particular, Article 1, part 16 of the Police Act prescribes that the arrested shall be detained in the premises specially designated for this under guard, in conditions excluding danger to their life and health. Police officers are obliged to take measures to ensure that in exercise of the police powers no harm is inflicted upon life and health of citizens.

The Police Act allows in exceptional circumstances the use of physical force, special means and firearms (Article 18), but it establishes that the police officer is obliged to provide emergency help to a citizen who received bodily injuries as the result of the use of physical force, special means or firearms, and to take measures to provide medical help to such citizen as soon as possible (Article 18, part 4).

The Police Act defines a strictly limited list not subject to expansive interpretation listing the situations where use of physical force, special means and firearms shall be allowed (Articles 20-23). These provisions foresee that the relevant measures can be applied by the police officers only with the aim to ensure legal order,

defence of rights and freedoms. Yet, the use of force that can be lethal is seen as an extraordinary measure that is allowed only to prevent comparable harm (protect the lives of others).

The law strictly defines the situations where officers of the National Guard are allowed to use firearms, military and other special vehicles (Federal Law of 3 July 2016 No 226-FZ "On the Military Forces of the National Guard of the Russian Federation (National Guard Act)"). This law provides that in using physical force, special means, firearms, military or special vehicles the officer of the National Guard is obliged to seek to minimise any harm (Article 18, part 5). Therefore, the use of force, weapons and special means is in itself acceptable only in conditions that do not allow carrying out the functions and powers of the National Guard by other means; infliction of death resulting therefrom is an extraordinary situation that the officers of the National Guard should evade.

Using weapons and special means is possible also in the framework of a counterterrorism operation under the conditions provided in the Federal Law of 6 March 2006 No. 35-FZ "On Countering Terrorism."

This Federal Law notably foresees the possibility of using weapons and military vehicles in order to eliminate the threat of terrorist act in the air or to put an end to such act. If the air vehicle does not react to radio-communications from the control points on the ground ordering cease of violation of the rules of using the airspace of the Russian Federation and (or) to the radio-communications and visual signals from the military air vehicles of the Russian Federation Military that have been surged to intercept this vehicle, or if it refuses to comply with the commands and does not state reasons for it, the Military Force of the Russian Federation shall use the weapons and military vehicles to terminate the flight of such air vehicle and force it to land. If the air vehicle does not comply with the demands to land and there is a real threat of the death of people or of an ecological disaster, the weapons and military vehicles shall be used to terminate the flight of a vehicle by its destruction (Article 7). Same rules are established to put an end to terrorist acts in the territorial waters, territorial sea, on the continental shelf of the Russian Federation and upon ensuring safety of national sea navigation (Article 8).

The Constitutional Court of the Russian Federation has not directly encountered these issues. Yet, the fundamental legal positions of the Court extend to the situations related to the use of lethal force. The Court noted in particular, that in defining conditions of realisation of the fundamental right the federal legislator must proceed from the principle of equality and the requirements of rationality, necessity and proportionality flowing therefrom, and to ensure the balance

of constitutional values as well as rights and lawful interest of participants of concrete legal relations (Judgments of 18 February 2000 No. 3- P, of 16 July 2008 No. 9-P, of 12 March 2015 No. 4-P, etc.).

As the Constitutional Court has underlined, the Constitution of the Russian Federation is based on the understanding that the human, his rights and freedoms are the highest value (Article 2), and that recognising the dignity of person is the basis for all its rights and freedoms and the necessary precondition to their existence and observance. The dignity of person is protected by the state, and nothing can justify its undermining (Article 21, part 1 of the Constitution). Any criminal attempt attacking the person, his rights and freedoms, represents simultaneously the gravest attack on human dignity since the human as a victim of a crime becomes also the victim of arbitrariness and violence. The state ensuring special attention to interests and demands of the victim of a crime is obliged to contribute to elimination of violations of his rights and restoring the dignity of person (Judgment of 15 January 1999 No. 1-P).

F. Other limitations on the right to life

Deprivation of the relatives of person of their right to receive compensation for the harm inflicted on his life when such harm has been inflicted as an act of necessary self-defence can be seen as a limitation of the right to life in its particular aspect guaranteeing taking the measures to compensate the harm to life (Article 1066 of the Civil Code of the Russian Federation). Another aspect of this is represented by acceptable limitations of the amount of compensation or even its refusal if the victim himself bears guilt for the harm inflicted (Article 1083 of the Civil Code of the Russian Federation).

The Constitutionality of the latter type of limitations has been assessed by the Constitutional Court of the Russian Federation. The issue before the Court concerned constitutionality of the regulations forbidding refusal to compensate the harm to life and health inflicted by the source of increased danger (hazardous object), even where infliction of harm was conditioned by severe negligence of the victim himself. The Constitutional Court of the Russian Federation concluded that this regulation embodies the balance of subjective rights of the one inflicting the harm whose activities represent a hazard for others, and the victim who has demonstrated gross negligence (Decisions of 19 May 2009 No. 816-O-O).

III. Expansive interpretations

A. Socio-economic dimensions

The Constitution of the Russian Federation lists the right to life among personal constitutional rights. The socio-economic values that are ensuring the minimally required quality of life ("worthy life") are guaranteed not by the right to life (Article 20), but by other constitutional rights, including the right to protection of personal dignity (Article 21), right to minimum wage (Article 37, part 3), right to a home (Article 40), right to protection of health and to medical help (Article 41). Taking this into account the Constitution of the Russian Federation provides a relatively narrow understanding of the right to life. At the same time the case-law of the Constitutional Court of the Russian Federation along with the Russian legislation make it possible to conclude that the constitutional right to life includes certain socio-economic aspects.

Thus, the Constitution of the Russian Federation foresees the necessity to ensure worthy life within the realisation of the policy of the Russian Federation as a social state (Article 7, part 1). In this context, the Constitution of the Russian Federation establishes the necessity to ensure protection of labour and the health of people, state support for the family, maternity, fatherhood and childhood, to the disabled and to elderly citizens, for development of the social services systems, establishing minimum wage in the amount of no less than subsistence rate for able-bodied general population throughout the Russian Federation, state pensions, social support and other guarantees of social protection (Articles 7 (part 2), 37, 38, 39, 41, 75 (parts 5 and 7)).

The right to worthy life in the sphere of labour is exercised through ensuring such labour rights as: the right to labour in conditions which meet safety and hygiene requirements, to receive remuneration for the labour without any discrimination whatsoever and not below the minimum wage established by federal law, the right of protection against unemployment, the right to rest.

For a person who has exhausted his ability to work, or whose ability to work is limited there are guarantees aimed to preserve his life. These guarantees in Russia are provided within social care, aiming not only to ensure physiological survival, but also social prosperity. The first aim of these guarantees is for the state to provide a source of income (pension, assistance) and guarantees of medical service including the help in providing medicine. With regard to the realisation of the right to life in its social aspect, the guarantees for its realisation include

legislatively provided social and professional rehabilitation (habilitation) of the disabled aimed to provide or return the ability to work, communicate, possibility to pursue socially acceptable life, obtain education, etc. (Federal Law of 24 November 1995 No. 181-FZ "On the Social Protection of the Disabled Persons in the Russian Federation"). The same group of social guarantees also includes social service for persons who require particular protection and support (elderly people, minors). These services include, for example, everyday services to help support the life in a household; medical services aimed to support and preserve health by way of organisation of care provision, assisting in healthcare activities, systematic monitoring to identify health problems; psychological services aimed to provide help in correction of psychological condition to adapt in the social environment, including anonymous psychological help using telephone hotlines; pedagogical services aimed to prevent deviations in behaviour or personal development, to form positive interests (including hobbies), to organise leisure time, help a family raise children; legal services aimed to provide help in obtaining legal services (including those done free of charge); services aimed to increase communication potential of persons limited in their functioning, including the disabled children (Federal Law of 28 December 2013 No. 442-FZ "On the Fundamentals of Social Services to the Citizens in the Russian Federation").

1. Labour pensions

A relevant example from the case-law of the Constitutional Court of the Russian Federation dealing with the socio-economic aspect of the right to life would be the Decision of 15 February 2005 No. 17-P upon complaint of the citizen Yenborisova P.F. regarding violation of her rights by the Article 14, part 8 of the Federal Law "On the Labour Pensions in the Russian Federation."

The applicant who was a disabled person has challenged the constitutionality of the legal provision that defined the amount of labour pension since it allowed affording her pension in the amount less than the subsistence rate for the constituent entity of the Russian Federation where she was residing.

The Constitutional Court pointed out that constitutional aims of the social policy of the Russian Federation (including the creation of conditions ensuring worthy life and free development of Man) condition the obligation of the state to care for the well-being of its citizens and their social protection; if due to age, health or other reasons that lie beyond one's control one cannot work and has no income to ensure income in the amount of subsistence rate for himself and his family, he can legitimately expect relevant help, welfare support, on the part of state and society. Therefore the Constitution affords everyone the right to freely use one's

abilities to work for any lawful economic activity, by his own efforts to ensure his subsistence, but also guarantees the social support due to age, illness, disability, loss of breadwinner, for upbringing of children and other situations provided by law (Article 34, part 1; Article 37, part 1; Article 39, part 1).

Legislative establishment of the relevant standards for sustainment is the competence of the Russian Federation, i.e. the federal-level function. The constitutional prescriptions that bind the state via social obligations towards the population in the system of constitutional norms (first of all its Articles 2 and 21 (part1)) define the legal measures for meeting the demands by the disabled persons who objectively cannot achieve material (financial) well-being on their own, and for guaranteeing material well-being at the level necessary to satisfy the basic living needs. These prescriptions encompass establishment of proper normative mechanisms for their satisfaction, with due regard of the capabilities of the society at a given stage of its development.

Provision of pensions is an important element of the social welfare. Its aim is to provide those in need, by way of creation of a system of accumulation of the results of their independent labour and fair redistribution of public material resources, i.e. means of living. The content of the provisions of the Constitution of the Russian Federation conditions setting the creation of conditions guaranteeing the dignity of person as a constitutional criterion for legislative regulation of pensions. Acknowledgement of personal dignity is the basis for all the human rights and freedoms, and is the necessary condition for their existence and observance. Under Article 21 of the Constitution of the Russian Federation the state is obliged to protect the dignity of person in all spheres, thereby establishing the priority of the individual and his rights.

The legislator compares his activity with the principle of recognition of personal dignity in all spheres of legal regulations. He also takes into account that labour pension according to its legal nature and target aims to remedy the losses following from the objective impossibility to continue to work. The legislator on his part must define the minimum amount of the labour old-age pension, that would ensure at least such subsistence level that would not create doubts over the very possibility of a dignified life for the citizen as the pensioner, his exercise of other individual rights and freedoms provided to him by the Constitution of the Russian Federation, and that would not undermine his human dignity – taking into account also all the other types of social support provided to specific categories of pensioners.

Therefore the state is obliged, using the economic resources available, to establish

such an order for pension relations of individuals that due to objective reasons including reaching unemployable age cannot independently ensure adequate quality of life, that would create real conditions for effective compensation for such person of their losses from natural (connected to age) loss of ability to work and provide for themselves in the amount guaranteeing their general material subsistence in the amount necessary to satisfy basic living needs.

The Constitutional Court has accepted that the challenged legal provision within the current legal regulation of the social welfare implies establishment for persons who acquired the right to receive old-age labour pension in full and who are disabled, "Veterans of Labour," "Home-front Workers of the Great Patriotic War," the minimum amount of labour old-age pension that taken together with the other measures of social support and taking into account the mechanism of timely indexation of the pension payments would be in any event no less than the subsistence rate for the pensioner in a constituent entity of the Russian Federation.

The Constitutional Court of the Russian Federation pointed out that during the reforms of the social welfare system the federal legislator has to guarantee the said persons such amount of labour old-age pension that taken together with the other social welfare measures would allow satisfying the minimum natural needs. These needs within the current legal framework can be measured by the subsistence rate in a constituent entity of the Russian Federation where they live. The amount of pensions thus should not create doubts as to the possibility of a worthy life for a pensioner, or to exercising by him of other personal rights and freedoms proclaimed by the Constitution of the Russian Federation.

Presently the legislation of the Russian Federation established the relevant guarantee directly. Under the Article 12.1 of the Federal Law of 17 July 1999 No. 178-FZ "On the State Social Support" the sum of support for non-working pensioner shall not be less than the amount of subsistence rate of a pensioner established in a constituent entity of the Russian Federation where the relevant pensioner lives.

2. Damage compensation

The Decision of the Constiutitonal Court of the Russian Federation of 27 December 2005 No. 523-O has considered the issue of constitutionality of Article 17 of the Federal law "On Combatting Terrorism." This article provided that the damage done by the terrorist act shall be compensated at the expense of the budgets of constituent entities of the Russian Federation where the attack occurred, or in certain cases at the expense of the federal budget with further

levying the relevant sums from those who inflicted the damage. The applicants believed this norm to be unconstitutional due to lack of clarity of its contents leading to varied application and violation of constitutional rights to court protection and compensation for damage dealt by crimes.

When the Constitutional Court discussed the conditions for the recognition of the right to compensation for harm dealt by the terrorist act, it defined such conditions as the constitutional rights to life, to protection of health and to compensation for the damage resulting from a crime to its victims (articles 20, 41 and 52 of the Constitution of the Russian Federation). Some such conditions were also established in international instruments in the sphere of human rights protection and countering terrorism. As noted, the state in such situations is responsible not as the one who inflicted damage, but as guarantor of compensation for damage where such compensation levied directly from the one who inflicted damage would encounter significant difficulties connected to elimination of the one who inflicted damage, lack of his property or impossibility of his identification.

The applicants' arguments as regards the contravention of the challenged norm to the provisions of the Constitution of the Russian Federation were declined by the Constitutional Court. The Court pointed that the challenged article did not deny the constitutional foundations for the responsibility of the state, did not narrow such responsibility or deprive citizens of the possibility to protect their rights. The Constitutional Court of the Russian Federation disagreed with the argument on the lack of clarity of the challenged regulation. It explained that its different application in the different cases of the applicants was conditioned by the different demands submitted, different defendants and different circumstances of these cases.

Since no unconstitutionality of the norm was established the Constitutional Court has discontinued the proceedings in the constitutional complaint due to lack of grounds for its further examination.

B. Environmental dimensions

The right to favourable environment is guaranteed under Article 43 of the Constitution of the Russian Federation. This right has a value on its own, but it is also related to other rights, including the right to life, since the living of person in a society does not mean he loses connection to nature or state of the environment.

This connection was taken account of by the Constitutional Court. The Court

stated in particular that extraordinary technological disaster that had occurred at the Chernobyl Nuclear Plant led to numerous ecological and humanitarian losses. This accident led to substantial violations of the right to favourable environment (Article 42 of the Constitution of the Russian Federation) and also, by way of consequences, of other constitutional rights and interests of citizens, connected to protection of life, health, home, property, and the right to freely move and choose the place of staying and living that were undermined in such a substantial way as to render the resulting harm really impossible to remedy (Judgment of the Constitutional Court of the Russian Federation of 1 December 1997 No. 18-P).

The meaning of environment and adequate state of ecology is reflected in the Federal Law of 10 January 2002 No. 7-FZ "On Protection of Environment." According to this Law the environment includes land, depths of the earth, soil, surface and underground waters, atmospheric air, plant and animal life and other organisms, as well as ozone layer of the atmosphere and near-Earth cosmic space, that together ensure favourable conditions for the life on the Earth (Article 1, paragraph four).

Apart from that, in accordance with the Constitution of the Russian Federation the land and other natural resources are utilised and protected in the Russian Federation as a basis for life and activities of the peoples living on the relevant territories (Article 9, part 1). This constitutional provision names the land and natural resources the "basis of life," and thereby additionally underlines the connection between the favourable environment and the right to life. The Constitutional Court of the Russian Federation has underlined that Article 9, part 1 of the Constitution of the Russian Federation united with the aims proclaimed in its Preamble, namely to ensure the well-being of present and future generations and responsibility before them, define the mutual conditioning of the constitutional rights of everyone to favourable environment (Article 42) and the obligation to preserve nature and environment, to treat natural resources with care (Article 58). Thereby one of the basic principles of the legal regulation of relations in the sphere of environmental protection and ensuring ecological safety is ensured, namely the principle of priority of public interests (Judgment of 14 may 2009 No. 8-P).

Thereby a special task is given to the state to support the favourable environment, taking into account that this defines exercise of rights and freedoms including the right to life.

The demand for adequate ecological conditions of life in the Constitution of the Russian Federation flows not from the right to life (Article 20), but from the

special right to favourable environment, to reliable information on the state of environment and to compensation for damage caused to his health and property by violation of environmental laws (Article 42).

One could view the position expressed in the recent Judgment of 1 February 2022 No. 4-P as a potentially ecological aspect of the right to life. This position relates to Article 134, part 1, paragraph two of the Federal Law "On Insolvency (Bankruptcy)" that foresees urgent extraordinary payments for services necessary to eliminate or prevent the threat of ecological, technical disaster or death of people, where such threat has appeared due to liquidation of the debtor. Such extraordinary payments essentially ensure protection of the right to life, the right to favourable environment and ecological well-being (paragraph 4 of item 3.4 of the Judgment).

The challenged norm states the following: "If the stopping of activity of the debtor company to its subdivisions can result in technological and (or) ecological disaster or death of people…." Here, the first part ensures the right to favourable environment and ecological well-being, and the second part ensures the right to life. The second part contains no ecological aspect: it states that when there is threat of death of people the expenses for its prevention have priority in relation to other payments.

Additionally, one can note the Judgment of the Constitutional Court of the Russian Federation of 2 June 2015 No. 12-P related to the problem of compensation for damage inflicted by a violation of environmental legislation.

This Judgment dealt with the narrow issue regarding the possibility to take into account that the company has taken measures to eliminate the consequences of an ecological legislation violation when this company is brought to legal liability. But at the same time the Judgment dealt with important issues regarding the meaning of proper conditions of the environment.

In this case the applicant was a commercial organisation that has allowed oil and oil products to spill in the forest lands. It was brought to property liability with levying of monetary compensation, despite the company having taken measures to restore the state of the territory (gathering of oil products, changing the soil and its re-cultivation, etc.).

The Constitutional Court of the Russian Federation has underlined that the main specific property of the harm inflicted to the environment and compensation for it is that the damage is inflicted not to property of a certain person, but to the natural

environment. Such damage is difficult to remedy, or can even be irreparable, and the previous state of the environment that existed before the violation cannot be returned. At that, the levying of compensation for the damages without taking into account the measures taken by the offender to restore the state of ecology, does not conform to the constitutional principles of equality and effective guarding of the environment. This position was taken into account by the legislator which has foreseen in the legal regulation of environmental protection the obligatory taking into account of the expenses carried by a person in connection to restoring the state of forests and eliminating the consequences of committed ecological violation.

In taking the decision the Constitutional Court first referred to the Constitution of the Russian Federation, namely Article 9, part 1, according to which the land and other natural resources are utilised and guarded in Russia as the basis of life and activities of peoples living in the relevant territory; and Article 36, part 2, according to which possession, utilisation and disposal of land and other natural resources shall be exercised by the owners freely provided that this is not detrimental to the environment and does not violate the rights and lawful interests of other people. According to the Constitutional Court of the Russian Federation, these constitutional provisions united with the aim declared in the Preamble to the Constitution to ensure well-being of the present and future generations and responsibility before them, define the mutual conditioning of the constitutional rights of everyone to favourable environment, to reliable information about its state and to compensation for damage inflicted upon one's health or property by violation of environmental legislation (Article 42) and the obligation to preserve nature and environment, and to treat natural resources with care (Article 58).

This constitutional obligation is universal. It is a part of an ensuring mechanism of realisation of the right of everyone to favourable environment and other ecological rights. It applies to citizens and legal persons necessarily encompassing their responsibility for the state of environment. Thereby it was taken into account that the oil spill resulting from commercial activity negatively influenced the state of environment which directly affects the quality of life of the people, but also the right to life as such.

Taking this into account the Constitutional Court underlined that the main goal of the Russian Federation as a guarantor of ecological well-being and social state the policy of which is aimed at creation of conditions ensuring worthy life and free development of Man (Article 7, part 1 of the Constitution of the Russian Federation) – is to achieve balance of private and public interests in the sphere of economics and in the sphere of ensuring ecological safety. This is achieved

by establishing a legal framework that is oriented to prevention of violations of environmental legislation and stimulating methods of economic activity that are sparing to the environment. This implies using private law and public law methods of regulation including the wide range of legal measures (administrative, fiscal and other).

As the result, adequate legal regulation of measures guarding the environment is capable of achieving the aim of ensuring the right to life taking into account the above-mentioned connection between this right and the environment.

C. Other expansive dimensions

The Russian Federation, like the rest of the world, encountered the Covid-19 pandemic. The pandemic represented unprecedented threat to life and health of the citizens, and required the state to undertake extraordinary measures aimed to protect these fundamental values.

According to the Federal Law of 21 December 1994 No. 68-FZ "On Protection of the Population from Emergency Situations of Natural and Technical Character" the emergency situation is the situation on a given territory that results from an accident, dangerous natural phenomenon, catastrophe, spreading of a disease representing threat to others, or another disaster that can result or has resulted in human casualties, harm to health of people or to environment, substantial material losses and disruption of normal conditions of life of the people (Article 1, part 1). This definition specially points out that spread of a dangerous disease (such as COVID-19) that can result in human death is an emergency situation.

The measures taken by the state to combat the coronavirus were assessed by the Constitutional Court of the Russian Federation in its Judgment of 25 December 2020 No. 49-P. The assessment included the protection by the state of the fundamental right to life.

This case clearly demonstrated the importance of the right to life in the Russian constitutional legal order. The Constitutional Court has underlined particularly that under the Constitution of the Russian Federation the life and health of man are the highest value, without which many other benefits lose their meaning, and therefore care for their preservation and strengthening becomes one of the main constitutional obligations of the state. In this regard, the Russian Federation undertakes the responsibility to ensure sanitary-epidemic safety of the population, including by way of adoption and implementing of the laws aimed to prevent

and eliminate the risks for life and health of citizens that arise with regard to epidemic illnesses. The choice of legal means aimed to protect life and health of citizens in order to prevent and eliminate emergency situations connected to epidemic illnesses, lies generally within the legislator's discretion. The legislator, in protecting human and civil rights and freedoms and establishing relevant legal regulations is obliged to foresee effective guarantees of observing other rights and freedoms of citizens, adequate to the aims of preserving their lives and health, which in certain situations can prevail over the value of preserving the common protective regime of exercising other rights and freedoms.

It follows that in the situation when the spread of a dangerous disease threatens the lives and health of citizens, the state is not only entitled, but is obliged to take limitation measures proceeding from the highest value of human life, requiring protection and preservation under all circumstances. Human life is the highest constitutional value, without which realisation of civil, economic, social and other rights becomes to a large extent meaningless. Taking this into account, the Constitutional Court of the Russian Federation stated the necessity of protection of life and health of citizens upon the rise of emergency situations or their threat, and upon realisation of the measures to counter epidemics and eliminate their consequences encompasses adoption of such legal acts that do not exclude possibility of limitations of human rights and freedoms, including the freedom of movement. This, importantly, is possible only insofar as it corresponds to established aims, upon observing the requirements of balance and proportionality (Article 55, part 3 of the Constitution of the Russian Federation).

This approach shows that protection of the right to life afforded to everyone may require introduction of rather serious limitations to other rights and freedoms (such as the freedom of movement). But these limitations, regardless of the pressure on the part of protection of the life and health of people, must not turn into arbitrariness, and must be introduced in strict accordance with the Constitution of the Russian Federation.

Annex 1: List of cited legal provisions

1) Constitutional provisions

Constitution of the Russian Federation (adopted by popular vote on 12 December 1993, amended by Laws of the Russian Federation on amendments to the Constitution of the Russian Federation of 30 December 2008 No 6-FKZ, of 30 December 2008 No 7-FKZ, pf 5 February 2014 No 2-FKZ, of 21 March 2014 No 6-FKZ and of 21 July 2014 No 11-FKZ, with amendments approved by all-Russian vote on 1 July 2020)

- Article 2
- Article 7, part 1
- Article 9, part1
- Article 17, part 2
- Article 18
- Article 20
- Article 21, part 1
- Article 36, part 2
- Article 41, part 3
- Article 42
- Article 43
- Article 45
- Article 46
- Article 55, parts 2 and 3
- Article 56, part 3
- Article 58
- Article 74, part 2
- Article 135

2) Legislative provisions

Codified legislation

- Civil Code of the Russian Federation, references are made to Part 1 of 30 November 1994 No 51-FZ (last amended 2021), Part 2 of 26 January 1996 No 14-FZ (last amended 2021)
  - Article 150
  - Article 151
  - Article 1066

- Article 1083

- Criminal Code of the Russian Federation of 13 June 1996 No 63-FZ (last amended 2022)
  - Article 53
  - Article 59
  - Article 105
  - Article 110
  - Article 110.1
  - Article 110.2
  - Article 277
  - Article 295
  - Article 317
  - Article 357
  - Chapter 59, paragraph 2

- Labour Code of 30 December 2001 No 197-FZ (last amended 2022)

Federal laws and Laws of the Russian Federation (adopted before the Constitution of the Russian Federation, they have the same legal force as federal laws):

- Law of the Russian Federation of 2 July 1992 No. 3185-I "On the Psychiatric Help and Guarantees of Rights of Citizens upon its Administering"

- Law of the Russian Federation of 22 December 1992 No. 4180-I "On Transplantation of Human Organs and (or) Tissues"
  - Article 8

- Federal Law of 21 December 1994 No. 68-FZ "On Protection of the Population from Emergency Situations of Natural and Technical Character"
  - Article 1

- Federal Law of 24 November 1995 No. 181-FZ "On the Social Protection of the Disabled Persons in the Russian Federation"

- Federal Law of 17 July 1999 No. 178-FZ "On the State Social Support"
  - Article 12

- Federal Law of 24 July 1998 No. 125-FZ "On the Obligatory Social

Insurance against Accidents at Working Place and Professional Diseases"
- Article 7

- Federal Law of 25 July 1998 No. 130-FZ "On Combatting Terrorism" (presently not in force, replaced by the Federal Law "On Countering Terrorism")
  - Article 17

- Federal Law of 17 December 2001 No. 173-FZ "On the Labour Pensions in the Russian Federation"

- Federal Law of 10 January 2002 No. 7-FZ "On Protection of Environment"
  - Article 1

- Federal Law of 26 October 2002 No. 127-FZ "On Insolvency (Bankruptcy)"

- Federal Law of 6 March 2006 No. 35-FZ "On Countering Terrorism"
  - Article 7
  - Article 8

- Federal Law of 7 March 2011 No. 3-FZ "On Police"
  - Article 1, parts 1 and 16
  - Article 18
  - Article 20
  - Article 21
  - Article 22
  - Article 23

- Federal Law of 21 November 2011 No. 323-FZ "On the Fundamentals for the Protection of Health of Citizens in the Russian Federation"
  - Article 20
  - Article 47
  - Article 53
  - Article 56
  - Article 66

- Federal Law of 28 December 2013 No. 442-FZ "On the Fundamentals of Social Services to the Citizens in the Russian Federation"

- Federal Law of 3 July 2016 No. 226-FZ "On the Military Forces of the National Guard of the Russian Federation"
  - Article 18

3) International Provisions

- Universal Declaration of Human Rights (adopted by the UN General Assembly on 10 December 1948)
  - Article 3

- International Covenant on Civil and Political Rights (Adopted on 16 December 1966 by the Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly; ratified by the Decree of the Presidium of the High Council of the USSR of 18 September 1973 № 4812-VIII)
  - Article 6

- Code of Conduct for Law Enforcement Officials (adopted on 17 December 1979 by the UN General Assembly Resolution 34/169 at its 106 Plenary Session)

Annex 2: List of cited cases

Judgments of the Constitutional Court of the Russian Federation

1. Judgment of 25 April 1995 No. 3-P "In the case on assessing the constitutionality of Article 54, parts one a two of the Housing Code of the RSFSR in connection with complaint of citizen L.N.Sitalova".
2. Judgment of 1 December 1997 No. 18-P "In the case on assessing the constitutionality of certain provisions of Article 1 of the Federal Law of 24 November 1995 "On amendments and additions to the Law of the Russian Federation "On the Social Protection of Citizens who became affected by the Radiation as the Result of the Disaster at the Chernobyl Nuclear Plant".
3. Judgment of 15 January 1999 No. 1-P "In the case on assessing the constitutionality of provisions of Article 295, parts one and two of the Code of Criminal Procedure of the RSFSR in connection with the complaint of citizen M.A.Klyuyev".

4. Judgment of 15 July 1999 No. 11-P “In the case on assessing the constitutionality of certain provisions of the Law of the RSFSR “On the State Tax Service of the RSFSR” and the laws of the Russian Federation “On the Fundamentals of the Tax System of the Russian Federation” and “On the Federal Bodies of the Tax Police”.
5. Judgment of 18 February 2000 No. 3-P “In the case on assessing the constitutionality of article 5, item 2 of the Federal Law “On the prosecution Service of the Russian Federation” in connection with the complaint of the citizen B.A. Kekhman”.
6. Judgment of 27 May 2008 No. 8-P “In the case on assessing the constitutionality of provision of Article 188, part one of the Criminal Code of the Russian Federation in connection with the complaint of citizen M.A. Aslamazyan”.
7. Judgment of 16 July 2008 No. 9-P “In the case on assessing the constitutionality of provisions of Article 82 of the Criminal Procedure Code of the Russian Federation in connection with the complaint of the citizen V.V. Kostylev”.
8. Judgment of 14 May 2009 No. 8-P “In the case on assessing the constitutionality of item 4, sub-item “b” of the Decree of the Government of the Russian Federation “On Adoption of the Order of Defining the Payment and its Highest Amount with Regard to Pollution of the Environment, Placing of Waste, Other Types of Harmful Effects” upon request of the Supreme Court of the Republic of Tatarstan”.
9. Judgment of 21 January 2010 No. 1-P “In the case on assessing the constitutionality of provisions of Article 170, part 4, Article 311, item 1m Article 312, part 1 of the Arbitration Procedure Code of the Russian Federation in connection with complaints of ZAO[577] “Production Union “Bereg””, OAO[578] “Karbolit”, OAO “Zavod “Mikroprovod””, OAO “Nauchno-Proizvodstvennoye predpriyatiye “Respirator””.
10. Judgment of 13 July 2010 No. 15-P “In the case on assessing the constitutionality of provisions of Article 4.5, part 4, Article 16.1, part 1, Article 27.11, part 2 of the Code on the Administrative Offences of the Russian Federation in connection with complaints of citizens V.V. Batalov, L.N. Valuyeva, Z.Ya. Ganiyeva, O.A. Krasnaya, and I.V. Epov”.
11. Judgment of 6 November 2014 No. 27-P “In the case on assessing the constitutionality of Articles 21 and 21.1 of the Law of the Russian Federation “On the State Secret” in connection with the complaint of the citizen O.A. Lapteva”.

577 Private company limited by shares, a type of joint stock company under Russian legislation.

578 Public corporation, a type of joint stock company under Russian legislation.

12. Judgment of 12 March 2015 No. 4-P "In the case on assessing the constitutionality of provisions of Article 25.10, part four of the Federal Law "On the Order of Leaving the Russian Federation and Entering the Russian Federation", Article 7, item 1, sub-item 13 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation", and Article 11, item 2 of the Federal Law "On Countering the Spread of the Disease Caused by the Human Immunodeficit Virus (HIV-infection) in the Russian Federation" in connection with complaints of several citizens".
13. Judgment of 2 July 2015 No. 12-P "In the case on assessing the constitutionality of Article 99, part 2, Article 100, part 2 of the Forestry Code of the Russian Federation and the provisions of the Decree of the Government of the Russian Federation "On Accounting for the Amount of Damage inflicted by Violation of the Forestry Legislation" in connection with the complaint of the OOO[579] "Zapolyarneft".
14. Judgment of 13 January 2020 No. 1-P "In the case on assessing the constitutionality of Article 13, parts 2 and 3, Article 19, part 5, item 5 and Article 20, part 1 of the Federal Law "On the Fundamentals for the Protection of Health of Citizens in the Russian Federation" in connection with the complaint of citizen R.D. Svechnikova".
15. Judgment of 25 December 202 No. 49-P "In the case on assessing the constitutionality of item 5, sub-item 3 of the Order of the Governor of the Moscow Region "On Introduction of the High Alert for Management Authorities and Forces of the Moscow Regional System for Prevention and Elimination of Emergency Situations and Certain Measures to Counter the Spread of the New Coronavirus Infection (COVID-2019) in the Territory of the Moscow Region" upon request of the Protvino Town Court of the Moscow Region".

Decisions (inadmissibility decisions) of the Constitutional Court of the Russian Federation

1. Decision of 27 December 2005 No. 523-O "Upon complaint of citizens Elena Leonidovna Burban, Oleg Aleksandrovitch Zhirov, Dmitry Eduardovitch Milovidov, Olga Vladimirovna Milovidova and Tamara Mikhaylovna Starkova on Violation of their constitutional rights by the provisions of Article 17 of the Federal law "On Combatting Terrorism"".
2. Decision of 19 May 2019 No. 816-O-O "On refusal to admit for consideration the complaint of citizen Shevchenko Andrey

579 Limited liability company, a type of commercial company under Russian legislation.

Aleksandrovitch on violation of his constitutional rights by the Article 1083, item 2, paragraph two and Article 1100, paragraph two of the Civil Code of the Russian Federation".

Case-law of the Supreme Court of the Russian Federation

1. Ruling of the Plenum of the Supreme Court of the Russian Federation of 15 June 2006 No. 14 "On the Court Practice on the Cases Regarding Crimes Connected to Drugs, Psychedelic Substances, Potent or Toxic Substances".
2. Ruling of the Plenum of the Supreme Court of the Russian Federation of 16 October 2009 No. 19 "On the Court Practice on the Cases Regarding Abuse of Official Powers and Exceeding Official Powers".
3. Ruling of the Plenum of the Supreme Court of the Russian Federation of 4 December 2014 No. 16 "On the Court Practice on the Cases Regarding Crimes Against Sexual Inviolability and Sexual Freedom of Person".
4. Ruling of the Plenum of the Supreme Court of the Russian Federation of 25 December 2018 No. 47 "On Certain Questions Arising Before Courts Considering Administrative Cases Connected to Violation of Conditions of Detention of Persons Placed in Involuntary Detention Institutions".

14. Tajikistan

Constitutional Court

Overview

The right to life is enshrined in Articles 5 and 18 of the Constitution. Tajikistan has ratified the International Covenant on Civil and Political Rights as well as its First Optional Protocol. Although not abolished, capital punishment is currently not practiced in Tajikistan. A moratorium was declared in 2004. Abortion is legal and is regulated by the Health Code and other regulatory legal acts. The Health Code also deals with euthanasia, prohibiting it in Article 150. Medical personnel are prohibited from performing euthanasia by any actions or means, including the termination of artificial life-sustaining measures. The act of "bringing a person to suicide" is criminalized under Article 109 of the Criminal Code. Relevant for the use of force by state authorities is Article 41 of the Criminal Code, which deals with "Bodily Injury Caused to a Criminal in the Course of Seizure." The first chapter of the Constitution of the Republic of Tajikistan is called "Fundamentals of the Constitutional Structure" and defines Tajikistan as a "social state." In Chapter 2 of the Constitution, a number of socio-economic rights are listed. Both these chapters therefore contain provisions that are relevant to the socio-economic dimensions of life. Protection of the environment is mentioned in Article 38.

Outline

I. Defining the right to life

Overview

The right to life forms the primary principle of all other rights and freedoms that develop in this area. The right to life is the right from which all other human rights are derived, and without which the meaning and essence of all other rights is lost.

Any civilized society and modern state recognizes the human right to life as one of the fundamental rights. Thus, according to Part 2 of Article 5 of the Constitution of the Republic of Tajikistan, "Life, honor, dignity and other natural human rights are inviolable." Further regulation of the right to life in the Constitution of the country is given in part 1 of Article 18, which establishes that "Everyone has the right to life."

The constitutional content of the right to life consists in the following postulates: a) the presence of this right, proceeding from the principle of naturalness, i.e., the belonging of this right to everyone from birth; b) inalienability (in this aspect today there is an exception, which will be discussed below when discussing the issue of the death penalty) of the right to life.

Thus, the content of the right to life consists of the existence of the right to life, the obligation of all to ensure this right and the obligation of all to preserve it. If the existence of a right acts as an absolute right, giving everyone the same opportunity to have this right from the moment of birth, then inalienability means that a person is inextricably linked with his right, and it cannot be taken away from him by anyone and in any way. The state and power cannot take away the right to life, but, for example, they can take away life itself. Similarly, a person himself cannot renounce his inalienable right to life by signing, for example, a waiver of his right to life before a notary.

The content of the right to life consists of several interrelated elements that reveal its essence. These include:
1. The problem of recognizing the beginning of life;
2. Euthanasia;
3. The use of proportionate force, which could potentially lead to death, by public authorities;
4. Death penalty.

One of the most complex and controversial issues in the field of the right to life is

the question of the beginning of life. Its uniform understanding is necessary, first of all, for the correct application of legal norms on liability for crimes against life. According to Article 18 of the Constitution of the Republic of Tajikistan, everyone has the right to life, which arises from the moment of birth and continues until his death. But the scope of the content of this right causes heated discussions in scientific circles.

Some scientists believe that the beginning of a person's life should be considered being in the womb, others - the moment of birth, others recognize the process of birth itself as the beginning of life.

The Republic of Tajikistan has chosen the path to the complete abolition of the death penalty. At the time of the declaration of independence, the then acting Criminal Code of the Tajik SSR of 1961 provided for the use of the death penalty for the commission of 44 elements of a crime. In 1992, amendments and additions were made to the Criminal Code of the Tajik SSR, according to which the number of articles was increased to 47. The new Criminal Code of the Republic of Tajikistan adopted in 1998 also retained this type of punishment for 15 crimes.

On August 1, 2003, the Law "On Amendments and Additions to the Criminal Code of the Republic of Tajikistan" was adopted, according to which the number of articles providing for the death penalty was reduced to five. Later, on July 15, 2004, a significant event took place in the modern history of Tajikistan: the President of the Republic of Tajikistan signed the Law "On the Suspension of the Death Penalty", according to which a moratorium on the use of the death penalty was introduced in Tajikistan.

The main positive aspect of this Law was that a moratorium was introduced both on the execution of the death penalty and on the issuance of such sentences. Thus, to date, there is not a single person sentenced to death in the Republic of Tajikistan.

A. Recognition and basic obligations

The current Constitution of the Republic of Tajikistan dated November 6, 1994, with additions and amendments made in 1999, 2003 and 2016, recognizes the right to life in the constitutional text.

On the basis of Article 18 of the Constitution:

> "Everyone has the right to life.
> No one can be deprived of life, except by a court verdict for a particularly serious crime.
> The inviolability of the person is guaranteed by the state. No one may be subjected to torture, inhuman treatment or punishment. Forced medical and scientific experiments on humans are prohibited."

The Republic of Tajikistan during the period of its independence ratified all the main documents in the field of human rights. And it carried out various reforms in the field of law, which were aimed at the implementation of international norms in its legislation.

The judicial system of Tajikistan makes extensive use of the relevant norms during the adoption of judicial decisions and interpretations.

The Constitutional Court of the Republic of Tajikistan, as an integral part of the judiciary system in the Republic of Tajikistan, whose competence is specifically indicated in the Constitution, widely uses the relevant norms of international law in its decisions.

Article 5

Man, his rights and freedoms are of the highest value.
Life, honor, dignity and other natural human rights are inviolable.
The rights and freedoms of man and citizen are recognized, respected and protected by the state.

Part 2 Article 5

The rights and freedoms of man and citizen are recognized, respected and protected by the state.

Article 16

A citizen of Tajikistan outside the country is under the protection of the state.

Article 17

... The state guarantees the rights and freedoms of everyone, regardless of their nationality, race, gender, language, religion, political opinions, education, social and property status ...

Article 18

... Inviolability of the person is guaranteed by the state. No one may be subjected to torture, inhuman treatment or punishment …

Article 21

... The state guarantees the victim judicial protection and compensation for the damage caused to him.

Article 33

The family, as the basis of society, is under the protection of the state.

Article 34

Mother and child are under special protection and patronage of the state... The state takes care of the protection of orphans and disabled children, their upbringing and education.

Article 35

... Wages should not be lower than the minimum wage ...

Article 36

Everyone has the right to housing. This right is ensured through the implementation of state, public, cooperative and individual housing construction.

Article 38

Every person has the right to health care. This right is ensured by providing free medical assistance in state medical establishments and by measures aimed at protecting environment, developing mass sport, physical training, and tourism. Other types of medical assistance one can receive are defined by law.

Article 39

Every person is guaranteed social security in old age, in the event of sickness and disability, loss of ability to work, or loss of a guardian or other instances prescribed by law.

Article 41

Every person has the right to education. The basic general education is compulsory. The state guarantees access to free general, vocational, and according to abilities based on competition, general specialized and higher education in the state educational establishments. Other forms of acquiring education are defined by law.

B. Constitutional status

The Constitution of the Republic of Tajikistan has created a favorable legal environment for respecting recognized human values, such as observing and protecting the rights and freedoms of people and citizens, and providing favorable conditions for a dignified life for every person, and is recognized by international experts as one of the best constitutions. Therefore, the proposal of the articles dedicated to the rights and freedoms of man and citizen is not devoid of interest.

Article 10 the Constitution of the Republic of Tajikistan states: "International legal acts recognized by Tajikistan are an integral part of the legal system of the republic. In case of disparity between the laws of the republic and recognized international legal acts, the norms of international legal acts are applied."

Laws and international legal acts recognized by Tajikistan come into force after their official publication.

Based on Article 11 of the Constitution of the Republic of Tajikistan: "Tajikistan, conducting peaceful policy, respects the sovereignty and independence of other States and determines its foreign policy on the basis of international norms. War propaganda is prohibited."

Chapter two of the Constitution of the Republic of Tajikistan is called "Rights, freedoms, basic duties of man and citizen."

Article 14 of this chapter says: "The rights and freedoms of individual and citizen are regulated and protected by the Constitution, laws of the Republic, and international legal acts recognized by Tajikistan."

Regarding the special status of the right to life, Article 5 of the Constitution of the Republic of Tajikistan states:

"Human, its rights and freedoms are the highest value.
The life, honor, dignity and other natural rights of man are inviolable.
The rights and freedoms of man and citizen are recognized, observed, and protected by the State."

C. Rights holders

Since a person's life begins after his birth, the birth of a person in Tajikistan is fixed on the basis of the Article 3 of the law of the Republic of Tajikistan "On state registration of acts of civil status":

1. Acts of civil status - actions of citizens or events that affect the emergence, change or termination of rights and obligations, characterizing the legal status of citizens.

2. Civil status acts shall be subject to state registration in the manner prescribed by this Law: birth, death..., restoration or cancellation of civil status records, regardless of nationality, race, gender, language, religion, political opinions, education, social and property the status of citizens.

In accordance with Article 150 of the Health Code of the Republic of Tajikistan (adopted on May 30, 2017), the following is stated:

1. The statement of death is carried out by a doctor, and in the absence of a doctor, by a paramedical worker. The conclusion about death is given on the basis of ascertaining the irreversible death of the entire brain (brain death), established in accordance with the instructions approved by the authorized state body in the field of healthcare.

2. The criteria and procedure for determining the moment of death of a person, the termination of resuscitation measures, are established by the authorized state body in the field of healthcare.

3. Medical personnel are prohibited from performing euthanasia (satisfying the patient's request to hasten his death) by any actions or means, including the termination of artificial life-sustaining measures.

4. The conscious inducement of the patient to euthanasia or the implementation of euthanasia is prohibited.

D. Limitations: General considerations

In accordance with Part 3 of Article 14 of the Constitution of the Republic of Tajikistan:

"Limitations of rights and freedoms of citizens are permitted only for the purpose of securing the rights and freedoms of other citizens, public order, protecting the foundations of the constitutional order, the security of the state, the defense of the country, public morality, the health of the population and the territorial integrity of the republic."

II. Limitations: Key issues

A. Capital punishment

A moratorium has been declared on the death penalty since 2004 in the Republic of Tajikistan. In connection with this, in accordance with Article 1 of the Law of the Republic of Tajikistan dated July 15, 2004, No. 45 "On the suspension of the application of the death penalty", the application of the death penalty in the Republic of Tajikistan for the commission of crimes provided for in Articles 104 of part 2, 138 of part 3, 179 of part 3, 398 and 399 of the Criminal Code of the Republic of Tajikistan, as well as the execution of the death penalty and other related rules provided for in Articles 19, 21, 23, 25, 78, 100, 127, 129, 131, 133, 214-222 of the Code of Execution of Criminal Punishments of the Republic of Tajikistan, is suspended.

B. Abortion

Artificial termination of pregnancy is regulated by the Health Code and other regulatory legal acts of the Republic of Tajikistan. According to Article 92 of the Health Code of the Republic of Tajikistan, medical and social counselling is carried out before and after artificial termination of pregnancy. It is forbidden to perform a selective abortion depending on the sex of the fetus.

Artificial termination of pregnancy, including for social and medical reasons, is carried out at the request of a woman within the terms of pregnancy established by the authorized state body in the field of healthcare.

The terms and list of medical indications for artificial termination of pregnancy are determined by the authorized state body in the field of healthcare, and the list of social indications is determined by the Government of the Republic of Tajikistan.

The procedure for performing an artificial termination of pregnancy shall be established by the authorized state body in the field of healthcare.

Artificial termination of pregnancy of minors and citizens recognized as fully or partially capable is carried out with the consent of legal representatives (mother and father, adoptive parents, guardians and trustees) in accordance with the procedure established by the legislation of the Republic of Tajikistan.

Disputes regarding artificial termination of pregnancy are considered in the manner prescribed by the legislation of the Republic of Tajikistan.

In accordance with part 2 of Article 85 of the Health Code, the relationship between a man and a woman, and the issues of planning childbirth, are based on the principles of equality, freedom, mutual responsibility and respect for the parties. Forced coercion of a woman to pregnancy or abortion is prohibited.

Articles 123 and 124 of the Criminal Code of the Republic of Tajikistan establish:

(1) Illegal abortion by a person with a higher medical education of the relevant profile is punishable by a fine of two hundred to five hundred times the minimum monthly wage or deprivation of the right to hold certain positions or engage in certain activities for up to three years.

(2) Performing an abortion by a person who does not have a higher medical education of the relevant profile or by a person previously convicted of illegal abortion, is punishable by a fine in the amount of five hundred to seven hundred times the minimum monthly wage or up to two years of imprisonment.

(3) Actions provided for by paragraphs 1 or 2 of this Article, if they negligently caused the death of the victim or the infliction of grievous harm to her health, shall be punished by imprisonment for a term of two to five years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years.

Compulsion of a woman to abortion if as a result, the abortion was performed, is punishable by up to 2 years of correctional labor, or imprisonment for the same

period of time.

C. Euthanasia

According to parts 3-4 of Article 150 of the Health Code of the Republic of Tajikistan:

3. Medical personnel are prohibited from performing euthanasia (satisfying the patient's request to hasten his death) by any actions or means, including the termination of artificial life-sustaining measures.

4. The conscious inducement of the patient to euthanasia or the implementation of euthanasia is prohibited.

D. Suicide and assisted suicide

Article 109 of the Criminal Code of the Republic of Tajikistan establishes:

(1) Bringing a person to suicide or an attempt on him by means of threats, cruel treatment or systematic humiliation of the human dignity of the victim - shall be punishable by imprisonment from three to five years.

(2) The same deed, committed against a person who was in material or other dependence on the perpetrator, or committed against a minor, is punishable by imprisonment for a term of five to eight years.

E. Use of force during law enforcement

Article 41 of the Criminal Code of the Republic of Tajikistan deals with "Bodily Injury Caused to a Criminal in the Course of Seizure":

(1) An act is not deemed to be a crime when a criminal is injured in the course of seizure in order to hand over the detained person to the law enforcement bodies or prevent him from committing new crimes if it was not possible to seize the criminal by any other means and there was not an excess of necessary measures.

(2) An excess of measures being necessary for seizing a criminal is deemed to be an obvious discrepancy between measures taken for the detention and the

character of a criminal act, degree of the social danger of the act committed by the detained and circumstances of the detention.

(3) Victims and other citizens also have the right to seizure a person who committed a crime.

(4) Appraising lawfulness of an injurious action while seizing a criminal, his acts in order to avoid seizure, his emotional state and other circumstances connected with the fact of seizure are taken into consideration.

III. Expansive interpretations

The first chapter of the Constitution of the Republic of Tajikistan is called "Fundamentals of the Constitutional Structure" and defines Tajikistan as a "social state." In Chapter 2 of the Constitution, a number of socio-economic rights are listed. Both these chapters therefore contain provisions that are relevant to the socio-economic dimensions of life. Protection of the environment is mentioned in Article 38.

The right to life is enshrined in according to Part 2 of Article 5 of the Constitution of the Republic of Tajikistan, "Life, honor, dignity and other natural human rights are inviolable." Further regulation of the right to life in the Constitution of the country is given in part 1 of Article 18, which establishes that "Everyone has the right to life."

Article 18.
Everyone has the right to life.
No one can be deprived of life, except by a court verdict for a particularly serious crime. The inviolability of the person is guaranteed by the state. No one may be subjected to torture, inhuman treatment or punishment. Forced medical and scientific experiments on humans are prohibited.

In this article, the human right to life is the most important human right, in other words, the innate and inalienable right of every person. Every person has the right to life from the moment of birth, and this right is ensured by legal guarantees, which are fixed both in the Constitution and in the legislation of the country.

In addition, this article confirms not only the right of every person to life as an

inalienable right and an extremely important value, but also the grounds and legal procedure for depriving a person of such a right by the state, the main directions of Criminal law policy in the field and appointment. The death penalty is defined as an exceptional form criminal punishment.

It is clear that life means human nature and is considered a sacred good for man. Deprivation of life means the cessation of the existence of an individual, a person, a member of society. In this regard, the human right to life is protected by the Constitution of the Republic of Tajikistan.

This provision of the Constitution of the Republic of Tajikistan on the right of everyone to life is associated and coincide with important documents of international law, including Article 3 of the Universal Declaration of Human Rights (1948) and Article 6 of the International Covenant on Civil and Political Rights (1966), which the Republic of Tajikistan recognized.

Annex: List of cited legal provisions

1) Constitutional provisions

The Constitution of the Republic of Tajikistan – November 6, 1994

- Article 5
- Article 10
- Article 11
- Article 16
- Article 17
- Article 18
- Article 21
- Article 33
- Article 34
- Article 35
- Article 36
- Article 38
- Article 39
- Article 41

2) Legislative provisions

Criminal Code of the Republic of Tajikistan (May 21, 1998, № 575)

- Article 41
- Article 109

Law of the Republic of Tajikistan On state registration of acts of civil status (29 April 2006, № 188)

- Article 3

The Health Code of the Republic of Tajikistan (30 May 2017, №1413)

- Article 92
- Part 3-4 of Article 150

Law of the Republic of Tajikistan On the suspension of the application of the death penalty (15 July 2004, № 45)

Scientific and popular interpretation of the Constitution of the Constitution of the Republic of Tajikistan (2009)

3) International provisions

Universal Declaration of Human Rights (1948)

- Article 3

International Covenant on Civil and Political Rights (1966)

- Article 6

15. Thailand

Constitutional Court

Overview

The right to life is a fundamental right that is of higher status than any other constitutional rights. The Constitution of the Kingdom of Thailand, B.E. 2560 (2017), section 28, explicitly recognizes and protects the right to life; it is also guaranteed and interpreted under Chapter V "Duties of the State" and Chapter VI "Directive Principles of the State." Apart from these provisions of the Constitution, there are also many laws protecting the right to life, such as the Penal Code, the Criminal Procedure Code, the Civil and Commercial Code, and ordinary legislations. Thailand has also ratified the International Covenant on Civil and Political Rights. In Thailand, the death penalty is a recognized form of criminal punishment. Regarding abortion, the Constitutional Court in 2020 ruled against the criminalization of abortion, and this ruling led to relevant legislative changes in 2021. Euthanasia is prohibited in Thailand. Assisted suicide is criminalized under the provisions in the Penal Code in relation to the offence of "causing death." Regarding the use of force by state authorities, an example of relevant legal norms is section 68 of the Penal Code, dealing with lawful defence. The current Constitution of Thailand additionally recognizes the right to life in various dimensions, namely through socio-economic rights, environmental rights, and the justice process rights. This is because the state considers not only the prevention of the state's or any person's violation or deprivation of the right to life, but also the protection of the people's right to life and bodies in the sense of life and the body being well-maintained.

Outline

I. Defining the right to life

A. Recognition and basic obligations

The right to life is one of the natural rights which is entitled to all people. The law recognizes and protects it. No one can deprive the right to life of others. According to the constitutions of the Kingdom of Thailand, each constitution, since the previous ones to the present constitution, has stipulated "the right to life" in a Chapter "Rights and Liberties of the People."

The first constitution recognizing the right to life was the Constitution of the Kingdom of Thailand, B.E. 2475 (1922), it was stated in Chapter II "Rights and Duties of the Siamese People", section 12 – section 15. As for the current Constitution, the Constitution of the Kingdom of Thailand, B.E. 2560 (2017) prescribes the right to life in Chapter III "Rights and Duties of the Thai People", section 25 – section 49.

Section 4 of the current Constitution stipulates the guarantee of the protection for the equality of all people, human dignity, fundamental rights and freedoms, and the equality of the individual and the Thai people. The term "the people" in paragraph one covers both all genders and all gender identities; they shall be protected under the universal principles. As for the term "the Thai people" in paragraph two chiefly aims at providing the equivalent protection under this Constitution to all Thai people.

The recognition of the right and liberty to life and person is comprehensively guaranteed under section 28 of the current Constitution. Accordingly, search of a person or any act affecting the right and liberty in life and person and the arrest and detention of a person shall not be permitted, except by an order or a warrant issued by the Court or on other grounds as provided by laws, e.g. the cases of the Criminal Procedure Code: the grounds for an arrest warrant under section 69, the arrest without an arrest warrant under section 78. Torture, brutal acts, or punishment by cruel or inhumane means are also prohibited; these differ from

the previous constitutions, namely the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and 2550 (2007) stipulating that punishment according to the judgment of the court or as provided by law shall not be deemed to be punished by cruel or inhumane means. This difference indicates that the current Constitution protects the right to life cumulatively.

From the above provisions, it could, therefore, be concluded that "the recognition and protection" of the right to life has been the intent of the constitutions of the Kingdom of Thailand consistently.

The current Constitution "recognizes and protects" the right to life explicitly in section 28 of Chapter III "Rights and Duties of the Thai People." In addition, the analogous ruling of the Constitutional Court regarding the recognition of the right to life could be exemplified by the Constitutional Court Ruling No. 4/2563 (2020). In this case, the Constitutional Court held that in case the intent was only to protect the fetus without consideration for the protection of the pregnant mother which pre-existed the fetus' rights, such an approach could prejudice the woman resulting in unfairness and encroachment or restriction of a woman's bodily rights to perform or omit an act on one's life and body, being a natural right fundamental to human dignity that was characteristic of one's rights and liberties, insofar that such action did not interfere or impinged upon the rights or liberties of another person. The provision of section 301 of the Penal Code thus affected the rights and liberties in life and body of a woman in excess of necessity and was not consistent with the rule of proportionality, and restricted rights and liberties under section 28 of the Constitution. The Constitutional Court further held that the provision of section 305 of the Penal Code and the said Regulations contributing to the termination of pregnancies performed by medical practitioners had the clarity and inclusion of problems on physical and mental health of pregnant women. It was therefore discernible that section 305 of the Penal Code was a provision which was intended to protect both the equity of law and the fair protection of rights and liberties in the body of a pregnant woman. The provision was in accordance with the rule of proportionality and was intended to provide suitable safeguards for the interests of society and the public. There was no unfair discrimination and no instance which could constitute a restriction of right or liberty in the body of a pregnant woman pursuant to section 28 of the Constitution. The Constitutional Court therefore proposed that the Penal Code and law relating to abortion should be revised in line with current circumstances. The relevant agencies should take actions to revise such provisions of law. (The revision of the Penal Code will be discussed in the following section.)

The Kingdom of Thailand is a member of the United Nations. According to the

UN Charter, it is an important duty of member countries to respect and promote human rights as well as perform a moral obligation to comply with the United Nations Universal Declaration of Human Rights. In addition, the Kingdom of Thailand is a state party to a total of 7 of the core international human rights treaties which are;

1. Convention on the Rights of the Child – CRC,
2. Convention on the Elimination of All Forms of Discrimination Against Women – CEDAW,
3. International Covenant on Civil and Political Rights – ICCPR,
4. International Covenant on Economic, Social and Cultural Rights – ICESCR,
5. Convention on the Elimination of All Forms of Racial Discrimination – CERD,
6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – CAT,
7. Convention on the Rights of Persons with Disabilities – CRPD.

Thailand applies Dualism. Therefore, the application of the international law to the country requires a process of the implementation to be domestic laws.

Even though there has not been a direct ruling of the Constitutional Court concerning the right to life. It could be analogous to the Constitutional Court's rulings which considered the criteria on the Human Rights, for example, the discrimination against individuals on the grounds of disability or differences in race, gender, including judicial proceedings.

As for the first case, the Constitutional Court Ruling No. 15/2555 (2012), dated 13th June B.E. 2555 (2012), the Constitutional Court held that the provision on qualifications and disqualifications of a candidate for selective examinations for recruitment of judicial officials, which stated "having physical or mental attributes unfit for a judicial official", was inconsistent with the rights of persons with disabilities to engage in work on an equal basis with other persons generally, pursuant to the United Nations Convention on the Rights of Persons with Disabilities. The provision also amounted to an unjust discrimination against a person on the basis of a disability as provided under section 30 paragraph three of the Constitution.

The second case, the Constitutional Court Ruling No. 45/2546 (2003), dated 11th November B.E. 2546 (2003), the Constitutional Court held that the prescription that a candidate in Municipal Assembly elections who had a Thai nationality but

a foreign father must also have the qualifications prescribed in the law on election of members of the House of Representatives was an unjust discrimination on the grounds of differences in race, which was prohibited under the Constitution of the Kingdom of Thailand.

The third case, the Constitutional Court Ruling No. 21/2546 (2003), dated 5th June B.E. 2546 (2003), the Constitutional Court held that the provisions had the characteristics of a mandatory provision for married women to use their husbands' surnames only which was an encroachment of the rights to use of surnames of married women resulting in an inequality under the law due to differences in sex and personal status. Accordingly, the case was an unjust discrimination because married women were one-sidedly compelled to use their husbands' surnames on the ground of marriage, it was not on the grounds of differences in physical attributes or obligations between men and women arising from the difference in sex. Thus, such discrimination was unnecessary.

Lastly, the Constitutional Court Ruling No. 4/2556 (2013), dated 13th March B.E. 2556 (2013), the Constitutional Court held that section 41 of the Act on Mutual Assistance in Criminal Matters, B.E. 2535 (1992) was the provision that compelled the defendant to be bound by evidence obtained from the plaintiffs examination in a foreign court. The defendant did not have the opportunity to inspect or acknowledge, or sufficiently prepare a defense against such evidence. The provision was thus unfair to the defendant. It was also inconsistent with Article 14.3 of the International Covenant on Civil and Political Rights (ICCPR), pertaining to the right to be tried in the defendant's presence, the right to defend oneself in person or through legal assistance, the right to examine witnesses against oneself, and the right to obtain the attendance and examination of witnesses on one's behalf under the same conditions as witnesses against oneself. Section 41 of the Act on Mutual Assistance in Criminal Matters, B.E. 2535 (1992) was therefore a provision of law restricting rights and liberties and affecting the essential substances of rights in the judicial process pursuant to section 29 and section 40(2), (3), (4) and (7) of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). The provision was also not in accordance with the rule of law principle under section 3 paragraph two of the Constitution. Thus, such a provision was contrary to or inconsistent with section 3 paragraph two, section 29, and section 40(2), (3), (4), and (7) of the 2007 Constitution.

The aforementioned Constitutional Court's rulings therefore are in accordance with the criteria on Human Rights stated in the international human rights treaties or international covenants.

In Thailand, the right to life is endorsed explicitly by the constitutional provision. It is also recognized and interpreted in the constitutional legal scheme. Furthermore, the right to life is elaborated in detail through the Constitutional Court's rulings which the Court ruled by applying the criteria on Human Rights as mentioned earlier.

As mentioned, the current Constitution of the Kingdom of Thailand, section 28, explicitly recognizes and protects the right to life. Besides, it is guaranteed and interpreted under Chapter V "Duties of the State" (the Constitution applies the phrase "the State shall..." for this Chapter) and Chapter VI "Directive Principles of the State" (the Constitution applies the phrase "the State should..." for this Chapter).

The current Constitution is the first constitution stipulating Chapter V "Duties of the State." The Chapter compels the government to perform the duties, if the government does not perform the duties stated by the Constitution in this Chapter and such a duty is an act for the direct benefit of the people and the community. The people and the community shall have the right to "follow up and urge" the state to perform such act, as well as "to take legal proceedings" against a relevant State agency to have it provide the people or the community such benefit. Additionally, the National Assembly can apply the issue regarding the government performance on the duties of the state as a general debate for the purpose of passing a vote of no-confidence. The purpose is to guarantee that the state's duties shall be responsible for the benefit of the people and the community effectively. Such duties are the fundamental rights that people require to receive. This could be exemplified, *inter alia*, by section 54, the education; section 55, the public health services; section 56, the basic utility services which are essential for the subsistence of the people in accordance with the sustainable development; and section 57, the conservation, the restoration, and the promotion of the local wisdom, arts, culture, traditions and good customs at both local and national levels.

The provisions in Chapter VI "Directive Principles of the State" are directive principles for state legislation or determination of policy for the administration of the state which aim at consistent and continuous administration under the examination of the National Assembly. However, if the government does not perform in accordance with the directive principles stated by the Constitution, the legal proceedings cannot be brought against the state. This is because such a principle is only guidelines for the administration of the policy. They are not strictly mandatory for the state to comply, e.g. section 68, managing system of the justice process in all aspects to ensure efficiency, fairness, and non-discrimination;

section 69 providing and promoting research and development in various branches of science, technology, and the arts; and section 72 taking actions relating to land, water, and the environment.

Not only the aforementioned provisions of the Constitution, but there are also many ordinary legislations protecting the right to life, for instance, the Public Health Act, B.E. 2535 (1992) and the Research and Innovation Utilization Promotion Act, B.E. 2021. As regards, the Public Health Act, B.E. 2535 (1992), the legislation aims at protecting the people' s health in order to live happily and free from disease, including living in a non-toxic environment by controlling actions or conducting business that may cause impacts on public health. While the Research and Innovation Utilization Promotion Act, B.E. 2564 (2021) allows grantees or researchers to be the copyright owner of the research funded by government agencies in order to apply the research findings and innovations for commercial or public benefits in a broader dimension.

B. Constitutional status

As for Thailand, the right to life is non-derogable because of the following reasons:

1. The Constitution of the Kingdom of Thailand, B.E. 2560 (2017) expressly recognizes the right to life under section 28 as mentioned above,
2. The Penal Code endorses the right to life in Title X "Offences Against Life and Body", Chapter I "Offence Causing Death" and Chapter II "Offence Body." The Code stated that committing an act of murdering or causing injury to the other person is a criminal offense and such an act shall be punishable by law,
3. Thailand is a party to the International Covenant on Civil and Political Rights (ICCPR); therefore it has a duty to implement the obligations. According to Article 2.1, it states that the States Parties shall respect and guarantee the rights of individuals, including prohibiting discrimination based on race, color, gender, language, religion, political opinion, nationality, economic, social status, birthplace, or any other condition. Additionally, Article 6.1 also provides that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

In addition, there was a Supreme Administrative Court judgment Case No. *For*

11/2558 (2015), dated 18th June B.E. 2558 (2015) which the court ruled that the right to life does not include the right to die. It is because the right to life cannot be abandoned. Euthanasia is not a right; it is only assistance from the state.

As mentioned above, the right to life is non-derogable. The stipulation to protect such right is not only provided in section 28 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017), but also in Title V "Wrongful Acts", Chapter I "Liabilities for Wrongful Acts" of the Civil and Commercial Code, section 420 which stated that a person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefor.

The right to life is a fundamental right that is of higher status than any other constitutional right; for example, the rights of privacy, dignity, reputation, and family; the right to property, and succession. Living brings other rights; therefore, the state is required to absolutely protect the right to life to all people. As a consequence, the Criminal Code provides the protection of the life of human beings; it also attaches the importance to it. This could be illustrated by the highest penalty for the offence against life i.e. death. The exception regarding deprivation is as restricted as possible, e.g. the lawful defense under section 68 of the Penal Code.

C. Rights holders

In Thailand, the commencement and the end of life are defined under section 15 of the Civil and Commercial Code. It provides that life begins with the full completion of birth as a living child and ends with death. Accordingly, the commencement of the personality consists of two criteria namely the full completion of birth and a living child.

The Constitution focuses on the recognition and protection of the right to life under Chapter III named "Rights and Liberties of the Thai People." As mentioned above, the human beings are the rights-holders. On the other hand, there are legislations concerning the rights of animals, for instance, the Criminal Code and the Cruelty Prevention and Welfare of Animal Act, B.E. 2557 (2014).

According to sections 381 and 382 of the Penal Code, Book III "Petty Offenses", the provisions state that whoever acts cruelly, ill-treats or kills an animal with unnecessary sufferings as well as overworking the animal unreasonably or using it to do the unsuitable work on account of which it becomes ill shall be an offence

and shall be punished with imprisonment or fined, or both.

The next case, the Cruelty Prevention and Welfare of Animal Act, B.E. 2557 (2014), the main purpose of this law is to find solutions to the problem regarding cruelty and animal welfare in order to provide animals with more appropriate protection. This Act prescribes the important definitions such as "animal", "cruelty" and "animal owner." Furthermore, it provided that there shall be a committee called the "Cruelty Prevention and Welfare of Animal Committee." The provision also stipulates that the act which is deemed an act of cruelty to animal without justification is an offense subject to imprisonment or fine, or both.

D. Limitations: General considerations

So far, there has not been any Constitutional Court ruling on the constitutionality of limitations on the right to life. However, there is a mechanism for this issue through the submission of a motion to the Constitutional Court under section 212 and section 213 of the current Constitution as follows:

Firstly, according to section 212 of the current Constitution, the case relating to a provision of law being contrary to or inconsistent with the Constitution, this case concerns the constitutionality of such a law after its promulgation. A person who is a party to the case has the right to submit to the Constitutional Court an objection that the provision of law applies to the case is contrary to or inconsistent with the Constitution in order to rule whether such a provision of law shall be unenforceable. The rulings of the Constitutional Court are binding on every organization. This is due to the fact that section 5 of the 2017 Constitution prescribes that the Constitution is the supreme law of the state. The provisions of any law which are contrary to or inconsistent with the Constitution shall be unenforceable.

Next, the control of the actions to be not contrary to or inconsistent with the Constitution under section 213 of the current Constitution through prescribing rules and procedures for protecting individuals from an unconstitutional violation of rights or liberties, this feature advocates the protection of people's rights and liberties when the power of a court is absent for the case. The objective aims at protecting the violation of rights and liberties not only from the actions of a state agency, a state official, or an agency that uses state power, but also from private actions that can be contested as unconstitutional. A person or a juristic person whose rights or liberties guaranteed by the Constitution are violated has the right to submit a petition to the Constitutional Court for a decision on whether such

acts are contrary to or inconsistent with the Constitution, according to the rules, procedures, and conditions prescribed by the Organic Act on Procedures of the Constitutional Court.

II. Limitations: Key issues

A. Capital punishment

Thailand legalizes capital punishment by injection of poisonous substance according to 18 (1) of the Penal Code and the Ministry of Justice's Regulation on Rules and Procedures for Death Penalty, B.E. 2546 (2003). While decapitation or shooting was applied in the past, the degree of punishment has been lessened due to the new law.

Although capital punishment is still legally enforced, such implementation has significantly declined. To be more specific, the Department of Corrections practiced recent death penalty by injection on 18th June 2018, taking 9 years after the enforcement of that method on 24th August 2009. In addition, such punishment shall be consistent with rules and regulations. In other words, torture, brutal acts or punishment by cruel or inhumane means shall not be permitted. Capital punishment shall also be prohibited for minors who are less than 18 years of age. Prior to testimony or trial proceedings in which death is a rate of penalty, an inquiry officer or the court shall ask the accused or the defendant whether they have a lawyer—if not, a pro bono lawyer shall be provided. The Court of First Instance has the duty to send to the Appeal Court any file of the judgment inflicting punishment of death, where no appeal has been lodged against such judgment. Such judgment shall not become final unless it has been confirmed by the Appeal Court. This punishment shall not be executed until the provisions of the Criminal Procedure Code governing pardon have been complied with.

In this regard, a Royal Pardon can be granted to prisoners of final criminal sentence for commutation or reduction of punishment according to section 179 of the Constitution and division 7 of the Criminal Procedure Code. This can be divided into 2 cases. Firstly, a particular petitioner has a right to present a Royal Pardon request. Lastly, the King grants prisoners of final judgment upon a Royal Decree. This general Royal Pardon is occasionally given on several auspicious occasions such as 70th Birthday of His Majesty the King on 28th July 2022 and 90th Birthday of Her Majesty the Queen Mother on 12th August 2022 to such

people for a chance to become good citizens.

As mentioned earlier, Thailand still enforces capital punishment. This penalty is imposed for the country's administration of peace and order. The current Constitution provides rules and conditions to enact the legal restriction of people's rights and liberties. With regard to the principle of proportionality under section 26, the legislature or public administrative authorities must take into account suitable proportionality to restrict rights and liberties. Such principle prevents the state from over-exercising powers to enact any laws arbitrarily. As such, the enactment of law resulting in the restriction of rights or liberties of the people shall be in line with appropriation, necessity, proportionality and balance between public interest and people's rights and liberties.

Due to severity of punishment of death, the laws provide for only serious offences, such as offences relating to the security of the Kingdom, acts of terrorism, and offences causing death, etc. according to the Penal Code. Some other legislation also provides capital punishment; for example, the Narcotic Drugs Act, B.E. 2522 (1979) (No. 8), B.E. 2564 (2021) and the Anti Human Trafficking Act, B.E. 2551 (2008) (No. 3), B.E. 2562 (2019).

As mentioned earlier, the current Constitution recognizes that capital punishment by the court judgment or relevant laws is deemed cruel or inhumane. Even though such penalty is provided by the Penal Code, the execution shall be consistent with section 28 of the Constitution. In other words, the capital punishment execution shall not be performed with cruel or inhumane means. It is clear that even if Thailand has not abolished such penalty, it provides life prevention from brutality.

As for a process of capital punishment abolishment, enactment of an act shall be done as the Penal Code is an Act according to the hierarchy of laws in Thailand's democratic regime of government with the King as Head of State.

B. Abortion

Abortion is prescribed in the Penal Code, Book II Specific Offenses, Title X Offences against Life and Body, Chapter 3 "Offenses of Abortion", section 301 – section 305. A woman is allowed to have an abortion in two cases: namely section 301 and section 305. Section 301 allows a woman below-12-week gestational age herself to cause an abortion or allows other person to procure the abortion for such woman. Section 305 allows a medical practitioner under the criteria of the Medical Council to carry out an abortion in the following cases:

(1) the woman whose pregnancy is not longer than 12 weeks affirms to terminate the pregnancy;
(2) it is necessary for a woman whose gestation exceeds 12 weeks because if she continues her pregnancy, there is a risk of causing harm to her physical or mental health, there is a considerable risk, or there is a medical reason for which it should be believed, that the baby, if born, would suffer abnormality to the extent of severe infirmity, or the woman affirms to the medical practitioner that she has become pregnant as a result of an offence relating to sexuality;
(3) a woman whose gestation exceeds 12 weeks but not more than 20 weeks affirms to terminate the pregnancy after examination and options counseling from medical practitioners and other practitioners according to the criteria and procedure designated by an announcement of the Minister of Public Health upon the advice of the Medical Council and related agencies under the law on prevention and rectification of adolescent pregnancy problems.

In Constitutional Court Ruling No. 4/2563 (2020), dated 19th February B.E. 2563 (2020), the Court held that the provision of section 301 which stated that any woman who causes an abortion on oneself, or consents to another person causing one's abortion, must be liable to a term of imprisonment not exceeding three years or a fine not exceeding sixty thousand baht, or both, affected the rights and liberties of women in excess of necessity and was not consistent with the rule of proportionality, and restricted rights and liberties under section 28 of the Constitution. It was only intent to protect the fetus without consideration for the protection of the pregnant mother. The Court further held that the provisions of the Penal Code on this issue had been in force for 60 years, and had caused problems of illegal abortions in society resulting in harm to the lives and bodies of a large number of women. The provision had also caused social problems due to the unpreparedness of women for numerous children born. Current medical sciences has greatly advanced, enabling care to safely support a woman's decision with regard to such issue at the appropriate time. In addition, there was a lack of comprehensive and appropriate protective measure for medical practitioners. The Constitutional Court therefore proposed that the Penal Code and laws relating to abortion should be revised in line with current circumstances. The relevant agencies should take actions to revise such provisions of law within 360 days.

Then, the provisions relating to the offence of abortion are amended by the Penal Code Amendment Act No. 28, B.E. 2564 (2021), allowing women to have an abortion in the event a gestational age of less than 12 weeks:

Section 301 states that any woman causing herself to be aborted or allowing the other person to procure the abortion for herself while the pregnancy is within 12 weeks is not guilty.

Section 305 states that if the offence under section 301 and section 302 is committed in the following cases by a medical practitioner and in compliance with the criteria of the Medical Council, such person is guiltless:

(1) it is necessary to commit because the woman would be at risk of suffering harm to her physical or mental health if her pregnancy continues;
(2) it is necessary to commit because there is a considerable risk, or there is a medical reason for which it should be believed, that the baby, if born, would suffer abnormality to the extent of severe infirmity;
(3) the woman affirms to the medical practitioner that she has become pregnant as a result of an offence relating to sexuality;
(4) the woman whose pregnancy is not longer than 12 weeks affirms to terminate the pregnancy;
(5) the woman whose pregnancy is longer than 12 weeks but not more than 20 weeks affirms to terminate the pregnancy after examination and options counseling from medical practitioners and other practitioners according to the criteria and procedure designated by an announcement of the Minister of Public Health upon the advice of the Medical Council and related agencies under the law on prevention and rectification of adolescent pregnancy problems.

C. Euthanasia

In Thailand, euthanasia is not permitted, but refusal to receive a cure. Section 12 of the National Health Act, B.E. 2550 (2007) provides that a person shall have the right to make a living will in writing to refuse the public health service which is provided merely to prolong his or her terminal stage of life or to make a living will to refuse the service as to cease the severe suffering from illness. An act done by public health personnel in compliance with the living will under paragraph one shall not be held an offence and shall not be liable to any responsibility whatsoever. This is in line with the principle of individual rights and liberties to life and body. An end-of-life patient shall enjoy the right to choose natural death or death with human dignity according to section 28 and section 4 of the 2017 Constitution. Although medical technology has been so advanced to treat any illness, medicine and equipment can be used merely to prolong a stage of life. Resurrection is indeed impossible; a cure in that way is unnecessary.

Such a complaint has never been filed to the Constitutional Court. However, the Administrative Court of Thailand dealt with a relevant issue in its Decision No. *For* 11/2558 (2015). The Court held that a person had refused to receive healthcare services and thereafter a physician respected such a decision. The choice was not a right to choose to live, but a right to refuse medical care for natural death. The individual action to write down the intention of his/her denial from treatment for life expansion or end of his/her health-related suffering was a right to life and body according to section 32 of the 2007 Constitution. This was irrelevant to public order and good morals. The Ministerial Regulation on Rules and Procedures of Implementation of Intention Letter was not an abandonment of dependent patients as a physician was still providing palliative care for natural death, which was not desperate restraint of patients' death or a cause of one's illness suffering.

D. Suicide and assisted suicide

As a proceeding consequence of euthanasia, suicide and assisted suicide have not been permitted in Thailand yet – except for a refusal to a cure as mentioned above.

As far as the Thai legal system is concerned, the consideration can be divided into two matters as follows.

First, suicide is not an offence since killing "others" is an offence according to sections 288 to 294 of the Penal Code. In other words, such act is carried out towards another life or body – no matter whether it is intentional or negligent murder, or intentional or negligent injury. It is a criminal offence and penalty. On the other hand, as suicide is not a criminal offence, neither is assisted suicide. Once the action exceeds as the actor becomes an offender, such person shall be liable to killing others according to section 288. Although there is no criminal penalty for suicide, provisions of law neither recognize nor guarantee such act.

Second, in accordance with section 293 of the Penal Code, whoever aids or instigates a child not over sixteen years of age, or a person who is unable to understand the nature and importance of his act or who is unable to control his act, to commit suicide, shall, if suicide has occurred or has been attempted, be liable. As the actor is an instigator causing another person's suicide, he is as wicked as a murderer. Moreover, the law protects an incapable person who is easily misguided; that is to say, an inexperienced minor and a person who has a lack of mind control.

E. Lethal use of force during law enforcement

Basically, no laws authorize state officials to murder or jeopardize the accused since every person shall enjoy their rights to life and body, and rights to access judicial process as well as accurate, non-delayed, and fair investigation and trials according to section 28 and section 68 of the 2017 Constitution. In order to maintain social peace and order, the state, however, plays its roles in exercising powers to ensure people's life and property security. The exercise of such powers possibly violates individual rights to life and body. For example, in criminal procedure, search and arrest may be unlawful, and so is investigation aiming for a guilty plea or self-incriminating information, and also acts of unjustified homicide.

Thus, it is necessary for the state to enact the laws to authorize the state officials, such as lawful defence under section 68 of the Penal Code, or criminal warrant issuance according to the Criminal Procedure Code. However, the laws which restrict individual rights and liberties shall be proportionate in accordance with section 26 of the Constitution.

To sum up, the force of the state officials during law enforcement is to be considered in two matters. Firstly, rights to life shall be recognized in the Constitution, and the state shall prevent any violation caused by its officials and control their powers pursuant to relevant laws. Meanwhile, people shall obey the laws and shall not commit any acts to violate other people's rights and liberties. The state shall maintain social peace and order by limiting crimes and administering justice for citizens and state officials.

Relevant rulings of the Constitutional Court concerning the lethal use of force during law enforcement are not found, but the Central Administrative Court Judgment Red Case No. 1438/2552 (2009). In this case, the Court considered that the plaintiff (prisoner), who was imprisoned with fetters until final judgment - death penalty or impunity, was violated in terms of a right to bodily movement. Because of the fetters at his ankles, while walking, he had to take the materials or pull a rope with the bond all the time, so his ankles scratched up with the iron fetters, causing different living from other people. Such act violated the liberty of the body as well as human dignity, and also was torture inconsistent with section 26 and section 31 of the Constitution, B.E. 2550 (2007). In addition, it was also inconsistent with article 1 of the United Nations Universal Declaration of Human Rights (UDHR): "all human beings are born free and equal in dignity and rights", and article 5: "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Moreover, that treatment was inconsistent

with article 7 of the International Covenant on Civil and Political Right (ICCPR), 1966, which laid down the same principle as the UDHR, article 10(1): "all person deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person", rule 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners: "any ligaments such as handcuffs, chains, fetters and strait-jackets, shall be prohibited for punishment", and rule 34: "ligaments shall be strictly necessarily applied for limited period." The application of ligaments such as fetters despite prisoners being imprisoned was, therefore, inconsistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Given that the action of which the defendant and the prison applied the fetters all the time was unlawful violation, the Court held that such application shall be restrained.

F. Other limitations on the right to life

To respond to this question, it can be explained with death caused by an official claiming of official duties or occurred during detention by officials claiming of duties. Legislation provides that autopsy performance of that event is needed similarly to ordinary cases. However, more measures shall be applied for life protection and the official's proof of innocence. In other words, such autopsy shall be carried out by interdisciplinary personnel altogether which includes a physician, inquiry official, public prosecutor and governing officer. Moreover, the public prosecutor shall work together with the inquiry official to make the autopsy report. Case investigation shall be conducted, and the court shall consider to render an order examining who the dead is, where, when, in which circumstance, as well as who has caused such death, in accordance with section 148 to section 156 of the Criminal Procedure Code.

Moreover, laws protect a defendant who is detained during trial. If a court renders a final judgment of innocence or that the act is not a criminal offence, or a public prosecutor withdraws an accusation because of clear evidence proving his innocence, such person shall be compensated according to the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544 (2001).

III. Expansive interpretations

A. Socio-economic dimensions

The Constitution of the Kingdom of Thailand, B.E. 2560 (2017), recognizes socio-economic rights in Chapter III "Rights and Duties of the Thai People." They are essential fundamental rights and cannot be infringed. The state considers not only the prevention of the state's or any person's violation or deprivation of right to life, but it must also protect the people's right to life and bodies to be well-maintained.

The right to life in social dimensions refers to that a person shall be protected for his or her rights and liberties in occupation. People can do any occupation in good faith, but must be within the scope of social order under section 40 of the current Constitution. It provides that a person shall enjoy the liberty to engage in an occupation. The restriction of such liberty shall not be imposed except by virtue of a provision of law enacted for the purpose of maintaining the security or economy of the country, protecting fair competition, preventing or eliminating barriers or monopoly, protecting consumers, regulating the engagement of occupation only to the extent of necessity, or for other public interests. Enactment of the law to regulate the engagement of occupation shall not be in a manner of discrimination or interference with the provision of education of educational institutions. This is pursuant to section 26 in conjunction with section 77 as explained above.

In this matter, there are important rulings of the Constitutional Court as follows:

The Constitutional Court Ruling No. 25/2547 (2004), dated 14th January B.E. 2547 (2004), the Constitutional Court held that the Spirits Act, B.E. 2493 (1950), section 4 provided that "spirit ingredients" meant flour used as spirit ingredients, fermented rice flour or other ingredients which were capable of producing alcohol in the production of spirits when mixed with other materials or other liquids. After considering fermented rice flour, the Constitutional Court was of the opinion that fermented rice flour was not a spirit ingredient in itself. It was a material used generally, especially amongst people within various local communities for many purposes, such as food and medicine. For this reason, section 24 of the Spirits Act, B.E. 2493 (1950), which prohibited the production or sale of spirit ingredients which was defined in section 4 as including fermented rice flour, to the extent that it prohibited the production or sale of spirit ingredients only where it meant fermented rice flour, was a restriction of a person's liberty to engage in an enterprise or an occupation and undertake in fair and free competition. Such

provision was disproportionate to necessity and affected the essential substance of the liberty under the provisions of the Constitution. The provision was not in accordance with the exception for restriction of liberty under section 50 paragraph two of the Constitution. Section 24 of the Spirits Act, B.E. 2493 (1950), only where such definition was applied, was therefore contrary to or inconsistent with section 50 of the Constitution and thus unenforceable. Moreover, section 26 of the Spirits Act, B.E. 2493 (1950), which provided that a license issued under section 24 would only be valid in the places specified in the license, was a consequential section relevant to section 24. Therefore, once it was ruled that section 24, to the extent that it prohibited the production or sale of spirit ingredients only in relation to inclusion of fermented rice flour, was contrary to or inconsistent with section 50 of the Constitution, it followed that section 26, in relation to the enforcement of a license under section 24 only with respect to the licensing application for the production or sale of fermented rice flour, was therefore also contrary to or inconsistent with section 50 of the Constitution and unenforceable.

Another case refers to the Constitutional Court Ruling No. 12/2552 (2009), dated 19th August B.E. 2552 (2009). The Constitutional Court ruled that section 43 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) recognized the liberty of a person to engage in an enterprise or occupation with the exception of the enactment of a law to restrict such liberty as provided under section 43 paragraph two. Such restriction of personal liberty as recognized by the Constitution also had to be consistent with the principle of the protection of rights and liberties as provided under section 29. When considering a law restricting rights and liberties as recognized by the Constitution, apart from taking into account the public conditions and way of living of the people at the time of enactment of the law, regard must also be given to the public conditions and way of living of the people at the time of the application of such law. The restriction of the liberty to sell food or beverages between 01.00 hours and 05.00 hours of each day, apart from constituting an unnecessary restriction of the opportunity to engage in an honest commercial occupation of a significant number of people, also imposed a burden on people engaged in other honest occupations who needed to consume food or beverages during such times of each day without any justifying reasons or necessities. It was apparent that the restriction of such liberty was not in any manner beneficial to the security of the state or the national economy, the protection of the people with regard to public utilities, the maintenance of public order or good morals of the people, or other benefits as specified under section 43 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). In addition, the needs pertaining to the maintenance of public order had changed, and the measures were no longer suitable to the current way of life of the people. The restriction of the people's liberty as recognized under the Constitution

therefore exceeded the extent of necessity and affected the essential substance of such liberty, thus prohibited under the Constitution.

B. Environmental dimensions

Considering the right to life in environmental dimensions as an extension of the right to life, the current Constitution recognizes such right and protects people for their well-being and dignity. In other words, treatment towards people as objects, animals, or slaves shall be prohibited because human dignity is the supreme and inherent right regardless of race, sex, color, language, religion, socio-cultural and economic status. The state must respect and promote human dignity and also, refrain from acting in any way that limits or deprives such dignity.

Per the Supreme Administrative Court's Judgment No. *Or* 231/2550 (2007), the Supreme Administrative Court held that the purpose of a train window was to allow light to enter the train and passengers could see the outside view. A train without windows cannot be called a passenger train; but a train for transporting goods and packages. It could be deemed that it treated passengers as objects and violated their human dignity. This deprived passengers of taking advantage of the train windows as they should be. The Supreme Administrative Court upheld the ruling of the Administrative Court, deciding that the defendant (State Railway of Thailand) must completely scrape advertisement sheets within 30 days from the date of the Court's judgment.

C. Other expansive dimensions

In addition to the right to life in socio-economic and environmental dimensions, the Constitution of the Kingdom of Thailand, B.E. 2560 (2017) also recognizes the right to life in justice process under section 29. This could be exemplified by the principles of the presumption of innocence; detaining the accused as necessary; right against self-incrimination; and right to bail. These guarantee fundamental rights protection of the people from unfair and miscarried arrest, prosecution and punishment. The state shall have the duty of justice administration under section 68; that is to say, effective, accessible and non-costly justice process as well as providing a lawyer and appropriate legal assistance to indigent or underprivileged persons to access such system.

In this case, relevant rulings refer to Constitutional Court Rulings No. 2/2562 (2019) and No. 30/2563 (2020).

As for the Constitutional Court Ruling No. 2/2562 (2019), dated 27th February B.E. 2562 (2019), the Court held that even though Announcement of the Council for Democratic Reform No. 25 Re: Proceedings Relating to Criminal Justice relevant to the prescription of penalty on a suspect in the event of failure to provide a fingerprint, handprint or footprint pursuant to an order of a state attorney, prosecutor or inquiry officer was a necessary measure in a period of coup d'état as for public order, it did not bring about security interests of the state at the time. In addition, it was found that there were other legal measures concurrently in force which empowered officers in the criminal justice process to carry out enforcement in line with the underlying intent. The Announcement thus constituted an unreasonable restriction of rights and liberties in life and body of a person causing unnecessary disproportion between public interest and the deprivation of the people's rights and liberties under such law. Also, human dignity and the rule of law were prejudiced. The Announcement was therefore inconsistent with or contrary to section 3 paragraph two, section 26 and section 28 paragraph one of the Constitution.

Another case refers to the Constitutional Court Ruling No. 30/2563 (2020), dated 2nd December B.E. 2563 (2020). The Court ruled that Announcement of the National Council for Peace and Order No. 29/2557 Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order and Announcement of the National Council for Peace and Order No. 41/2557 Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, only with respect to the criminal penalty, should be liable to a term of imprisonment not exceeding 2 years or a fine not exceeding 40,000 baht, or both were not appropriate for the nature of the offence, not in accordance with the principle of proportionality, constituted a law which restricted rights and liberties of a person in excess of reasonability, and were inconsistent with the rule of law. The provisions were therefore either contrary to or inconsistent with section 26 of the Constitution. Moreover, Announcement of the National Council for Peace and Order No. 29/2557 therefore prescribed a criminal penalty having retrospective effect on a person who failed to report to authorities pursuant to an Order of the National Council for Peace and Order that was issued beforehand. Hence, the Announcements were contrary to or inconsistent with section 29 paragraph one of the Constitution.

Annex 1: List of cited legal provisions

1) Constitutional provisions

The Constitution of the Kingdom of Thailand, B.E. 2475 (1922)
Chapter II "Rights and Duties of the Siamese People"
- section 14

The Constitution of the Kingdom of Thailand, B.E. 2540 (1997)
Chapter III "Rights and Duties of the Thai People"
- section 31 paragraph two

The Constitution of the Kingdom of Thailand, B.E. 2550 (2007)
Chapter II "Rights and Duties of the Siamese People"
- section 32 paragraph two

The Constitution of the Kingdom of Thailand, B.E. 2560 (2017)
Chapter I "General Provisions"
- section 4

Chapter III "Rights and Duties of the Thai People"
- section 25 paragraph three
- section 26
- section 27
- section 28
- section 29
- section 40

Chapter V "Duties of the State"
- section 51
- section 54
- section 55
- section 56
- section 57

Chapter VI "Directive Principles of the State"
- section 68
- section 69
- section 72
- section 77 paragraph one and three

Chapter VII "the Council of Minsters"
- section 179

Chapter XI "Constitutional court"

- section 212
- section 213

2) Legislative provisions

The Civil and Commercial Code (latest amendment: 8 November, 2022)
- section 15
- section 420

The Criminal Procedure Code (latest amendment: 20 March, 2019)
- section 69
- section 78
- section 134/1 paragraph one
- section 173 paragraph one
- section 254 paragraph two
- section 262

The Penal Code (latest amendment: 7 May, 2022)
- section 18
- section 68
- section 288
- section 289
- section 290
- section 291
- section 292
- section 293
- section 294
- section 295
- section 296
- section 297
- section 298
- section 298
- section 299
- section 300
- section 301
- section 305
- section 381
- section 382

The Narcotic Drugs Act, B.E. 2522 (1979) (No. 8), B.E. 2564 (2021)
- section 145

The Public Health Act, B.E. 2535 (1992)

The Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544 (2001)
- section 20

The Ministry of Justice's Regulation on Rules and Procedures for Death Penalty, B.E. 2546 (2003)
- Article 5

The National Health Act, B.E. 2550 (2007)
- section 12

The Anti Human Trafficking Act, B.E. 2551 (2008) (No. 3), B.E. 2562 (2019)
- section 53/1
- section 52/1 paragraph two

The Cruelty Prevention and Welfare of Animal Act, B.E. 2557 (2014)
- section 3
- section 5
- section 20

The Research and Innovation Utilization Promotion Act, B.E. 2564 (2021)

The Announcement of the Medical Council No. 7/2554 Re: Criteria and Methods for the Diagnosis of Brain Death, B.E. 2554 (2011)
- Article 3

3) International provision

The International Covenant on Civil and Political Rights (ICCPR) (the date of accession: 29 Oct 1996)
- Article 2.1
- Article 6.1

Annex 2: List of cited cases

1. The Ombudsman requested for a Constitutional Court ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case where section 12 of the Names of Persons Act, B.E. 2505 (1962), raised the question of constitutionality [the Constitutional Court Ruling No. 21/2546 (2003), dated 5th June B.E. 2546 (2003)]

2. The Ombudsman requested for a Constitutional Court ruling under section 198 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), on the constitutionality of section 20(1) of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), as amended by the Election of Municipal Assembly Members Act (No. 9), B.E. 2538 (1995) [the Constitutional Court Ruling No. 45/2546 (2003), dated 11th November B.E. 2546 (2003)]

3. The Supreme Administrative Court referred an objection of a plaintiff to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case of whether or not section 24 and section 26 of the Spirits Act, B.E. 2493 (1950), were contrary to or inconsistent with section 46 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). [the Constitutional Court Ruling No. 25/2547 (2004), dated 14th January B.E. 2547 (2004)]

4. Saraburi Provincial Court referred the objection of a defendant (Mr. Tanarat Kaewwaree) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in the case of whether or not clause 3 of the Announcement of the National Executive Council No. 45, dated 17th January B.E. 2515 (1972), as amended by clause 1 of the Announcement of the National Executive Council No. 252, dated 16th November B.E. 2515 (1972), was contrary to or inconsistent with section 26, section 27, section 28, section 29, section 30, section 36 and section 50 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) [the Constitutional Court Ruling No. 12/2552 (2009), dated 19th August B.E. 2552 (2009)]

5. The Ombudsman requested the Constitutional Court for a ruling under section 245(1) of the Constitution on whether or not section 26 paragraph one (10) of the Judicial Officials of the Courts of Justice Administration

Act B.E. 2543 (2000) presented a question of constitutionality under section 30 of the Constitution [the Constitutional Court Ruling No. 15/2555 (2012), dated 13th June B.E. 2555 (2012)]

6. Whether or not section 36, section 37, section 38, section 39 and section 41 of the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992) were contrary to or inconsistent with section 3 paragraph two, section 29 and section 40(2), (3), (4) and (7) [the Constitutional Court Ruling No. 4/2556 (2013), dated 13th March B.E. 2556 (2013)]

7. Whether or not the Announcement of the Council for Democratic Reform No. 25 Re: Proceedings Relating to Criminal Justice, dated 29th September B.E. 2549 (2006), only with respect to the prescription of offence and penalties, was contrary to or inconsistent with section 3, section 26, section 28 paragraph one and section 29 paragraph four of the Constitution [the Constitutional Court Ruling No. 2/2562 (2019), dated 27th February B.E. 2562 (2019)]

8. Miss Srisamai Chueachat (applicant) requested for a Constitutional Court ruling that section 301 of the Penal Code raised a problem of inconsistency with section 27 and section 28 of the Constitution; (2) that section 305 of the Penal Code raised a problem of inconsistency with section 27, section 28 and section 77 of the Constitution; (3) that a ruling of the Constitutional Court should come into effect 540 days after the ruling was read with a condition that an organ, state agency or relevant person should revise the law and report compliance or compliance problems to the Constitutional Court within 360 days and 500 days as from the Constitutional Court ruling. [the Constitutional Court Ruling No. 4/2563 (2020), dated 19th February B.E. 2563 (2020)]

9. Whether or not the Announcement of the National Council for Peace and Order No. 29/2557, Re: Persons Who Shall Report to Authorities Pursuant to Orders of the National Council for Peace and Order, dated 24th May B.E. 2557 (2014), and Announcement of the National Council for Peace and Order No. 41/2557, Re: Prescription of Offence for Violation or Non-Compliance with a Summons to Report to Authorities, dated 26th May B.E. 2557 (2014), were contrary to or inconsistent with section 4, section 26, section 27 paragraph one and paragraph three and section 29 paragraph one of the Constitution [the Constitutional Court Ruling No. 30/2563 (2020), dated 2nd December B.E. 2563 (2020)]

10. *The* administrative *agencies* neglecting their duties as required by *law* to perform [the Supreme Administrative Court's Judgment No. *Or* 231/2550 (2007)]

11. A group of doctors led by Dr. Thapanawong Tanguraiwan, Mrs. Oraphan Methadilokkul, and Mrs. Cherdchu Ariyasriwatana jointly filed the lawsuit. Ms. Yingluck Shinawatra, Prime Minister, and Mr. Wittaya Buranasiri, Minister of Public Health at that time, to the Supreme Administrative Court requesting the court to repeal the ministerial regulations prescribing criteria and methods for conducting a letter of intent not to receive public health services that are solely to prolong death in the last term or to end suffering from illness B.E. 2550 issued under section 12 paragraph two of the National Health Act, B.E. 2550 (2007) [the Supreme Administrative Court judgment Case No. *For* 11/2558 (2015), dated 18th June B.E. 2558 (2015)]

12. Whether or not the plaintiff (prisoner), who was imprisoned with fetters until final judgment - death penalty or impunity were contrary to or inconsistent with human rights [the Central Administrative Court Judgment Red Case No. 1438/2552 (2009)]

16. Türkiye

Constitutional Court

Overview

The right to life is enshrined in the Article 17 of the Constitution. Even though the right to life is not considered as absolute, it could be understood as one of the most important of constitutional rights. Türkiye is a member of the Council of Europe and a state party to the European Convention on Human Rights. It is also a state party to the International Covenant on Civil and Political Rights (ICCPR) and the two Optional Protocols to the ICCPR. Article 38 § 10 of the Constitution currently prohibits capital punishment. Voluntary abortion is legal, the time limit being up to the completion of the tenth week of pregnancy. Some potential exceptions exist for beyond this time period. Although active euthanasia is prohibited in Türkiye, passive euthanasia is legal. Suicide is not criminalised under the Turkish legal system. However, the legislator has created a separate offence called "directing suicide." Regarding the use of force by state authorities, examples of relevant legal norms include Article 17 § 4 of the Constitution and Article 16 of the Law no. 2559 on the Duties and Power of the Police. The Constitutional Court has also dealt with broader dimensions of the right to life. For example, the Court has developed case-law in which it concluded that Article 60 (the right to social security) has a close link with the right to life. Also, even though the right to a healthy and balanced environment is enshrined separately in Article 56, it must be assessed in conjunction with other constitutional provisions, including Article 17 (life, physical and mental integrity).

Outline

I. Defining the right to life

A. Recognition and basic obligations

1. Recognition of the right to life in the constitutional text

The Constitution of the Republic of Türkiye (adopted by Law no. 2709 of 18 October 1982 published in the Official Gazette bis no. 17863 and dated 9 November 1982, hereinafter referred to as "the Constitution") explicitly recognizes "the right to life" under the first sentence of the first paragraph of its Article 17, with the official heading "*I. Personal inviolability, corporeal and spiritual existence of the individual*." This constitutional provision is precisely located under Chapter Two of Part Two of the Constitution, which is entitled "*Rights and Duties of the Individual*" comprising Articles 17 to 40. More particularly, it is the first provision among the other constitutional provisions to have been listed under this Chapter but also under Part Two, entitled "*Fundamental Rights and Duties*," which constitutes the "Turkish Bill of Rights" and includes Articles 17 to 74 of the Constitution. It simply states that; "*Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence.*," which are among rights that are "*closely tied, inalienable and indispensable*" (see *Serpil Kerimoğlu and Others*, no. 2012/752, 17 September 2013, § 50; *Mehmet Ali Emir and Others*, no. 2012/850, 7 November 2013, § 47).

Article 148 § 3 of the Constitution (Paragraph added on September 12, 2010; Law no. 5982) stipulates that; "*Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted.*" In this regard, it should be noted at the outset that the "right to protect and improve his/her material and spiritual existence," which is listed in the second sentence of the first paragraph of Article 17 of the Constitution as indicated above, is to be more likely to be read and interpreted in conjunction with Article 8 of the European Convention on Human Rights (hereinafter referred as to "the ECHR") safeguarding the right to respect for private life, and not in the context of the right to life guaranteed by Article 17 of the Constitution and jointly by Article 2 of the ECHR (see, among many others, *Mehmet Kurt* [Plenary], no. 2013/2552, 25 February 2016, § 44; *Ü.B.K.*, no. 2015/2536, 4 July 2019, § 37).

Within the scope of the protection of private life, several legal interests that are

compatible for freely developing one's personality are included within the scope of this right. In this respect, legal interest of a person with respect to his physical and mental integrity is also safeguarded within the scope of the right to respect for private life (see *Mehmet Kurt*, cited above, §§ 44-45; and, in particular, *R.G.* [Plenary], no. 2017/31619, 23 July 2020, § 73, concerning the Court's judgment finding a violation of the right to protect the corporeal and spiritual existence due to the procrastination of the victim's request for termination of her pregnancy resulting from a criminal act; and more recently, for a case concerning the alleged bullying and harassment in the workplace, see *Türkan Aydoğmuş*, no. 2018/19000, 12 January 2022, §§ 22-23). One of the legal interests guaranteed under the right to physical and mental integrity is the right to a healthy environment (see the Court's judgment no. E.2013/89, K.2014/116, 3 July 2014; and also, *Mehmet Kurt*, cited above, § 45). Accordingly, these issues will not be discussed further as they are not relevant to the present Fact File, except where necessary (see, in particular, the observations in Part III.B).

In addition, the text of the Constitution indicates that even under circumstances such as times of war, mobilization, a state of emergency, "*the individual's right to life*, *(...) shall be inviolable* *except where death occurs through acts in conformity with law of war*" according to the second paragraph of Article 15 of the Constitution on the suspension of the exercise of fundamental rights and freedoms.

At the same time, paragraph 4 of Article 17 of the Constitution expressly mentions the following substantive limitations to the right to life providing that; "*The act of killing in case of self-defence and, when permitted by law as a compelling measure to use a weapon, during the execution of warrants of capture and arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during state of emergency, do not fall within the scope of the provision of the first paragraph.*" (for further explanations see Part II.E, below)

Finally, another limitation to the right to life was capital punishment. However, since the constitutional amendment introduced with the Law no. 5170 of 7 May 2004 amending, among others, Article 38 of the Constitution on the principles relating to offenses and penalties, the Constitution has fully prohibited capital punishment in Türkiye (by virtue of Article 38 § 10) (as regards this issue, see Part II.A, below).

2. Ratified key international and regional human rights treaties relevant for the protection and interpretation of the right to life

At the international level, Türkiye signed the 1948 Universal Declaration of Human Rights on 6 April 1949 (published in the Official Gazette numbered 7217 and dated 27 May 1949), which proclaims the right to life in Article 3; the 1966 International Covenant on Civil and Political Rights (ICCPR) on 15 August 2000 and ratified it on 4 June 2003 -with the Ratification Act No. 4868 (published in the Official Gazette numbered 25142 and dated 18 June 2003), which guarantees the right to life under Article 6. Türkiye is also party to the 1966 Optional Protocol to the ICCPR signed on 3 February 2004 and ratified on 1 March 2006 -with the Ratification Act No. 5468; as well as to the 1989 Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty, signed on 6 April 2004 and ratified on 28 October 2005 -with the Ratification Act No. 5415. However, the ICCPR entered into force on 23 December 2003, in accordance to its Article 49, and its Optional Protocol was effective from 24 October 2006.

At the regional level, the most important regional instrument pertaining to the right to life, to which Türkiye is a party since 1954, is the ECHR, signed in Rome, under the auspices of the Council of Europe, on 4 November 1950, with entry into force on 3 September 1953, and which guarantees the right to life under its Article 2. Türkiye recognized the right to individual application to the European Court of Human Rights (hereinafter, "the ECtHR") in 1987 and the compulsory jurisdiction of this Court in 1990. Türkiye is also party to Protocols nos. 6 and 13 to the ECHR on the abolition of the death penalty.

In dealing with constitutional rights cases, the Turkish Constitutional Court not only applies and develops domestic standards of review, but also takes into account international legal obligations. The Constitutional Court refers systematically to the international and European human rights instruments such as the ECHR and the ECtHR's judgments when adjudicating the individual applications brought before its jurisdiction, in conformity with the Constitution. In fact, with the constitutional amendment of 2010, a new paragraph was added to Article 148 of the Constitution which provides that everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms under joint protection of the Constitution and the ECHR and its additional protocols, to which Türkiye is a party, -such as the "right to life," which is jointly protected by Article 17 of the Constitution and Article 2 of the ECHR-, has been violated by public authorities, after having exhausted the ordinary legal remedies.

3. Obligations on the state regarding the right to life

For the State to be held responsible for an individual's death, it must first be proven beyond any reasonable doubt that the individual was killed by agents of the State. Where it has been proven that the State is responsible for the death, in that case, the burden of proof shall be borne by the State to demonstrate that the killing fell within the exceptional circumstances where it may be permissible under Article 17 § 4 of the Constitution (see *İpek Deniz and Others*, no. 2013/1595, 21 April 2016, § 121; and for a similar ECtHR's judgment see, *McCann v. the United Kingdom* [GC], no. 18984/91, 27 September 1995, § 172).

Article 17 of the Constitution, which safeguards the right to life, when read in conjunction with Article 5 thereof in which one of the aims and duties of the State is set out as providing the conditions required for the development of the individual's corporeal and spiritual existence, imposes certain negative and positive obligations on the State (see Court's judgment, no. E.2007/78, K.2010/120, 30 December 2010; *Serpil Kerimoğlu and Others*, cited above, § 50).

In addition to its negative obligation to refrain from the intentional and unlawful taking of life of any individual within its jurisdiction, the State also has a duty, within the scope of its positive obligations, to safeguard the lives of those within its jurisdiction against risks likely to result from the acts of public authorities, other individuals or even the individual himself/herself (see Court's judgment, no. E.1999/68, K.1999/1, 6 January 1999). In the context of this duty, the State must primarily adopt deterrent and protective legislative arrangements against the threats and risks posed to the right to life and must also take necessary administrative measures (see Court's judgment, no. E.2005/151, K.2008/37, 3 January 2008; Court's judgment, no. E.2010/58, K.2011/8, 6 January 2011; *Serpil Kerimoğlu and Others*, cited above, § 51; and *İpek Deniz and Others*, cited above, § 149).

Moreover, the State also has a positive obligation to set up an effective judicial system capable of ensuring that the legislative and administrative framework set up to protect the right to life is properly implemented and that any breaches of that right are repressed and punished. This obligation applies in the context of any activity, whether public or not, in which the right to life may be at stake (see *Serpil Kerimoğlu and Others*, § 52).

In cases where the public authorities know or ought to know that there is a real and imminent danger to the life of a person, the public authorities must, within a reasonable time, take measures to prevent the realisation of that danger, but the

positive obligation cannot be interpreted in such a way as to place an excessive burden on the public authorities, particularly in view of the unpredictability of human behaviour and the preference for the action to be taken or the activity to be carried out by assessing priorities and resources (see *Serpil Kerimoğlu and Others*, § 53; *Necla Kara and Others*, no. 2018/5075, 15 March 2022, § 75).

The State's positive obligations within the scope of the right to life also have a procedural aspect. This procedural obligation requires the conduct of an independent investigation capable of establishing all aspects of any unnatural death and leading to the identification and, if necessary, punishment of those responsible for such death (see *Serpil Kerimoğlu and Others*, § 54; *Sadık Koçak and Others*, no. 2013/841, 23 January 2014, § 94).

The type of investigation to be conducted into an incident, as required by the procedural obligation, is to be determined on the basis of whether the obligations concerning the essence of the right to life require any criminal sanction. In the case of deaths caused intentionally or resulting from an attack or ill-treatment, the State is obliged by virtue of Article 17 of the Constitution to conduct criminal investigations capable of leading to the identification and punishment of those responsible for the attack causing death. In such cases, a mere payment of compensation as a result of administrative and judicial investigations and criminal proceedings is not sufficient to remedy the violation of the right to life and put an end to the person's victim status (see *Serpil Kerimoğlu and Others*, § 55).

However, Article 17 of the Constitution does not grant the applicants the right to ensure prosecution or punishment of third parties for a criminal offence or imposes on the State the duty to conclude all proceedings with a conviction or a specific criminal sentence (see *Serpil Kerimoğlu and Others*, § 56). This is not an obligation of result but an obligation to use appropriate means (see *Cezmi Demir and Others*, no. 2013/293, 17 July 2014, § 127). However, as an element of the procedural obligation, those responsible must be punished with sanctions proportionate to their acts and appropriate redress must be provided for the victim (see *Şenol Gürkan*, no. 2013/2438, 9 September 2015, § 105; *Necla Kara and Others*, above cited, § 109). In any event, the State must not allow for the impunity of acts which clearly jeopardize life and of the severe attacks against the individual's material and spiritual entity on condition of taking into account the specific circumstances of each case (see *Filiz Aka*, no. 2013/8365, 10 June 2015, § 32).

In order to be able to say that an investigation is effective and sufficient, investigating authorities need to act *ex officio* and immediately to collect all

evidence capable of shedding light on the death and ensuring the identification of those who are responsible. A deficiency in the investigation that would reduce the likelihood of discovering the cause of the incident of death or those who are responsible bears the risk of clashing with the obligation to conduct an effective investigation (see *Serpil Kerimoğlu and Others*, § 57).

On the other hand, the nature and degree of the review meeting the minimum standard of effectiveness of the investigation depend on the particular circumstances of the case. The question of effectiveness in this scope should be assessed on the basis of all relevant facts and the practical realities of the investigative work. Therefore, it is not possible to reduce the variety of situations that can occur to a simple list of investigative acts or other minimum criteria (see *Fahriye Erkek and Others*, no. 2013/4668, 16 September 2015, § 68).

One of the matters which ensure the effectiveness of the criminal investigations to be conducted is the fact that the investigation process is open to public scrutiny in order to ensure accountability in practice as in theory. In addition, in each incident, it should be ensured that the relatives of the deceased person are involved in this process to the extent that it is necessary so as to protect their legitimate interests (see *Serpil Kerimoğlu and Others*, § 58).

If the infringement of the right to life is not caused intentionally, the positive obligation to set up an effective judicial system does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see *Serpil Kerimoğlu and Others*, § 59).

However, where it is established that the negligence attributable to public authorities on that account goes beyond an error of judgment or carelessness, in that the authorities in question, fully realising the likely consequences and disregarding the powers vested in them, failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of the right to life, irrespective of any other types of remedy which individuals may exercise on their own initiative (see *Serpil Kerimoğlu and Others*, § 60).

To say that it is effective, a criminal investigation should also be conducted with a reasonable level of diligence and speed (see *Salih Akkuş*, no. 2012/1017, 18 September 2013, § 30). This is a necessity so as to ensure adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts.

The sensitivity to be displayed in this matter shall prevent the judicial system's role in the prevention of similar incidents likely to occur afterwards from being tarnished (see *Cemil Danışman*, no. 2013/6319, 16 July 2014, § 110; *Filiz Aka*, cited above, § 33).

Lastly, an investigation may be considered effective if the decision taken at the end of the investigation is based on a comprehensive, objective and impartial analysis of all findings and, in addition, the decision concerned includes an assessment of whether the interference with the right to life is a proportionate interference which arises from an exigent circumstance which is sought by the Constitution (see *Cemil Danışman*, cited above, § 99).

B. Constitutional status

1. The derogatory nature of the right to life in the Turkish Constitution, albeit with strong guarantees

Although the right to life is of great importance, it is however not absolute in Türkiye as the Constitution has placed limitations on this right. The Turkish Constitution seeks to balance the interests of all and so, although it respects the right to life, it also places certain limitations on this right to protect the public interest and ensure peace and order in the society. It goes to show that no individual can be deprived of his/her right to life, except through the legally recognized exceptions, listed under Article 15 § 1 (in time of emergency) and Article 17 § 4 (in ordinary time) of the Constitution as mentioned above, which shall be read in conjunction with Article 13 of the Constitution providing that fundamental rights and freedoms may be restricted only by law and in conformity with the requirements of the democratic order of the society and the principle of proportionality. Those limitations in the constitutional text are as follows:

Firstly, according to Article 12 § 1 and Article 15 § 2 of the Constitution, the right to life is by its very nature "*inviolable*" in any circumstances, "*except where death occurs through acts in conformity with law of war*." This phrase added to Article 15 § 2 interferes with the inviolable nature of the right to life, but is consistent with Article 15 § 2 of the ECHR providing that "*No derogation from Article 2, except in respect of deaths resulting from lawful acts of war (...) shall be made under this provision.*"

Secondly, the last paragraph of Article 17 of the Constitution provides that an interference with the right to life shall be lawful in the following cases: (i) for self-

defence; and, when permitted by law as a compelling measure to use a weapon, (ii) during the execution of warrants of capture and arrest, (iii) the prevention of the escape of lawfully arrested or convicted persons, (iv) the quelling of riot or insurrection, or (v) carrying out the orders of authorised bodies during state of emergency.

As seen from the above, the legality of the interference with the right to life is constantly underlined in all the relevant constitutional provisions.

2. Special status of the right to life

Even if the right to life is not considered as absolute, it could be understood as one of the most important of constitutional rights. It should be noted at the outset that the right to life is the first ever "fundamental right of the individual" listed under Part Two of the Constitution, which constitutes the "Turkish Bill of Rights," as mentioned above.

Besides, the Turkish Constitutional Court considered that interference with the right to life can only happen under very limited and very clearly defined exceptional circumstances, as laid down inter alia in Articles 13, 15 § 2 and 17 § 4 of the Constitution. For instance, after recalling that the right to life enshrined in Article 17 of the Constitution is an inalienable and indispensable fundamental right, the Court held that even in the exceptional situations mentioned under Article 17 § 4 of the Constitution, "*it must be absolutely necessary to use lethal force as a last resort when there is no other possibility of intervention left. For this reason, bearing in mind the inviolable nature of the right to life, there is a need for a strict review on the requirements of necessity and proportionality in cases involving such use of force that might result in death.*" (see *İpek Deniz and Others*, cited above, § 117)

More recently, in the individual application in the case of *Hasan Kılıç* (no. 2018/22085, 27 January 2021), the Constitutional Court held that there has been a violation of the procedural aspect of the right to life due to the failure to investigate the administration's fault as regards the suicide bomb attack that was carried out in front of the Ankara Train Station by members of the DAESH terrorist organisation, on 10 October 2015, during the peaceful meeting on peace, labour and democracy organised by some non-governmental organisations, as a result of which many people were killed and many people, including the applicant, were injured. After the incident, the applicant brought a full remedy action before the administrative court which, at the end of the administrative proceedings, awarded 25,000 Turkish liras (TRY) to the applicant for non-

pecuniary compensation, plus legal interest running from the date of lodging the action, within the scope of the social risk principle, stating that the impugned incident was an act of terrorism and that there had been no fault attributable to the administration as regards the performance of the administrative service. The regional court of appeal, having rejected the appeal requests of the applicant and the Ministry of Interior, upheld the administrative court's decision. Accordingly, the applicant filed an individual application with the Constitutional Court alleging the violation of the right to life due to the fact that in the proceedings he had brought for the redress of the damages he had sustained as a result of the suicide bomb attack, which he claimed to have been foreseeable and preventable by the public authorities, his allegations that the incident had occurred due to the fault of the administration had not been considered.

In the actions for compensation to be brought before the judicial and administrative courts in order to establish the legal responsibility in terms of the right to life, the requirements of reasonable promptness and due diligence must be fulfilled. In the same vein, it is incumbent on the Constitutional Court to examine whether the inferior courts made an examination as required by Article 17 of the Constitution in the proceedings concerning such incidents. As a matter of fact, the sensitivity on the part of the inferior courts in this regard would prevent any harm to the important role of the current judicial system in preventing similar future violations.

In the present case, the administrative court awarded non-pecuniary compensation to the applicant; however, it did not provide any justification to this end. Moreover, it could not be understood from the decision of the administrative court whether the evidence requested by the applicant had been collected and whether the administrative court had evaluated the evidence including those adduced by the applicant. The applicant, with reference to the findings and evaluations in the preliminary examination report, raised, also before the regional court of appeal, his allegations that the respondent administration had failed to take the life-protecting measures in the incident and that the intervention of the security forces after the explosions worsened the consequences of the attack. However, the regional court of appeal upheld the administrative court's decision, stating that it complied with the procedure and the law, but without explicitly examining the applicant's allegations.

The full remedy action brought by the applicant was based on the alleged failure of the administration to fulfil its obligation to protect life. In this regard, it is obvious that for resolution of the dispute, the necessary evidence should have been collected, as well as the applicant's aforementioned allegations should have

been examined. For this reason, it has been concluded that the inferior courts failed to examine the applicant's case with due diligence as required by Article 17 of the Constitution. Consequently, the Court has found a violation of the procedural aspect of the right to life.

C. Personal scope of the right to life

Article 17 of the Constitution, which states that "*everyone*" has the right to life, does not contain a provision on the beginning of life. However, it may be possible to draw a conclusion regarding the beginning of the right to life from the legal provisions on abortion, which is legally permissible up to the tenth week of pregnancy (Article 5 of the Law no. 2827 on Population Planning, for further details on this issue see Part II.B, below).

Similarly, Article 17 of the Constitution does not contain a provision on the end of life. Article 17 of the Constitution uses the word "killing", not "death." There is no provision in the Constitution defining the end of life or the state of death. In national legislation, death is defined as "*medical brain and heart death*" (Regulation on the Construction of Cemetery Sites and Funeral Transport and Burial Procedures, (Official Gazette 19 January 2010 - 27467). Subparagraph ç) of Article 4 with the marginal heading Definitions is as follows: "Funeral (Dead): A person who is medically brain and heart dead,").

On the other hand, the national legislation contains provisions on who shall determine the state of death (see Law no. 1593 on Public Health (Art. 215-219)). National legislation stipulates that a burial licence/death certificate must be obtained before a body can be buried; it specifies which physicians can issue this certificate and who can issue a burial licence in places where there is no physician (appointed health officer, gendarmerie station commander, village headman). In case of suspicious death, burial licence will not be issued and the case shall be referred to the Public Prosecutor's Office (see Code of Criminal Procedure no. 5271 (Art. 159)). The Law regulating the ability to take tissue from the deceased stipulates that two authorised physicians can determine that medical death has occurred (see Law no. 2238 on Organ and Tissue Procurement, Storage and Grafting as amended by Law no. 6514 (Art. 11)).

Consequently, under national law, the determination of death by medical personnel and defining death as "medical brain and cardiac death" do not seem to be incompatible with the right to life.

D. Standards of constitutional review

Standards of constitutional review that are particularly applicable when adjudicating on the constitutionality of the limitations on the right to life, bearing in mind the superior value of this right, are the strict application of the principles of legality, of necessity and proportionality as well as the exercise of the balancing between competing constitutional rights and freedoms. In this respect, some examples of cases examined by the Turkish Constitutional Court, which are not exhaustive, are given below.

1. Cases of death occurring as a result of the use of force by public officers

In the case of *İpek Deniz and Others* (no. 2013/1595, 21/4/2016), the Court found a violation of the substantive aspect of the right to life due to the death as a result of the use of force by the law enforcement officers as well as the lack of justification for the use of force that might result in death; and a violation of the procedural aspect of the same right due to the failure to conduct an effective investigation into the death.

In applications involving deaths resulting from the use of force by public officers, the ECtHR recalls that the exceptions set out in Article 2 § 2 of the ECHR concern intentional killing but the text of Article 2, read as a whole, extends to the cases of use of force which may result, as an unintended outcome, in the deprivation of life. According to the ECtHR, the use of force must be "absolutely necessary" for the achievement of one of the purposes set out in the second paragraph (see *McCann v. the United Kingdom*, § 148). The Constitutional Court stresses that, in cases where such force which may result in death had to be used, there is a need for conducting a strict review as to whether it was necessary and proportionate. In fact, the ECtHR emphasises that the use of the term "absolutely necessary" with respect to interference with the right to life indicates that a stricter and more compelling criterion of necessity must be applied than is normally used to determine whether State interference is "necessary in a democratic society" in relation to the right to private life or freedom of assembly (see *Aydan v. Türkiye*, no. 16281/10, 12 March 2013, § 65).

In the case of *Hüseyin Yıldız and İmiş Yıldız* (no. 2014/5791, 3 July 2019), the applicants claimed that their son (a prisoner) had suffered vision loss as a result of an operation carried out in the penitentiary institution, which was in breach of his right to life. The Constitutional Court held that there has been a violation of the right to life due to failure to prove the absolute necessity for the use of force.

For instance, the criminal case, which was opened for certain reasons -such as the failure to identify, within the scope of the investigation launched against the security officers taking part in the operation, the security officers who had actually carried out the operation as well as the failure to grant a leave for investigation- has been pending for more than nine years. With the lapse of time, it becomes difficult to collect evidence and to establish how the incident occurred. Unreasonable length of investigations -especially in cases of abuse of power- may create the impression that such acts are tolerated and encouraged.

In the present case, regard being had to the fact that the criminal proceedings lasting so long, it was difficult to put forth clear information on the course of events as well as the circumstances in which the applicants' son (T.Y.) had been injured, it was not reasonable to wait for the outcome of the criminal proceedings which were not conducted effectively to ensure the accountability of those responsible. It has been concluded that the State failed to fulfil its obligation to provide a convincing explanation on the circumstances in which T.Y., who had been under its supervision at the material time, had been injured and accordingly also failed to prove that it had been absolutely necessary to use force against him.

Therefore, it has been concluded that the use of force by the public officials against T.Y. had not been absolutely necessary. In addition, it is not convincing that the administrative authorities, after a long time, concluded within the scope of the action for compensation that the applicants' son had played an active role in the incidents.

2. Cases of death occurring as a result of dangerous activities

In a State of law, it may be deemed reasonable to require the permission of a certain authority for the conduct of a judicial investigation against public officers since they perform their duties on behalf of the State and they are under risk of frequent complaints and investigations in connection with certain issues resulting from the performance of their duties (see *Hidayet Enmek and Eyüpsabri Tinaş*, no. 2013/7907, 21 April 2016, § 106). Indeed, Article 129 § 6 of the Constitution provides that prosecution of public servants and other public officials for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law (see *Hidayet Enmek and Eyüpsabri Tinaş*, § 107).

On the other hand, the procedure concerning permission for an investigation has been designed to prevent public officers from facing unjustifiable charges concerning the commission of an offence on account of their duties as well as

to avoid any delay in the performance of their public services. The preliminary examination required to be made to this end prior to the initiation of a criminal investigation is intended for determining whether there is a ground to necessitate a criminal investigation. Therefore, the procedure concerning permission for an investigation must not be applied, beyond the said purpose, in such a manner as to cause a delay in the criminal proceedings and to prevent the conduct of the investigation in an effective manner or to create the impression that the public officers are exempted from the criminal investigation (see *Naziker Onbaşı and Others*, § 70).

Indeed, the minimisation of the risks posed to the lives and physical integrity of the individuals within the scope of a dangerous activity, the identification of those responsible for taking necessary measures, and the judicial response to be provided by the State in respect of the responsibilities are of importance for the prevention of similar incidents as well (see *Naziker Onbaşı and Others*, § 71).

Those principles were applied in the following applications brought before the Constitutional Court, where it concluded that the absence of a permission to initiate criminal investigation against the public officers held responsible in mine accidents violated the right to life under its procedural limb.

Firstly, in the individual application of *Naziker Onbaşı and Others* (no. 2014/18224, 9 May 2018), where the Court examined an alleged violation of the right to life on account of the issuance of a decision not to grant permission for an investigation in respect of certain public officers to whom fault had been attributed in the expert reports obtained within the scope of the criminal investigation carried out into another mine accident and a decision of non-prosecution was issued against certain suspects, the Court concluded that operating a coal mine was a dangerous activity since it involved certain risks to the lives and physical integrity of individuals, notably those of the workers of the mine, and that the State was therefore liable, by virtue of its obligation to protect individuals' lives, to take necessary measures so as to protect lives and physical integrity of individuals as well as to prevent deaths and injuries during the performance of this service. In this regard, it considered that the obligation to set up an effective judicial system required the conduct of an effective criminal investigation into the relevant incident in view of the fact that many people had lost their lives due to similar incidents taking place in previous years, that the existence of the risk of inrush (instantaneous outburst of gas) at the scene of the accident had been known, and that it had been possible to take measures against such existing risk as indicated in the expert reports.

Secondly, in the individual application of *Abdulkadir Yılmaz and Others (2)* (no. 2016/13649, 29 January 2020), similarly to the application of *Naziker Onbaşı and Others*, the Court held that there has been a violation of the procedural aspect of the right to life for granting no permission for an investigation against certain public officers, the suspects of a mine explosion on resulting in death and injury of several persons. Many miners, including the applicants' relatives, lost their lives or were injured as a result of the explosion which took place in 2014 in a mine operated by a private company in Soma. As indicated by the expert report issued with respect to the incident, the explosion took place on account of several omissions and faults. However, no permission was granted for launching an investigation against the relevant officers on the ground that no direct causal link could be established between the acts of those who were subject to preliminary inquiry and the mine explosion taking place. Finding a violation, the Constitutional Court concluded that the discontinuation of the judicial process without allowing the investigation authorities to make an assessment as the existence of a causal link between the acts of the suspects and the incident taking place was incompatible with the principles of an effective investigation.

II. Limitations: Key issues

A. Capital punishment

Article 38 § 10 of the Constitution (as amended on May 7, 2004; Law no. 5170) currently prohibits capital punishment.

Even if the death penalty has not been executed in Türkiye since 25 October 1984 (date of the last execution of the death penalty), Türkiye abolished the death penalty, firstly, for peace time offences in 2002, with the Law no. 4771 Amending Various Laws dated 3 August 2002 providing that this penalty was abolished "*except for the death penalty for crimes committed in case of war or imminent threat of war*," and then, for all offences in 2004, with the Law no. 5170 dated 7 May 2004 Amending Certain Provisions of the Constitution of the Republic of Türkiye. Article 15 and Article 38 of the Constitution were amended, accordingly.

After that, the death penalty was completely removed from the (abrogated) Turkish Penal Code no. 765 with the Law no. 5218 dated 14 July 2004 on the Abolition of the Death Penalty and Amendments to Certain Laws. The death penalty was then replaced by aggravated life imprisonment in the Penal Code

no. 765. The (new) Turkish Penal Code no. 5237 adopted on 26 September 2004 (published in the Official Gazette dated 12 October 2004 and numbered 25611, hereinafter referred to as "the Turkish Penal Code"), still in force, replacing the Code no. 765, also enumerates, in its Articles 46 § 1 a) and 47, the aggravated life imprisonment among prison sentences.

These amendments were followed by the signature and ratification by Türkiye of Protocol no. 6 to the ECHR concerning the abolition of the death penalty and Protocol no. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, respectively in 2003 and in 2004 (Protocol no. 13 was ratified in 2006).

B. Abortion

1. The key legal norms regulating abortion

Article 5 of the Law no. 2827 on Population Planning regulates the termination of pregnancy. According to the first paragraph, which provides for voluntary abortion, "*until the tenth week of pregnancy is completed, the uterus is evacuated upon request, unless there is a medical inconvenience for the mother's health*." Since no sanctions can be imposed for an evacuation during this period, it can be concluded that the foetus during this period is not yet recognised as a living individual.

The second paragraph, which provides for abortion for medical reasons, also authorises abortion when the gestation period exceeds ten weeks if the pregnant woman so requests. However, in such a case, abortion is only possible if one of the following conditions is met: "the pregnancy threatens or will threaten the mother's life" or "the child will be born with a severe disability." Articles 99 and 100 of the Turkish Penal Code, which regulate the offences of abortion and miscarriage, seem to provide an independent protection to the foetus after the tenth week of pregnancy by prohibiting voluntary abortion after the tenth week of pregnancy.

According to the third paragraph, which provides for involuntary abortion, abortion may be performed in urgent cases where the life of the pregnant woman or one of her vital organs would be threatened without immediate intervention, regardless of the duration of the pregnancy. On the other hand, it should be reminded that the Turkish Criminal Code No. 5237 regulates the interventions against the foetus as a qualified form of offences against the life and bodily

integrity of the pregnant woman, not among the offences against life and bodily integrity of the foetus. It should also be noted that the Turkish Criminal Procedure Code stipulates that during forensic examination and autopsy of a stillborn baby, it must be determined "whether it is biologically mature enough to continue its life outside the womb or whether it has the ability to live" (Criminal Procedure Code, Art. 88). Article 88 of the Turkish Criminal Procedure Code introduces a special provision on forensic examination and autopsy of new-borns and specifies the issues to be investigated: These include whether the new-born is alive, whether it was born on time, its ability to live, the duration of life after birth, the time of death and the causes of death. The purpose of the forensic examination or autopsy to be performed on the corpse of the new-born is to determine whether the child lived during or after birth, whether there are signs of life or whether the child is biologically capable of continuing its life outside the mother's body, in other words, to determine whether it is capable of living. Consequently, as a sign of recognition of the new-born's right to life, beyond the purpose expected from classical forensic examinations or autopsy procedures, it has been made compulsory to determine whether the child's life has matured outside the mother's body or whether it has the ability to live.

The request by a woman for termination of her unwanted pregnancy is directly related to her personal autonomy as well as to her mental or physical integrity. The notion of personal autonomy and the interferences with the individual's physical integrity fall -from the aspect of private life- within the sphere of the right to protect and improve the corporeal and spiritual existence enshrined in Article 17 of the Constitution.

The legislator allows for the termination of a pregnancy resulting from a criminal act, which is under 20 weeks, but makes it subject to authorisation. The reason for seeking an authorisation for ending pregnancy is to inspect whether the pregnancy has resulted from a criminal act.

2. Relevant constitutional adjudication on the issue of abortion

According to the Constitutional Court, "*(...) an unborn child is clearly not recognised as a human being in the context of criminal law. However, the fact that the foetus is not explicitly recognised as a human being under criminal law does not mean that it is not protected in any way in the Turkish Legal System. In particular (...) in cases where the rights and interests of the mother and the child do not conflict and even overlap, the life of the foetus is closely linked to the mother's right to life. Provisions regulating the protection of the mother's right to life indirectly protect the right to life of the foetus. In the present case,*

since the parents wanted their child to be born alive, the right to life of the foetus is effectively protected by provisions that both protect the mother's right to life and bodily integrity and regulate the offence of abortion committed without the mother's consent." (see *Zeki Kartal* (dec.), no. 2013/2803, 21 July 2016, § 77) In any event, national legislation has not prioritised the right to life of the unborn over the will and health of the mother. Considering the wide margin of appreciation given to States by the ECtHR in this field, one can argue that the national legislation is not incompatible with the ECHR (see *Vo v. France* [GC], No. 53924/00, 8 July 2004, § 82).

On 15 December 2020, the Constitutional Court found a violation of the right to life safeguarded by Article 17 of the Constitution in the individual application lodged by *Onur Arslan* (no. 2017/17652). In the present case, the applicant's sister lost her life after she had undergone an abortion operation, which had been unlawfully performed by a gynaecologist at a state hospital, in the twenty-fourth week of pregnancy. At the end of the criminal proceedings in 2008, the incumbent assize court sentenced the gynaecologist to 5 years' imprisonment. Upon the gynaecologist's death in 2019, the court ordered the setting aside of the conviction decision. This decision was upheld by the Court of Cassation. The applicant claimed pecuniary and non-pecuniary compensation before the Ministry of Health on account of the alleged medical malpractice in the case. However, his claim was rejected. Thereupon, he brought an action for a full remedy, which was also dismissed by the incumbent administrative court. The dismissal decision was upheld by the Council of State.

Before the Constitutional Court, the applicant maintained that the right to life had been violated as his sister's death had resulted from the unlawful medical intervention which had been performed under the State supervision and control and the action for a full remedy had been dismissed upon the erroneous assessment of the administrative court.

The Court considered that it was found established by the assize court that the abortion operation resulting in the death of the applicant's next-of-kin was a medical intervention constituting an offence.

It should be primarily noted that the hospital management is entrusted with the duty to manage and supervise the processes concerning the recruitment and supervision of all medical staff working at the hospital, as well as the organisation of treatments and other services provided there. In this sense, it has been considered that the responsibility attributable to the state hospital complained by the applicant within the scope of the impugned incident be examined from the

standpoint of the organisational failure.

In its decision dismissing the applicant's claim for compensation, the administrative court noted that the impugned operation had been performed by the gynaecologist, when he had been on annual leave during which he could not indeed provide public service, without informing the Chief Physician's Office of the relevant hospital; and that therefore, the hospital administration could not be held liable for the surgical intervention.

However, the gynaecologist, a public officer, performed a surgical operation at the state hospital, in company with the other staff, during a working day despite being on leave, without informing any hospital authorities. Besides, the other staff working in the hospital and indeed being aware of the surgical operation did not inform the hospital authorities of the situation.

In these circumstances, it is clear that in the present case, there was an organisational failure attributable to the state hospital as the administration had failed to duly fulfil its duty of supervision and control, which would ensure the medical staff to abstain from performing any criminal acts, and thus caused a management vacuum.

In the present case, the public authorities failed to fulfil the positive obligation to protect life. Therefore, the dismissal of the applicant's claim for compensation by the administrative court for the lack of any malpractice was also incompatible with the principles for the protection of the right to life. Consequently, the Court has found a violation of the right to life safeguarded by Article 17 of the Constitution.

C. Euthanasia

Euthanasia can be legally categorised in different ways. These are: Euthanasia in the narrow sense, euthanasia in the broad sense, voluntary euthanasia, involuntary euthanasia, active euthanasia and passive euthanasia. In practice, the most common types of euthanasia are active euthanasia and passive euthanasia.

Active euthanasia is the painless ending of a person's life by a physician at his/her own request and within the latest possibilities of medical science.

Passive euthanasia is when the person stops the treatment, again at his/her own request, but not by a physician.

Although active euthanasia is not legal in Türkiye, passive euthanasia is legal. In short, it can also be called the patient's refusal of treatment. In accordance with health law, passive euthanasia occurs if the patient uses this right, that is, if he/she leaves himself/herself to die. However, in this case, the patient must have requested this with his/her free will. The responsibility of the physician may arise with misguidance. The basis of passive euthanasia is Article 25 of the Patient Rights Regulation (dated 1 August 1998 and published in the Official Gazette numbered 2342 – Regulation amended on 16 January 2019 and published in the Official Gazette numbered 30657).

According to Article 25 § 1 of the Regulation, the patient is entitled to refuse or request the cessation of the treatment planned to be applied or being applied to him/her, with the patient bearing the responsibility for the negative consequences that may arise -except in cases where it is required by law- (c.1). In this case, the patient or the patient's legal representatives or the patient's relatives must be informed about the consequences that may arise from the non-application of the treatment and a written document showing that this information has been provided must be obtained (c.2). Within the framework of these regulations, it is considered that there is no legal obstacle to the implementation of passive euthanasia in Türkiye.

Pursuant to Article 5 of the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, signed in Oviedo, on 4 April 1997, entered into force on 1 December 1999, to which the Republic of Türkiye is a party, "*An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.*" In this context, if the person suffering from an incurable disease does not consent, the treatment cannot be applied to that person. Paragraph 3 of the aforementioned article of the Convention stipulates that "*The person concerned may freely withdraw consent at any time.*" Accordingly, it is possible for the person concerned to withdraw his/her consent at any time from the treatment that has been started, provided that his/her consent is validly obtained, and to abandon the treatment at any time. However, it should be noted that Article 24 of the Patient Rights Regulation stipulates that "*if the treatment has started, and if there is an emergency situation that threatens life or one of the vital organs, withdrawal of consent is not possible*." According to Article 90 § 5 of the Constitution, national legal provisions, which contradict the provisions of international human rights treaties duly put into effect, should not be applied, as the relevant international provisions prevail over the national provisions. In application of Article 90 § 5 of the Constitution, some scholars have argued that Article 24 of the Regulation

is contrary to Article 5 of the Convention on Human Rights and Biomedicine, according to which any intervention in the health field may be carried out after the person has given free and informed consent, and that he/she may freely withdraw consent at any time. So that, in the Turkish legal system, when thoroughly applying Article 90 § 5 of the Constitution, it should be, therefore, also possible for the patient to refuse treatment that would delay or prevent death in spite of Article 24 of the Regulation.

In Turkish law, the most important legal basis for not recognising active euthanasia is Article 17 § 2 of the Constitution. According to this article, the violation of the bodily integrity of individuals is prohibited except in cases of medical necessity and in cases prescribed by law, and the right to life and the right to protect one's material and spiritual existence are guaranteed by the Turkish Constitution. Based on this article of the Constitution, no physician can euthanise a patient.

Euthanasia is also explicitly prohibited in Article 13 of the Patient Rights Regulation. According to this article, which has the subtitle "Prohibition of euthanasia," "*Euthanasia is prohibited. The right to life cannot be renounced on the grounds of medical necessity or by any means whatsoever. No one's life may be terminated, even at the request of himself/herself or another person.*" This reveals that active euthanasia is prohibited even with the consent of the patient.

As seen above, there is no provision in the Turkish legal system (constitution, law, presidential decree, statute) that explicitly provides legal protection for active euthanasia. Therefore, although the motive of the physician who performs active euthanasia is to help the patient in order to relieve the patient's suffering, since this help will be done with the intention of ending the patient's life, that is, killing the patient, the offence of intentional homicide regulated in Article 81 of the Turkish Penal Code will be committed. According to this regulation, the person who intentionally kills a person shall be sentenced to life imprisonment.

Therefore, as long as it is not subject to a separate regulation in Turkish law, active euthanasia, which is defined as the act of terminating the patient's life with an active action to be performed during the medical activities, will be evaluated within the scope of the Turkish Criminal Code and will give rise to the offence of intentional homicide. Although there is no regulation on this issue in the Turkish Penal Code currently in force, it is observed that the Turkish Penal Code drafts prepared in 1989, 1997 and 2003 before the adoption of the current Code included regulations on euthanasia. This also reveals that the criminal dimension of this issue (although it is not included in the text of the adopted law) is being discussed

in Türkiye.

The only legal regulation in Turkish law that includes the word "euthanasia" is the Law no. 5996 on Veterinary Services, Plant Health, Food and Feed. With paragraph (3) of Article 9 of this Law, entitled "Animal Welfare", euthanasia of animals is prohibited as a rule. (The Law was adopted on 11 June 2010 and published in the Official Gazette dated 13 June 2010 and numbered 27610.) However, an exception to the rule is made by stating that euthanasia may be decided by the veterinarian in cases of diseases that cause pain and suffering to animals or that cannot be cured, for the prevention or eradication of an acute infectious animal disease, or in cases that pose a risk to human health, or in cases that pose a danger to the life and health of humans and animals and whose negative behaviour cannot be controlled. Under these conditions, euthanasia must be performed by or under the supervision of a veterinarian (Art. 9 § 3, last sentence of the Law no. 5996).

So far, there has been no constitutional adjudication on the issue of euthanasia before the Court.

D. Suicide and assisted suicide

1. Legal status of suicide and assisted suicide

Suicide is not criminalised under the Turkish legal system. This may be explained, on the one hand, by the fact that suicide is not related to others and, on the other hand, by the requirements of penal policy, i.e. the ineffectiveness of punishment.

Since the act of suicide is not a criminal offence sanctioned by law, criminal involvement in suicide cannot be envisaged. For this reason, in order to prevent impunity for those who make an attempt on the lives of others by inciting, aiding or abetting others to commit suicide, the legislator has created a separate offence called "directing suicide." Directing suicide is not technically involvement, but is a separate offence in itself.

Indeed, Article 84 of the Turkish Penal Code regulates the offence of "directing suicide." In order for this offence to be formed, it is required that a person incites or encourages another person to commit suicide, or that a person strengthens the existing decision of another person to commit suicide, or that a person assists in any way in the suicide of another person.

As can be seen, the offence of "directing suicide" can be committed by performing any one of the alternative acts provided by the law. While the penalty is increased in the event of suicide, those who incite people to suicide whose ability to perceive the meaning and consequences of the act committed has not developed or has been eliminated, and those who force people to commit suicide by using force or threat are punished with the penalty of the offence of intentional killing.

The offence of "directing suicide" differs from "euthanasia" in that it can be committed by anyone, in other words, the act that ends life is not required to be performed by health personnel.

Unlike euthanasia, in the case of directing suicide, the act of ending life is carried out by the person who commits suicide. In the offence of inciting and encouraging suicide, it is the perpetrator who makes the victim decide to end his/her life and promotes (encourages) the idea of suicide.

Although the act of directing or assisting suicide has a different meaning from euthanasia, there may be an interaction with euthanasia when it comes to assisting a terminally ill person to realise his/her decision to commit suicide in order to relieve his/her sufferings. However, even in this case, there is a certain limit, namely, in the case of assisted suicide, the action leading to death comes from the person himself/herself.

Physician-assisted suicide, on the other hand, takes place when the physician or other health personnel guides the patient to the action that will facilitate the patient's death, makes suggestions to the patient or provides the means to be used by the patient. In this framework, physician-assisted suicide may give rise to the offence of "directing suicide", but differs from euthanasia in that there is no active or passive action of the healthcare professional in the termination of life. "The only criterion that distinguishes active euthanasia from physician-assisted suicide is that the final act leading to death is performed by the physician (or health personnel) in the first case and by the patient in the second case." (Erözden, O. (2012), The Right to Die, Güncel Hukuk, December 2012/12-108, p.11).

Euthanasia is essentially based on a demand (or the fulfilment of such a demand), whereas suicide is not a demand or an act directed against another person, but the act of killing directed against oneself and with one's own hands.

Active euthanasia is different from suicide and assisted suicide. In active euthanasia, the physician or another person performs the act that leads to death. If the patient personally performs the medical method that leads to death, this is

suicide, and if the patient is assisted in this matter, this is assisted suicide.

2. Relevant constitutional adjudication on the issues of suicide, attempted suicide, or assisted suicide

In terms of the State's responsibility in suicide cases, it is necessary to examine, firstly, whether the authorities knew or should have known that there was a real and imminent risk of suicide and, if so, secondly, whether the authorities took all reasonable measures to prevent the risk. In examining the State's substantive obligation, the Court will examine whether the authorities took all reasonable measures to eliminate the known risk of suicide, to minimise the potential risk of suicide, to prevent being driven to suicide, to prevent drug use in public institutions such as prisons. On the other hand, the Court also examines complaints concerning the effectiveness of the investigation in cases of suicide for which the State cannot be held substantively responsible.

For instance, in the leading judgment in the individual application of *Mehmet Kaya and Others* (no. 2013/6979, 20 May 2015), the allegations asserted within the scope of the right to life were examined in its substantive aspect. Within the framework of the basic approach adopted by the Constitutional Court with regard to the positive obligations incumbent on the State, the Court has noted that under certain special conditions, the State is also obliged to take necessary measures in order to protect an individual's life from the risks likely to be caused by the individual's own acts. It has been also indicated that in order to speak of such an obligation, which is also applicable for the death incidents taking place in the prisons, it must be primarily ascertained whether the prison officers have been aware of or ought to have been aware of the real risk that a person under their control may kill himself, and if there is such a risk, it must be examined whether they have performed all necessary acts and actions expected from them for elimination of this risk within the framework of reasonable limits and within the scope of their powers.

The Court has paid regard to the facts that the convict Erkan Kaya was staying at his own will in the section of the prison called "observation"; that he had only received drug treatment due to his physiological disorders; that there is no information indicating that an assessment as to the type and place of his treatment was made by and between the prison's administrative personnel and relevant doctors serving in the prison and other institutions by taking into account the degree of disorder suffered by the convict; and that the prison officers failed to prevent the convict from finding a lighter to set his bed on fire, the act which he had previously attempted. Having regard to the foregoing conditions as a whole, the

Constitutional Court has concluded that the prison officers did not take necessary measures for the prevention of Erkan Kaya's death within the framework of their duties and powers and, thereby, the obligation to protect life was breached in the present case (for similar Court's judgments see, among many others, *Nejla Özer and Müslim Özer*, no. 2013/3782, 21 April 2016; *Serfinaz Öztürk*, no. 2014/18274, 21 September 2017; *Recep Kolbasar*, no. 2014/5042, 26 December 2017).

In the case of *Mehmet Karabulut* (no. 2013/512, 5 November 2015), the Court has considered that although the deceased, who was performing his military service as an infantry soldier, killed himself by his own will, the provocative sentence "*you are dishonest if you do not shoot yourself* " uttered by one of the persons who were present at the incident scene when the deceased put his rifle to his head may be considered to be a factor reinforcing the deceased's tendency to commit suicide; and that therefore, possible effects of this phrase on the deceased's death should have been investigated. Accordingly, the Court has noted that it was not adequately investigated who had uttered these words during the incident and an assessment on the possible effects of these provocative words on the deceased's death was not made within the scope of the investigation. It has been accordingly held that there has been a breach of the obligation to conduct an effective investigation under the right to life guaranteed in Article 17 of the Constitution.

In the case of *Doğan Demirhan* (no. 2013/3908, 6 January 2016), in the assessment of whether the obligation to conduct an effective investigation required by Article 17 of the Constitution has been fulfilled in the case of suicide at the workplace; it has been determined that the competent authorities did not take all reasonable measures for the collection of evidence, such as not investigating the claim that the deceased was left-handed and that it was contrary to the ordinary course of life that he fired the shot that caused death with his right hand, and not considering that the statement of the suspect Y.Ç. should be taken again regarding the detection of gunshot residue as a result of the examination of the hand swabs after the statement was taken by the law enforcement officers. In this way, it has been understood that there are some deficiencies that weaken the possibility of revealing the cause of the death and the responsible persons, if any, and have a significant effect on its depth and seriousness, and it has been concluded that there has been a violation of the procedural dimension of the right to life due to the stated deficiencies.

E. Lethal use of force during law enforcement

1. The key legal norms regulating the application of lethal force during law enforcement activities

Article 17 § 4 of the Constitution sets out the exceptional circumstances in which the State will not be held responsible in the event of death as a result of the use of force. In particular, this constitutional provision provides that an interference with the right to life shall be lawful in the following cases: (i) for self-defence; and, when permitted by law as a compelling measure to use a weapon, (ii) during the execution of warrants of capture and arrest, (iii) the prevention of the escape of lawfully arrested or convicted persons, (iv) the quelling of riot or insurrection, or (v) carrying out the orders of authorised bodies during state of emergency. In addition, Article 13 of the Constitution stipulates that fundamental rights and freedoms in general, including the right to life, may be restricted "only by law."

These provisions of the Constitution require the law and other regulations to specify which officials may use which force/weapon, in which circumstances, how and to what extent. In this scope, Article 16 of the Law no. 2559 on the Duties and Power of the Police regulates the authority of the police to use force and weapons. This article shows in which cases, against whom, by which means, in which procedure, for what purpose and to what extent the police can use force and weapons. The situations in which the use of weapons by the police is "permitted" in this article can be summarised as follows: a) in the exercise of the right to legitimate defence b) to break resistance c) for the purpose of arrest d) to neutralise attacks on certain places with Molotov cocktails, explosives, flammable, inflammable, incendiary, suffocating, wounding and similar weapons.

On the other hand, Article 16 of the Law no. 2559 restricts the use of weapons in the specified situations based on the principle of proportionality. Firstly, Article 16 § 7 (a) of the Law permits the use of weapons "within the scope of the exercise of the right to legitimate defence", but Article 25 § 1 of the Turkish Penal Code does not allow this. Article 25 § 1 of the Turkish Penal Code limits the use of weapons in this case to the extent of "the necessity of defence in proportion to the attack." However, Article 27 of the Turkish Penal Code provides for a reduced sentence or no sentence at all if this limit is exceeded under certain conditions. Secondly, Article 16 § 7 (b) of the Law authorises the use of arms "in the face of resistance which it is unable to neutralise, with a view to breaking that resistance", but limits the use of arms in this case "to the extent of breaking ... the resistance." Thirdly, Article 16 § 7 (c) of the Law authorises the use of a firearm "for the purpose of ensuring the apprehension of the suspect", but limits the use of a firearm "to the

extent necessary to ensure ... the apprehension of the suspect." Fourthly, Article 16 § 7 (d) of the Law authorises the use of weapons against those who attack or attempt to attack certain places "... with ... similar weapons in order to neutralise the attack", but limits the use of weapons "to the extent necessary to neutralise ... the attack."

2. Relevant constitutional adjudication on the use of lethal force by law enforcement officials

The Constitutional Court has already examined many individual applications on the allegations of deaths caused by the use of force by security forces by the means of weapons (see among many others *Cemil Danışman*, cited above; and *Mustafa Çelik and Siyahmet Şaran*, no. 2014/7227, 12 January 2017), bombs in air operations (see *Encü and Others*, no. 2014/11864, 24 February 2016, § 11), sticks and physical force (see *İpek Deniz and Others*, no. 2013/1595, 21 April 2016), tear gas (see *S.K.*, no. 2014/10839, 25 February 2015; and *Ulaş Lokumcu*, no. 2013/7753, 27 October 2016), and tear gas grenades (see *Turan Uytun and Kevzer Uytun*, no. 2013/9461, 15 December 2015, § 59; and *İbrahim Aslan*, no. 2014/5978, 30 June 2016). In particular, in the case of *Turan Uytun and Kevzer Uytun* cited above, the Constitutional Court concluded that, taking into account the consequences of gas grenades, they could be considered as weapons: "*Since there is a risk that gas grenades may cause serious injuries or, as alleged in the concrete case, deaths as a result of improper firing of tear gas weapons, the principles accepted by the Constitutional Court regarding the use of firearms should be used as an evaluation criterion for the use of these weapons to the extent appropriate*" (*ibid*, § 59).

The Constitutional Court considered that cases of death occurring as a result of the use of force by public officers must be examined within the scope of the State's negative obligation under the right to life. This obligation concerns both deliberate killing and the use of force that ends in death without premeditation (see *Cemil Danışman*, cited above, § 44). Within the scope of the negative obligation concerning the right to life, the officers who use force through the exercise of public authority bear the responsibility to not end the life of any individual in an intentional and unlawful way (see *Serpil Kerimoğlu and Others*, no. 2012/752, 17 September 2013, § 51).

Even in situations laid down in Article 17 § 4 of the Constitution, the Constitutional Court considered that it must be absolutely necessary to use lethal force as a last resort when there is no other possibility of intervention left. For this reason, bearing in mind the inviolable nature of the right to life, there is a need

for a strict review on the requirements of necessity and proportionality in cases involving such use of force that might result in death (see *Cemil Danışman*, § 50; *İpek Deniz and Others*, § 117).

In making an assessment on this aspect of the use of force by public officers, the Court must subject deprivations of life to the most careful scrutiny by taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination (for a similar judgment of the ECtHR, see *McCann v. the United Kingdom*, § 150). Also, in the evaluation which will be made about this subject, regard must be had, as a whole, to the conditions under which the incident occurred and the course over which it developed as a whole (see *Cemil Danışman*, § 57; for a similar judgment of the ECtHR, see also *Andronicou and Constantinou v. Cyprus*, no. 25052/94, 9 October 1997, § 182).

Lastly, the circumstances surrounding the impugned death must be carefully examined, and the acts previously performed by the deceased as well as the nature of the danger that might have been posed by him/her must also be taken into consideration (see *Cemil Danışman*, § 63).

To ensure the effectiveness of investigations concerning cases of deaths arising, or allegedly arising, from the use of force by public officers, the investigating authorities must be independent from those persons who might have been involved in the case. This requirement does not only define hierarchical and institutional independence but also necessitates that the investigation is actually (also in practice) carried out independently (see *Cemil Danışman*, § 96).

In the case of *Şehmus Altındağ and Others* (no. 2014/4926, 9 January 2020), the Constitutional Court held that there has been a violation of the right to life due to ineffective criminal investigation into the deaths and injuries resulting from the use of firearms by security forces. The applicants were among the crowd which gathered for the burial of three persons allegedly being a member of a terrorist organisation, namely the PKK. During the impugned incident, the security officers had opened fire on the crowd on account of which seven persons lost their lives and several persons were injured. At the end of the investigation, a decision of non-prosecution was ultimately issued in respect of the security officers as they had acted within the limits of legitimate defence. Finding a violation of the procedural aspect of the right to life, the Constitutional Court held that the investigating authorities had failed to elucidate the circumstances surrounding the incident involving deaths and injuries and to subject the obtained evidence to

thorough, objective and impartial analysis.

On 13 January 2021, the Constitutional Court found violations of both substantial and procedural aspects of the right to life safeguarded by Article 17 of the Constitution in the individual application lodged by *Tochukwu Gamaliah Ogu* (no. 2018/6183) due to the death of a foreigner after being wounded by a bullet fired by a police officer. In the present case, the only way to determine the firing distance was to examine the bullet hole in the shirt worn by the deceased. However, since the shirt had been lost, no definite assessment could be made regarding the distance from which the bullet had been fired. An analysis was conducted to ascertain whether there had been gunshot residue on the suspect's hands approximately seven hours after the incident. Although it was not a complex process to obtain such evidence, as was also the case for securing the other evidence, the unreasonable steps taken in this sense resulted in a failure to obtain the potential evidence.

The applicant's requests for an investigation into the identity of the deceased and then for participating in the criminal proceedings were rejected by the assize court which subsequently concluded the case disregarding the documents submitted. It was not deemed necessary by the court to investigate the identity of the deceased, on the ground that it would make no sense in murder cases. As a result of the court's having insisted on rejecting the applicant's request to participate in the proceedings, the matter was again brought before the Court of Cassation, thus prolonging the proceedings for approximately eight years.

At the investigation stage, the DNA profile of the deceased was obtained from the bone sample during the autopsy. Nonetheless, the court persistently refused to investigate the deceased's identity and did not accept the applicant's request to participate in the proceedings. Lack of due diligence during investigation or prosecution processes may call into question the independence of the investigation and give an impression that there is an unwillingness on the part of the judicial authorities to achieve justice.

In the present case, refusal to investigate the matter, which was an absolute necessity, also resulted in a failure to meet the promptness criterion with a view to ensuring effectiveness. The case is still pending before the first instance court despite the fourteen years having elapsed since the incident. It was revealed by the competent authorities that the killing had not pursued a legitimate aim under Article 17 of the Constitution, and that the officers involved in the applicant's killing had done so neither to prevent any attempt to abscond nor to make a self-defence. The matter discussed by the competent authorities and underlying the

decision of lack of jurisdiction was the degree of criminal responsibility on the part of the accused police officer.

According to the Court, the death of the applicant's relative due to a public officer's conduct should necessarily be subject to examination. It is incumbent on the Court to establish the State's responsibility arising from the Constitution and the ECHR. The Court has concluded that the State acted in breach of its substantial and procedural obligations in the present case where a person under its control had been killed by a public officer. Consequently, the Court has found a violation of the right to life.

F. Covid-19 pandemic

During the Covid-19 pandemic, after the very first case was declared in March 2020 in Türkiye, the Turkish Government took many administrative measures restricting the right to life, the right to liberty and the right to free movement with the aim to prevent the spread of the virus and protect the health of the individuals such as, among others, the mandatory use of masks in public spaces, curfew decisions over vulnerable persons (in particular, persons with compromised immune system, persons under the age of 20 and over the age of 65), closure of workplaces, educational centres such as schools, universities and training centres, manufactories, shopping and entertainment centres for a certain period of time, without declaring any emergency situation in accordance with Article 15 of the Constitution. This situation led to discussion on the legality of these measures, which were generally argued to be based on executive orders (Health or Interior Ministries' circulars or presidential decisions) and not on legal provisions.

1. Curfews

The Constitutional Court has already issued a recent judgment on curfews for persons over 65 years of age in the individual application of *Senih Özay* (no. 2020/13969, 9 June 2020).

In the relevant application, it was alleged that certain rights and freedoms were violated due to the curfew imposed on persons over the age of 65 years due to the risk of the pandemic, that the curfew was unlawful, that the right to personal liberty and security and the freedom of movement were violated due to the curfew.

The applicant argued that the right to personal liberty and security can only be

restricted by a judge's decision according to the Constitution, that rights and freedoms can only be suspended in a state of emergency pursuant to Article 15 of the Constitution, that there was no state of emergency at the time the curfew was declared, and that the provisions of the Provincial Administration Law no. 5442 and the Public Health Law no. 1593 cannot constitute the legal basis for the curfew.

As a result, it was concluded that a full remedy action before the administrative courts is an effective remedy that has the potential to resolve the applicant's request for a stay of curfew in a reasonable time, that an application should be made when the request for a stay of execution is not resolved in a reasonable time with the due diligence required by the sensitivity of the situation and this situation creates the risk that the decision to be rendered in the case in question will be unsatisfactory, and that the application was inadmissible due to "non-exhaustion of remedies."

2. Vaccination

Another issue, which came into question during the pandemic, was the matter of whether vaccination against the Covid-19 virus should be made compulsory or not. In Türkiye, the only law that contains regulations on vaccination is the Public Health Law no. 1593 of 1930. In the Law, protection of the society from infectious diseases, prevention of epidemics, and combating epidemics are among the duties of the State. The only vaccine specified as a compulsory vaccine in the law is the smallpox vaccine.

In Article 57 of the Law, under the heading of combating epidemic diseases within the borders of Türkiye, infectious diseases for which notification is obligatory are regulated. In this article, epidemic diseases to be fought are counted one by one and it is made possible to vaccinate those who are exposed to the disease listed in this Article, according to Article 72 § 2 of the Law. However, due to the absence of the Covid-19 epidemic among the diseases considered as epidemic diseases in this Law of 1930, within the scope of the current legal regulations, it is not possible to impose compulsory vaccination with government policies in terms of the Covid-19 epidemic. It is foreseen that the compulsory vaccination can only be brought by a legal regulation.

Until now, no individual application on the Covid-19 vaccination has been brought to the Constitutional Court and, accordingly, no decision has been rendered on this specific matter. Nevertheless, it should be noted that both the ECtHR and the Constitutional Court have examined the issue of compulsory

vaccines of infants under the right to private life and not under the right to life (for the Court's judgments see, *Halime Sare Aysal* [Plenary], no. 2013/1789, 11 November 2015; *Muhammed Ali Bayram*, no. 2014/4077, 29 June 2016; *Salih Gökalp Sezer*, no. 2014/5629, 21 November 2017; for similar ECtHR's judgments see, *Boffa and Others v. San Marino*, no. 26536/95, Commission decision of 15 January 1998, Decisions and Reports (DR) no. 92-B, p. 34; *Solomakhin v. Ukraine*, no. 24429/03, § 33, 15 March 2012, with further references; and, more recently, see *Vavřička and Others v. Czech Republic* [GC], nos. 47621/13 and 5 others, §§ 258-264, 8 April 2021).

In particular, it is observed that vaccination practices are discussed before those judicial bodies within the framework of the right to private life that protects bodily integrity or the right to self-determination or the right to material and moral protection. However, it should be recalled that a violation of the right to life may be alleged where it can be medically demonstrated that a compulsory or voluntary vaccination resulted in death or fatal harm. In the context of bodily integrity, it is also possible that the right to life or the prohibition of ill-treatment may come to the fore due to adverse/side effects such as death that vaccination practices may cause.

As it can be understood from the aforementioned decisions of the Constitutional Court in individual applications, the Court requires that the compulsory vaccination practice has a legal basis, the regulation must be clear and detailed, the legitimate purpose of the practice and the balance between the legitimate purpose and the intervention in order for it not to constitute a violation of rights. In addition, since the practice causes interference with the inviolability, material and spiritual existence of the person under Article 17 of the Constitution, it cannot be contrary to the word and spirit of the Constitution, the requirements of the democratic social order and secular republic and the principle of proportionality in accordance with Article 13 of the Constitution.

The legal regulation that will be the basis for vaccination must comply with the aforementioned criteria. However, although the regulation to be made in the legislation complying with the relevant criteria does not cause a violation of rights, since permanent side effects can be observed in very rare cases in vaccination, the health of the vaccinated person may be endangered by the formation of a weakened disease through deliberate infection. In this case, the interference with the right to bodily integrity is aggravated. As a matter of fact, according to the assessments of the ECtHR in the cases of *Boffa and Others v. San Marino* and *Solomakhin v. Ukraine*, cited above, if such interventions harm the health of the person, there may be a violation of rights.

Moreover, vaccination is a medical intervention and represents an interference with the right to respect for private life. For this reason, as in every medical intervention, the consent of the person to be vaccinated is required for the legality of the medical intervention for vaccination; if the person is a minor, vaccination must be carried out with the permission of his/her parents. The only vaccine included within the scope of compulsory vaccination in Türkiye is the smallpox vaccine; and as stated in the cases of *Halime Sare Aysal*, *Muhammed Ali Bayram* and *Salih Gökalp Sezer*, cited above, other vaccination practices other than the smallpox vaccine are vaccines within the scope of the Expanded Immunisation Programme of the Ministry of Health, which was established on the basis of the decree with the force of law, and the administration of these vaccines can only be carried out with the consent of the person to be vaccinated or if the person is a child, with the consent of his/her parents; in order to make it compulsory, it needs to be regulated by law.

III. Expansive interpretations

A. Socio-economic dimensions

1. Socio-economic dimensions of the right to life in the constitutional text

Under the terms of Article 2 of the Constitution, "*The Republic of Türkiye is a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble.*" It is clear from the wording of this constitutional provision that the concept of "social state" is part of the characteristics of the Republic, - a democratic, secular and social state governed by the rule of law respecting human rights -, which are irrevocable as per Article 4. This means that the provisions of Article 2 - including the notion of "social state" - shall not be amended, nor shall their amendment be proposed.

In addition, Article 5 of the Constitution provides that the aims and duties of the State are, among others, "*to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law; and to provide the conditions required for the development of the*

individual's material and spiritual existence." As explained above, the "right to protect and improve his/her material and spiritual existence" is protected under Article 17 of the Constitution read in conjunction with Article 8 of the ECHR.

2. Relevant constitutional adjudication concerning socio-economic dimensions of the right to life

By referring to Article 5 of the Constitution, the Constitutional Court has defined the concept of "social state" as the means to achieve the aim of the State, which is to ensure social peace and social justice and to provide a decent living standard for everyone compatible with human dignity. In this scope, the Court has recognised a close link between Article 5 and Article 60 of the Constitution ensuring the right to social security, which provides security and safety for the future and therefore is a means to achieve the happiness of the individual (see Court's judgment, no. E. 1986/16, K. 1986/25, 21 October 1986; and, Court's judgment, no. E. 1988/19, K. 1988/33, 26 October 1988).

The Court has also developed case-law in which it has reached the conclusion that Article 60 has also a close link with the right to life guaranteed by Article 17 of the Constitution. In this regard, the protection of the right to life and the right to protect and improve his/her corporeal and spiritual existence, one of the conditions of the rule of law, shall also be ensured by providing social security. In fact, the right to life and the right to protect one's material and spiritual existence, both guaranteed under Article 17, are inalienable and indispensable fundamental rights which are closely interrelated with each other. The removal of all kinds of obstacles to these rights has also been assigned as a duty to the State. The State, which is bound to protect the weak against the strong, will ensure genuine equality, maintain social balance and thus fulfil the requirement of a genuine rule of law. The protection of the right to life, which is the aim pursued by the rule of law, will be realised by ensuring and maintaining social security. In this sense, the legal regulations of the competent authorities providing social security shall not be contrary to Article 17 nor shall they deprive the rights guaranteed under this article of their practical meaning (see Court's judgment, no. E. 1990/27, K. 1991/2, 17 January 1991).

B. Environmental dimensions

1. Environmental dimensions of the right to life in the constitutional text

Article 17 of the Constitution, safeguarding the right to life, does not include

any provisions regarding environmental dimensions. In this regard, it should be looked elsewhere in the text of the Constitution. In fact, the normative basis of the right to a healthy environment, in the constitutional context, is the regulation that everyone has the right to live in a healthy and balanced environment, which is set forth in Article 56 of the Constitution.

However, this provision is enshrined within the section "social and economic rights and duties" of the Constitution. In Article 148 § 3 of the Constitution, where the right to an individual application is regulated, it is set out "*Everyone may apply to the Constitutional Court on the ground that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted*." It is thereby indicated that an individual application cannot be lodged due to an alleged violation of the second and third generations of rights enshrined in the Constitution. However, the right to a healthy environment must be assessed in conjunction with Article 17 of the Constitution embodying the legal interests with respect to physical and mental integrity, and Articles 20 and 21 thereof, which respectively safeguards the right to respect for private and family life and the inviolability of domicile, and by also taking into account its impact on the legal interests inherent in these provisions (see *Mehmet Kurt* [Plenary], no. 2013/2552, 25 February 2016, § 46).

The right to environment has today become much more important as it is of particular concern to the present generation and even to the next generations due to its close relation with the rights to life and to health. As it is very difficult and troublesome, and even it is sometimes impossible, to reinstate the environment after being polluted and destroyed, it is required that investments and activities to be performed for development and economic progress be carried out without destroying the nature and polluting the environment; and that antipollution and preservative measures be given weight instead of cleaning polluted environment or restoration of disrupted environment (see the Court's judgment no. E.2013/89, K.2014/116, 3 July 2014; no. E.2006/99, K.2009/9, 15 January 2009). The right to a healthy and balanced environment is not one of the rights that would be renounced on the grounds that the rule to be introduced would lead to economic, bureaucratic and actual obligations and that the productive activities would be affected (see the Court's judgment, no. E.2011/110, K.2012/79, 24 May 2012).

All legal interests included within the realm of the private life are safeguarded under Article 8 of the ECHR. However, it appears that these legal interests fall into the scope of various provisions of the Turkish Constitution. In this context,

Article 17 § 1 of the Constitution sets out that everyone has the right to protect and improve his/her corporeal and spiritual existence. The right to protect and improve corporeal and spiritual existence corresponds to the right to respect for physical and mental integrity and right to self-fulfilment and to make decisions regarding himself, which are safeguarded under the right to respect for private life within the framework of Article 8 of the ECHR. Apart from that, certain legal values inherent in the notion of private life are enshrined in Article 20 of the Constitution, and the other sub-categories of private life – namely, confidentiality of communication and right to respect for domicile – are safeguarded under Articles 21 and 22 of the Constitution. It is accordingly seen that the rights enshrined in Article 8 of the ECHR are basically set out in Articles 17, 20, 21 and 22 of the Constitution.

Within the scope of the protection of private life, several legal interests that are compatible for freely developing one's personality are included within the scope of this right. In this respect, legal interest of a person with respect to his physical and mental integrity is also safeguarded within the scope of the right to respect for private life. One of the legal interests guaranteed under the right to physical and mental integrity is the right to a healthy environment (see the Court's judgment, no. E.2013/89, K.2014/116, 3 July 2014).

2. Relevant constitutional adjudication concerning environmental dimensions of the right to life

In the case of *Mehmet Kurt* cited above, the Plenary of the Constitutional Court found a violation of the applicant's right to protect and improve his corporeal and spiritual existence safeguarded in Article 17 of the Constitution as the inferior courts failed to duly examine his main allegations that the environmental nuisance caused by the plant established next to his immovable property had an adverse impact on his health and quality of life and that the environmental assessment made by the relevant administration was insufficient, which thereby led to the conclusion that the public authorities failed to fulfil their positive obligations to ensure the protection and effective enjoyment of the applicant's right to protect and improve his corporeal and spiritual existence.

In the event that the interventions raised in the context of environmental issues directly affect the right to the protection and development of material and spiritual existence defined in Article 17 of the Constitution, it is possible to conduct an examination by establishing a connection with the legal interests under this article. It is necessary to determine whether the public authorities have taken the necessary steps to ensure the effective protection of this right and whether a fair

balance has been struck between the conflicting interests in the context of the environmental impact in question.

In the petition filed by the applicant during the proceedings in question and in the petitions for objection to the expert report and reply to the reply, it is seen that the applicant made requests and objections to take into account the effects of the relevant facility on the health and quality of life of himself and the surrounding community. Despite these objections, it is understood that the court did not order a new expert examination, nor did it reveal the justification for the said appreciation. Although the reversal decision of the Council of State also pointed out the lack of evaluation in the context of the judgment process and especially the expert report, it is understood that the mentioned issue was not fulfilled and the decision of the chamber was lifted and the judgment of the court of first instance was approved.

One of the most important elements of the procedural safeguards that should be provided to individuals who are subject to environmental decision-making processes is the opportunity to bring the actions or omissions of public authorities before an independent judicial authority and to have them duly examined. It is essential not only to provide the opportunity to apply to these authorities, but also for the relevant public authorities to approach the issue with due diligence, to establish a balance by taking into account all relevant interests, and for this purpose, it is essential that individuals are enabled to participate effectively in the process and have the opportunity to present all their objections and evidence, to have them examined and to have all their substantive claims met with their justifications.

In terms of the concrete application, it is understood that the applicant's main allegations that the environmental disturbance caused by the operation of the facility in question has a negative impact on health and quality of life and that the environmental assessment made by the administration in this context is insufficient is the most important factor in determining whether the public authorities have established a fair balance between the interests of the applicant and the public. Despite this, it is seen that the applicant's said requests and objections were not evaluated by the trial courts. It is understood that the court's examination and reasoning leading to the conclusion that the environmental impact assessment report was not obtained for the facility in question is quite limited, in this respect, no direct response was given to the applicant's main allegations and the applicant did not have the opportunity to properly evaluate the allegations regarding the environmental activity in question before the judicial authorities.

In the light of these findings, it is concluded that the public authorities failed

to fulfil their positive obligations in the context of protecting and ensuring the effective use of the applicant's right to the protection and development of material and spiritual existence. As a result, it has been decided that the applicant's right to the protection and improvement of material and spiritual existence guaranteed under Article 17 of the Constitution has been violated.

C. The issue of domestic violence

In the case of *T.A.* ([Plenary], no. 2017/32972, 29 September 2021), on 29 September 2021, the Plenary of the Constitutional Court found a violation of the obligation to protect life and conduct an effective investigation, safeguarded by Article 17 of the Constitution, due to the public authorities' failure to effectively implement the protective and preventive measures ordered so as to prevent the violence against women and lack of a criminal investigation against the public officers being negligent in the incident.

In many previous applications, the Court has examined whether the legislative infrastructure for the protection of victims of violence or those who face the risk of violence has been sufficient in terms of complaints concerning the violence against women. As also stated in these decisions, for the purposes of adopting an effective and immediate method to protect the family and to prevent violence against women, and affording an immediate protection to the person exposed to violence or who faces such a risk, Law no. 6284 and the relevant regulation issued in accordance with this Law have been put into practice in accordance with the standards set forth by the international conventions to which Türkiye is a party.

It has been observed that Law no. 6284 sets forth relevant principles and procedures as well as sanctions with respect to measures to be taken for the protection of women, children and family members exposed to or potentially exposed to violence and prevention of violence against these persons. In addition, administrative units such as the Violence Prevention and Monitoring Centre ("the Centre") have been established through Law no. 6284 for the purpose of preventing violence against women. Accordingly, it has been understood that the necessary legal infrastructure has been established within the framework of the State's obligation to afford protection, and that the legal system set up to protect those who are, or who face the risk of being, exposed to violence is adequate.

In the circumstances of the case, it appears that V.A. had constantly disturbed S.E., through communication devices (voice calls, text messages) or by getting closer to her, insulted and threatened her, and that several incidents had occurred

between the parties within a short period of time (about 6 months). During the period elapsing from S.E.'s divorce to her death, a number of injunctions were ordered in her favour, the last of which was to prevent her husband (V.A.) from getting closer her.

Accordingly, in consideration of the fact that serious complaints had constantly been made to the police and judicial authorities on account of the said incidents and that the injunctions had been notified every time to the Centre that was responsible for monitoring the process, it is obvious beyond any doubt that the public authorities, which were responsible/authorized for the prevention of violence against women and needed to act in cooperation/coordination with each other, were indeed aware of the imminent and real risk to S.E.'s life, and were in a position to predict any attack that would have serious life-threatening consequences.

It has been clearly observed in view of the process resulting in the murder of S.E. that the injunction ordered following the last incident, which was a restraining order, was not served on V.A., that in spite of the alleged failure to comply with the injunction, the imposition of forced imprisonment was never considered, that the Centre never contacted S.E. to provide support services for the prevention of violence, and that the incumbent public authorities, who had the opportunity, even in the absence of evidence, to order an ex officio injunction and submit it to the competent authority for approval, made no attempt to take these steps in order to prevent violence, nor did they properly follow the injunctions already ordered.

In consideration of the fact that S.E. was killed during the delivery of the joint child to V.A., the public authorities' failure to make an evaluation regarding the delivery of the joint child or the child's meeting with the father also constituted another serious negligence pointing to the authorities' failure to take the necessary measures to prevent the life-threatening situation and to implement Law no. 6284 in an effective and practical manner.

As a result, the public authorities cannot be said to have effectively exercised the public power entrusted to them, which was based on the legal/institutional infrastructure, in accordance with their obligation to protect life pursuant to Law no. 6284 and the relevant legislation. In other words, it is clear that public authorities failed to take and implement the necessary measures to protect the life of S.E.

Besides, in the present case, the relevant units did not grant a leave for investigation against the responsible public officers, which was also deemed appropriate by the

appellate authorities. The procedure whereby a leave is sought for an investigation against the responsible public officers should not be applied in a way giving the impression that it will hinder the effective conduct of investigation or that the public officers are exempted from criminal investigation. In order to prevent similar incidents, it is also of importance that those responsible for minimising the risks to the life and physical integrity of individuals and for taking the necessary measures be identified and the State show a deterrent judicial reaction to the failed upholding of established responsibilities. Consequently, the Court has found a violation of the right to life insofar as it relates to the obligations to protect life and conduct an effective investigation.

Annex 1: List of cited legal provisions

1) Constitutional provisions

Constitution of the Republic of Türkiye of 1982 (last amended on 16 April 2017)

- Article 2
- Article 4
- Article 5
- Article 12
- Article 13
- Article 15
- Article 17 §§ 1, 2 and 4
- Article 20
- Article 21
- Article 22
- Article 38 § 10
- Article 56
- Article 90 § 5
- Article 129 § 6
- Article 148 § 3

2) Legislative provisions

a) Constitutional amendment laws

Law no. 5170 Amending Certain Provisions of the Constitution of the Republic of Türkiye (dated 7 May 2004)

Law no. 5982 Amending Certain Provisions of the Constitution of the Republic of Türkiye (dated 7 May 2010)

b) Ordinary laws

Turkish Penal Code no. 765 (repealed) (dated 1st March 1926)

Law no. 1593 on Public Health (dated 24 April 1930)
- Article 57
- Article 72 § 2
- Articles 215-219

Law no. 2559 on the Duties and Power of the Police (dated 4 July 1934)
- Article 16 (as amended by Article 4 of the Law no. 5681 dated 2 June 2007; and lastly, by adding a sub-paragraph d) to the last paragraph of Article 16 with Article 4 of the Law no. 6638 dated 27 March 2015)

Law no. 5442 on Provincial Administration (dated 10 June 1949)

Law no. 2238 on Organ and Tissue Procurement, Storage and Grafting (dated 29 May 1979)
- Article 11 (as amended by Article 41 of the Law no. 6514 dated 2 January 2014)

Law no. 2709 on the Constitution of the Republic of Türkiye (dated 18 October 1982)

Law no. 2827 on Population Planning (dated 24 May 1983)
- Article 5

Law no. 4771 Amending Various Laws (dated 3 August 2002)

Law no. 5218 on the Abolition of the Death Penalty and Amendments to Certain Laws (dated 14 July 2004)

Turkish Criminal Code no. 5237 (dated 26 September 2004)
- Article 25 § 1
- Article 27
- Article 46 § 1 a)
- Article 47
- Article 81

- Article 84
- Article 99
- Article 100

Turkish Criminal Procedure Code no. 5271 (dated 4 December 2004)
- Article 88
- Article 159

Law no. 5996 on Veterinary Services, Plant Health, Food and Feed (dated 11 June 2010)
- Article 9 § 3

Law no. 6284 to Protect Family and Prevent Violence against Women (dated 8 March 2012)

c) Regulations

Patient Rights Regulation (dated 1 August 1998 and published in the Official Gazette numbered 2342 – amended on 16 January 2019 and published in the Official Gazette numbered 30657)
- Article 13
- Article 24
- Article 25

Regulation on the Construction of Cemetery Sites and Funeral Transport and Burial Procedures (published in the Official Gazette dated 19 January 2010 and numbered 27467)
- Article 4 § ç)

3) International provisions

Universal Declaration of Human Rights (signed on 6 April 1949)
- Article 3

International Covenant on Civil and Political Rights (ICCPR) (ratified on 4 June 2003)
- Article 6
- Article 49

Convention for the protection of Human Rights and Dignity of the Human Being

with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ratified on 2 July 2004)

- Article 5

1989 Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty (ratified on 28 October 2005)

1966 Optional Protocol to the ICCPR (ratified on 1st March 2006)

4) Other

Convention for the Protection of Human Rights and Fundamental Freedoms (usually known as the European Convention on Human Rights) (ratified on 18 May 1954)

- Article 2
- Article 8
- Article 15

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (ratified on 12 November 2003)

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (ratified on 20 February 2006)

Annex 2: List of cited cases

1) Constitutional Court of the Republic of Türkiye

a) Constitutionality review

1. C.C., E.1986/16, K.1986/25, 21 October 1986
2. C.C., E.1988/19, K.1988/33, 26 October 1988
3. C.C., E.1990/27, K.1991/2, 17 January 1991
4. C.C., E.1999/68, K.1999/1, 6 January 1999
5. C.C., E.2005/151, K.2008/37, 3 January 2008
6. C.C., E.2006/99, K.2009/9, 15 January 2009
7. C.C., E.2007/78, K.2010/120, 30 December 2010
8. C.C., E.2010/58, K.2011/8, 6 January 2011
9. C.C., E.2011/110, K.2012/79, 24 May 2012
10. C.C., E.2013/89, K.2014/116, 3 July 2014

b) Individual application

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2. *Salih Akkuş*, no. 2012/1017, 18 September 2013
3. *Mehmet Ali Emir and Others*, no. 2012/850, 7 November 2013
4. *Sadık Koçak and Others*, no. 2013/841, 23 January 2014
5. *Cemil Danışman*, no. 2013/6319, 16 July 2014
6. *Cezmi Demir and Others*, no. 2013/293, 17 July 2014
7. *S.K.*, no. 2014/10839, 25 February 2015
8. *Mehmet Kaya and Others*, no. 2013/6979, 20 May 2015
9. *Filiz Aka*, no. 2013/8365, 10 June 2015
10. *Şenol Gürkan*, no. 2013/2438, 9 September 2015
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12. *Mehmet Karabulut*, no. 2013/512, 5 November 2015
13. *Halime Sare Aysal* [Plenary], no. 2013/1789, 11 November 2015
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22. *İbrahim Aslan*, no. 2014/5978, 30 June 2016
23. *Zeki Kartal* (dec.), no. 2013/2803, 21 July 2016
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29. *Naziker Onbaşı and Others*, no. 2014/18224, 9 May 2018
30. *Hüseyin Yıldız and İmiş Yıldız*, no. 2014/5791, 3 July 2019
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32. *Şehmus Altındağ and Others* (no. 2014/4926, 9 January 2020
33. *Abdulkadir Yılmaz and Others (2)*, no. 2016/13649, 29 January 2020
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2) European Court of Human Rights

1. *McCann v. the United Kingdom* [GC], no. 18984/91, 27 September 1995
2. *Andronicou and Constantinou v. Cyprus*, no. 25052/94, 9 October 1997
3. *Boffa and Others v. San Marino* (dec.), no. 26536/95, 15 January 1998
4. *Vo v. France* [GC], No. 53924/00, 8 July 2004
5. *Solomakhin v. Ukraine*, no. 24429/03, 15 March 2012
6. *Aydan v. Türkiye*, no. 16281/10, 12 March 2013
7. *Vavřička and Others v. Czech Republic* [GC], nos. 47621/13 and 5 others, 8 April 2021

17. Uzbekistan

Constitutional Court

Overview

Article 24 of the Constitution of the Republic of Uzbekistan includes the right to life as one of the fundamental rights of the individual, determining that it is an inalienable right of every person. Infringement of the right to life is the gravest crime. Therefore, in the Republic of Uzbekistan, the fight against murders is considered a priority. In terms of criminal punishments, the death penalty is no longer available. On the basis of the 2005 Decree of the President of the country, the death penalty was abolished with the decree's entry into force on January 1, 2008. Uzbekistan has ratified the International Covenant on Civil and Political Rights (ICCPR), as well as the two Optional Protocols to the ICCPR. Uzbekistan acceded to the Second Optional Protocol to the ICCPR in December 2008. Abortion is legal in Uzbekistan. However, abortion taking place later than 12 weeks requires medical reasons. Article 114 of the Criminal Code defines the conditions that criminalize abortion. Euthanasia is prohibited in Uzbekistan (Article 97 of the Criminal Code), and the act of "forcing to suicide" is considered a criminal act. The terms broader understandings of the right to life, "life" and "health" do not mean the literal meaning of the word "life", but the totality of social relations related to the protection of the individual.

Outline

I. Defining the right to life

A. Context

Article 24 of the Constitution of the Republic of Uzbekistan includes the right to life as one of the fundamental rights of the individual, determining that it is an inalienable right of every person, and infringement on it is the gravest crime. Therefore, in the Republic of Uzbekistan, the fight against murders is considered a priority.

The following information provides an overview of the legal context for the right to life in light of developments in Uzbekistan, especially regarding the field of criminal law. The meanings of the term "life" are addressed in Section I.B.

The action strategy for five priority areas of development of the Republic of Uzbekistan in 2017-2021 defines specific tasks to coordinate activities to combat and prevent crime, improve and strengthen the effectiveness of organizational and legal mechanisms for countering religious extremism, terrorism, other forms of organized crime, and corruption, and improve the legal culture of the population, and the organization of effective interaction in this area of state structures with civil society institutions and the media.

To date, large-scale work is being carried out in Uzbekistan to ensure the rule of law and prevent crime. A number of documents in this area have been adopted. Thus, the Decree of the President of the country "On measures to further improve the system of prevention of offenses and the fight against crime" defined the tasks of state bodies and the public. An important step was the adoption in 2014 of the Law of the Republic of Uzbekistan "On the prevention of neglect and delinquency among minors", which determined:

- a system of social, legal, medical and other measures;
- implementation of individual preventive work;
- ways to identify and eliminate the causes and conditions that contribute to neglect, homelessness of minors, their commission of offenses or other anti-social actions.

The adoption of the Law of the Republic of Uzbekistan "On restricting the distribution and consumption of alcohol and tobacco products" had an indirect impact. The law contains rules for protecting the health of citizens from the harmful effects of the use of alcohol and tobacco products, and from the associated

social and other negative consequences. The Law also provided for the creation of organizational and legal conditions for the formation and establishment of a healthy lifestyle in society.

At all times, the issues of crime prevention are especially relevant. That is why the Criminal Code of the Republic of Uzbekistan provides for tasks, which contribute to the prevention of crimes, namely:

- education of citizens in the spirit of observance of the Constitution and laws of the Republic;
- ensuring justice when sentencing a guilty person to punishment;
- establishment of responsibility for failure to report about an impending or committed grave or especially grave crime.

Crime prevention is understood as a system of state and public measures aimed at identifying and reducing crime, eliminating the causes and conditions for their commission and preventing new crimes.

The system of measures to combat crime can be divided into three areas - general, special and individual warning. The general prevention of serious crimes consists of:

- development and implementation of a well-thought-out socio-economic policy focused on a person, his needs and interests;
- creation and development at the present level of a system for the prevention of violent crimes (it is no secret that factors in the commission of serious crimes include: untimely or incorrect response to signals about threats of illegal acts, facts of preparation for intentional crimes; shortcomings in the organization of the activities of internal affairs bodies; red tape in the investigation of criminal cases of attempted murders or other serious violent crimes; non-execution or improper execution of the punishment imposed by the court);
- a rational deterrent criminal policy (a reasonable balance of hard and soft penalties must be maintained in criminal law);
- radical restructuring of the penitentiary system - the system of institutions for the execution of sentences (focus should be exclusively on the correction and re-education of convicts, compliance with recognized international standards and serving to adapt the prisoner to normal conditions of human life);
- raising the legal awareness and legal culture of the population (in January 9th, 2019, the Decree of the President of the Republic of Uzbekistan “On

> the fundamental improvement of the system of raising legal awareness and legal culture in society" was adopted, which identified a number of problems and shortcomings that impede the formation of a respectful attitude to human rights and freedoms, namely: the low level of legal awareness, legal culture, and legal literacy among the population and citizens.

In this regard, the main tasks of increasing legal awareness and legal culture in society are outlined: further improvement of the effectiveness of work to improve the legal awareness and legal culture of the population, the introduction of modern methods of increasing the legal knowledge of citizens in a harmonious combination with socio-political transformations, and the formation of strong legal immunity to protect the population.

Measures of special prevention of violent crimes are carried out in the family, school, as well as in the districts. When preventing these acts, it is necessary to pay special attention to the family, in particular, to improve the level and quality of education of family members, and improve intra-family relationships and take measures to improve the family microclimate; improving the living conditions of citizens, raising children in a healthy atmosphere.

An important role is played by psychological assistance to young families and the preparation of future parents for responsibility in raising children.

It is also necessary to recreate, of course, taking into account the new economic, social and other realities, the system of public prevention of violent crimes. This refers to, for example, the possibility of organizing nightly patrols of streets and other public places by public volunteers.

The preventive value of such measures cannot be denied. At present, it is important to find the best forms of stimulation, encouragement and development by the state of civic activity, based on the natural desire of people to organize and unite in order to protect themselves, their children, and loved ones from criminal encroachments.

Moreover, in order to prevent crimes against life and health, it is necessary to increase the effectiveness of countering the illegal circulation of alcoholic beverages, narcotic substances and psychotropic drugs. It is necessary to strengthen measures for the registration and treatment of mental disorders. Of great importance are also measures to ensure the birth of a healthy generation, the upbringing of children who are prosperous both physically and spiritually.

Speaking about the individual prevention of crimes against life and health, it is necessary to return to the question of the relationship between social and biological factors in the structure of the offender's personality. The problems of considering crime as an innate predisposition or the result of environmental influences, and the formation of a person's criminal behavior in society are very important. The innate inclinations of a person do not always play a significant role in the formation of a criminal.

Since crime is a negative social phenomenon, one must look for its origins not in the individual, but in society. Consequently, there are no innate criminals, they are formed as a negative product of society. Proceeding from this, it is necessary to select an individual system of measures and works required for a particular object of prevention.

The development of a legal framework for monitoring the behavior of those categories of the population that are somehow at risk is an effective measure for the individual prevention of violent crimes against life and health (especially in cases of domestic crime). Risk groups include:

- persons who do not have a permanent source of income for a long time (legal grounds are needed to find out on what specific funds they depend, and to assist them in finding employment, obtaining another specialty, etc.);
- the unemployed;
- persons systematically abusing alcohol;
- persons previously convicted, leading an immoral or illegal lifestyle (committing petty hooliganism, abusing alcohol);
- persons without fixed housing, engaged in vagrancy and begging;
- minors and young people aged 14-30, not studying and not working (as a preventive measure, the organization of control over the receipt of compulsory education can act).

Individual prevention of crimes against life and health comes from the strengthening of individual educational work with each person. In recent years, the proportion of crimes committed by convicted persons, the unemployed, persons without a fixed place of residence, or who do not have a permanent income, has been increasing. This means that preventing such occurrences is also an important countermeasure against violent crimes.

Separately, attention is drawn to the investigation of crimes against life and health as an effective measure to prevent crime. Investigations of violent crimes

require a high level of professionalism and efficiency in decision-making from law enforcement officers. The causes and effects of violent crimes can be latent and sometimes difficult to identify. Because of this, interrogators and investigators often face problems of overcoming the psychological barrier when talking with persons who have committed crimes.

In recent years, measures have been taken in the Republic of Uzbekistan to radically improve the judicial and legal sphere, which are aimed at protecting the rights and legitimate interests of the individual, building a democratic legal state and civil society.

As mentioned earlier, on February 7, 2017, by the Decree of the President of the Republic of Uzbekistan, an action strategy was adopted in five priority areas for the development of the Republic of Uzbekistan in 2017-2021. Ensuring the rule of law and further reforming the judicial and legal system is indicated in this strategy as a priority direction for the development of the state. Among the main tasks approved are: increasing the legal culture and legal awareness of the population, organizing effective interaction in this direction between state structures, civil society institutions and the media.

To implement these tasks, it is necessary to form knowledge and ideas about crime in general and about crimes against human life and health, in particular. Improving measures to improve the legal knowledge of citizens in a harmonious combination with socio-political transformations in the country is provided for by the Decree of the President of the Republic of Uzbekistan dated January 9, 2019 “On the radical improvement of the system of raising legal awareness and legal culture in society.” In this Decree, special attention is paid to the formation of a system of consistent communication to the population of the essence and significance of the socio-economic reforms being carried out in the country, and the adopted legislative acts. The main goal of the state in the implementation of these tasks is to strengthen in the minds of citizens of the idea that “the establishment of a spirit of respect for the laws in society is the key to building a democratic rule of law state.” All government measures will ultimately help to strengthen the legal awareness and legal culture of citizens, starting with the system of pre-school education, and will ensure the widespread promotion of the idea of maintaining a balance of personal and public interests.

In conclusion, it is noted that the prevention of violent crime will strengthen the rule of law and order in the Republic of Uzbekistan, improve the moral atmosphere in society and improve the upbringing of the younger generation.

B. Terminology and legal liability

1. Meanings of the term "life"

The terms "life" and "health", do not mean the literal meaning of the word "life", but the totality of social relations related to the protection of the individual. The value of life or health is immeasurably higher than the totality of social relations, and violation of the latter also leads to the violation of the former. Taking into account the value ratio, on the one hand of social relations that can be damaged by crimes against life, and on the other hand human life and health, the latter are the primary object of protection via the legal norms on liability for murder and for bodily harm.

In the new Uzbekistan, large-scale reforms are being implemented in order to establish a free civil society and build a humane democratic legal state. The main goal of these reforms is to ensure human rights and interests of citizens. After all, the honor and dignity of a person, his life and health or personal freedom are universal rights of all citizens. Article 26 of the Constitution of the Republic of Uzbekistan stipulates that no one may be subjected to torture, violence, cruel or other forms of oppression degrading human dignity. This constitutional norm fully meets the provisions of the Universal Declaration of Human Rights.

It should be especially emphasized that human life should be considered not only as a right under the law, but also as a value protected by the Constitution. According to the law, human life is protected as the highest value.

It should be noted that the Criminal Code of the Republic of Uzbekistan equally protects the lives of all people. This corresponds to the principle of equal rights for all citizens – the life of every person is protected regardless of any particular attributes: the age, gender, health and other characteristics of the victim do not matter. Murder is recognized as the unlawful deprivation of life, this includes the life of an infant as well as that of an elderly person, no matter whether completely healthy or hopelessly ill. Human life cannot be assessed from a qualitative point of view.

The object of protection of the Criminal Code in crimes against life (in particular, murders) are social relations that develop regarding the realization by a person of a natural right to life, confirmed by international and constitutional acts, and to ensure the safety of life as the highest value. And the object of criminal law protection of life is the benefits and legitimate interests of a person in the form of his existence, in respect of which a criminal encroachment has been carried out or

a threat of such an encroachment has been created.

Life as an object of crime is not subject to qualitative or quantitative assessment - the lives of all people are equal. It is the equivalence of the object that explains why causing death to a person mistaken for another is not considered a criminal mistake and does not affect the qualification of the deed as murder.

The criminal law equally protects the life of every person, regardless of his state of health, moral character, age, social significance, and does not allow the deprivation of life of a hopelessly ill person, even with his consent or request (euthanasia).

Within the framework of the criminal law protection of life, the definition of the time limits of life is also of great theoretical and practical importance.

In the scientific literature, the termination of human life is characterized by biological death. Biological death refers to the death of the central nervous system, the complete cessation of the heartbeat and respiratory arrest. The biological death of the human body is ascertained after thirty minutes from the moment the above signs are detected. Biological death occurs, as a rule, with the inevitable natural aging of the human body. At the same time, the onset of a situation of pathological death is also possible. Pathological death is the onset of death as a result of the development of a disease.

Today, along with the concept of biological death, the signs of which are indicated above, the existence of the so-called brain death (brain death) is recognized. This is justified by the fact that the human body is not just a collection of organs and tissues, but a complex structure and functioning according to certain biological laws, a system controlled by the brain. By way of natural course, brain death very quickly leads to the death of all other organs and systems of the human body. Thus, from a practical point of view, biological death should be considered as the moment of the end of life.

The moment of the beginning of life is the appearance of any part of the baby's body from the womb, and the moment of the end of life is biological death. The criminal law protection of life is ensured throughout the life of the individual and ends with his/her death.

2. Legal liability

Murder refers to the unlawful taking of the life of another person. Article 97 of

the Criminal Code of the Republic of Uzbekistan has two parts, respectively establishing liability for:

- Simple premeditated murder
- Premeditated murder with aggravating circumstances

According to the first part of Article 97 of the Criminal Code of the Republic of Uzbekistan, a murder committed in a quarrel or fight in the absence of hooligan motives, jealousy, motives for revenge, envy, hostility, hatred arising from personal relationships, etc. will be qualified as a simple premeditated murder.

According to Article 17 of the Criminal Code of the Republic of Uzbekistan, a person who is sane (mentally healthy) and who has reached the age of 13 is held liable for murder with a more severe punishment: fourteen years imprisonment - in case of simple murder (the category mentioned by the first part of Article 97 of the Criminal Code of the Republic of Uzbekistan). For liability, the age that the offender has reached is calculated not at the time of bringing to justice, but at the time of the murder.

Part two of Article 97 of the Criminal Code of the Republic provides for liability for premeditated murder with aggravating circumstances - imprisonment from fifteen to twenty-five years or life imprisonment. Thus, exceptional and capital punishment was provided for this crime.

According to the classification of crimes, according to Article 15 of the Criminal Code of the Republic of Uzbekistan, this crime of premeditated murder with aggravating circumstances is especially serious.

Particularly grave crimes are intentional crimes for which imprisonment for a term of more than ten years is provided.

II. Limitations: Key issues

A. Capital punishment

It is well known that the death penalty has been abolished in most countries of the world, which have elevated democratic and humanist ideas to the highest level. This is because the right to life is a natural right of every human being, and this right was given to him by the creator, not by the state.

It should be noted that the number of crimes punishable by death in Uzbekistan has been gradually reduced, and the death penalty for crimes has been abolished.

On June 20, 2022, the President of the country Sh. Mirziyoyev at a meeting with the Constitutional Commission proposed to include in the Constitution of the Republic of Uzbekistan the norm "Prohibition of the death penalty in Uzbekistan."

On the basis of the 2005 Decree of the President of the country, the death penalty in the Republic of Uzbekistan was abolished with the decree's entry into force on January 1, 2008. In December 2008, Uzbekistan acceded to the second Optional Protocol to the ICCPR.

After the declaration of independence of Uzbekistan on August 31, 1991, the country went through two cycles of reforms, within which great importance was attached to the observance of human rights and respect for freedoms:

1) at the stage of priority reforms (1991-2000), transformations of the transition period and the formation of the foundations of national statehood were carried out;

2) the next stage (2001-2007) became a period of active democratic renewal and modernization of the country.

During the first stage, Uzbekistan acceded to the six major UN international human rights treaties, created human rights institutions and organized human rights education at the national level. The abolition of the death penalty, effective from January 1, 2008, became part of the second stage of reforms, the main tasks of which were to improve legislation and create democratic structures. Since the country declared its independence in 1991, provisions on the death penalty have been preserved in more than thirty articles of the Uzbek Criminal Code. In the 1994 edition of the Criminal Code of the Republic of Uzbekistan, the death penalty was mentioned in the text of thirteen articles. In 1998, the number of articles providing for the death penalty was reduced to eight, in 2001 to four, and in 2003 to two (Article 97: aggravated premeditated murder; Article 155: terrorism).

The implementation of the death penalty in the case of minors, women, and persons over 60 have always been prohibited. After the President signed the Decree "On the abolition of the death penalty in the Republic of Uzbekistan" on August 1, 2005, Uzbekistan announced the abolition of the death penalty from January 1, 2008 and the replacement of this punishment with life or long-

term imprisonment. Despite the fact that no official moratorium on the use of the death penalty was announced, no death sentences were pronounced within the 28 months from the moment the decree was signed until its actual abolition.

The delayed entry into force of the decree was justified by the need for preparatory reforms. The presidential decree noted that "the abolition of the death penalty will require extensive explanatory work among the population, strengthening in the minds of people the understanding of the need for further liberalization of criminal punishment, including the abolition of the death penalty." The decree also notes the need to carry out "a number of organizational and preparatory measures" related to the construction of complexes and facilities for the detention of persons whose death penalty has been commuted to life imprisonment, and the training of personnel to work in these institutions. In addition, careful study and introduction of amendments and additions to the criminal, criminal procedural, and penitentiary legislation is necessary, taking into account the in-depth study of international legal acts in this area, the relevant legislation of foreign countries that have abolished the death penalty and have experience in organizing the execution of sentences for those sentenced to life or long terms of imprisonment instead of the death penalty.

It should be noted that the most important trend in the ongoing liberalization of the judicial system and criminal penalties in the Republic of Uzbekistan is the gradual reduction in the scope of the death penalty.

Since January 1, 2008, the death penalty has been abolished in Uzbekistan as a form of punishment for all types of crimes. After the death penalty was abolished, in April 2008 the Supreme Court of Uzbekistan began reviewing the death sentences.

As mentioned, following a subsequent judicial and legal reform, in December 2008 Uzbekistan acceded to the Second Optional Protocol to the ICCPR. At the UN General Assembly in 2007, Uzbekistan supported a resolution calling on all countries of the world to impose a moratorium on the execution of death sentences in order to abolish the death penalty. Uzbekistan also voted in favor of resolutions regarding the abolition of the death penalty in 2008, 2010, 2012, 2014 and 2016.

B. Abortion

The beginning of human life begins with the emergence of a part of the body of the newborn from the mother's womb. In Uzbekistan, artificial abortion

of the fetus before it is formed (i.e. 12 weeks or less) is not considered as murder, if this is performed with the consent of the pregnant woman. However, without such consent, the act should be qualified as a criminal abortion, regardless of the period of pregnancy (Article 114 of the Criminal Code).

In order to establish time limits for the operation of criminal law norms for the protection of human life, it is necessary to clearly define the beginning of life, that is, the moment from which a person can be considered a full-fledged member of society. Some scientists propose to understand the beginning of life as the moment of complete separation of the infant from the mother's body and the emergence of his body's ability to function independently.

It is difficult to agree with this opinion, since in this case the murder of a baby who came out of the womb, but whose umbilical cord has not yet been cut off, or the murder of a baby during childbirth, when his head was already outside the mother's womb, in a criminal law sense would not be recognized as the murder of a person. Also in this regard, it should be recognized as correct the opinion that a person's life begins from the moment any part of the baby's body appears from the womb. That is, the beginning of a person's life is recognized as the moment of the appearance of any part of the child's body in the process of childbirth from the womb.

In Article 97 of the Criminal Code of the Republic of Uzbekistan, life exists when a person is born and has not yet died. The moment of the beginning of life is the beginning of physiological childbirth (the beginning of the extraction of the fetus from the mother's womb), the moment of death is the onset of biological death (an irreversible process of decay of the cells of the cerebral cortex).

One should agree with the authors who argue that the beginning of life is the appearance of any part of the child's body. This position is also in line with current criminal law. Thus, according to Article 99 of the Criminal Code of the Republic of Uzbekistan, the murder of a newborn child by a mother is possible not only immediately after birth, but also during childbirth. It is this approach to understanding the beginning of life that makes it possible to solve the rather complex issues, from the point of view of modern medicine, of delimiting criminal abortion from the murder of a newborn.

Criminal abortion is defined in Article 114 of the Criminal Code. Artificial abortion by an obstetrician or gynecologist in places other than appropriate treatment facilities or in cases where there are no medically acceptable reasons, is

prohibited. A person who does not have the necessary qualifications to artificially abort a fetus is also prohibited from doing so.

The object of the crime defined in Article 114 of the Criminal Code is social relations regarding the ensuring of the safety of a pregnant woman's life or her children. Medical reasons for artificial abortion include the following: - severe or moderately severe gonorrhea, severe or moderately severe inflammatory processes of the genitals, presence of purulent foci regardless of their location, severe pregnancy the presence of diseases; - the presence of a fetus of more than 12 weeks; - artificial abortion less than 6 months after the previous artificial abortion, as well as other cases considered in the manual on artificial abortion. Artificial abortion carried out outside a medical institution, regardless of the presence of medically impossible circumstances, is considered criminal. If a person does not have the legal authorization to artificially abort a fetus, it should be qualified as a crime according to Part 2 of Article 114 of the Criminal Code. In this case, whether or not there were adequate medical reasons, the presence of cases where artificial abortion is medically impossible, as well as the place where artificial abortion is performed, do not affect the qualification.

In Article 115 of the Criminal Code, forcing a woman to abort her fetus artificially is prohibited: 1. Social relations that ensure the safety of the life or health of a pregnant woman are considered the object of the crime. 2. Forcing a woman to abort her fetus artificially, i.e., using physical or mental violence against a pregnant woman against her will, or influencing her in any other way, if as a result the fetus is aborted, constitutes the objective aspect of the crime. 3. Forcing a pregnant woman to abort her fetus means having a negative influence on her (depriving her of financial support, evicting her from home, etc.). 4. The use of physical force as an element of the objective aspect of the crime under consideration can be in the form of beating, torture, tying up and forced bringing to a medical institution, inflicting light injuries on the body, use of force in illegal deprivation of human liberty.

C. Euthanasia

Euthanasia is the active and passive deprivation of life of a person who suffers from an incurable disease, as a result of which he experiences suffering. Euthanasia is carried out at the request of the sick person.

It should be noted that euthanasia is prohibited in the Republic of Uzbekistan (Article 97 of the Criminal Code), despite the fact that it is legal in some

countries. The criminal legislation of the Republic of Uzbekistan does not allow the deprivation of life of a hopelessly ill person, even with his consent or request (euthanasia).

D. Suicide and assisted suicide

Suicide and forcing to suicide is a crime and encroaches on the safety of life. It differs from intentional murder (see Article 97 of the Criminal Code) in the following features:

- when driving to suicide, the guilty person does not intend to kill the victim;
- driving to suicide is achieved by threats, cruel treatment or systematic humiliation of honor and dignity.

The court establishes the presence of the above two circumstances for the assessment (qualification) of an act as incitement to suicide.

The peculiarity of driving to suicide is that the death of the victim is not caused by the actions of the guilty person. The injured person independently attempts suicide (once or repeatedly) as a result of the unlawful actions of the guilty person. Between the emergence of the desire to commit suicide and the actions of the perpetrator, which led to the death of the victim, there is a period of time. Therefore, this type of crime can be called passive deprivation of life by suicide or attempted suicide.

Example from a criminal case:

- By a court verdict in one of the districts of the Kashkadarya region, citizen N. was found guilty of driving his wife M. to suicide in the following circumstances.
- During the period of 2013 to 2018, N. insulted his wife M., treated her cruelly, beat her, did not provide material assistance, and systematically made scandals. As a result, wife M. doused herself with diesel fuel and set it on fire. Thanks to the assistance provided by N.'s mother and brother, the life of N.'s wife was saved. The court found N. guilty under paragraph "a" of part two of Article 103 of the Criminal Code of the Republic of Uzbekistan for driving a person to suicide in relation to a person who was financially or otherwise dependent on the guilty person. N. was sentenced to imprisonment for a term of two years.

It should be noted that in order to recognize a crime, it is necessary that the victim

(the injured person) committed suicide or attempted to commit suicide. For example, the commission of suicide could result from experience of being abused by another person, being struck and beaten on various parts of the body, or being tortured. Such cases will thus be assessed as bringing to suicide.

There are circumstances that increase the punishment (Article 103 of the Criminal Code):

a) in relation to a person who was materially or otherwise dependent on the perpetrator (this paragraph applies when the victim is dependent on the perpetrator (employee, dependent));
b) in relation to a minor or a woman who was known to the perpetrator to be in a state of pregnancy (the victim is under 18 years of age, and is also pregnant, which the person committing the crime knows about);
c) by prior agreement by a group of persons (a crime is committed by two or more people who have agreed to commit incitement to suicide);
d) using telecommunications networks, as well as the worldwide information network Internet (the crime is committed using the Internet, telecommunications networks (for example, the constant humiliation of the victim through Telegram)).

A person's guilt in driving to suicide is expressed in his premeditated intention to commit this act. That is, the person understands the danger of encroachment on life, wants to bring the victim to the desire of and to commit suicide.

Recall that serious crimes are intentional crimes for which imprisonment for a term of five to ten years is provided.

Inducement to suicide, that is, arousing in another person the determination to commit suicide by persuasion, deceit, or in any other way, if the person has committed suicide or attempted it, shall be punishable by restriction of liberty from two to five years, or by imprisonment up to five years.

The same actions committed:

a) in relation to a minor or a woman, known to the perpetrator, who was in a state of pregnancy;
b) by prior agreement by a group of persons;
c) with the use of telecommunications networks, as well as the worldwide information network Internet, shall be punished by imprisonment from five to seven years.

In the case under consideration, the Criminal Code of the Republic of Uzbekistan also protects public relations regarding the safety of life. Inducement to suicide also differs from intentional murder (Article 97 of the Criminal Code) by the following factors:

- death is the ultimate goal of the criminal;
- the actions of the offender are expressed in the form of persuasion, deceit or other means.

The presence of the above two circumstances is necessary for the assessment (qualification) of an act as a suicidal inclination.

The peculiarity of this type of crime is that the death of a person is not caused by the actions of the perpetrator, but is the result of an attempted suicide or suicide due to the unlawful actions of the perpetrator. Just as in the case of driving to suicide, there is a period of time between the emergence of the desire to commit suicide and the actions of the perpetrator of inducement, which led to the death of the victim. Therefore, this type of murder can be called passive deprivation of life by suicide or attempted suicide.

In order for a crime to be recognized, it is necessary that the victim (injured person) commit or attempt suicide. For example, a person persuades another person to commit suicide, causing the victim to commit suicide. This case is assessed as a suicidal inclination.

In 2017, teenagers in Uzbekistan were spotted in the "game" that became known in the CIS countries as the "Blue Whale": several minors appeared on Instagram with the hashtags "#in game", as well as the countdown of days, the ominous "4:20 am" time and suicidal posts. Law enforcement agencies, administrations of educational institutions and self-government bodies of citizens immediately reacted to alarming signs on the network. As a result of the work carried out, adolescents were identified who are predisposed to participate in these games, who are in the "group death." Source (Uzbek news website): https://www.podrobno.uz/cat/obchestvo/mvd-siniykit-prishel-v-uzbekistan-dva-mesyatsa-nazad.

The guilt of a person in bringing to suicide is expressed in his premeditated intention to commit this act, that is, the person understands the danger of encroachment on life, and inclines the victim to the state of desire for suicide.

According to Article 17 of the Criminal Code of the Republic of Uzbekistan,

a person who is sane (healthy) and who has reached the age of 16 is subject to liability.

III. Summary: Crimes against life

Having mainly focused on Articles 97–1031 of the Criminal Code of the Republic of Uzbekistan, the following conclusions can be drawn:

1. According to the legislation of Uzbekistan, the following are recognized as crimes against life: the murder of a newborn child by a mother; murder in a state of strong mental agitation; intentional infliction of death in excess of the limits of necessary defense, necessary measures to detain a person who has committed a socially dangerous act, as well as infliction of death through negligence; driving to suicide or inducing suicide.
2. In crimes against life, the biological death of a person occurs. An exception is incitement to suicide and inducement to suicide, which are also recognized as crimes in cases where the injured person (victim) attempted suicide, but death did not occur.
3. The main punishment for crimes against life is imprisonment; for some of these crimes, restriction of freedom and corrective labor are also assigned.

Annex: List of cited legal provisions

1. Constitution of the Republic of Uzbekistan adopted in 08.12.1992
2. Criminal Code of the Republic of Uzbekistan adopted in 22.09.1994

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