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## Right to life

“ **Article 2**<sup>1</sup> [of the [European Convention on Human Rights](#)], which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted ... Together with Article 3 [which prohibits torture and inhuman and degrading treatment or punishment], it also enshrines one of the basic values of the democratic societies making up the Council of Europe.” ([Makaratzis v. Greece](#) judgment of the Grand Chamber of 20 December 2004, § 56).

### Use of lethal force by the State

#### The necessity principle

**Mc Cann and Others v. the United Kingdom: “a stricter and more compelling test of necessity”**

The use of lethal force by the State was first addressed in details in the [Mc Cann and Others v. the UK](#) judgment of 27.09.1995: Article 2 allows for exceptions to the right to life only when it is “absolutely necessary”, a term indicating “that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 and 11 of the Convention”(§ 149).

The case concerned the death of three members of the IRA, suspected of having on them a remote control device to be used to explode a bomb, who were shot dead on the street by Special Air Service soldiers in Gibraltar. The Court concluded that there has been a violation of Article 2 because the operation could have been planned and controlled without the need to kill the suspects.

*Recent examples:*

#### [Andreou v. Turkey](#)

27.10.2009

The case concerned a British national shot and injured by Turkish armed forces during tensions at the United Nations buffer zone in Cyprus.

**Violation of Article 2: the use of potentially lethal force against the applicant had not been “absolutely necessary” and had not been justified by any of the exceptions permitted under Article 2.**

<sup>1</sup>. Article 2 (right to life) of the [European Convention on Human Rights](#) provides that:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;  
(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;  
(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

### **Perisan and Others v. Turkey**

20.05.2010

Violation of Article 2: the force used against the prisoners to quell disturbances in a prison, which had led to the deaths of eight of them, had not been “absolutely necessary” within the meaning of Article 2 and the Court held that there had been a violation of this article in respect of the eight prisoners who died and six who survived their injuries.

### **Putintseva v. Russia**

10.05.2012

The case concerned the death of a young man during his mandatory military service after being shot by a superior when trying to escape.

Violation of Article 2: the legal framework on the use of force to prevent the escape of a soldier had been deficient and the authorities had failed to minimise recourse to lethal force.

**Under Article 2, the use of lethal force by police officers might be justified in certain circumstances but Article 2 does not grant “carte blanche”, and policing operations had to be authorised and sufficiently regulated by domestic law.**

The use of arms have to be clearly regulated and caution in the use of weapons is the sign of a democratic society ([Mc Cann and Others v. the United Kingdom](#), § 212).

*Recent examples:*

### **Nachova and Others v. Bulgaria**

06.07.2005 (Grand Chamber)

The case concerned the killing of the applicants’ relatives by a military policeman who was trying to arrest them.

Violation of Article 2. The Court recalled that law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value.

### **Soare and Others v. Romania**

22.02.2011

The case concerned the circumstances surrounding the arrest of a 19-year-old man by the police and in particular the fact that he was shot in the head by a police officer - he survived but was semi-paralysed.

Violation of Article 2: the legal framework had not been sufficient to afford the required level of protection “by law” of the right to life.

### **Gorovenky and Bugara v. Ukraine**

12.01.2012

The applicants were the relatives of two men who were shot by a police officer who was off-duty.

Violation of Article 2 on the account of the authorities’ failure to vet the police officer before issuing him with a firearm.

### **Sašo Gorgiev v. “The Former Yugoslav Republic of Macedonia”**

19.04.2012

The case concerned a waiter who was shot in a bar by a police reservist who was supposed to be on duty in the police station.

Violation of Article 2. The Court found in particular that the Government had neither provided it with information in regulations for the prevention of abuse of official weapons by its agents nor with information as to whether the police reservist had been assessed to ensure that he was fit to be recruited and equipped with a weapon.

## The proportionality principle

The proportionality principle does not appear in the text of Article 2 but is clearly established in the Court's case-law.

*Recent examples:*

### Wasilewska and Kalucka v. Poland

23.02.2010

The case concerned the death of a suspect during an anti-terrorist operation.

Violation of Article 2: the Polish Government had failed to submit any comments regarding the proportionality of the level of force used by the police, the organisation of the police action and whether an adequate legislative and administrative framework had been put in place to safeguard people against arbitrariness and abuse of force.

### Finogenov and Others v. Russia

20.12.2011

The case concerned the siege in October 2002 of the "Dubrovka" theatre in Moscow by Chechen separatists and the decision to overcome the terrorists and liberate the hostages using gas.

No violation of Article 2 concerning the decision to resolve the hostage crisis by force and use gas.

Violation of Article 2 concerning the inadequate planning and implementation of the rescue operation.

Violation of Article 2 concerning the ineffectiveness of the investigation into the allegations of the authorities' negligence in planning and carrying out the rescue operation as well as the lack of medical assistance to hostages.

## Positive and procedural obligations under Article 2 - definitions

### Positive obligations

States should not only refrain from the intentional and unlawful taking of life, but also **take appropriate steps to safeguard the lives of those within their jurisdiction, in particular by putting in place effective criminal-law provisions backed up by law-enforcement machinery** ([L.C.B. v. the United Kingdom, judgment of 9.06.1998](#) ; [Osman v. the United Kingdom, judgment of 28.10.1998](#)). The absence of any direct State responsibility for the death of an individual does not exclude the applicability of Article 2 ([Angelova and Iliev v. Bulgaria, judgment of 26.07.2007](#), § 93).

However, positive obligations flowing from Article 2 should "be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities". "Where there is an allegation that the authorities have violated their positive obligation to protect the right to life (...), **it must be established to the [Court's] satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk**" ([Osman v. the United Kingdom](#), § 116).

### Osman v. the United Kingdom

28.10.1998

The case concerned the killing of a schoolboy's father - Mr Osman was shot dead and his son was wounded in the shooting incident - by a teacher who had been involved in a

series of increasingly serious incidents and who had been suspended following a psychiatric evaluation

No violation of Article 2: the applicants had failed to show that the authorities knew or ought to have known that the lives of the schoolboy and his father were at real and immediate risk from the teacher, or had enough evidence to either charge him or have him committed to a psychiatric hospital.

### **Berü v. Turkey**

11.01.2011

The case concerned the death of a child in an attack by stray dogs, which were already known to be dangerous.

No violation of Article 2: the series of incidents that had already taken place before the fatal attack were not sufficient for the Court to find that the authorities had had a “positive obligation” to take preventive measures. There was no evidence that the authorities knew or should have known that there was an immediate risk to the girl’s life. The incident, admittedly a tragic one, had in reality happened by chance and Turkey’s responsibility could not therefore be engaged without extending that responsibility in an excessive manner.

### **Choreftakis and Choreftaki v. Greece**

17.01.2012

The case concerned the murder of the applicants’ son by a man previously convicted of intentional homicide who had been released on licence.

No violation of Article 2. The Court held that the conditional release system in Greece offered sufficient safeguards to protect society.

### **Kemaloglu v. Turkey**

10.04.2012

The case concerned the applicants’ seven-year old son who froze to death while trying to walk back home, on a day when school classes ended earlier due to a blizzard and the municipality shuttle did not come on time.

Violation of Article 2. The Court reiterated that not every risk to life obliged the authorities to take operational measures to prevent that risk from materializing but that in this case, by neglecting to inform the municipality’s shuttle service about the early closure of the school, the Turkish authorities had failed to take measures which might have avoided a risk to the child’s life.

### **Kayak v. Turkey**

10.07.2012

The case concerned the murder of a 15-year-old, who had been stabbed in front of a school.

Violation of Article 2: the authorities had failed in their duty to ensure supervision of the school premises.

## Procedural aspect of positive obligations

Article 2 implies positive obligations of a procedural aspect, including the duty for States to investigate deaths that may have occurred in breach of the Convention ([McCann and Others v. the United Kingdom](#)).

“The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility ([Anguelova v. Bulgaria](#), § 137, [Jasinskis v. Latvia, judgment of 21.12.2010](#), § 72).

**Inquiry requirements: independence, promptness and expedition, capacity to establish the facts, and accessibility to the public and the relatives.**

**Paul and Audrey Edwards v. the United Kingdom**

14.03.2002

The case concerned the double murder committed by a dangerous offender on the day of his release.

Violation of Article 2 on the account of two defects (although the inquiry had met most of the other requirements): the inquiry had no power to compel witnesses, and it had been held in private - the applicants had only been able to attend three days of the inquiry.

(also see: [Seidova and Others v. Bulgaria, judgment of 18.11.2010](#), in which the victim's relatives were excluded from the investigation into the death of their husband and father).

In a number of cases, violations of Article 2 were found because of a lack of serious activity by investigating prosecutors. For instance: [Kolevi v. Bulgaria, judgment of 05.11.2009](#) : Inability to prosecute the murder of the applicant's and of the supervision of the investigation by a chief public prosecutor suspected by the family of masterminding the victim's murder.

The Court found violations of Article 2 in a number of Bulgarian cases concerning the use of force by the police, inadequate investigation and prosecution of deaths and injuries ([Angelova and Iliev v. Bulgaria, judgment of 26.07.2007](#); [Ognyanova and Choban v. Bulgaria, judgment of 23.02.2006](#), [Angelova v. Bulgaria, judgment of 13.06.2002](#)).

**A duty to "take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice might have played a role".**

**Nachova and Others v. Bulgaria**

06.07.2005 (Grand Chamber)

**Angelova and Iliev v. Bulgaria**

26.7.2007

Violation of Article 14 (prohibition of discrimination) together with Article 2 in that the authorities had failed to investigate possible racist motives behind the deaths of the applicants' relatives.

**Mižigárová v. Slovakia**

14.12.2010

In this case, the applicant alleged a violation of Article 14 in conjunction with Article 2, given that her husband was a Romani man, which, coupled with the legacy of widespread abuse of Roma in police custody, created, she alleged, an obligation on the State to investigate a possible racist motive behind his death.

Violation of Article 2 (death and lack of effective investigation).

No violation of Article 14. The Court did not consider that the authorities had had sufficient information to bring into play their obligation to investigate possible racist motives behind the police officer's behaviour.

**The issue of effective investigation in cases related to wide-scale events**

**Sandru and Others v. Romania**

08.12.2009

Violation of Article 2. The Court concluded that the Romanian authorities had failed to carry out an effective investigation following the violent repression of the December 1989 anti-communist demonstrations.

The case of Association [“21 December 1989” and Others v. Romania \(judgment of 24.05.2011\)](#), in the context of the same events, concerned the death of the applicants’ son during the anti-government demonstrations.

Violation of Article 2 on account of the lack of an effective investigation into this death. The Court noted that its finding of a violation of Article 2 on account of the lack of an effective investigation related to a wide-scale problem, given that many hundreds of people were involved as injured parties in the impugned criminal proceedings. It added that general measures at domestic level would unquestionably be necessary in the context of the execution of the Association “21 December 1989” and Others v. Romania judgment.

### **Jularić v. Croatia**

20.01.2011

The case concerned the killing of the applicant’s husband by members of the Serbian paramilitary (or the Yugoslav People’s Army).

### **Skendžić and Krznarić v. Croatia**

20.01.2011

The case concerned the disappearance of the applicant’s husband and father following his arrest by the Croatian police.

In these two cases, concerning crimes committed during the Croatian Homeland War, the Court found that Croatian authorities’ investigations into two 1991 war crimes were inadequate due in particular to inactivity of authorities and conflict of interest.

### **Giuliani and Gaggio c. Italy**

24.03.2011 (Grand Chamber)

The case concerned the death of a young man while he was taking part in an anti-globalization protest during the G8 summit in Genoa in 2001.

No violation of Article 2 with regard to the use of lethal force: it had not been excessive or disproportionate to what was absolutely necessary in defense of any person from unlawful violence.

No violation of Article 2 with regard to the domestic legislative framework governing the use of lethal force or with regard to the weapons issued to the law-enforcement agencies at the G8 summit in Genoa.

No violation of Article 2 with regard to the organisation and planning of the policing operations at the G8 summit in Genoa. While authorities had a duty to ensure the peaceful conduct and the safety of all citizens during lawful demonstrations, “they (could not) guarantee this absolutely and they (had) a wide discretion in the choice of the means to be used”.

No violation of Article 2 with regard to the alleged lack of an effective investigation into the death. The Court found in particular that a detailed investigation into the fatal bullet, which was in dispute between the Parties, was not crucial as the Court found that the resort to lethal force had been justified.

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