



Traditional and New Challenges in the Right to Life

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Structure of the presentation

- ▶ **Philosophical basis of the right to life**
- ▶ **Institutional guarantees of the right to life at the international level**
- ▶ **Traditional topics of the right to life**
- ▶ **New challenges in the right to life**

Philosophical basis of the right to life

▶ Natural law theory of human rights by Thomas Aquinas:

- Human life as a gift from God (supernatural authority)
- More types of laws → hierarchy

Eternal law → Divine law → Natural law → Human law

▶ Rational concept of human rights (17th century)

- The influence of the Enlightenment and humanism
- Man as an intellectual and autonomous being
- The right to life and its protection as a legitimate precondition for the establishment of the state

→ Social contract (theory) → What does it mean? → T. Hobbes and John Locke

→ Reflection of that ideas in the Declaration of the Rights of Man and of the Citizen (1789)

→ I. Kant → Human dignity → inadmissibility of instrumentalisation

Institutional guarantees of the right to life at the international level

World War II and Nazi ideology as an impulse for the creation of an international system of human rights protection



Establishment of the United Nations, the Council of Europe (ECHR) and other international organizations



Adoption of a number of legal documents - embedding the natural and universal character of human rights



Enshrining the right to life and other fundamental rights at the national (constitutional) level

Institutional guarantees of the right to life at the international level

▶ **Article 3 of the Universal Declaration of Human Rights**

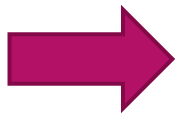
„Everyone has the right to life, liberty and security of person.“

▶ **International Covenant on Civil and Political Rights**

„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.“

▶ **Article 2(1) European Convention on Human Rights**

„Everyone's right to life shall be protected by law. [...]“



Why the right to life is considered the most important human right?

Is the right to life an absolute right? Why?



What can be considered traditional topics related to the right to life?

Traditional topics of the right to life

➔ War (genocide)

➔ Death penalty

➔ Abortion

➔ Euthanasia

Death penalty

- ▶ Critique of the death penalty in the Enlightenment
- ▶ Strong tendency to abolish the death penalty after World War II
- ▶ At the international level, the death penalty was still considered a possible exception to the right to life
 - ➔ **Serious crimes only + emphasis on fair trial + exclusion of certain groups of people**
 - ➔ **Different approaches** ➔ **USA X EUROPE** ➔ **US Supreme Court/ECHR (Article 3 ECHR)**
- ▶ Article 2(1) European Convention on Human Rights

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

X Protocol No. 6, 1983 (only death penalty in time of war remained)

Protocol No. 13, 2002 (abolition of the death penalty in all circumstances)

Abortion

- ▶ Influenced by social development, including religion and the position of the church
- ▶ Lack of uniform legislation at European and international level

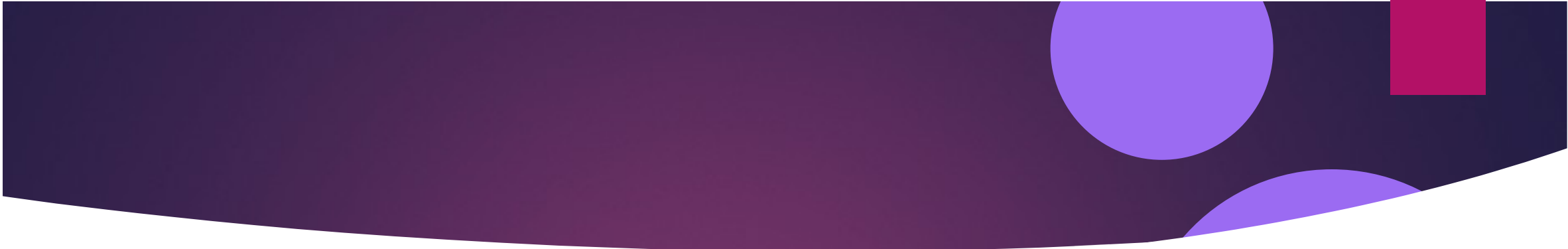
X Article 16(1) e) Convention on the Elimination of all Forms of Discrimination Against Women:

„States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.“

▶ **Does the right to abortion exist?** → ECHR → Protection through other rights...**Which one?**

→ „Margin of appreciation“ → different approaches → liberal or restrictive → **Examples?**

→ Conflict of different interests and rights of different persons → **Specifically?**



▶ Question related to the determination of the **status of unborn child**:

biological aspect → reflection of human biological development (**stages of development**)

moral/philosophical aspect → human being = human person? → **Animalism vs. Functionalism**

legal aspect → protection of unborn life as a public interest or a fundamental right → **ECHR?**

CASE OF VO v. FRANCE (Application no. 53924/00):

„At European level, the Court observes that there is no consensus on the nature and status of the embryo and/or foetus (see paragraphs 39-40 above), although they are beginning to receive some protection in the light of scientific progress and the potential consequences of research into genetic engineering, medically assisted procreation or embryo experimentation. At best, it may be regarded as common ground between States that the embryo/foetus belongs to the human race. The potentiality of that being and its capacity to become a person – enjoying protection under the civil law, moreover, in many States, such as France, in the context of inheritance and gifts, and also in the United Kingdom (see paragraph 72 above) – require protection in the name of human dignity, without making it a “person” with the “right to life” for the purposes of Article 2. The Oviedo Convention on Human Rights and Biomedicine, indeed, is careful not to give a definition of the term “everyone”, and its explanatory report indicates that, in the absence of a unanimous agreement on the definition, the member States decided to allow domestic law to provide clarification for the purposes of the application of that Convention (see paragraph 36 above).“

Euthanasia

▶ **According to the WHO, euthanasia is:**

„A deliberate act undertaken by one person with the intention of either painlessly putting to death or failing to prevent death from natural causes in cases of terminal illness or irreversible coma of another person.“

Euthanasia X Assisted suicide X Futile and useless treatment ➡ What's the difference?

▶ **Philosophical approaches:**

- human life as a fundamental (most important) value - quality of life is not the determining factor
- emphasis on personal life and its quality - distinguishing between good and bad death (life)

▶ **Legal issues:**

- Do we have not only the right to life, but also the right to die?
- Does the state have an obligation to guarantee the performance of euthanasia?

➡ **ECHR (No. 2346/02, No. 31322/07, No. 46043/14)** ➡ **THE SITUATION IN EUROPE**



What are the new challenges in the right to life?

New challenges in the right to life

Link to the development of biomedicine and its vague regulation



**Embryo handling – ART (selection and research use)
Manipulation of the human genome (enhancement)**



**The question of respect for human dignity
Threat to human nature and the autonomy of the individual**

New challenges in the right to life

- ▶ The importance of biomedicine for the development of ART (1978 - the first „test tube baby“)
- ▶ addressing the problem of infertility and low fertility
- ▶ X → **creating new forms of conflict between human rights and public interests**



Right to private and family life – Art. 8 ECHR (link to reproductive life - extensive interpretation of the ECHR)



Right vs. right

(Evans vs. UK - Complaint No. 6339/05)

OR

Right vs. public interest

(Dickson vs. UK - Complaint No. 44362/04)



Thank you for your attention.