

## SCOPE AND NATURE OF PROCEDURAL OBLIGATIONS UNDER ARTICLE 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

**Key words:** *human rights, positive obligations, right to life, international law*

**Açar sözlər:** *insan hüquqları, pozitiv öhdəliklər, yaşamaq hüququ, beynəlxalq hüquq*

**Ключевые слова:** *права человека, положительные обязательства, право на жизнь, международное право*

### a. Introduction

This article deals with regulation of procedural positive obligations under scope of European Convention on human rights, where these rights include which notion of the Article 2. Also it deals with case-law of the European Court of Human Rights under this right. This study is fulfilled to research the procedural positive obligations under the right to life. And especially this study is dealt with the other related human rights.

### b. General approach

Positive obligations arise from the duty to protect persons under the jurisdiction of the state and the State shall perform this duty in its relations between individuals, mainly by ensuring compliance with the Convention. The theory of positive obligations is the basis of a remarkable trend - the tendency to apply to private relations between individuals by expanding the scope of the Convention. If the state is unable to prevent the violation of someone's rights by legal or factual means, or in other words, to create conditions for the punishment of the perpetrators, it faces the risk of being prosecuted by the European Court.

Fundamental difference established by the European Court is the difference between "procedural" and "substantive" obligations. The criterion that forms the basis of this is the essence of the action expected from the state. Therefore, material and legal obligations are those that require the basic measures required for the full realization of the rights guaranteed, such as the establishment of proper rules governing police intervention, the prohibition of ill-treatment or forced labor, the provision of necessary conditions in prisons, legal recognition of the status of the norms of the Convention requires inclusion in adoption legislation or, more broadly, family law, and so on. As for procedural obligations, they are those that require the organization of internal procedures to ensure better protection of individuals, and, as a result, the provision of adequate remedies for violations of rights. This ensures that individuals have the right to demand an effective investigation (regarding alleged violations of their rights) and, in a broader context, the obligation of the state to adopt deterrent and effective criminal law; In the context of Article 8, in particular, parents are required to participate in processes that may affect their family life (adoption, determination of where the child will live, decision-making on guardianship or the right to see the child, etc.).

In practice, the interaction of these obligations seems quite complicated. It should be noted that their combination has made it possible to significantly expand the scope of European control. The following typical cases suggest the richness of the interactions between substantive and procedural obligations and provide the European Court with enormous resources (even if these resources are not exhaustive) for investigation.

The most common situation is that compliance with a specific provision of the Convention, in turn, is assessed at two levels, double control. In such a case, the Court shall examine the violation of the substantive right (for example, the right of property), provided that the parties have the opportunity to express their grievances. It is not enough: it also checks whether the public authorities are conducting an effective investigation into the facts of the alleged violation and whether the alleged victim (s) are provided with effective domestic remedies. In fact, it may identify a violation of the above provision (the first sentence of Article 1 of Protocol No. 1) at one or both levels.

However, compliance or non-compliance with the procedural requirement may also play a role in the assessment of substantive violations. Tanis et al's decision in the case against Turkey is an example of this; In this case, the Court found that the right to life of the missing person had been infringed upon, in particular due to deficiencies in domestic proceedings and the failure of the authorities to make the necessary efforts to investigate.

In addition, a defect in a procedural measure required of the state (for example, in conducting an effective investigation) may result in the Court ruling that the state is liable for a material violation or non-compliance with a procedural obligation. This is a specific hypothesis that has emerged in the context of the application of Article 3 since the decision on the case Kurt against Turkey. The decision states that conducting an effective investigation is essentially a breach of a procedural obligation. However, if we are talking about the family of the missing person, it is also inhuman or degrading treatment.

Finally, it should be added that the diversity of grounds for verifying compliance with a procedural obligation is a result of the increasing demands of the European Court of Human Rights on positive procedural obligations, and this approach ultimately violates Article 6 § 1 and Article 13 of the Convention. but also the application of procedural requirements remains in force. This, in turn, often leads to the investigation of the same complaint from two perspectives, and in both cases a violation of the Convention is found. This multifaceted effect of procedural obligations is fully demonstrated in the case of Tanis mentioned above. Whether or not the obligations are complied with in that decision, as already mentioned, is prohibited by Article 3 both in the context of the merits of the complaint on the violation of the right to life and in the subsequent procedural obligations (mainly the obligation to investigate) arising from Article 2. In terms of ill-treatment (against relatives) and, finally, under Article 13. It is interesting to note that the Court found a violation in each case.

### **c. International norms regulating procedural positive obligations in relation to right to life**

Member states, have positive obligations, including the obligation to investigate the death in question. For a clear understanding of obligation to investigate deaths, it is important to understand the underground of this obligation. The obligation to perform an effective investigation into the death of detainee will be described, firstly discussing general principles that are relevant for the obligation to perform an effective investigation.

The Court has emphasized that the essential purpose of the investigative duty under Article 2 of the Convention is to secure the effective implementation of domestic laws which protect the right to life. In those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This link between the State's procedural obligations and the positive obligations to provide for an effective independent judicial system is not always clear. While the duty to investigate was first formulated in the context of killings allegedly perpetrated by or in collusion with State agents. It is now accepted that that obligation arises in a variety of situations where there is reason to believe that an individual has sustained life-threatening injuries, has died or has disappeared in suspicious circumstances, including in the context of medical negligence and accidents, irrespective of whether the alleged perpetrators are private persons or State agents or whether their identity is unknown, whether the harm was self-inflicted.

The court distinguishes between the obligation to investigate a suspected death or suicide and the obligation to investigate a suspected disappearance.

He thus considers the positive obligation under Article 2 of the Convention to carry out an effective investigation to be a separate obligation binding on the State, even if the death occurred before the decisive date. (Silih v. Slovenia - the case is related to the death that took place before the decisive date, the deficiencies or omissions in the investigation occurred after that date).

The jurisdiction of time shall be exercised within certain limits determined by its jurisdiction, taking into account the principle of certainty, in order to control whether the court has complied with these obligations. First, procedural actions and / or omissions that occurred only after the decisive date may be within the jurisdiction of the Court. Second, the Court emphasizes that there must be a real link between the death and the entry into force of the Convention in relation to the State responsible for the occurrence of procedural obligations. Thus, two criteria must be met to determine this connection: first, the time from the date of death to the entry into force of the Convention must be logically short (less than ten years), and second, an effective investigation of a significant part of the proceedings but rather to initiate appropriate proceedings to determine the cause of death and bring the perpetrators to justice - whether the Convention has been or will be implemented after ratification by the State concerned (Janowiec and others v. Russia). However, the Court cannot rule out that, under certain circumstances, this connection may also arise from the need to ensure in a real and effective manner the values and guarantees underlying the Convention.

In the case of Tuna's death as a result of torture, Tuna applied the principles set out in the Court's decision in the Silih case for the first time by considering together the procedural complaints lodged by the applicants under Articles 2 and 3. Court the principles relating to the separation of procedural obligations, in particular the facts relating to the material aspect of Articles 2 and 3, as in this case, which fall outside the jurisdiction of the jurisdiction, but which relate to the procedural aspect, the subsequent *ratione temporis* reaffirmed the

two criteria used to determine jurisdiction when the procedure coincided, at least in part, with that period. However, the Court cannot rule out certain exceptional circumstances in which the standard of "true commitment" has not been met, which may also arise from the need to ensure in a real and effective manner the values and guarantees underlying the Convention. The "Convention Values" test, which is an exception to the general rule and thus allows the jurisdiction of the court to apply to the past, is only broader if the triggering event is on a scale equal to the denial of the Convention's fundamentals (in the case of serious crimes under international law). Can be applied to events that occurred after its adoption in. This means that a State Party cannot be held liable under the Convention for failing to investigate even the most serious crimes if it relates to a date prior to the adoption of the Convention (Janowiec and others v Russia).

#### **d. Conclusion**

European Court established the difference between procedural and substantive obligations. Procedural obligations are those that require the organization of internal procedures to ensure better protection of individuals and, as a result, the provision of adequate remedies for human rights violations. The decision states that conducting an effective investigation is essentially a breach of a procedural obligation. The procedural positive obligation under Article 2 carry out an effective investigation, the duty of the State.

#### **Literature**

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#### **Avropa insan hüquqları konvensiyasının ikinci maddəsi çərçivəsində prosesual öhdəliklərin əhatə dairəsi və xarakteri**

##### **Xülasə**

Dövlətlərin müsbət öhdəlikləri müxtəlif sferalarda ortaya çıxır. Avropa İnsan Hüquqları Konvensiyasının ikinci maddəsinə əsasən, dövlətlər ölüm hadisələrinin araşdırılması üzrə pozitiv öhdəliklərə malikdirlər. İkinci maddəyə əsasən aparılan istintaqın məqsədi yaşamaq hüququnu təmin edən daxili qanunların səmərəli şəkildə həyata keçirilməsini və dövlət agentləri və orqanları ilə əlaqəli olan hallarda və məsuliyyəti altında baş verən ölümlərə görə hesabatlılığı təmin etməkdir. Məqalədə bu məsələlər üzrə normalar təhlil edilmiş, təklif və tövsiyələr verilmişdir.

#### **Объем и природа процедурных обязательств в соответствии со статьей 2 европейской конвенции о правах человека**

##### **Резюме**

Позитивные обязательства государств проявляются в разных сферах. Согласно второй статье Европейской конвенции о правах человека, государства несут позитивное обязательство расследовать случаи смерти. Целью второй статьи расследования является обеспечение эффективного применения внутреннего законодательства, гарантирующего право на жизнь и ответственность за смерть в случаях, связанных с государственными агентами и органами и под их ответственность. В статье анализируются нормы по этим вопросам, вносятся предложения и рекомендации.

**Rəyçi: h.f.d. G.Rzayeva**

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