Realizing the right to life in the context of Health Care: Constitutional and International Law perspectives

This article explores and presents the significance of the contemporary understanding of the right to life, which grants the contracting states of the ECHR broad discretion in implementing their obligations under the Convention within the framework of their national legal systems. Within a unified convention framework, standards for the protection of the right to life are evolving in the field of healthcare, varying in both substance and intensity. In the case law of the European Court of Human Rights (ECtHR), the right to life has gradually evolved from a classic defensive right of the individual into a complex legal category that imposes on the state an obligation to actively protect life in all areas of its activity, including the field of healthcare. The article explores and presents the relationship between the universality of Convention guarantees and respect for national autonomy. This relationship emerges as one of the central systemic issues of the contemporary convention-based framework for the protection of human rights. The right to life is a central prerequisite for the protection of human dignity, which the Slovenian constitutional order recognizes as one of the highest constitutional values. The article reveals that the Constitutional Court of the Republic of Slovenia interprets the right to life more strictly in its national legal framework (Article 17 of the Constitution) than it is enshrined in international instruments containing a comparable provision stating that everyone has the right to life (Article 2 of the ECHR).

Keywords: *right to life, healthcare, inviolability of human life, legal protection*

Introduction

The right to life is a fundamental and inalienable human right, the effective realization of which is a necessary prerequisite for the exercise of all other human rights and fundamental freedoms[1]. It is protected under Article 2 of the European Convention on Human Rights (ECHR), which stipulates that everyone's right to life is protected by law[2]. Due to its significance, it is recognized and regulated in numerous universal and regional international human rights instruments and is constitutionally guaranteed in the legal systems of most modern democratic states[3]. However, in contemporary law, the right to life is not limited solely to its negative dimension – that is, the prohibition against the arbitrary deprivation of life. Particularly in the context of healthcare, its positive dimension has developed, imposing on the state a duty to take active measures to protect an individual's life. This shift from the

[1]Human Rights Committee, General Comment No. 36 (2019) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 3.9.2019, para. 2.
[2]Ibid., para. 1 – No one shall be arbitrarily deprived of life, except in the execution of a sentence of a court following a conviction of a crime for which this penalty is provided by law.
[3]Buletsa, 2020, p. 15.

classical defensive function to the concept of the state's positive obligations represents one of the central trends in the development of contemporary international and constitutional law.

The central research question of this article is how the right to life is realized within the context of healthcare and what its relationship is to patient autonomy and the right to privacy. The analysis focuses on three levels: (i) the international legal framework, particularly Article 2 of the ECHR, (ii) the constitutional framework of the Republic of Slovenia, and (iii) the case law of the European Court of Human Rights (ECtHR) and Slovenian courts. This methodological contribution is based on a legal-dogmatic analysis, a comparative law approach, and an analysis of case law. In this context, legal norms are interpreted within their systemic connection to the principle of the protection of human dignity as a fundamental constitutional value.

The Right to Life as a Fundamental Human Right – Constitutional and International Foundations

In international law, the right to life was first universally recognized in Article 3 of the Universal Declaration of Human Rights (UDHR), which stipulates that everyone has the right to life, liberty, and personal security.[4] Although the Declaration is not a legally binding international instrument, it serves as the foundation for the development of the modern system of international human rights protection and as an important interpretive framework for subsequent international treaties.

The right to life is considered the most fundamental right, serving as the foundation for all other human rights and regarded as one of the most fundamental human rights.[5] The right to life acquired its legally binding nature through the provisions of the International Covenant on Civil and Political Rights, Article 6 of which stipulates that everyone has the right to life and that this right must be protected by law. In its interpretive practice, the United Nations Human Rights Committee has emphasized that this provision imposes on States not only the duty to refrain from the arbitrary deprivation of life, but also the positive obligation to adopt legislative, administrative, and other measures to effectively protect human life.

In the European context, the fundamental legal framework is provided by Article 2 of the ECHR, which stipulates that everyone's right to life is protected by law. The ECtHR does not view these provisions merely as a prohibition on the intentional and arbitrary deprivation of life, but as the basis for the development of a comprehensive system of positive obligations on the part of

[4]Ibid; Since 1982, the United Nations has also addressed the issue of the right to life in the context of the relationship between human rights and scientific and technological progress (*Human Rights and Scientific and Technological Progress*). Resolutions adopted in this area emphasize that the right to life is an inalienable right of every individual and, at the same time, a prerequisite for the realization of all other human rights.

[5]Nyane, 2022, p. 270.

the state. These include the duty to establish an appropriate legal framework and to ensure effective legal protection in cases of alleged violations of the right to life. Thus, in the case law of the ECHR, the right to life has gradually evolved from a classic defensive right of the individual into a complex legal category that imposes on the state an active duty to protect life in all areas of its activity, particularly in the field of healthcare.

While Article 2 of the ECHR guarantees the right to life, the Slovenian constitutional framework places the protection of human life on a higher normative level. Article 17 of the Constitution of the Republic of Slovenia (URS) stipulates that human life is inviolable. The right to life is a central prerequisite for the protection of human dignity, which the Slovenian constitutional order recognizes as one of the highest constitutional values. Human life is both a necessary and sufficient prerequisite for the protection of human dignity as the supreme constitutional value and ideal[6] . The protection of the sanctity of human life is guaranteed by Article 17 of the URS[7], which ranks among the most strictly protected constitutional provisions. This provision does not grant an individual the right to dispose of their own life in the sense that the state would be obligated to facilitate or provide assistance in committing suicide. The protection of the right to life in the Slovenian constitutional order is based on the understanding of human dignity as a fundamental constitutional value that permeates the entire legal system.[8] The right to life under Article 17 of the URS is therefore inextricably linked to the right to personal dignity and security under Article 34 of the URS, whereby the individual is protected as the bearer of human dignity and fundamental rights. Constitutional protection of life is based on respect for the human being as the bearer of human dignity and inalienable rights; therefore, it is not permissible to treat an individual's life merely as a means to achieve other ends.[9] The framers of the Constitution have thus recognized life as having a special constitutional status that goes beyond the understanding of life as merely a subjective human right and defines it as an independent constitutional value.

This understanding has also been emphasized in Slovenian judicial practice by the Constitutional Court of the Republic of Slovenia (USRS), which stated in its judgment I U 1228/2019-42, the USRS stated that Article 17 of the URS provides broader constitutional protection than comparable international provisions, as it protects life as an independent constitutional value. The Court emphasized that the concept of the inviolability of human life in the Slovenian constitutional framework is defined more broadly and strictly than comparable provisions in international instruments, which, as a rule,

[6]Ivanc, 2019, p. 137.
[7]Ibid.
[8]USRS Decision U-I-109/10-11, 26. 9. 2011, para 7 and 8; The Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 1/91 - hereinafter TUL), the preamble to the Constitution of the Republic of Slovenia, and numerous constitutional provisions, it follows that human dignity is a fundamental value /…/ and has objective significance in the exercise of public authority, both in specific proceedings and in the adoption of regulations.
[9]Ivanc, 2019, p. 134–137.

guarantee only the right to life. International documents, as a rule, do not contain a provision comparable to Article 17 of the Constitution, which explicitly stipulates that human life is inviolable. In the court's assessment, this constitutional provision protects not only an individual's subjective right to life, but life as an independent constitutional value. It follows that the principle of the inviolability of human life has special constitutional significance in the Slovenian legal order and enjoys a particularly high level of legal protection. International instruments contain a comparable provision stating that everyone has the right to life or that everyone's right to life is protected by law.[10] Consequently, the expression of and belief in the sanctity of human life may take various forms and, of course, possess varying degrees of legitimacy.[11]

In the Slovenian constitutional order, the right to life is also closely linked to the right to health care under Article 51 of the URS. This provision imposes a positive obligation on the state to establish a health care system that guarantees individuals effective, high-quality, and safe medical treatment.[12] In this sense, the right to health care is not merely a social right, but represents one of the key mechanisms for fulfilling the state's positive obligations to protect human life.

Contemporary constitutional theory and judicial practice indicate that the right to life does not merely entail a prohibition on the arbitrary taking of life, but also requires the state to take active measures to ensure the conditions for its effective protection. This obligation is particularly evident in the field of health care, where the state must establish a regulatory, organizational, and institutional framework that enables timely and professional medical care, the effective prevention of threats to patients' lives, and appropriate legal remedies in cases of violations of the right to life.

From the perspective of the topic at hand, therefore, the right to life is not merely a foundational constitutional principle but also a central criterion for assessing the functioning of the healthcare system. It is precisely in this area that the positive obligations of the state, as developed in the contemporary case law of the ECtHR, are directly reflected; these obligations require states to establish an effective healthcare system as one of the key instruments for ensuring the actual and effective protection of human life.

[10]The first sentence of paragraph 1 of Article 6 of the International Covenant on Civil and Political Rights (ICCPR); the first sentence of Article 2(1) of the ECHR; Article 2(1) of the Charter of Fundamental Rights of the EU; Article 3 of the Universal Declaration of Human Rights.

[11]UPRS Judgment I U 1228/2019-42, November 11. 2021, para. 138.

[12]The State's constitutional obligation under Article 51 of the Constitution of the Republic of Slovenia is implemented at the legislative level primarily through the Health Care Activities Act (ZZDej), which regulates the organization of health care activities and public health services, and through the Patient Rights Act (ZPacP), which guarantees procedural and substantive safeguards for patients. The Medical Service Act (ZZdrS), meanwhile, regulates the provision of medical services, the professional duties and responsibilities of physicians, and thereby contributes to ensuring the high-quality and safe provision of healthcare services.

Methodology/Materials and Methods

The methodological approach is based on well – established methods of legal science, employing normative-dogmatic, comparative, axiological, and sociological approaches. Within the framework of the theoretical approach, the study of legal sources was based on a review of the relevant literature by domestic and foreign authors. The study focuses on the descriptive and explanatory aspects of the issue and on understanding the right to life at the international level and in the Republic of Slovenia.

This paper analyses the realization of the right to life in healthcare from the perspective of international law, the European Convention on Human Rights, the constitutional order of the Republic of Slovenia, and the case law of the ECtHR. Methodologically, it is based on legal – dogmatic and comparative legal analysis, as well as an analysis of case law.

Results

The Implementation of Positive Obligations Under Article 2 of the ECHR in Health Care

The development of the ECtHR's case law has gradually transformed Article 2 of the ECHR from a classic prohibition against the arbitrary deprivation of life into a complex system of the state's positive obligations. These obligations have particular significance in the context of healthcare, as they relate to situations in which an individual's life depends directly on the actions or omissions of state authorities or healthcare providers.

In its early case law, the ECHR emphasized that the right to life must be "practical and effective," not merely theoretical and illusory.[13] This gives rise to an obligation on the part of states to take appropriate measures to protect life in cases where the authorities are aware of, or ought to be aware of, a real and immediate danger to an individual's life. In the context of health care, these obligations fall into three interrelated categories: (i) normative, (ii) operational (preventive), and (iii) procedural obligations.

The State's normative obligation under Article 2 of the ECHR requires the establishment of an appropriate legal and institutional framework that enables the effective protection of life. The State must ensure that activities within the healthcare system are legally regulated in a manner that minimizes risks to patients' lives and enables oversight of the conduct of healthcare professionals and institutions.

ECtHR in the case *of Calvelli and Ciglio v. Italy*, dated January 17, 2002

[13]ECtHR Šilih v. Slovenia, No. 71463/01, April 9, 2009; para. 153*;* ECtHR Cyprus v. Turkey*,* [GC], No. 25781/94, May 10, 2001, para. 147, ECHR 2001 IV.

In this case, the Court emphasized that the legal system must provide an effective mechanism for establishing the liability of healthcare professionals, including the possibility of civil and criminal sanctions.[14]

Similarly, in the case *of Vo v. France*, No. 53924/00, the Court noted that the legal framework must be sufficiently clear and predictable to ensure effective protection of life even in complex medical situations.[15] This normative obligation also includes the State's duty to ensure regulation of the operations of both public and private healthcare providers, as the protection under Article 2 of the ECHR is not limited to the vertical relationship between the State and the individual, but encompasses the entire system of healthcare provision.

The State's operational obligation refers to the duty to monitor specific measures to protect an individual's life in specific situations of risk. This obligation arises when state authorities or healthcare providers are aware of, or should be aware of, a real and immediate danger to life.

ECtHR in the case *of L. C. B. v. the United Kingdom*, dated June 9, 1998

The Court emphasized that the State must take appropriate measures whenever there is a real or immediate threat to an individual's life of which the State is aware or ought to be aware.[16] In a healthcare context, this entails an obligation to provide adequate and timely medical care.

Similarly, in the case *of Mehmet Şentürk and Bekir Şentürk v. Turkey*, No. 13423/09, the Court emphasized that the State's positive obligation arises even in cases were an individual is not guaranteed timely access to hospital care or appropriate emergency medical assistance, provided that such a failure endangers the individual's life.[17] In such cases, the state must ensure the effective organization of the healthcare system, enabling individuals to have actual access to life-saving medical services.

ECHR in the case *of Dodov v. Bulgaria,* dated July 14, 2008

Of particular importance is the Court's finding that a failure to provide adequate supervision in a hospital setting may constitute a violation of Article 2 of the ECHR.[18] This obligation is particularly emphasized in cases involving individuals who, due to their medical condition or other circumstances, are unable to effectively care for themselves and are therefore in a particularly vulnerable position.[19] The operational obligation to ensure adequate medical care and provide assistance is particularly emphasized for vulnerable groups,

[14]ECtHR, Calvelli and Ciglio v. Italy, No. 32967/96, January 17, 2002, para.51.
[15]ECtHR, Vo v. France, No. 53924/00, July 8, 2004, paras. 81–89.
[16]ECtHR L.C.B. v. The United Kingdom, No. 14/1997/798/1001, June 9, 1998, para. 36, Reports of Judgments and Decisions 1998-III, p. 1403, para. 36.
[17]ECtHR, Mehmet Şentürk and Bekir Şentürk v. Turkey, No. 13423/09, April 9, 2013, para. 105.
[18]ECtHR, Dodov v. Bulgaria, No. 59548/00, July 14, 2008, para. 70.
[19]ECtHR, Dodov v. Bulgaria, No. 59548/00, July 14, 2008, para. 81.

such as hospitalized patients, children, or individuals who are unable to protect their own interests.[20]

The procedural obligation of the state under Article 2 of the ECHR requires that, in the event of an alleged violation of the right to life, an effective, independent, and thorough investigation must be ensured. This obligation applies regardless of whether the interference resulted from the actions of state authorities or private entities.

ECtHR in the case *of Öneryildiz v. Turkey*, dated November 30, 2004

The Court emphasized that the procedural obligation includes the duty to conduct an effective investigation capable of leading to the identification and, where necessary, the punishment of those responsible.[21]

Similarly, in the case *of Šilih v. Slovenia*, No. 71463/01, the Court emphasized that the procedural dimension of Article 2 of the ECHR remains independently protected even after death.[22] In the context of healthcare, this means that the state must ensure effective mechanisms for establishing liability even in cases of alleged medical errors or omissions, including the possibility of criminal, civil, and disciplinary proceedings.

The Relationship Between Articles 2 and 8 of the ECHR: The Right to Life, Personal Autonomy, and the Limits of Self-Determination

The relationship between Article 2 of the ECHR, which protects the right to life, and Article 8 of the ECHR, which guarantees the right to private and family life, represents one of the most challenging areas of contemporary interpretation of the Convention. It involves a conflict between two fundamental values: the protection of life, on the one hand, and an individual's autonomy and bodily integrity, on the other.

The ECtHR has repeatedly emphasized that the concept of private life under Article 8 of the ECHR encompasses a broad and dynamic concept that cannot be exhaustively defined.[23] It includes an individual's physical and psychological integrity, their personal identity, and various elements of personal development. In this context, Article 8 of the ECHR also protects areas such as sexual identity, sexual life, and the right to form relationships with other people.[24] The Court has gradually developed the view that at the core of Article 8 of the ECHR lies the principle of personal autonomy, which recognizes an individual's right to a certain degree of self-determination regarding their own body and way of life.[25] However, this autonomy is not

[20]ECtHR, Center for Legal Resources on behalf of Valentin Câmpeanu v. Romania, No. 47848/08, July 17, 2014, para. 130.
[21]ECtHR Öneryildiz v. Turkey, No. 48939/99, November 30, 2004, para. 71; see also ECtHR Kalender v. Turkey, No. 4314/02, December 15, 2009, para. 52.
[22]ECtHR, Šilih v. Slovenia, No. 71463/01, April 9, 2009, para. 155.
[23]ECtHR X and Y v. the Netherlands, No. 8978/80, March 26, 1985, para. 22.
[24]ECtHR Mikulić v. Croatia, No. 53176/99, February 7, 2002.
[25]ECtHR Pretty v. The United Kingdom, No. 2346/02, April 29, 2002.

absolute and cannot, in and of itself, override the State's positive obligations under Article 2 of the ECHR.

A similar normative approach stems from Recommendation No. 1418 (1999) of the Parliamentary Assembly of the Council of Europe on the protection of the human rights and dignity of terminally ill and dying persons.[26] The recommendation emphasizes the duty of member states to ensure respect for the dignity of terminally ill and dying persons while maintaining the prohibition on the intentional taking of life. In this regard, it explicitly draws upon Article 2 of the ECHR, which protects the right to life, to state that the wish of terminally ill and dying persons to die does not create a legal claim to assisted dying, nor can it constitute a legal justification for acts intended to cause death.[27]

Assisted Suicide and the Limits of Convention Protection

The relationship between the right to life under Article 2 of the ECHR and the issue of assisted suicide has been the subject of extensive case law by the ECtHR. In several cases, the Court has assessed the compatibility of national regulations that prohibit or restrict assisted suicide with the provisions of the Convention and has gradually developed standards regarding the scope of States' positive obligations and their margin of appreciation. The following section presents the key decisions that serve as a starting point for examining the realization of the right to life in the context of health care.

ECtHR in the case *of Pretty v. the United Kingdom,* dated April 20, 2002

The Court, for the first time, comprehensively addressed the question of whether Article 8 of the ECHR entails an individual's right to request state-assisted suicide.[28] The applicant, who suffered from a progressive neurodegenerative disease, argued that the criminal law prohibition on assisted suicide unjustifiably restricted her right to private life. The Court took a clear position that a right to die cannot be derived from Article 2 of the ECHR. The fundamental purpose of this provision is the protection of life, not its negation. Therefore, Article 8 of the ECHR cannot be interpreted as imposing an obligation on the state to facilitate or assist in causing an individual's death. The Court emphasized that recognizing a right to die would entail a fundamental change in the structure of the Convention, which is designed as an instrument for the protection of life and human dignity.[29] At the same time, it noted that these are issues that fall within the realm of broad social and ethical debate, where the Contracting States have a certain margin of appreciation.

[26]Recommendation 1418 (1999) of the Parliamentary Assembly. Text adopted by the Assembly on June 14, 1999 (24th session).
[27]Parliamentary Assembly Recommendation 1418 (1999), pp. 2–4, point 9, para. c.
[28]ECtHR Pretty v. The United Kingdom, No. 2346/02, April 29, 2002.
[29]Ibid.

Subsequent case law of the ECtHR has further developed the concept of personal autonomy, but has not altered the fundamental position established in the case *of Pretty v. the United Kingdom*, No. 2346/02. In the case *of Hass v. Switzerland*, No. 31322/07, the Court reiterated that the right to private life also encompasses a certain degree of autonomy in deciding one's own manner of death, but that this does not entail a positive obligation on the part of the State to provide access to lethal means.[30] In the case *of Koch v. Germany,* No. 497/09, the ECtHR further emphasized the procedural dimension of Article 8 of the ECHR, particularly the requirement for effective judicial protection when deciding on requests for assisted suicide. However, the Court reaffirmed that no substantive right to assisted suicide arises from the Convention.[31] In the case *of Lambret and Others v. France*, No. 46043/14, the Court focused on the issue of discontinuing artificial life support and emphasized the distinction between withholding disproportionate treatment and the active taking of life.[32] In the court's view, this is a legally and ethically significant distinction, as the decision to withhold disproportionate treatment does not in itself constitute intentional deprivation of life, but may, under certain conditions, be consistent with the obligations under Article 2 of the ECHR. This distinction remains a key starting point in contemporary bioethical debates as well. The Court systematically defined, for the first time, the procedural standards that states must ensure when deciding on the withdrawal of life-sustaining treatment. The emphasis is not on the substantive question of whether discontinuing treatment is permissible, but rather on the legality and quality of the decision-making process. It has emphasized the need for a clear legal framework, respect for the patient's wishes, the involvement of close relatives and healthcare professionals in the decision-making process, and the assurance of effective judicial oversight.

Case law establishes a clear conceptual distinction between: (i) the right to respect for private life and physical integrity, and (ii) the potential right to cause or assist in death. Although Article 8 of the ECHR protects an individual's autonomy, this cannot take precedence over the fundamental normative core of Article 2 of the ECHR, which protects life as a fundamental value. Legal doctrine therefore emphasizes that the ECHR is based on a hierarchy of values in which the right to life holds a special, foundational position.[33] Individual autonomy is thus realized within the limits of the protection of life, not as its negation.

Although the case law of the ECtHR establishes a relatively consistent interpretation, the question of the normative tension between the protection of life and respect for personal autonomy remains open. On the one hand, it is emphasized that a broad interpretation of Article 2 of the ECHR strengthens the protection of vulnerable individuals and prevents abuses. On the other

[30]ECtHR Hass v. Switzerland, No. 31322/07, January 20, 2011.
[31]ECtHR Koch v. Germany, No. 497/09, December 17, 2012, para. 42.
[32]ECtHR Lambret and Others v. France, No. 46043/14, June 5, 2015.
[33]ECtHR Grabenwarter, European Convention on Human Rights – Commentary, Oxford University Press.

hand, the question arises as to whether such an interpretation sufficiently takes into account developments in contemporary bioethics, which increasingly emphasize patient self-determination as a central principle of medical law. This tension is particularly evident in end-of-life issues, where the line between permissible withdrawal of treatment and prohibited interference with life is often blurred. It is precisely here that it becomes clear that the ECHR does not provide an unambiguous answer, but rather establishes a framework within which states develop their own solutions.

Human Dignity, Physical Integrity, and the Right to Self Determination

The right to life is a fundamental human right and one of the highest values of modern democratic society. As a fundamental human right, it is guaranteed in national constitutional frameworks and international human rights instruments. Closely linked to it is the protection of bodily integrity and personal autonomy, which guarantees the individual the right to decide on interventions involving their own body and on medical treatment. The right to self-determination is therefore an important expression of respect for human dignity, as it enables individuals to decide for themselves on matters that significantly affect their physical and personal spheres.[34]

The fundamental international framework governing the use of biomedical interventions was established in 1997 by the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine – the Oviedo Convention.[35] Article 5 of the Convention stipulates that medical interventions may only be performed after the person has been adequately informed about the intervention and has freely consented to it. The individual must be informed in advance of the purpose and nature of the intervention, its consequences, risks, and other information relevant to making a decision. Furthermore, the individual may freely withdraw their consent at any time.[36]

The legal system guarantees the protection of an individual's physical and mental integrity as one of the fundamental aspects of their personal sphere. The protection of physical integrity means that, as a general rule, any intervention in a person's body is permitted only on the basis of their free and informed consent or another legal basis established by law. This gives rise to the doctrine of informed consent, which is based on respect for the patient's autonomy and right to self-determination in decisions regarding medical treatment.[37] If a patient is unable to give valid consent due to their medical condition or other circumstances, consent is given by their legal representative or another

[34]Buletsa, 202, p. 16.
[35]Astromske, Peicius 2021, p. 31.
[36]Ibid.; In the original: "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, ETS, No. 164 – Oviedo, April 4, 1997."
[37]Novak, Korošec, Balažic, 2009, p. 141.

authorized person in accordance with the law.[38] The doctrine of informed consent to medical treatment is based on the principle of patient autonomy, according to which, as a general rule, any medical intervention requires the patient's free and informed consent. If a patient is unable to give valid consent due to their medical or other circumstances, consent is given by their legal representative or another person authorized to do so in accordance with the law.

The validity of the patient's consent is inextricably linked to the physician's fulfilment of the duty to inform. The patient must be informed, in a manner they can understand, of the nature and purpose of the proposed procedure, its expected benefits, risks, possible complications, and available treatment alternatives. Only on the basis of adequate information can the patient freely and autonomously decide on an intervention affecting his or her bodily integrity. Therefore, the law recognizes the individual's legally protected interest in being safeguarded against medical interventions performed without his or her valid consent.[39]

Under Slovenian law, a patient's bodily integrity is primarily protected by the right to consent to medical treatment, as stipulated in Article 26 of the Patient Rights Act (ZPacP).[40] The right to consent guarantees an individual the ability to make independent decisions regarding medical treatment and represents one of the fundamental expressions of a patient's autonomy and right to self-determination regarding interventions on their own body. The exercise of this right is inextricably linked to the physician's duty to provide information, as valid consent is possible only if the patient has previously received complete, understandable, and decision-relevant information. The protection of physical and mental integrity is also guaranteed at the constitutional level. The preamble to the Constitution of the Republic of Slovenia emphasizes the commitment to respecting human rights and fundamental freedoms as one of the fundamental constitutional principles of a democratic state. Article 17 of the URS is of particular importance, as it guarantees the inviolability of human life and thereby establishes one of the fundamental constitutional values of the Slovenian legal order.[41]

Chapter II of the URS, titled "Human Rights and Fundamental Freedoms" sets forth a catalogue of human rights, the conditions for their exercise, and the constitutional conditions under which they may be restricted. Traditionally, the fundamental function of human rights has been to protect the individual against arbitrary interference by the state and its authorities. However, the modern constitutional understanding imposes not only negative obligations but also positive obligations on the state to ensure, through an appropriate normative

[38]Novak, Korošec, 2009, p. 197.
[39]Burger, 1984, p. 281.
[40]Patient Rights Act (ZPacP), Official Gazette of the Republic of Slovenia, No. 15/08, 55/17, 152/20 – ZZUOOP, 175/20 – ZIUOPDVE, 177/20, 15/21 – ZDUOP, 206/21 – ZDUPŠOP, 100/22 – ZNUZSZS, 136/23 – ZIUZDS, 100/25 – ZDigZ.
[41]Jambrek, 2019, p. 16–17.

framework and effective legal protection, the actual realization of human rights, including in relations among individuals.[42]

Article 35 of the URS holds a special place among constitutionally protected rights; it guarantees the inviolability of a person's physical and mental integrity, privacy, and personal rights. The protection of physical integrity guarantees an individual protection against impermissible intrusions into their physical integrity, while the protection of mental integrity encompasses protection against intrusions into an individual's inner life, emotional sphere, personal identity, and dignity. Such intrusions can cause feelings of fear, humiliation, distress, or inferiority and constitute an intrusion into the individual's constitutionally protected personal sphere.[43] The URS does not define personal rights exhaustively, nor does the legislation contain an exhaustive catalogue of them. Their content is therefore developed primarily through constitutional and judicial practice as well as legal theory. Such an open constitutional concept allows for the adaptation of the protection of personal rights to social changes, advances in medicine, biomedical technologies, and new forms of interference with human physical and mental integrity.[44]

In its constitutional rulings, the USRS has repeatedly defined the right to the inviolability of human life under Article 17 of the URS as one of the fundamental constitutional values, which is of an absolute nature and therefore may not be restricted.[45] The absolute nature of this right is reflected, among other things, in the constitutional prohibition on the death penalty, which applies regardless of the type and severity of the criminal offense committed and the degree of danger the perpetrator poses to society. At the same time, it emphasized the distinction between the state's negative and positive obligations in the field of human rights protection. Negative obligations impose on the state the duty to refrain from impermissible interference with human rights, while positive obligations require active action by all branches of government to ensure their effective realization and protection. The state's positive obligations are particularly intense with regard to human rights that protect life, health, physical and mental integrity, personal safety, and human dignity. This gives rise to the state's duty to establish an effective normative, institutional, and judicial framework for their effective realization.[46]

Human dignity, as one of the fundamental principles of constitutional law, requires both respect for an individual's autonomy and their right to make free decisions on matters that fall within the sphere of private life. This principle is of particular importance when deciding on the medical treatment of terminally ill patients, where the protection of life, respect for human dignity, and the individual's right to self-determination intersect. It is precisely in this area that

[42]VSRS II Ips 160/2018, June 20, 2019, para. 17.
[43]USRS Decision Up-2155/08, October 1, 2009, para. 5.
[44]VSRS II Ips 160/2018, June 20, 2019, para. 16.
[45]Jaklič, Šepec, 2021, p. 46–47.
[46]USRS Decision Up-1082/12, May 29, 2014, para.12.

the most challenging ethical, legal, and medical dilemmas arise, which healthcare professionals, healthcare providers, and legislators must confront.

Recognition of a patient's right to refuse medical treatment has significantly influenced the development of the modern understanding of the balance between the duty to preserve life and respect for patient autonomy. Traditionally, medical law has been based primarily on the duty to preserve life. However, contemporary developments in human rights increasingly emphasize the individual's right to make their own decisions regarding medical interventions that affect their body and personal sphere. Although the legal frameworks of Council of Europe member states in this area are not entirely uniform, they generally recognize that the right to informed consent or refusal of treatment is one of the fundamental expressions of human autonomy and the right to self-determination.[47]

In the medical sciences as well, human dignity is regarded as a universal value and the fundamental basis of humane medical care. It signifies not only the recognition of the intrinsic and inalienable value of every human being, but also the obligation of all participants in healthcare to respect and protect this value. The principle of respect for human dignity has significant legal, ethical, and professional dimensions in treatment, nursing care, palliative care, and the alleviation of suffering from illness at the end of life.[48] In the Slovenian legal system, the principle of respect for human dignity is also particularly emphasized in the exercise of patients' rights. Article 3 of the ZPacP[49] establishes respect for the patient's personality and dignity as one of the fundamental principles of medical care. Among other things, this principle requires that a patient must not be subjected to discrimination, stigmatization, or any form of social exclusion due to their health condition or due to the causes, consequences, or circumstances of their illness and medical care.

Effective Legal Protection in the Event of an Infringement on the Right to Life

The fundamental rules regarding the exercise, limitation, and judicial protection of human rights and fundamental freedoms are set forth in Article 15 of the Constitution of the Republic of Slovenia. The fourth paragraph of that provision specifically guarantees judicial protection of human rights and fundamental freedoms, as well as the right to redress for the consequences of their violations. This constitutes a general constitutional guarantee of effective legal protection, the content of which reflects the requirements of Article 13 of the ECHR, under which Contracting States are obligated to ensure effective legal remedies for the protection of Convention rights.

When interpreting the fourth paragraph of Article 15 of the URS, one must, similarly to the interpretation of the right to judicial protection under the

[47]Astromske, Peicius, 2021, p. 28.
[48]Saetern, Naden, 2021, p. 71.
[49]Ibid.

first paragraph of Article 23 of the Constitution of the Republic of Slovenia, proceed from the requirement of effective and substantive protection of human rights. The purpose of constitutional protection is not merely formal recognition, but rather the establishment of such legal and institutional mechanisms that enable individuals to effectively exercise their rights and ensure the effective redress of the consequences of their violations.[50]

In its decision Up-555/03, Up-827/04, the USRS emphasized that the fourth paragraph of Article 15 of the URS must be interpreted as also encompassing the right to an independent, impartial, and effective investigation of the circumstances of an incident in which a person is alleged to have been subjected to torture or inhuman or degrading treatment by state authorities, or in which the person lost their life as a result of their actions. This right also includes the right of the affected persons or their relatives to effective access to such an investigation and to appropriate participation in it. Although the fourth paragraph of Article 15 of the URS primarily guarantees judicial protection of human rights, the Constitutional Court, in its interpretation, followed the established case law of the ECtHR regarding Article 13 of the ECHR. It follows from this case law that, in certain cases, the requirement for an effective legal remedy may be satisfied merely by conducting an independent and effective investigation outside of formal judicial proceedings, provided that such an investigation meets the requirements of independence, impartiality, thoroughness, and timeliness, and ensures that the affected persons have the opportunity to participate effectively.[51] An effective investigation thus constitutes one of the essential procedural guarantees for the protection of the right to life and the prohibition of torture or inhuman or degrading treatment.

The fourth paragraph of Article 15 of the URS constitutes an independent constitutional guarantee of judicial protection of human rights and fundamental freedoms, as well as the right to redress for the consequences of their violations. Although the right to judicial protection is generally guaranteed in the first paragraph of Article 23 of the URS, the fourth paragraph of Article 15 of the URS specifies it and emphasizes its effective implementation. If the legal system does not guarantee an individual effective judicial protection of human rights, this generally constitutes an infringement of both the right to judicial protection under Article 23 of the URS and the right under the fourth paragraph of Article 15 of the URS.[52] The Supreme Court of the Republic of Slovenia (VSRS) emphasized in Case II Ips 99/2013 that the fourth paragraph of Article 15 of the URS cannot be interpreted to mean that, in every case of a human rights violation, compensation is necessarily required when it is no longer possible to remedy the consequences of the violation . The assessment of the adequacy of a legal remedy must be based on the standard of effectiveness as developed by the ECtHR in relation to Article 13 of the ECHR.

[50]VSRS Judgment II Ips 99/2013, November 5, 2015, para. 11.
[51]para. 33.
[52]Testen, 2011, p. 200.

According to the established case law of the ECtHR, a legal remedy must be effective both in law and in practice. Its purpose must be to prevent the alleged violation or to bring it to an end, if it is still ongoing, or to ensure the effective redress of the consequences of a violation that has already occurred. The nature and scope of legal protection depend on the right in question and the circumstances of the individual case. In some cases, a finding of a violation of a human right or a Convention right may be sufficient to provide effective protection. Conversely, in cases of particularly serious infringements of fundamental human rights – especially violations of the right to life under Article 2 of the ECHR or the right to a trial without undue delay – the individual must, as a rule, also be guaranteed the possibility of obtaining just monetary compensation or damages for the non-pecuniary harm suffered.[53]

Legislation governing patients' rights must ensure that these rights are not merely formally recognized, but are also effectively enforced in practice. This must be supported by a system of judicial protection that enables patients to effectively defend their rights before the competent courts. Article 5 of the ZPacP sets forth a catalogue of patients' rights, which, by their nature, constitute an expression of personal rights, as they directly protect an individual's physical and mental integrity, dignity, privacy, and autonomy of decision-making. Violations of these rights encroach upon the patient's personal sphere and, as a rule, cause non-pecuniary harm, which may manifest as distress, humiliation, feelings of powerlessness, deprivation, loss of trust, or other forms of mental suffering. Therefore, in the event of a violation of these rights, the individual must be guaranteed effective legal protection that meets the requirements of Articles 15 and 23 of the URS and the standards for an effective legal remedy developed in the contemporary case law of the ECtHR.

Personal rights are rights that are inseparably linked to an individual's personality and protect their fundamental personal interests, particularly physical and mental integrity, identity, privacy, dignity, and other physical and psychological aspects of human personality. Their absolute nature is reflected primarily in their protective function, as they impose on everyone the duty to refrain from impermissible interference in an individual's protected sphere of personality.[54] In order to ensure the broadest and most effective protection of the human personality, Article 35 of the URS protects personality rights through the use of a general clause. It specifies the content of this protection as the inviolability of a person's physical and mental integrity, privacy, and personality rights. The protection of patients' rights is also closely linked to the provision of Article 34 of the URS, which guarantees the right to personal dignity and safety.

In Decision 1082/12[55], the USRS emphasized that the human rights set forth in Articles 34 and 35 of the URS impose both negative and positive obligations on the state. The state's negative obligation entails the duty to

[53]Supreme Court of the Republic of Slovenia Judgment II Ips 99/2013, November 5, 2015, point 12 of the reasoning.
[54]Farmany, 2019, p. 341.
[55]USRS Decision Up-1082/12, May 29, 2014, point 12 of the reasoning.

refrain from arbitrary or impermissible interference with an individual's physical and mental integrity. The positive obligation, on the other hand, requires the adoption of appropriate measures for the effective protection of persons within its jurisdiction. Among the fundamental positive obligations of the state are, in particular, the establishment of an appropriate legal and institutional framework for the prevention, detection, and punishment of unlawful interference, as well as ensuring its effective and efficient implementation in practice.

In the Case No. II Ips 160/2018,[56] the VSRS emphasized that the right to personal integrity is also included among personality rights, a fact confirmed by both legal theory and established case law. In this regard, it noted that the list of personality rights is open-ended, as these are rights that belong to a person by virtue of their personal dignity and are inseparably linked to their personality. Due to their special nature, their protection is also guaranteed under tort law. Article 179 of the Obligations Code (OZ)[57] classifies mental anguish resulting from the infringement of personality rights among the legally recognized forms of non-pecuniary damage, for which the court may award the injured party fair monetary compensation.[58] Invasions of personality rights generally affect an individual's non-pecuniary interests, particularly their dignity, physical and mental integrity, privacy, and personal identity. This also applies to violations of patients' rights, where impermissible infringements on physical or mental integrity or on human dignity cause non-pecuniary harm. In such cases, protection under tort law constitutes an important element of effective judicial protection of human rights and patients' rights. The possibility of claiming fair monetary compensation does not merely serve to remedy the consequences of a violation that has already occurred, but also contributes to the effective protection of personality rights and strengthens the preventive function of the legal system in preventing interference with an individual's fundamental personality rights.

The protection of personality rights in civil law is not limited solely to compensatory relief but also encompasses preventive and restitutory forms of protection. In addition to claims for damages, individuals may also bring injunctive and remedial claims under Article 134 of the Civil Code, the purpose of which is to prevent further infringements of personality rights or to remedy their consequences. The specific nature of personality rights, in fact, requires comprehensive and effective legal protection in both private and public law relationships. The special provision for just monetary compensation under the Act on the Protection of the Right to a Trial Without Undue Delay (ZVPSBNO)[59] is based on the recognition that certain systemic violations of human rights, by their very nature, require specially tailored forms of legal

[56]VSRS Judgment II Ips 160/2018, June 20, 2019, para. 8.
[57]Civil Code, Official Gazette of the Republic of Slovenia, No. 97/07 – Officially consolidated text, 64/16 – Constitutional Court decision, 20/18.
[58]VSRS Judgment II Ips 160/2018, June 20, 2019, para. 12.
[59]Act on the Protection of the Right to a Trial Without Undue Delay (ZVPSBNO), Official Gazette of the Republic of Slovenia, No. 67/12 – officially consolidated text.

protection aimed at ensuring the effective exercise of the constitutional right to a trial under Article 23 of the URS.[60]

In general terms, personality rights are defined as non-property and distinctly personal rights that are inseparably linked to the individual and protect his or her fundamental personal interests. As a rule, infringements of these rights cause non-pecuniary harm, which manifests itself primarily in the impairment of an individual's physical, mental, and emotional well-being and, due to its nature, often cannot be precisely quantified in monetary terms. Personality rights therefore represent the intersection of constitutional and civil law protection.[61] On the one hand, they are an expression of fundamental human rights; on the other hand, they function as subjective civil rights that enable an individual to seek judicial protection against infringements on their personality rights.

The first sentence of the first paragraph of Article 2 of the ECHR imposes a negative obligation on the State to refrain from the intentional and unlawful deprivation of life. The established case law of the ECtHR emphasizes that, in addition to negative obligations, this provision also imposes extensive positive obligations on the State, the purpose of which is to ensure the effective protection of the life of all persons within its jurisdiction (see also the case *of Calvelli and Ciglio v. Italy*, No. 32967/96[62]; *Kotilainen and Others v. Finland*, No. 62439/12[63]; *Kurt v. Austria*, No. 62903/15[64]).

The positive obligations under Article 2 of the ECHR are tailored to the circumstances in which the right to life may be at risk. Their specific content, however, depends on the nature of the risk and the context in which the risk arises. They are shaped by the various circumstances in which the right to life may be at risk (see the case *of Öneryildiz v. Turkey*, No. 48939/99[65]). In the field of healthcare, the State's positive substantive obligations also include the duty to ensure appropriate professional standards in the provision of healthcare services. The State must therefore establish an effective regulatory framework that requires healthcare providers – whether public or private healthcare institutions – to take appropriate measures to protect the life and health of patients (see the case *of Calvelli and Ciglio v. Italy*, No. 32967/96[66]; the case *of Vo v. France*, No. 53924/00[67]; the case *of Lopes de Sousa Fernandes v. Portugal,* No. 56080/13[68]; the case *of Hristozov and Others v. Bulgaria*, No. 47039/11[69]).[70]

[60]UPRS Decision Up – 1082/12, May 29, 2014, para. 12.
[61]Kasperska, 2021, p. 576.
[62]ECtHR, Calvelli and Ciglio v. Italy, No. 32967/96, January 17, 2002.
[63]ECtHR, Kotilainen and Others v. Finland, No. 62439/12, September 17, 2020, para. 66.
[64]ECtHR, Kurt v. Austria [GC], No. 62903/15, June 15, 2021, para. 157.
[65]ECtHR, Öneryildiz v. Turkey, No. 48939/99, November 30, 2004, para. 71.
[66]ECtHR, Calvelli and Ciglio v. Italy, No. 32967/96, January 17, 2002, para. 49.
[67]ECtHR, Vo v. France, No. 53924/00, July 8, 2004, para. 89.
[68]EctHR, Lopes de Sousa Fernandes v. Portugal, No. 56080/13, December 19, 2017, para. 166.
[69]ECtHR, Hirstozov and Others v. Bulgaria, No. 47039/11 and 358/12, April 29, 2013, para. 108.
[70]ECtHR, V v. The Czech Republic, No. 26074/18, March 7, 2024, para. 82.

Conclusions

An examination of sources of international law, the constitutional framework of the Republic of Slovenia, and the case law of the ECtHR confirms that the right to life in modern law is no longer understood merely as a negative obligation on the part of the state to refrain from arbitrarily taking life. Rather, it is understood as a comprehensive system of positive obligations aimed at ensuring the effective protection of life, including within the context of healthcare. In the field of healthcare, the right to life is closely intertwined with human dignity, physical and mental integrity, and patient autonomy. Contemporary legal standards therefore require striking an appropriate balance between the protection of life and respect for an individual's right to self-determination regarding medical treatment. Contemporary ECHR case law confirms that effective protection of the right to life requires a clear legislative framework, adherence to professional standards, effective decision-making procedures, and the guarantee of judicial protection in cases of interference with fundamental human rights. This is particularly true in decisions regarding the end of life, where the patient's autonomy, the protection of human dignity, and effective legal protection must be balanced against the state's constitutional duty to protect life.

The case law of the ECtHR is characterized by the development of normative, operational, and procedural obligations on the part of states, which require them to establish an appropriate legal framework, an effectively organized healthcare system, and mechanisms for judicial and other forms of protection in cases of interference with the right to life. The normative framework and case law under consideration confirm that effective legal protection of the right to life goes beyond merely remedying the consequences of violations and includes preventive, procedural, and substantive legal mechanisms designed to ensure comprehensive protection of human life, physical and mental integrity, and human dignity.

Likewise, the case law of the ECtHR consistently emphasizes that the fundamental purpose of Article 2 of the ECHR is the protection of life as one of the fundamental values of a democratic society. Therefore, no right to die or right to request assistance in bringing about one's own death can be derived from that provision. Although Article 8 of the ECHR guarantees broad protection of personal autonomy and private life, this protection is exercised within the limits of the legal order, which safeguards life as a special legal interest. This interpretation of the relationship between Articles 2 and 8 of the ECHR is also reflected in a systemic understanding of their interplay. It follows from the legal sources under consideration that a structural asymmetry remains between the right to life and the right to private life. While Article 8 of the ECHR allows for a broad scope of autonomy, Article 2 of the ECHR sets a clear substantive limit: life, as a legally protected value, is not at the disposal of the individual or the state. This asymmetry is particularly pronounced in healthcare, where decision-making often takes place within relationships marked by unequal power dynamics, the vulnerability of the patient, and the

professional authority of healthcare providers. Therefore, the state's positive obligations serve not only to protect life but also to prevent abuse, arbitrariness, and systemic failures. In this context, case law functions not merely as an interpretive instrument, but as a normative corrective to national legal systems. By establishing standards of effectiveness, predictability, and procedural safeguards, the ECtHR sets minimum common European standards for the protection of life.

The Slovenian constitutional legal order also follows this understanding. Article 17 of the URS, which stipulates that human life is inviolable, together with Article 51 of the Constitution and the legal framework governing health care, forms a constitutional framework in which the protection of life constitutes one of the state's fundamental obligations. The Slovenian constitutional framework thus ranks among legal systems that recognize life as an independent, objective constitutional value. The concept of the inviolability of life under Article 17 of the URS means that life is not merely a subjective right of the individual, but also a constitutionally protected good that limits the individual's autonomy of disposition. It follows that the state's positive obligations are fulfilled not only by establishing an appropriate regulatory framework but also by ensuring the effective functioning of the healthcare system, high-quality medical care, and effective legal remedies in cases of infringements on the right to life. Such a constitutional framework reinforces the state's protective function in the field of health care, while at the same time raising the question of striking an appropriate balance between the state's duty to protect life and respect for the patient's autonomy and right to self-determination.

The central finding of this article is that the right to life in the context of health care is realized as a multifaceted category under constitutional and international law, the scope of which goes beyond the traditional understanding of the prohibition on taking life. Its effective protection depends on the coordinated operation of constitutional guarantees, international legal standards, and national healthcare legislation. In this regard, the case law of the ECtHR serves as an important interpretive framework for the development of the state's positive obligations. It is precisely through the consistent implementation of these obligations that the contemporary understanding of the right to life as one of the fundamental values of a democratic state governed by the rule of law is manifested. Despite the establishment of common convention standards, however, the ECHR case law under consideration also reveals a certain normative tension. The broad margin of appreciation afforded to states leads to varying levels of protection for the right to life across individual member states. This raises the question of whether the European standard for the protection of life in healthcare is in fact uniform, or whether its content and the level of protection vary across national legal systems.

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