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PROTECTION OF SOCIAL RIGHTS IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Master Thesis

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CONTENT

INTRODUCTION

"If political rights are necessary to set social rights in place, social rights are indispensable to make political rights 'real' and keep them in operation. The two rights need each other for their survival; that survival can only be their joint achievement"[1].

By the words of Zygmunt Bauman social and political rights are very closely interrelated. For example, probably the most famous quote about human rights is expressed in Vienna Declaration and Programme of Action from 1993. It has been stated that *"Human Rights are [....] indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis [....]"*[2]. However, having all this in mind the reality is that human rights are divided into different documents and treaties.

The first important document to be mentioned is the *Universal Declaration of Human Rights* [hereinafter the UDHR][3] adopted within the United Nations framework in 1948, which can be regarded as the first catalog of all human rights. Later, in order to strengthen the human rights protection within the United Nations, in 1966 two more international covenants (also one additional protocol on individual petition right) were adopted:

1. *UN International Covenant on Civil and Political Rights* [hereinafter the ICCPR][4];

2. *UN International Covenant on Economic, Social and Cultural Rights* [hereinafter the ICESCR][5].

The aim of these covenants was to have legally binding documents in order to strengthen the protection of human rights at the universal level. Two mentioned Covenants lay grounds for human rights protection in the United Nations system.

Therefore, Master Thesis (thereinafter – Thesis) starts with the legal analysis of the ICESCR. The Covenant refers to specific social rights which are protected under universal level and can serve as one of the legal grounds for identification of social rights in the case law of the European Court of Human Rights.

ICESCR binds its States Parties to respect economic, social and cultural rights [hereinafter - socio-economic rights, social rights].

Furthermore, according to the wording of Article 2 of this Covenant, States Parties have indirect commitments (or international obligations) to guarantee the rights and freedoms of the Covenant:

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[1] Zygmunt Bauman, *Collateral Damage: Social Inequalities in a Global Age* (Malden: Polity Press, 2011) p. 8.
[2] "*Vienna Declaration and Programme of Action*", United Nations human rights office of the high commissioner, section 1, art. 5, accessed 2019 August 2., https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx.
[3] "*Universal Declaration of Human Rights*", United Nations, accessed 2019 August 2., https://www.un.org/en/universal-declaration-human-rights/.
[4] "*International Covenant on Civil and Political Rights*", United Nations human rights office of the high commissioner, art. 1, accessed 2019 August 3., https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
[5] "*International Covenant on Economic, Social and Cultural Rights*", United Nations treaty collection, art. 1, accessed 2019 August 3., https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en.

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures"[6].

This means that every State Party must try its best financial, economic and other capacities, and, also, legislative measures, to guarantee progressively (in the future) social rights enshrined in the Covenant to the full extent.

ICESCR is aimed to protect every individual's rights without any discrimination (despite religion, race, sex, language, political or other opinion, etc.).

However, even though the idea and aim of the document were extremely positive, Article 2 of the Covenant leaves a wide State's margin of appreciation in the implementation of the rights enshrined in the ICESCR. Further, in 1966 when the Covenant was adopted, it was based only on the reporting system. After almost two decades, in 1985 The Committee on Economic, Social and Cultural Rights (CESCR) with the body of 18 independent experts that monitors implementation of the ICESCR by its States Parties was established.

Another Covenant - ICCPR – through its Article 2, directly obligates all States Parties to implement the Covenant[7]; i.e., to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, etc., electoral rights and rights to due process and a *fair* trial, etc. after the moment of the State's ratification or accession to the ICCPR.

The ICCPR has its specific feature – it is monitored by a specially created body - the United Nations Human Rights Committee, which under the Optional Protocol of the ICCPR (1966) examines the individual petitions submitted under the ICCPR.

At the European level after a Second World War in 1949 the International regional organization – the Council of Europe – was created[8].

One year after ten Council of Europe States gave birth to a 1950's European Convention on Human rights,[9] or as it is officially called - *Convention for the Protection of Human Rights and Fundamental Freedoms* [hereinafter ECHR, the Convention, European Convention][10]. The Convention protects civil and political rights such as the right to life, prohibition of torture, prohibition of slavery, the right to the protection of private and family life, the freedom of religion the freedom of association, etc.

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[6] "International Covenant on Economic, Social and Cultural Rights", *supra note*, 5: art. 2.
[7] "International Covenant on Civil and Political Rights", *supra note*, 4: art. 2.
[8] "Council of Europe", Council of Europe, accessed 2020 November 17., https://www.coe.int/en/web/portal/home.
[9] Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (Cambridge: Cambridge University Press, 2006).
[10] „*Convention for the Protection of Human Rights and Fundamental Freedoms* ", European Convention on Human Rights, art. 1, accessed 2019 August 10., https://www.echr.coe.int/Documents/Convention_Eng.pdf.

Moreover, ECHR has quite effective implementation mechanism; At the beginning, two bodies were functioning – *European Commission of Human Rights*, which was the filtering body considering whether the cases were admissible or not and the *European Court of Human Rights* [hereinafter the ECtHR, the Court, European Court] deciding on the merits of cases. Two bodies were later on merged into one - European Court of Human Rights, which as a permanent and single body has been created in 1998 under Protocol 11. Since that day, individuals may directly take cases to the Court. ECtHR under Article 46 of the Convention adopts obligatory judgments to the States.

Even the system of the ECHR has been described as the most effective human rights protection system, however, till this day no additional Protocol on social rights has been adopted within the Convention's framework. Hence, that is how the 1950s treaty text came into being, mostly excluding social and economic rights.[11]

For this reason and in order to fill in a legal gap in Europe as regards the social rights protection, the *European Social Charter* [hereinafter ESC][12] has been opened for signature on October 18, 1961 which directly guarantees economic, social and cultural rights. It is also very important to mention that after 5 years in 1996 the *European Social Charter* has been modified into the *European Social Charter (Revised)*[13] version, which gradually replace the original treaty.

However, even though social rights are not expressly mentioned in the text of the European Convention on Human Rights, certain social rights may be and are defended by the European Court of Human Rights through the Court's case law.

For the purpose of this Master Thesis it is essentially important to raise an aspect, whether the protection level of social rights can be regarded as effective one at the European level within the framework of the Council of Europe, and primarily, as interpreted in the jurisprudence of the European Court of Human Rights; moreover, another important aspect for this research is the question, whether it is necessary to look for other possibilities which could/would guarantee more effective protection of social rights at European level. Afterall, an individual can only enjoy the full potential of the rights enshrined in the ECHR once he or she has access to at least minimal socio-economic well-being, which has to be ensured by the state[14].

Research relevance. Social rights are not directly enshrined in the text of the European Convention on Human Rights, nevertheless, the protection of social rights has been developed in the jurisprudence

[11] Ed Bates, *The evolution of the European Convention on Human Rights: From its inception to the creation of a permanent court of human rights* (New York: Oxford University Press, 2010)
[12] "*European Social Charter*", Council of Europe, art. 1, accessed 2019 August 10., https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035.
[13] "*European Social Charter (Revised)*", Council of Europe, art. 1, accessed 2019 August 10., https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163.
[14] Vygantė Milašiūtė, "The Idea of Minimum Protection of Socioeconomic Rights under the ECHR", *Teisė*: *160 (2020): 36-50, p. 46. https://www.zurnalai.vu.lt/teise/article/view/20255/19381*.

of ECtHR. For example, cases *James and Webster v. UK*[15]; *Van der Musselle v. Belgium*[16]; *Kosiek v. Germany*[17]; *D.H. and Others v. The Czech Republic*[18]*; McDonald v. The United Kingdom*[19] and many others are very good examples of the Court's case law developments in the area of social rights.

Hence, these cases have proven that the protection of social rights under the Court's jurisprudence has started a long time ago and has been continuing until now. Moreover, based on the *dynamic* interpretation principle the case law of the ECtHR has been involving new social aspects into the sphere of the protection of human rights. As it was stated in *Tyrer v. the United Kingdom*[20] and then repeated time and again in other cases (*e.g. Micallef v. Malta*[21]): *"The Convention is a living instrument that must be interpreted according to present-day conditions"*[22].

Another aspect demonstrating the relevance of this Thesis is the question - why during the adoption of the Convention in 1950s social rights were not included into the text of the Convention; another question - why the Convention system, inheriting already 16 additional Protocols, does not have an additional Protocol devoted specifically for the protection of social rights?

Author of the Thesis will try to provide an answer to the question – that maybe it is already a good time to initiate the adoption of the new additional Protocol of the Convention which will specifically cover social rights? Further question can also follow – how such Protocol, if adopted, would reconcile with the Revised Social Charter?

On the other hand, the contra argument can be raised that the protection of social rights within the framework of the Council of Europe is sufficient under the provisions of the European Social Charter

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[15] "European Court of Human Rights 1981 August 13 judgement in the case *James and Webster v. United Kingdom* (No. 7601/76; 7806/77)", HUDOC database, para. 57, accessed 2019 August 13., https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-57608%22]}.

[16] "European Court of Human Rights 1983 November 23 judgement in the case *Van der Musselle v. Belgium* (No. 8919/80)", HUDOC database, para. 40, accessed 2019 August 13., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57591%22]}.

[17] "European Court of Human Rights 1986 August 28 judgement in the case *Kosiek v. Germany* (No. 9704/82)", HUDOC database, para. 39, accessed 2019 August 13., https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Kosiek%20v.%20Germany%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-57513%22]}.

[18] "European Court of Human Rights 2007 November 13 judgement in the case *D.H. and Others v. The Czech Republic* (No. 57325/00)", HUDOC database, accessed 2020 October 7., https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-83256%22]}.

[19] „European Court of Human Rights 2014 May 20 judgement in the case *McDonald v. The United Kingdom* (No 4241/12)", HUDOC database, accessed 2020 October 7., https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22McDonald%20v.%20the%20United%20Kingdom%22],%22languageisocode%22:[%22ENG%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-144115%22]}.

[20] "European Court of Human Rights 1978 April 25 judgement in the case *Tyrer v. the United Kingdom* (No. 5856/72)", HUDOC database, accessed 2019 August 13., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-57587%22]}.

[21] "European Court of Human Rights 2009 October 15 judgement in the case *Micallef v. Malta* (No. 17056/06)", HUDOC database, para. 81, accessed 2020 October 7., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-95031%22]}.

[22] *Ibid*, para. 31.

and, as well, under the broad interpretation of social rights as interpreted and applied by the European Court of Human Rights in its case law[23].

Most likely one of the biggest cases supporting the above statement and showing that the protection of social rights within the framework of the Council of Europe is enough under the provisions of the *European Social Charter (revised)* and under the broad interpretation of social rights by the European Court of Human Rights is the case *Airey v. Ireland*.[24] It should be noted that the Convention's intent was to have effective remedies, not illusionary. Lastly, this case set a precedent and has been often quoted for demonstrating that there are economic and social rights dimensions within civil and political rights and that States may have positive obligations with respect to civil and political rights. *"Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention"*[25]. The reached conclusion of the ECtHR can be regarded as the legal basis for the relevance and significance of the Thesis.

Scientific novelty and level of investigation into the problem. The research on social rights in the European Court of Human Rights jurisprudence lacks the attention of Lithuanian Scholars. Nevertheless, the issue is discussed by Danutė Jočienė. Some separate topics of the issue are covered by Ernestas Spruogis. Dovilė Gailiūtė analyzed the right to housing[26]; Indrė Pukanasytė discussed about the electoral law[27]; Vygantė Milašiūtė talked about the idea of minimum protection of socio-economic rights under the ECHR[28].

Few foreign Authors raising the question can also be mentioned. For example Koch Ida Elisabeth wrote a monograph about the protection of Socio-Economic demands under the European Convention on Human Rights.[29] Kitty Arambulo was one of the Authors who talked about social, economic and cultural rights[30]; Chester Hartman in his works often mentions the right to housing[31], Elizabeth Wicks

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[23] Danutė Jočienė, „*Social rights in the jurisprudence of the European Court of Human Rights*", *Vilnius University Journal*, 66,2 (2008): p. 22, https://www.journals.vu.lt/teise/article/view/387.

[24] "European Court of Human Rights 1979 October 9 judgement in the case *Airey v. Ireland* (No. 6289/73)", HUDOC database, accessed 2019 August 15., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-57420%22]}.

[25] *Ibid*, para. 26.

[26] Dovilė Gailiūtė, „*Right to housing* "(doctoral dissertation, Mykolas Romeris University, 2013).

[27] Indrė Pukanasytė, „*The electoral law in the jurisprudence of the Constitutional Court of the Republic of Lithuania and in the European Court of Human Rights* "(doctoral dissertation, Mykolas Romeris University, 2014).

[28] Milašiūtė, supra note, 15.

[29] Ida Elisabeth Koch, *Human rights as indivisible rights: the protection of socio-economic demands under the European Convention on Human Rights* (Boston: Martinus Nijhoff Publishers, 2009).

[30] Kitty Arambulo, *Giving Meaning to Economic, Social and Cultural Rights: A Continuing Struggle*, (Philadelphia: University of Pennsylvania Press, 2003).

[31] Rachel G. Bratt, Michael E. Stone and Chester Hartman, *A right to housing: foundation for a new social agenda* (Philadelphia: Temple University Press, 2006).

discussed the healthcare issues[32], Manfred Nowak provides with a research on the right to education[33], Krzysztof Drzewicki evaluated the right to work and rights at work.[34] Of course, other scholars have also analyzed the above-mentioned questions and some of them will be mentioned later in the Thesis.

Research significance. The Master Thesis may be relevant to the legal practitioners as well as scholars and individuals when forming their claims to the ECtHR. Thesis conclusions can help to answer the question whether social rights are effectively protected in the Court's case law and whether some additional measures are needed at European level in order to strengthen the protection of social rights.

Research object. Author will answer a question whether the protection of social rights exists or not in the case law of ECtHR. After that, if the protection of social rights in the Court's jurisprudence does indeed exist, its effectiveness will be analyzed.

Research goal. To evaluate, whether the protection of social rights exists or not in the in the Court's jurisprudence. If yes, would it be arguably stating that such protection is effective one in the case law of the European Court when interpreting and applying the rights and freedoms enshrined in the text of the Convention, among which, as it has been mentioned before, social rights are not expressly included.

Hence, the Author would like to quote the opinion of D. Jočienė, that even though "*social rights are not directly enshrined in the text of the Convention, they are broadly analyzed through the court's jurisprudence*"[35]. Thus, in order to determine what socio-economic rights may be derived from a civil-political right guaranteed by the European Convention, the Court's case law will be analyzed.

Research tasks. To analyze what social rights or, more exactly, what aspects related to social rights can be derived from the provisions of the Convention relying on the case law of the ECtHR when interpreting and applying those provisions; Author of the Thesis will select the concrete Articles of the Convention such as Article 2, 3, 4, 8 as well as Protocol 1 Article 1 and Article 2 of the Convention in order to analyze the framework of the protection of social rights and its effectiveness under the ECHR.

For the methodological approach of this Theses it should be pointed out that the above-mentioned Articles of the Convention have been selected by the Author due to, according to the opinion of the Author, their fundamental value and their crucial importance for the protection of social rights, as various different aspects related to social rights can be derived from above-mentioned Convention provisions.

Moreover, in Author's opinion, interpretation and application of the above-mentioned Articles of the Convention cover all the main parts of an individual's life as well as the most important social aspect areas.

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[32] Elizabeth Wicks, *Human Rights and Healthcare* (London: Bloomsbury Publishing, 2007).
[33] Manfred Nowak *The Right to Education: Economic, Social and Cultural Rights* (Hague: Martinus Nijhoff Publishing, 2001).
[34] Krzysztof Drzewicki *The Right to Work and Rights in Work: Economic, Social and Cultural Rights*, (Hague: Wolters Kluwer, 2001).
[35] Jočienė, *supra note*, 18: p. 24.

For example, a close connection can be seen between the right to life, prohibition of inhuman or degrading treatment and the right to health. In order to analyze properly the possible protection and effectiveness of the mentioned social right - the right to health – the Author decided to take both Articles 2 and 3 of the Convention in consideration in order to see the case law of the ECtHR under those Articles related/or reflecting the right to health or its possible aspects.

Furthermore, in the opinion of the Author, Articles 4 (Prohibition of slavery and forced labour) and 8 (Respect for private and family life) of the Convention are closely related to the right to work and the rights at work. Hence, in order to evaluate a possible protection and its effectiveness of the social right to work, the Author has decided to take in consideration the above-mentioned Articles of the Convention and to see the relevant case law of the Court.

Lastly, the right to the protection of property which from its nature is an economic right and the right to education which in its nature is a cultural right are both taken because they have some social aspects and are also considered as an extremely important aspect of a human's life; therefore, in order to analyze a possible protection and its effectiveness of the above-mentioned social rights Article 8 of the Convention, as well as Articles 1 and 2 of the First Protocol of the Convention have also been selected for this Analysis.

As a disclaimer it must be stated that it would be impossible to analyze thoroughly every single right enshrined in the Convention. Hence, the Author will not try to do so. Instead, it has been decided to analyze, in his opinion, the most important socio-economic rights and (or) their aspects which have been developed in the case law of the ECtHR.

To sum up, Articles 2, 3, 4, 8 of the Convention as well as Article 1 and Article 2 of the First Protocol of the Convention have been selected due to above-mentioned reasons and because, in the Author's view, these Articles allow to analyze all major fundamental aspects related to a person's life – health, work, education and living conditions.

Research methods. To achieve aims and goals of the Thesis following methods are used: 1) The analytical method is used to describe a research object and tasks. It is also applied making observations on a legal literature. Moreover, this method is used for analysis of the relevant international and European legislation. 2) The descriptive method is exercised to analyze the jurisprudence and general questions relating social and economic rights. 3) The comparative method was applied to determine differences of European legal acts and international legislation on social rights. 4) The historic method is availed to describe changes of the Court's approach to social and economic rights.

Research structure. The Thesis is comprised of introduction, four chapters, conclusion, abstract and summary written in English and Lithuanian languages.

The first chapter is dedicated to positive obligations of socio-economic rights, the right to life and the role of ECtHR. Second chapter is talking about the prohibition of torture under the ECHR. Third

chapter is dedicated to analyze the right to a private life under the ECHR, here we have analyzed the right to work and the rights at work. Also, the right to housing and the right to property has been discussed about as well. In the fourth chapter the problematic aspects of slavery and forced labour under the ECHR had been analyzed. Moreover, children protection and the right to education had been engaged as well. Furthermore, the expected results of the research are situated and discussed in the conclusion.

Defense statements. Social rights are not directly enshrined in the text of the European Convention on Human Rights; nevertheless, they are protected through the case law of the ECtHR when interpreting and applying various provisions of the Convention's rights and fundamental freedoms.

1. EUROPEAN CONVENTION, INTERNATIONAL OBLIGATIONS OF THE STATES UNDER THE CONVENTION, POSITIVE OBLIGATIONS AND THE ROLE OF ECtHR

Since the day European Convention on Human Rights has entered into force in 1953, all persons from all Member States ratifying the Convention may bring complaints regarding human rights violations to the ECtHR. Likewise, if all the domestic remedies have been exhausted, the Court would analyze the case concerned. It is thought that the European Convention actually laid common European legal space for over 830 million citizens[36]. What is more, the Convention has a protective function as well as prohibitive one. For example, the ECHR protects: 1) Life, freedom and security. 2) Respect for private and family life. 3) Freedom of expression. 4) Freedom of thought, conscience and religion. 5) Vote in and stand for election. 6) A fair trial in civil and criminal matters. 7) Property and peaceful enjoyment of possessions. On the other hand, it prohibits: 1) The death penalty. 2) Torture or inhuman or degrading treatment or punishment. 3) Slavery and forced labour. 4) Arbitrary and unlawful detention. 5) Discrimination in the enjoyment of the rights and freedoms secured by the Convention. 6) Deportation of a state's own nationals or denying them entry and the collective deportation of foreigners.

One has to agree that all of the above-mentioned rights are very important and necessary to have in a democratic society. However, not all the rights are of an equal value. For instance, one could argue that the most important right of them all is the right to life. As it is stated in the official Council of Europe page: "*without the right to life it is impossible to enjoy the other rights*"[37]. Or for example, the right to respect for private and family life is so broad and important that without it, it would be impossible to enjoy one's privacy, data protection, self-image, possibility for members of a national minority to have a traditional lifestyle[38] and much more. Hence, in Author's opinion only the most important rights of the convention should be analyzed in the Thesis. That is why Articles 2, 3, 4, 8 of the Convention as well as Protocol 1 Article 1 and Article 2 of the Convention has been selected. By taking the latter Articles, Author in no means is saying that other rights of the Convection are not important, because they are extremely important. However, for the purpose of this Thesis the above-named human rights seem to be the most fitting and correct to analyze. Moreover, these Articles have the most interrelation with social rights that may be derived from the Court's interpretation of the Convention.

[36] „A Convention to protect your rights and liberties ", Council of Europe, accessed 2020 November 13., https://www.coe.int/en/web/human-rights-convention.
[37] "Right to life ", Council of Europe, accessed 2020 November 13., https://www.coe.int/en/web/human-rights-convention/life.
[38] "Right to respect for private and family life", Council of Europe, accessed 2020 November 13., https://www.coe.int/en/web/human-rights-convention/private-life.

As it comes from the above paragraph, the most attention will be dedicated to the following aspects of a person's life – health, living conditions, work, privacy, property and education. Also, Author will talk about the states' duty to ensure positive obligations of the latter rights. Because as the name suggests, positive obligations in the human rights sphere means that the state has to ensure an effective possibility for an enjoyment of fundamental human rights. Unlike the negative obligations, which only suggests that the state only guards from a human rights' breaches and violations. To illustrate all this, the Court has given a great quote: "*although the essential object of many provisions of the Convention is to protect the individual against arbitrary interference by public authorities, there may in addition be positive obligations inherent in an effect respect of the rights concerned. Genuine, effective exercise of certain freedoms does not depend merely on the State's duty not to interfere, but may require positive measures of protection even in the sphere of relations between individuals*"[39]. Of course, the obligation to ensure the enjoyment of certain rights depends on various things and has its own boundaries. Hence, the state shall secure the so-called minimal standard. Like it was mentioned in *Airey v. Ireland*[40], the ECtHR has held that the possibility to enjoy certain rights has to be real and effective. In this case, Mrs. Johanna Airey claimed that her husband was an alcoholic and that he often threatened her with physical violence. Eventually, Mrs. Airey instituted proceedings against Mr. Airey and he was convicted by the District Court of Cork City of assaulting her and fined[41]. It is also crucial to point out that Mrs. Airey for many years has been trying to separate from her husband but unsuccessfully[42]. Moreover, there has been a big risk not only for her but for their children's health as well. *"She has been endeavoring to obtain a decree of judicial separation on the grounds of Mr. Airey's alleged physical and mental cruelty to her and their children"*[43]. Nonetheless, woman's struggle was without any success, as she did not have enough money for legal assistance: *"in the absence of legal aid and not being in a financial position to meet the costs involved herself, to find a solicitor willing to act for her"*[44]. Hence, in 1973 Mrs. Airey applied before the commission. After careful evaluation of facts, the court expressed that even though Mrs. Airey was not restrained from applying to the High Court, however, without having money for a lawyer, she would not be able to properly and satisfactory appear before the court. *"The Government contend that the application does enjoy access to the High Court since she is free to go before that court without the assistance of a lawyer. The Court does not regard this possibility, of itself, as conclusive of the matter. The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to the courts in view of the prominent*

[39] „Positive obligations on member States under Article 10 to protect journalists and prevent impunity", European Court of Human Rights, p. 4, accessed 2020 October 25., https://www.echr.coe.int/documents/research_report_article_10_eng.pdf.
[40] *Airey v. Ireland*, *supra note*, 24.
[41] *Ibid*, para. 8.
[42] *Ibid*, para. 9.
[43] *Ibid*
[44] *Ibid*

place held in a democratic society by the right to a fair trial. It must therefore be ascertained whether Mrs. Airey's appearance before the High Court without the assistance of a lawyer would be effective, in the sense of whether she would be able to present her case properly and satisfactorily"[45]. Thus, the European Court of Human Rights held this was a violation of her right to access a court for determination of her civil rights and obligations: *"The Court holds by five votes to two that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention, taken alone"*[46]. Also, this case has set the precedent that socio-economic rights may be derived from the Court's interpretation of ECHR and that the states have a positive obligation to ensure a minimal standard of a given rights. *"Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention"*[47]. Therefore, in this case state had a positive obligation to offer a free legal service for a party which could not afford it. Otherwise, if a person does not have enough money for a lawyer, his rights would not be properly (effectively) defended in a court's case. However, the previously mentioned boundaries of the states' positive obligations have never been accurately defined. Thus, it is quite unclear what exactly is the minimal standard of the positive obligations. Nonetheless, the Court has given some criteria regarding the matter: "*the ECtHR requires the existence of knowledge, a direct and immediate link, and no impossible or disproportionate burdens to be able to accept (some) positive obligations*"[48].

Anyhow, states' positive obligation to indirectly ensure socio-economic rights, comes from a principle that the rights have to be effective and real. Under this principle, an individual should always have a possibility to effectively benefit from the rights enshrined in the ECHR. However, the minimal standard of social rights depends on the international (global) understanding. It varies from a country to country depending on their economic capacities. Also, the limitation of the positive obligation of a state to indirectly ensure social rights' minimal standard according to ECHR is determined by the lack of minimal standard definition[49].

1.1. The right to life under Article 2 of the ECHR and positive obligations of the States under this Article

The ECHR states that: "*Everyone's right to life shall be protected by law*"[50]. Moreover, the Article prohibits death penalty or execution. Shortly speaking, negative obligation of a state would be not to

[45] *Airey v. Ireland*, *supra note*, 24: para. 24.
[46] *Ibid*, para. 37.
[47] *Ibid*, para. 26.
[48] Malu Beijer, *The Limits of Fundamental Rights Protection by the EU* (Portland: Intersentia, 2017), p. 64.
[49] Milašiūtė, *supra note*, 7: *p. 42.*
[50] „European Convention on Human Rights ", *supra note*, 11: art. 2.

execute or sentence to death people in its jurisdiction. However, Member States also have a positive obligation to take the necessary steps to protect the health of individuals and prevent any environmental dangers. Therefore, we may see that it is very important to take positive obligations of states to protect the right to life, since the positive aspect also includes a social right to health. Moreover, as we have learnt from a previous paragraph, positive obligations ensure individual's ability to enjoy the full capacity of his/her rights. Meaning, it would be impossible to properly analyze the topic without including positive obligations.

From the Court's case law, we know that the positive obligation of a state regarding Article 2 of the Convention would be to safeguard lives of the individuals in its jurisdiction. This opinion was expressed in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*[51]. And as it was explained in the Guide on Article 2 of the European Convention on Human Rights, the latter positive obligation has two aspects: "*(a) the duty to provide a regulatory framework; and (b) the obligation to take preventive operational measures"*[52]. Hence, it means that the state has to take an action in order to protect individuals' lives in its territory. It would mean that the local population has to be warned regarding possible environmental hazards. Also, depending on a situation, there should be evacuation plans after a disaster. In short, country has to take appropriate security measures and steps to avoid possible hazards. If there are dangerous zones, they should be marked with the warning signs. Moreover, if the disaster was to happen, state should have an emergency plan to avoid further deaths and injuries. In other words, states may act in such of a way that would ensure a good health of its citizens.

For instance, in the health care sphere, in the case of *Calvelli and Ciglio v. Italy*[53] the Court held that: "*positive obligations therefore require States to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives. They also require an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable"*[54]. Hence, the Court in its case law regarding the Article 2 of the Convention mainly talk about the physical aspects of the right life and the right to health. Here, the physical aspect of the latter rights could be understood as an actual individual health, well-being, lack of injuries that could cause death etc. This argument can be supported by the Court's case law regarding Article 2 of the convention and states' positive obligation to ensure general physical safety of individuals in its jurisdiction.

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[51] „European Court of Human Rights 2014 July 17 judgement in the case *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (No. 47848/08)", HUDOC database, para. 79, accessed 2020 October 27., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-145577%22]}.

[52] "Guide on Article 2 of the European Convention on Human Rights", European Court of Human Rights, p. 8, accessed 2020 October 27., https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf.

[53] „European Court of Human Rights 2002 January 17 judgement in the case *Calvelli and Ciglio v. Italy* (No. 32967/96)", HUDOC database, accessed 2020 October 27., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60329%22]}.

[54] *Ibid*, para. 49.

For example, in the case of *Ciechońska v. Poland*,[55] the applicant's husband died after being hit by a tree in a health resort. The Court has held that: "*the State's duty to safeguard the right to life must also be considered to involve the taking of reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death*"[56]. It may be also pointed out that as stated in *Rajkowska v. Poland*,[57] the State's positive obligation under Article 2 extends to the context of a road safety as well. Moreover, the case of *Furdik v. Slovakia*[58], showed that it may extend to the provision of emergency services where it has been brought to the notice of the authorities that the life or health of an individual is at risk on account of injuries sustained as a result of an accident. However, the most important part is that as stated in the *Oneryildiz v. Turkey*[59], the above list of sectors is not exhaustive and States' positive obligation to ensure the right to life and the right to health may extend to any situation where the individuals' lives shall fall at risk[60]. In the latter case, a methane explosion occurred at the site. As it is stated in the case's fact sheet: "*a landslide caused by mounting pressure, the refuse erupted from the mountain of waste and engulfed some ten slum dwellings situated below it, including the one belonging to the applicant. Thirty-nine people died in the accident*"[61]. In this case, the Court reasoned that Article 2 shall be interpreted in a practical and effective way. They have stated: "*the interpretation of Article 2 is guided by the idea that the object and purpose of the Convention as an instrument for the protection of individual human beings requires its provisions to be interpreted and applied in such a way as to make its safeguards practical and effective*"[62]. However, in this case the applicants complained that the authorities did not do everything what is possible to prevent the accident from happening. In other words, State had a positive obligation to ensure safety measure to prevent accidents from happening, but failed to do so. In Court's opinion: "*the Turkish authorities at several levels knew or ought to have known that there was a real and immediate risk to a number of persons living near the Ümraniye municipal rubbish tip. They consequently had a positive obligation under Article 2 of the Convention to take such preventive operational measures as were necessary and sufficient to protect those individuals*"[63]. Hence, the Court concluded that: "*there has also been a*

[55] „European Court of Human Rights 2011 June 14 judgement in the case *Ciechońska v. Poland* (No. 19776/04)", HUDOC database, accessed 2020 October 27., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-105102%22]}.
[56] *Ibid*, para. 67.
[57] „European Court of Human Rights 2007 November 27 Decision in the case *Rajkowska v. Poland* (No. 37393/02)", HUDOC database, accessed 2020 October 27., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-83946%22]}.
[58] „European Court of Human Rights 2008 December 2 Decision in the case *Furdik v. Slovakia* (No. 42994/05)", HUDOC database, accessed 2020 October 27., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-90321%22]}.
[59] „European Court of Human Rights 2004 November 30 judgement in the case *Oneryildiz v. Turkey* (No. 8939/99)", HUDOC database, accessed 2020 October 27., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-67614%22]}.
[60] *Ibid*, para. 71.
[61] *Ibid*, para. 18.
[62] *Ibid*, para. 69.
[63] *Oneryildiz v. Turkey*, *supra note*, 55: para. 101.

violation of Article 2 of the Convention in its procedural aspect, on account of the lack, in connection with a fatal accident provoked by the operation of a dangerous activity, of adequate protection "by law" safeguarding the right to life and deterring similar life-endangering conduct in future"[64].

On the other hand, in the case of *Hristozov and Others v. Bulgaria*[65], the State had used its positive obligation actively, to protect people in its jurisdiction from possible harms of using experimental drugs. However, applicants complained about that they have been denied the experimental anti-cancer drug. Nonetheless, according to the Bulgarian law, at the given time the drug did not meet the raised criteria i.e. the drug had to be tested and authorized in at least one other country beforehand. Hence, it turned out that there was no official authorization of a given drug in any other state. Therefore, Bulgarian authorities had forbidden the experimental treatment and drug use for cancer patients. The government reasoned the decision by saying that the product carries a serious risk and that it might do more damage rather than good to a cancer patient. "*Such products carried serious risks, which required them to be carefully regulated. The State was entitled to refuse permission for the use of an unauthorized medicinal product, and this did not breach the right to life, but safeguarded it*"[66]. Moreover, the Court also stated that: "*The first sentence of Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction*"[67] In other words, The Court agreed with the Bulgarian government's opinion, that in this case it was reasonable to forbid the use of an experimental drug, based on a fact that it might do more harm than good. Thus, the government did not harm or breached the right to life (or the right to health) of cancer patients. Also, "*in the Court's view Article 2 of the Convention cannot be interpreted as requiring access to unauthorized medicinal products for the terminally ill to be regulated in a particular way*"[68]. Thus, in this case The Court found no violation of Article 2 of the convention.[69] Hence, this case proves that sometimes it is possible to prevent persons from a certain treatment, if that treatment might actually harm the patient. Especially when it comes to an experimental drug use, it is very important to properly test them and only after a careful evaluation, it should be authorized for a human testing. It is only reasonable that if the drug has not been properly analyzed and investigated yet, state should not pass the law to legalize its use or further try-outs with human beings.

However, there are many examples were the ECtHR has underlined that Article 2 of the Convention should not and cannot be interpreted as ensuring an absolute security to everybody in any situation or activity in which the right to life might be at risk. Especially so when an individual has purposely

[64] *Ibid*, para. 118.
[65] „European Court of Human Rights 2012 November 13 judgement in the case *Hristozov and Others v. Bulgaria* (No. 47039/11, 358/12)", HUDOC database, accessed 2020 April 16., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-114492%22]}.
[66] *Ibid*, para 99.
[67] *Ibid*, para 106.
[68] *Ibid*, para 108.
[69] *Ibid*, para 109.

exposed himself to such situation. For example, this was expressed in the case of *Gōkdemir v. Turkey*[70] where the Court has stated the following: "*Indeed, Article 2 of the Convention cannot be interpreted as guaranteeing to every individual an absolute level of security in any activity in which the right to life may be at stake, in particular when the person concerned bears a degree of responsibility for the accident having exposed himself to unjustified danger*"[71].

Hence, from this chapter it comes clear that all Contracting States have a positive obligation under the Article 2 of the Convention to ensure individuals' rights to life by taking appropriate protective steps. It would also be possible to say that the right to health could be derived from the Court's case law when interpreting Article 2 of the convention. Because the principal of an effective and real rights, implies that the States must ensure at least a minimal standard of a social right to health so an individual would enjoy a proper protection of the right to life. Meaning that preventive measures has to take place to ensure safety of the population in Contracting States' jurisdiction. Of course, Contracting States do not have an obligation to ensure an absolute security to everybody. The goal is more about taking precautions and ensuring a safe environment. Nevertheless, even though the above-mentioned cases have shown a lot of promise regarding the Court's interpretation of Article 2 in the context of certain accidents or environmental hazards, the Court has not moved far from the original understanding of "*life protection*". For example, only in a very limited number of cases where the lack of protection did not result in someone's death, had the protection of Article 2 of the Convention. For instance, in the case *Nicketi v. Poland*,[72] The applicant claimed that the lack of refund from the full price of life-saving drug violated Article 2 of the Convention[73]. Mr. Zdzisław Nitecki could not afford to pay 30% of the remaining price and was unable to follow the prescribed pharmaceutical treatment. Hence, he claimed that the lack of treatment would inevitably accumulate to his death. However, even though the Court agreed that the positive obligation under Article 2 could be engaged in such cases, it still noted that: "*the complaint under Article 2 of the Convention is manifestly ill-founded*"[74]. Now, considering that the person could not afford even the remaining 30% of the drug cost, the lack of treatment would result in his death. Hence, the State in this situation could not ensure the minimal standard of the positive obligation to the right to health for Mr. Nitecki. Thus, the protection of his right to life is not actually effective and real in this case. Therefore, we may see that because the Court was unable to ensure a minimal standard of a social right to health, it has also failed to see enough evidence that the right to life was at risk in this case. Hence, perhaps it is time to initiate the adoption of the new additional Protocol to the Convention.

[70] „European Court of Human Rights 2015 May 19 Decision in the case *Gōkdemir v. Turkey* (No. 66309/09)", HUDOC database, accessed 2020 October 28., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-155477%22]}.
[71] *Ibid*, para. 17.
[72] „European Court of Human Rights 2002 March 21 Decision in the case *Nitecki v. Poland* (No. 65653/01)", HUDOC database, accessed 2020 October 28., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22339%22]}.
[73] *Ibid*, para. 1.
[74] *Nicketi v. Poland*, *supra note*, 68.

Afterall, why the Convention system, inheriting already 16 additional Protocols, does not have an additional Protocol for the social rights? Perhaps, if there was such protocol the Court would be able to avoid the above-mentioned situations.

2. THE PROHIBITION OF TORTURE UNDER THE ECHR

The ECHR clearly states that: "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*"[75]. This applies to all human beings, no matter the circumstances. The latter Article may be understood as states duty not to use an excessive force. For example, police brutality during the interrogation should not be tolerated. As it is stated in the official Council of Europe page: "*the interrogation techniques used by the law enforcement agencies must comply with the rights guaranteed by Article 3*"[76]. Furthermore, the same source also claims that the extradition or deportation of a person could accumulate to violation of Article 3, if that person would face an ill-treatment after being deported. Hence, the negative obligation of a state in this case is pretty simple – not to torture or throw at such risk persons in its jurisdiction. However, positive obligation of a state according to Article 3 is a bit more complex. Countries have to take actions in order to ensure detention conditions, prisoners health and many things that are related to it. In other words, even though negative obligations of a state are quite similar to the ones secured by Article 2, positive obligations have a twist to it. In the previous chapter we have talked about the positive obligation of the state to ensure the right to life and the right to health, we have only taken in consideration the physical well-being of a person. The chapter was focused on the situations where the actual physical damage could be made and about actual injuries that could lead to death. Nonetheless, the ideas expressed in the *European Social Charter (Revised)* that: *"Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable"*[77] have another aspect to it. Here the key words are "*standard of health*". This term for our society means well-being overall, our health and the health of those we care about. Regardless of an individual background, religion, gender or beliefs system, this is one of the everyday concerns we all must face. After all, condition of a person's health may be a decisive factor for working, studying and many more daily activities. Thus, the right to health is a fundamental part of our human rights.[78] Moreover, in the 1946 Constitution of the World Health Organization (WHO), health is described as: "*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*"[79]. Hence, it means that ultimately - body, soul and mind must be healthy. In other words, individual psychological state matters just as much as a physical well-being. Therefore, in Author's opinion according to Article 3, state has a positive obligation to take appropriate actions to ensure that persons' in state's custody would not be mistreated, that they would have living conditions

[75] „European Convention on Human Rights ", *supra note*, 11: art. 3.
[76] „Prohibition of torture ", Council of Europe, accessed 2020 November 15., https://www.coe.int/en/web/human-rights-convention/the-prohibition-of-torture-in-practice.
[77] "European Social Charter (Revised)", *supra note,* 13: p. 2.
[78] „The Right to Health", Office of the United Nations High Commissioner for Human Rights, p. 1, accessed 2020 March 5., https://www.ohchr.org/Documents/Publications/Factsheet31.pdf.
[79] „Constitution of the world health organization", World Health Organization, p. 1, accessed 2020 March 7., https://www.who.int/about/who-we-are/constitution.

required and fitting for a human being to live in, state has to make sure that they have access to appropriate health or medical services etc. All that leads to a stable mental state of a person. In short, we could say that a country has a positive obligation through its actions to ensure conditions that would keep a person in a normal mental state. Afterall, the world health organization in its fact sheet states that the right to health is not only about access to it. For example, building more hospitals is good, but the right to health extends beyond that.[80] With such opinion also agrees The Committee on Economic, Social and Cultural Rights, they include: safe potable water and adequate sanitation; safe food; adequate nutrition and housing; healthy working and environmental conditions; health-related education and information; gender equality.[81] Hence, it is quite clear that the right to health is strongly connected to various other social rights and human rights in general and all States have a positive obligation to ensure the minimal standard of it. Otherwise, lack of the above mentioned basic human needs, could not only lead to a poor physical health, but could actually cause serious mental problems which without a doubt could over time accumulate to a degrading treatment or even torture.

For example, in the case of *D. v. the United Kingdom*[82] the applicant was arrested and sentenced for cocaine possession. Also, it has been discovered that the person in question suffered from AIDS. Nonetheless, before his release an order was made of his deportation back to the country of origin (St Kitts, the Caribbean). The applicant thus claimed that such deportation would shorten his life expectancy due to a fact that he would not be able to receive the kind of treatment in his country of origin as he would receive in the UK. Even though The Court agreed that the State has a right to control the entry, residence and expulsion of aliens, every case shall be analyzed individually. In this particular situation, it must be understood that the person in question suffers from a very serious illness and expulsion would mean the drastic shortage of his remaining life. Therefore, conditions are exceptional here, the case requires a closer look and The Court noticed it. It must be pointed out that expulsion in this case would accumulate to inhumane treatment, or violation of Article 3 of the convention in other words. The Court stated that: "*In view of these exceptional circumstances and bearing in mind the critical stage now reached in the applicant's fatal illness, the implementation of the decision to remove him to St Kitts would amount to inhuman treatment by the respondent State in violation of Article 3*"[83]. Moreover, it is very important to note that The Court had analyzed the health issue as well. It has been argued that if the applicant was brought back to his country of origin he would not die immediately, but his lifespan would shorten because of the conditions he would face there. The Court considered not only physical but also possible mental suffering, which is a part of the right to health as it has been explained

[80] The Right to Health, *op. cit.*, p. 3.
[81] „The Right to Health ", *supra note*, 73: p. 3.
[82] „European Court of Human Rights 1997 May 2 judgement in the case *D. v. The United Kingdom* (No. 30240/96)", HUDOC database, accessed 2020 May 4., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-58035%22]}.
[83] *Ibid*, para. 53.

previously. Further, ECtHR rightly pointed out other health related issues he would face if he was brought back to St. Kitts. For example: "*Any medical treatment which he might hope to receive there could not contend with the infections which he may possibly contract on account of his lack of shelter and of a proper diet as well as exposure to the health and sanitation problems which beset the population of St Kitts*"[84]. An interesting fact is that these reasons named by the court almost identically fits to what the right to health declares and to what we have discovered about this right at the beginning of the Thesis.

One should go even further and say that the right to health *inter alia* protects those in states custody[85]. Afterall, if we believed the 2019 report on European prisons[86], "*in the European Union, over 584,485 people are currently detained in penal institutes*"[87]. In perspective and according to the data gathered in 2019, European Union Member States totaled approximately 513,5 million people[88]. Meaning, 0.1 percent of the EU population is currently in jail. That is a lot of people that one day may be walking our streets again. Therefore, we must admit that it would be much better for everybody if they left the prison rehabilitated rather than even more cruel and angry. Thus, it is necessary to do the imprisonment time the right way. Afterall, it is not a secret that prisons have four major purposes: 1. retribution – punishment for the committed crimes, depriving a wrongdoer from their freedom is a way of making them pay a debt to the society; 2. Incapacitation – means removing criminals from the streets, isolating them from the rest of the society *per se,* so they could not inflict any more harm to the innocent; 3. Deterrence – here we move towards the part where it is believed that people might change in prison. Because deterrence means the prevention of future crimes. The goal is to teach inmates so they would change their ways and actually stop their criminal activities; and 4. Rehabilitation – is the final step in the prison programme. It is expected that after all the activities are completed, a convict is changed to a law-abiding individual. To achieve this, many procedures must be followed, this includes education material in prison, acquiring new job and working skills, various counselling, psychological help, as well as communication with social workers. Moreover, there are many prison rules that shall be followed, to ensure the achievement of aforementioned purposes and goals. Probably the only rule that needs to be mentioned here is that the prisoners are people, and their human rights must be respected. Overall, it means that even though criminals are incapacitated and may no longer enjoy their "*freedom of movement*", their other fundamental human rights remain. Here the most important right would be prohibition of torture – prisoners must be treated in a way, so they could properly live inside the prison. Adequate food, water and living conditions must also be ensured for them to stay healthy. Nonetheless,

[84] *Ibid*, para. 52.
[85] „European prison Rules", Council of Europe, part 1, art. 1, accessed 2020 March 20., https://www.coe.int/en/web/human-rights-rule-of-law/european-prison-rules.
[86] "Prisons in Europe. 2019 report on European prisons and penitenary systems", European Prison Observatory, accessed 2020 March 25., http://www.prisonobservatory.org/.
[87] *Ibid*, p. 4.
[88] „European population", Eurostat, accessed 2020 March 27., https://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00001&language=en

each year the ECtHR receives many cases where prisoners complain regarding their living conditions or other rights breaches which accumulate to poor health etc. According to the 2019 data on prisons in the European Union: "*The most overcrowded prison systems are those of France, Italy, Hungary, and Romania, with occupancy rates ranging between 115% and 120%. Denmark, Austria, Greece, the Czech Republic, Portugal, Slovenia, Malta, and Belgium show occupancy rates between 100,5 and 109,3 while the remaining sixteen countries have fewer prisoners than available places*"[89]. Which means, the complaints are not out of the blue. There truly is such a problem in the prisons around the EU, not only that, but there are cases where other rights related to health are breached.

For example, in the case of *Muršić v. Croatia*[90] the Chamber found a violation of Article 3 because applicant lacked of personal space and work opportunities in Bjelovar prison.[91] Such judgement was ruled after evaluating the three conditions test, which was set out in Ananyev and *Others v. Russia*.[92] In the latter, the Court stated the following: *"…in deciding whether or not there has been a violation of Article 3 on account of the lack of personal space, the Court has to have regard to the following three elements: (a) each detainee must have an individual sleeping place in the cell; (b) each detainee must have at his or her disposal at least three square meters of floor space; and (c) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items. The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3"*[93]. However, in the Muršić case, detainee disposed of less than 3 sq. m of floor space[94] and thus, this accumulated to a violation of Article 3 of the convention. Hence, this case shows that states have a responsibility to ensure a minimum standard of living conditions for its detainees. More precisely, access to an individual space played a crucial role here. Meaning, Article 3 not only protects access to physical medical care, but also, regulates living conditions. In this case, it became clear that human beings must have at least some personal space to live, move around and sleep. Limiting such freedom of a minimum amount of personal space, as court's practice showed, would inevitably result in violation of Article 3, as such restrictions accumulate to an inhuman and degrading treatment towards a detained individual. Finally, it must be stated that the ECtHR through interpretation of Article 3 of the Convention in the above case had derived a social right to health.

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[89] "Prisons in Europe. 2019 report on European prisons and penitenary systems", *supra note*, 81: p. 6-7.
[90] *„European Court of Human Rights 2016 October 20 judgement in the case Muršić v. Croatia (No.* 7334/13*)"*, HUDOC database, accessed 2020 April 1., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-167483%22]}.
[91] *Ibid*, para. 68.
[92] „European Court of Human Rights 2012 January 10 judgement in the case *Ananyev and others v. Russia* (No. 42525/07 and 60800/08)", HUDOC database, accessed 2020 April 1., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-108465%22]}.
[93] *Ibid*, para 148.
[94] *Muršić v. Croatia*, *op. cit*. para. 76.

In another group of cases the Court must deal with the situations where persons in custody would not receive a proper medical treatment, as it was in the case *Paladi v. Moldova*[95]. The Applicant was a deputy Mayor of Chişinău. Mr. Paladi has been arrested in the autumn of 2004 and charged with corruption and abuse of his power. It is important to point out that Mr. Paladi suffered from a number of serious illnesses (diabetes, angina, heart failure, hypertension, chronic bronchitis, pancreatitis and hepatitis)[96]. The applicant had been checked by doctors and majority of them recommended that Mr. Paladi would be treated in appropriate conditions - hospital with all the necessary equipment, because patient required constant medical supervision. Also, doctors concluded that should he not be treated properly he might face serious health issues. However, the applicant was kept in prison and had only a sporadic doctor visits for urgent medical assistance during the emergencies. It has been recorded that throughout the period Mr. Paladi had made a great number of unsuccessful habeas corpus applications to domestic courts. Thus, before the ECtHR he alleged, that among other things, there has been a violation of his rights guaranteed by Article 3 of the Convention.[97] ECtHR found that there has been a violation of the latter Article and quoted the case of *Kudła v. Poland*[98] stating the following: "*the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance*"[99]. The given quote quite clearly expresses the seriousness of a well-being of a person. Although Article 3 of the Convention cannot be interpreted as giving the green light to release detainees on health grounds, it surely raises a bar for the states to ensure the protection of the detainee's health.[100] To support this statement, the court in its case *Sarban v. Moldova*[101] also expressed and opinion that: *"the right of all prisoners to conditions of detention which are compatible with human dignity, so as to ensure that the manner and method of execution of the measures imposed do not subject them to distress or hardship of an intensity exceeding*

[95] "European Court of Human Rights 2009 March 10 judgement in the case *Paladi v. Moldova (No.* 39806/05*)*", HUDOC database, accessed 2019 August 18., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-91702%22]}.

[96] „Information Note on the Court's case-law 117, *Paladi v. Moldova*", European Court of Human Rights, p. 1-2, accessed 2020 April 3., *https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-1637&filename=002-1637.pdf&TID=ihgdqbxnfi*.

[97] *Paladi v. Moldova, op. cit.*, para. 63.

[98] „European Court of Human Rights 2000 October 26 judgement in the case *Kudła v. Poland* (No. 30210/96)", HUDOC database, accessed 2020 April 3., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-58920%22]}.

[99] *Ibid*, para 71.

[100] „European Court of Human Rights 2002 November 14 judgement in the case *Mouisel v. France* (No. 67263/01)", HUDOC database, para 40, accessed 2020 April 6., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-60732%22]}.

[101] „European Court of Human Rights 2005 October 4 judgement in the case *Sarban v. Moldova* (No. 3456/05)", HUDOC database, accessed 2020 April 6., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-70371%22]}.

the unavoidable level of suffering inherent in detention"[102]. Meaning, if a state takes a person to custody, that state has to feel a certain level of responsibility for that person and make everything what is in state's power to ensure that individual is kept in proper conditions. Also, that his very basic needs are fulfilled i.e. that person has access to food, water and medical treatment. All in all, in the *Paladi v. Moldova* case, The Court held that the person did not have a proper access to a medical treatment. Moreover, this unnecessarily exposed Mr. Paladi to *"a risk to his health and must have resulted in stress and anxiety"*, which was in excess of the level inherent in any deprivation of liberty. Also, it must be noted that throughout the years, ECtHR have constantly ruled that states have a responsibility for the health and well-being of those in its custody. Thus, showing that Article 3 of the conventions is closely interrelated with the social right to health and is often analyzed in Courts case law. Hence, it must be stated that the ECtHR through interpretation of Article 3 of the Convention in the above case had derived a social right to health.

Another very similar case is *Holomiov v Moldova*[103], here the Government argued that the applicant had received all necessary medical care while in Prison.[104] However, the applicant stated that he had no access to the doctors he actually needed - no urologists, cardiologists or neurologists.[105] Thus, ECtHR had to evaluate two factors – time in detention and actual health conditions of the applicant. Because these factors in reality determine whether the state fulfilled its responsibility (ruling of *Sarban v. Moldova*, that indeed the state had a responsibility to protect person's in detention well-being) to ensure applicant's access for medical care. Hence, after a careful investigation of the facts, *"the Court concludes that while suffering from serious kidney diseases entailing serious risks for his health, the applicant was detained for a very long period of time without appropriate medical care. The Court finds that the applicant's suffering went beyond the threshold of severity under Article 3 of the Convention and constituted inhuman and degrading treatment"*[106]. Moreover, it shall be noted that the Court had also found violations of Article 3 of the convention, in a very similar circumstances in the following case:

[102] *Sarban v. Moldova*, *supra note*, 96: para. 77.
[103] „European Court of Human Rights 2006 November 7 judgement in the case *Holomiov v Moldova* (No. 30649/05)", HUDOC database, accessed 2020 April 16., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-77850%22]}.
[104] *Ibid*, para. 110.
[105] *Ibid*, para. 111.
[106] *Ibid*, para. 121.

Istratii and others v. Moldova[107], *Mamedova v. Russia*[108], *Frolov v. Russia*[109], *Testa v. Croatia*[110]. Thus, showing Court's position regarding states responsibility towards persons in custody and their well-being.

One more category of cases is related to euthanasia and the idea of assisting suicide. For instance, in the case *Pretty v. UK*[111] the applicant wished to control how and when she would die, since she suffered from motor neuron disease and the final stages of illness would be really unsignifying[112]. Considering the situation, the woman was in, she could not commit suicide by herself. Hence, she wished her husband could help. However, even though suicide was not a crime in the English law, assisting was. Therefore, the authorities had refused such request. Thus, the applicant complained that her husband would not be guaranteed freedom from prosecution if he helped her die. The Court in this situation agreed that without a possibility to end her life she would be at risk of a distressing death. However, the Court further noted that: "*Nonetheless, the positive obligation on the part of the State which is relied on in the present case would not involve the removal or mitigation of harm by, for instance, preventing any ill-treatment by public bodies or private individuals or providing improved conditions or care. It would require that the State sanction actions intended to terminate life, an obligation that cannot be derived from Article 3 of the Convention*"[113]. However, could the right to social and medical assistance be derived from Article 3 of the convention? In Author's opinion it could be, because the lack of such assistance to person who cannot perform certain daily tasks by himself, would accumulate to a degrading treatment towards a vulnerable individual. Now, could the medical assistance in dying be interpreted as a part of a social right to medical assistance? If yes, perhaps if we had an additional protocol for social rights in the ECHR, maybe it would be possible in certain circumstances for the Court to rule that a state has a positive obligation for medical assistance in dying, in cases where patients would like to die with dignity. Of course, every situation would be different and require careful inspection. In any case, Author is raising a question perhaps the right to die with dignity should be added to the ECHR as well? Some arguments for it could include: 1. If a person has a right to live, then he should have a right to die as well. 2. Considering death is a natural process and currently we have no means to stop it, there should

[107] „European Court of Human Rights 2007 March 27 judgement in the case *Istratii and others v Moldova* (No. 8721/05, 8705/05 and 8742/05)", HUDOC database, para. 59, accessed 2020 April 16., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-79910%22]}.
[108] „European Court of Human Rights 2006 June 1 judgement in the case *Mamedova v Russia* (No. 7064/05)", HUDOC database, para. 66, accessed 2020 April 16., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-75646%22]}.
[109] „European Court of Human Rights 2007 March 29 judgement in the case *Frolov v Russia* (No. 205/02)", HUDOC database, para. 51, accessed 2020 April 16., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-79955%22]}.
[110] „European Court of Human Rights 2007 July 12 judgement in the case *Testa v Croatia* (No. 20877/04)", HUDOC database, para. 64, accessed 2020 April 16., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-81641%22]}.
[111] „European Court of Human Rights 2002 April 29 judgement in the case *Pretty v. UK* (No. 2346/02)", HUDOC database, accessed 2020 October 29., https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-60448%22]}.
[112] Ibid, para. 7.
[113] Ibid, para. 55.

be no laws regulating against patients' will to end their suffering. 3. If euthanasia is strictly controlled and is used only for seriously ill, suffering, etc. we could prevent such people from looking for illegal, harmful and dangerous alternatives. Of course, there are many contra arguments to such opinion. For example, it is ethically immoral in human and medical standards. Or that the concept of euthanasia might get out of hands and be used too often and too carelessly.

All in all, after analyzing how the right to health is understood in the legal field, we may draw a conclusion that it is definitely interrelated with an Article 3 of the convention. Moreover, Author had analyzed how ECtHR would interpret the prohibition of torture through its jurisprudence and it appeared that quite indeed the social right to health has been be derived out of it. Lastly, it is good that even though social right to health is not directly enshrined in the text of the European Convention on Human Rights; nevertheless, Article 3 of the Convention may be used in order to protect it. However, perhaps the time has come to add an additional protocol to the Convention with a list of social rights, so the Court could directly apply them in its jurisprudence. On a contrary, if such additional protocol is not necessary then ECtHR should be even more active and dynamic when explaining social rights through the perspective of ECHR.

3. THE RIGHT TO A PRIVATE LIFE UNDER THE ECHR

To live and prosper an individual must have a place of living and that place must meet certain conditions to be fitting for one's needs and dignity. It is well known that an individual must have access to food, water, shelter, etc. to stay healthy and fulfill his/her daily needs. Also, to cover all the living expenses, a person must have access to work without any discriminations whatsoever. Of course, working conditions must also be adequate and safe for all people. Not to mention, privacy, self-image and believes must also be respected both at work and at home. Thus, taking a step back and looking at the bigger picture from a little farther away, it may seem like everything is connected and interrelated more than one might think from a first glance.

The ECHR states that: "*Everyone has the right to respect for his private and family life, his home and his correspondence*"[114]. This Article in particular was taken due to its broad nature and importance in a democratic society. For instance, the latter Article embodies everything related to personal identity – name, civil status (possibility to change it), acquiring new identity, etc. Amongst other things, Article 8 may be engaged for privacy protection. For example, collection of private information, telecommunication wiring by the state's agents or even publication of information infringing personal space. Moreover, Article also enables minorities to live ordinary/traditional lives.

Due to a broad nature of Article 8, it would be a good idea to classify it in two categories. For instance, the first category could be regarded as a "*private life*", it is a very broad term which lacks in an exhaustive definition in a legal sphere. Nonetheless, we know that it includes the following aspects: a) Physical and moral integrity of the person - this term is used for the reproductive rights, forced medical treatment, sexual orientation, health care, mental illnesses, etc. For the very first time this concept was discovered in the case *X and Y v. The Netherlands*[115] b) Privacy - this concept is better known for a general public, it is no secret that the latter includes data protection, correspondence, the right to one's image, reputation, information regarding one's health, it could even be used in work related areas, etc. c) Identity and Autonomy - the latter concept is dedicated for one's general identity, desired appearance, marital and parental statues, etc. d) Family life - it includes everything that is related to one's family – couples, parents, children, other family relations, etc. Second category may be regarded as "*home*". It includes housing and place of living, the requirements for such place and property owners.

Due to such broad nature of Article 8, many different social rights could be derived from it. From the above paragraph we may see that in fact – health related areas (patients' rights), rights at work and the right to housing may be named as the main social rights that could be derived from Article 8.

[114] „European Convention on Human Rights ", *supra note*, 11: art. 8.
[115] „European Court of Human Rights 1985 March 26 judgement in the case *X and Y v. The Netherlands* (No. 8978/80)", HUDOC database, para. 22, accessed 2020 November 16., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57603%22]}.

Therefore, in theory the latter Article could be engaged in order to protect the right to health (patient's rights aspect of it), working and housing rights.

3.1. Patients' rights

It appears that the right to health is much more complex than one might of thought at the beginning. In the previous chapters we have discussed two sides of the right to health – Physical and Mental. However, one could argue that there is a third aspect – patients' rights. These rights *inter alia* mostly cover technical things like patient's right to information or asking for a consent before performing a certain procedure, confidentiality, etc. Frankly speaking, patient has a right to know and choose what is best for him. For example, in the European Charter of Patients' Rights[116] there are 14 rights of the patient: 1-Right to Preventive Measures, 2-Right of Access, 3-Right to Information, 4-Right to Consent, 5-Right to Free Choice, 6-Right to Privacy and Confidentiality, 7-Right to Respect of Patients' Time, 8-Right to the Observance of Quality Standards, 9-Right to Safety, 10-Right to Innovation, 11-Right to Avoid Unnecessary Suffering and Pain, 12-Right to Personalized Treatment, 13-Right to Complain, 14-Right to Compensation. The above-mentioned rights in a quite good detail describe everything what patient could expect or ask for in a medical institution. Moreover, under the domestic level around the EU, states also have patients' rights. For instance, in Lithuania regarding the human health we mostly have Article 53 of the Lithuanian Constitution. The latter Article reads that the state takes care of its citizens' health and helps to acquire medical treatment when a person is sick. Further, the law regulates free medical care in the governmental medical institutions. Moreover, the state encourages the exercising of its citizens and other sports activities. Lastly, the state and every person shall protect the environment from pollution and harmful impacts.[117] Even more detail on patients' rights are given in the Civil Code of the Republic of Lithuania[118] and in the Lithuanian patients' rights and compensation law[119]. The latter law now guarantees the following: 1-Right to a quality health care, 2-Right to an accessible health care, 3-Right to choose a doctor, nurse, medical institution, diagnostics and treatment methods, 4-Right to information, 5-Right not to know information related to health or treatment, 6-Right to refuse to be a part of medical testing and scientific research, 7-Right to refuse treatment, 8-Right to complain, 9-Right to a private life, 10-Right to compensation.[120] Comparing the two – Lithuanian and European patient's rights, we may find many similarities. Nonetheless, one thing is for sure, society must know the full set of their rights, as persons and as patients. One might even say that some people don't know the full

[116] "European Charter of Patients' Rights", Europa, art. 1-14, accessed 2020 March 10., https://ec.europa.eu/health/ph_overview/co_operation/mobility/docs/health_services_co108_en.pdf.
[117] „Constitution of the Republic of Lithuania", LRS, art. 53., accessed 2020 March 12., https://www.lrs.lt/home/Konstitucija/Konstitucija.htm.
[118] "Civil code of the Republic of Lithuania", TAR, art. 6.725 - 6.746., accessed 2020 March 12., https://www.e-tar.lt/portal/lt/legalAct/TAR.8A39C83848CB.
[119] "Lietuvos Respublikos pacientų teisių ir žalos sveikatai atlyginimo įstatymas", e-seimas, art., 1-25., accessed 2020 March 12., https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.31932?jfwid=6ar7pi6vj.
[120] "Patients' rights protection", sam, accessed 2020 March 15., https://sam.lrv.lt/lt/veiklos-sritys/pacientu-teises/pacientu-teisiu-apsauga.

extent of their rights. Raising another question – whether the state have a positive obligation of properly informing or explaining the latter information to its citizens. Afterall, only those who know their rights may properly defend them. Another question still stands, whether it would be possible to state that the right to health could be derived from the Court's case law when interpreting Article 8 of the convention and if yes, is the protection level effective?

For example, in the case *Otgon v. Republic of Moldova*[121], the applicant complained on the amount of damages awarded for a harm caused to one's health. The situation is as follows, mother and daughter drank tap water in their apartment and shortly after started feeling unwell. In the hospital, both the applicant and her daughter were diagnosed with dysentery.[122] After their release from the hospital, mother decided to defend their rights in court. The District Court ruled in her favor. However, even though The Higher Courts confirmed the findings of the first instance, it decided to half the original award amount. Therefore, the applicant decided to claim higher damages, based on the fact that her health had been endangered after drinking the tap water. Hence, The Court reasoned that: "*there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8*"[123]. Therefore, we may see that in this situation, court once again states that The Convention would not directly protect the rights in question. However, such protection would arise from the serious nature of the matter. Thus, the social right to health (or its components in this case) would be protected by interpreting the Article 8 of the convention. The court reasons that the Article 8 shall be engaged when: "*the pollution is directly caused by the State or when the State's responsibility arises from the failure to regulate private industry properly*"[124]. Meaning, state is responsible for providing or making sure to provide safe potable water in this case. Hence, The Court held that there was a violation of Article 8. Lastly, it is important draw an attention to the components of "*health*". As a social right it is combined of two aspects - good physical state and good mental state. In this case The Court rightly points out that the applicant suffered both physically and mentally. And for such reason the award had to be increased since it did not meet the minimum standard.

Another case related to patient's rights is *K.H. and Others v. Slovakia*[125] the group of applicants were restrained from access to personal medical records[126]. In this situation, a group of women during

[121] „European Court of Human Rights 2016 October 25 judgement in the case *Otgon v. Republic of Moldova* (No. 22743/07)", HUDOC database, accessed 2020 April 16., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-167797%22]}.
[122] *Ibid*, para 5-6.
[123] *Otgon v. Republic of Moldova*, *supra note*, 115: para 15.
[124] *Ibid*, para 15.
[125] „European Court of Human Rights 2009 April 28 judgement in the case *K.H. and Others v. Slovakia* (No. 32881/04)", HUDOC database, accessed 2020 April 25., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-92418%22]}.
[126] *Ibid*, para 9.

their pregnancies were treated in two different hospitals in Slovakia. After their deliveries, none of them were able to conceive a child anymore. Hence, the applicants suspected that they might have been sterilized during their caesarean delivery by medical personnel in the hospitals concerned. Thus, to have a full understanding of the situation and to analyze the medical reason behind their infertility, the applicants decided to authorize their lawyers to review and photocopy their medical records. However, even though lawyers have made multiple attempts in order to obtain the said medical records, it was unsuccessful because they were not allowed by the hospitals' management[127]. Therefore, The Court stated that "*the complaint in issue concerns the exercise by the applicants of their right of effective access to information concerning their health and reproductive status. As such it is linked to their private and family lives within the meaning of Article 8*"[128]. The Court further stated that in order to have an *"effective and accessible procedure"* the applicants should have all the access to relevant and appropriate information. Moreover, the right to one's private and family life must be practical and effective, so a conclusion must be drawn that to ensure the right enshrined in Article 8 of the convention as well as to ensure the social right to health, it is important to make the access to personal information available. The Court considered that persons who, like the applicants, wished to obtain photocopies of documents containing their personal data, should not have been obliged to make specific justification as to why they needed the copies. Hence in this case The Court found a violation of Article 8.

Another similar case is *LH v. Latvia*[129] where the applicant claimed that the state's agent had no right to collect her personal medical information without her authorization, because that is a violation to respect for her private life. The Court in this case was on the applicant's side and ruled that the medical records shall be protected in order to secure one's right to respect for private life. Moreover, The Court held that the domestic law failed to indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise[130].

Similarly, Article 8 may be used to protect patient's confidential information. As it happened in cases *Armonas v. Lithuania*[131] and *Biriuk v. Lithuania*[132], when one of the biggest daily newspapers in Lithuania, published an Article on its front page concerning to the applicants. The paper had stated that the medical staff from the AIDS center and the local hospital had confirmed that Mr. Armonas and Ms.

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[127] *K.H. and Others v. Slovakia*, supra note, 93: para. 9.
[128] *Ibid*, para. 44.
[129] „European Court of Human Rights 2014 April 29 judgement in the case *LH v. Latvia* (No. 52019/07)", HUDOC database, para. 1, accessed 2020 May 4., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-142673%22]}.
[130] *Ibid*, para. 47.
[131] „European Court of Human Rights 2008 November 25 judgement in the case *Armonas v. Lithuania* (No. 36919/02)", HUDOC database, para. 48, accessed 2020 April 25., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-89823%22]}.
[132] „European Court of Human Rights 2008 November 25 judgement in the case *Biriuk v. Lithuania* (No. 23373/03)", HUDOC database, para. 47, accessed 2020 April 25., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-89827%22]}.

Biriuk were HIV positive. Also, the paper had referenced to a certain information regarding the applicants' sexual life. Naturally, both parties had separately sued the newspaper for the violation of their privacy. In both cases the court stated that: "*the applicant lived not in a city but in a village, which increased the impact of the publication on the possibility that her illness would be known by her neighbors and her immediate family, thereby causing public humiliation and exclusion from village social life*". Hence, finding that the Article was humiliating and that the information published without Mr. Armonas' and Ms. Biriuk's consent, did not correspond to any legitimate public interest. In conclusion, The Court's position was that the newspaper had disgracefully abused the press freedom and that the applicants' right to privacy and Article 8 in both cases had been violated. However, considering the publicity and the degrading treatment the applicants had to suffer from, perhaps, the Court could of evaluate a possible violation of article 3 in this case as well.

In Author's opinion the Court should be more dynamic when interpreting Articles of the Convention. Even more so, it seems that the lack of socio-economic rights in the Convention limits the Court's ability to thoroughly analyze cases. Thus, even though patient's rights could be derived from the court's interpretation of Article 8 of the Convention, Author is not convinced that the protection effectiveness is optimal. Even more so, if there was a protocol on social rights in the Convention, the protection effectiveness of social rights would undoubtably increase. The Court would not have to interpret civil-political rights in order to derive a desired social right. This would be possible to do with no interpretations. Thus, would be more efficient and ease Court's work.

3.2. The right to work and the rights at work

At the beginning we have raised a question whether other social rights like the right to work and the rights at work could be derived from the Court's interpretation of Article 8 of the Convention and if yes, is the protection level effective? To answer this, ECtHR's case law shall be analyzed.

For example, in the case *Sidabras and Džiautas v. Lithuania*[133], Mr. Sidabras for some time has been working as a tax inspector in Lithuania and Mr. Džiautas, worked as a prosecutor at the Office of the Prosecutor General of Lithuania. However, after some time both applicants were dismissed from their positions based on a fact that they were former KGB officers (the Soviet Security Service). Such dismissal in their opinion was unfair and violated their rights. Therefore, they both applied to the ECtHR and eventually the court held that there has been a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect to private life) of the Convention.[134] The court started by highlighting the fact that Article 14 protects all persons in similar situations from being treated differently. It has been evaluated whether the applicants have been treated differently from other persons

[133] „European Court of Human Rights 2004 July 27 judgement in the case *Sidabras and Džiautas v Lithuania* (No. 55480/00, 59330/00)", HUDOC database, accessed 2020 July 13., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-61942%22]}.
[134] *Ibid*, para. 62.

in Lithuania who had not worked for the KGB. However, since other people had no job restrictions like what Mr. Sidabars and Mr. Džiautas had, the court ruled that that such ban does effect "*private life*". Therefore, the court stated that: "*applicants were treated differently from other persons in Lithuania who had not worked for the KGB, and who as a result had no restrictions imposed on them in their choice of professional activities*"[135]. Moreover, Lithuanian government argued that the KGB act was adopted in order to have people loyal to the state, working in an important fields. Nonetheless, the ECtHR held that such differentiation shall also be admitted as different treatment. The court stated: "*Government's argument that the purpose of the KGB Act was to regulate the employment prospects of persons on the basis of their loyalty or lack of loyalty to the State, there has also been a difference of treatment between the applicants and other persons in this respect. difference of treatment between the applicants and other persons in this respect"*[136]. In this case, the Court very clearly expressed an opinion that no double standards or different treatment in any circumstances may be tolerated. Also, the Court once again expresses an opinion formed in *Airey v. Ireland*, stating that *"there is no watertight division separating the sphere of social and economic rights from the field covered by the Convention*[137]*"* and a ban on engaging in `professional activities in various branches of the private sector on account of their status as "*former KGB officers*" would *inter alia* interfere with their socio-economic right to work.

Another type of cases is related to surveillance at workplace. For instance, in case of *Halford v. the United Kingdom*[138] everything started when Ms. Alison Halford (the highest-ranked female officer in the UK) has been denied from promotion to the rank of Deputy Chief Constable. As she claimed, the position was refused to her because she is a female. Hence, she has been "*discriminated against on grounds of sex*"[139]. The applicant amongst other things alleged that her phone at home and at work is tracked and calls being intercepted in order to gather intelligence to later use against her in the court proceedings. Therefore, the Court evaluated the details and held that there has been a violation of Article 8 of the ECHR. It reasoned that intercepting phone calls interfered with the applicants right to private life and correspondence. ECtHR later concluded that indeed the phone calls were intercepted by the police with the intention to collect information on the applicant, which would later be useful in order to defend their position during the proceedings. Particularly the Court stated: "*it is clear from its case-law that telephone calls made from business premises as well as from the home may be covered by the notions of "private life" and "correspondence" within the meaning of Article 8 para. 1*"[140]. Finally, the Court agreed that the interference was unlawful. Such conclusion has been drawn because the legislation did

[135] *Ibid*, para. 23.
[136] *Ibid*, para. 23.
[137] *Sidabras and Džiautas v Lithuania*, *supra note*, 127: para. 47.
[138] „European Court of Human Rights 1997 June 25 judgement in the case *Halford v. the United Kingdom* (No. 20605/92)", HUDOC database, para. 10, accessed 2020 July 13., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-58039%22]}.
[139] *Ibid*, para 11.
[140] *Ibid*, para 44.

not provide with an adequate protection to the applicant against the police intercepting her calls. The Court said: "*such interference was not "in accordance with the law" since domestic law did not provide any regulation of interceptions of calls made on telecommunications systems outside the public network*"[141]. Thus, ECtHR concluded that the applicant's right to respect for private life has been breached.

Another similar case of *Copland v. the United Kingdom*[142] involves a person who was an employee at Carmarthenshire College. She worked as a personal assistant to the College Principle. Shortly speaking, before the Court she alleged that her telephone calls and e-mail messages had been monitored at the Deputy Principal's instigation. Hence, the Court assessed that the telephone communication even from a working place should be understood as falling under the scope of private life. "*According to the Court's case-law, telephone calls from business premises are prima facie covered by the notions of private life and correspondence*"[143]. Further, ECtHR reasoned that if phone calls fall within the scope of protection, so should the e-mails sent from the business computer. Moreover, the Court argued that even the other data gathered from monitoring the personal use of the internet, should also be accordingly protected. However, the applicant had never been warned that her phone calls, e-mails or other usage of computer and internet will be surveilled. Thus, the applicant's right to privacy had been breached, as she had reasonable expectations to believe that nobody would monitor her at work. "*the Court considers that the collection and storage of personal information relating to the applicant's telephone, as well as to her e-mail and Internet usage, without her knowledge, amounted to an interference with her right to respect for her private life and correspondence within the meaning of Article 8*"[144]. Lastly, even though the Court did not answer the questions whether the telephone, e-mail and internet use surveillance in a business premises is considered "*necessary in a democratic society*", they have however, answered that interference was not according with the law. "*as there was no domestic law regulating monitoring at the relevant time, the interference in this case was not in accordance with the law*[145]".

Finally, in the Grand Chamber's judgment *Barbulescu v. Romania*[146] which concerned a breach of the applicant's privacy at work, the Court held that there has been a violation of Article 8 of the Convention as the Romanian authorities had not adequately protected the applicant's right to respect for his private life and correspondence. In this case the applicant was dismissed from a private company

[141] *Ibid*, para 50.
[142] „European Court of Human Rights 2007 April 3 judgement in the case *Copland v. the United Kingdom* (No. 62617/00)", HUDOC database, para. 7, accessed 2020 July 13., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-79996%22]}.
[143] *Copland v. the United Kingdom*, *supra note*, 136: para. 41.
[144] *Ibid*, para 44.
[145] *Ibid*, para. 48.
[146] „European Court of Human Rights 2017 September 5 judgement in the case *Barbulescu v. Romania* (No. 61496/08)", HUDOC database, para. 141, accessed 2020 July 18., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-177082%22]}.

after they have checked his e-mails and other electronical communication. The applicant believed that his dismissal was based on the contents of the latter commination which was a breach of his privacy at work. Moreover, it has been established that the domestic courts did not evaluate the fact that the applicant might have not received any warning regarding the surveillance. The Court notes: "*The domestic courts failed to determine, in particular, whether the applicant had received prior notice from his employer of the possibility that his communications on Yahoo Messenger might be monitored; nor did they have regard either to the fact that he had not been informed of the nature or the extent of the monitoring, or to the degree of intrusion into his private life and correspondence*"[147]. All in all, ECtHR has held that the domestic authorities did not ensure the applicant's right to privacy, thus, breaching the Article 8 of the Convention.

On the other hand, in the Grand Chamber's judgment *Lopez Ribalda and Others v. Spain*[148], the Grand Chamber did not find a violation of the convention. In this case the applicant complained about the video-surveillance at work which have led to her dismissal. However, the Court held that the employer (a supermarket) had a reasonable suspicion of theft. Hence, video-surveillance have been justified. As in a previous case, the applicant argued that they have not received a prior notice about a possible surveillance. Nonetheless, ECtHR reasoned that the employer had a serious enough reason, suspicion and losses to justify such video-surveillance. Therefore, in this current situation it was believed so the domestic courts did not exceed their powers and correctly found the surveillance proportionate and legitimate. Moreover, there is a similar case (*R v. Oakes*[149]) regarding the video-surveillance where the Canadian Supreme Court also considered the necessity, proportionality and effectiveness. Furthermore, according to joint dissenting opinion of judges De Gaetano, Yudkivska and Grozev "*This is an appropriate approach to follow in order to determine whether there has been a fair balance between competing Convention rights*"[150]. All in all, because the employer managed to show the seriousness and legitimacy of surveillance, also because they have already experienced profit loss because of the thefts, they had a good enough reason for a video-surveillance. Therefore, ECtHR did not find a violation of the Convention.

Hence, from the above cases it is clear that the Court was able to derive certain social rights at work from the interpretation of Article 8 of the Convention. However, in author's opinion even though ECHR manages to maintain a semi effective protection level of socio-economic rights when interpreting Article

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[147] *Barbulescu v. Romania*, *supra note*, 140: para. 140.

[148] „European Court of Human Rights 2019 October 17 judgement in the case *Lopez Ribalda and Others v. Spain* (No. 1874/13, 8567/13)", HUDOC database, para. 137, accessed 2020 July 18., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-197098%22]}.

[149] "Supreme Court of Canada 1986 February 28 judgement in the case *R v. Oakes* (No. 17550)" lexum database, para. 3, accessed 2020 July 26., https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/117/index.do.

[150] "Joint dissenting opinion of judges De Gaetano, Yudkivska and Grozev in the case *Lopez Ribalda and Others v. Spain*, (No. 1874/13, 8567/13)", HUDOC database, para. 14, accessed 2020 July 26., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-197098%22]}.

8 of the convention, nonetheless, the Court should be even more dynamic and proactive. Therefore, in Author's opinion, it would be a good idea to add an additional protocol to ECHR for social rights protection. This would ease Court's job and would ensure an effective protection of social rights without a need of interpretation of civil-political rights.

3.3. The right to housing

According to D. Gailiūtė's opinion, the right to housing, as any other human right erects from a natural human dignity[151]. Thus, it is crucial to protect such fundamental and extremely valuable social right. That is why, Article 31 of the *European Social Charter (Revised)* ensures the protection of one's dignity and enshrines that Contracting States must: *"promote access to housing of an adequate standard; prevent and reduce homelessness with a view to its gradual elimination; make the price of housing accessible to those without adequate resources"*[152]. Not only that, but Article 16 of the latter document provides with the various means how states should be responsible for providing housing to newly formed families[153]. Of course, it is directed towards family needs and how state's organs should mind the needs of the family during the law-making process. Moreover, Article 15 requires to promote a full social integration of disabled persons. Thus, enhancing their *"participation in the life of the community through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure"*[154]. Further, Article 19 enshrines migrant workers' rights and prohibits discrimination in relation to buying property, house or another place to live[155]. Not only that, but Article 23 also protects elder persons' housing rights and motivates states to develop housing strategies for such vulnerable groups, so elder people could live longer in their own apartments[156]. Finally, Article 17 defines rights of children and their standard of living in orphanages[157]. Hence, it is quite clear that there are many Articles in the revised social charter that are deeply connected to the right to housing. And unlike other documents and treaties in which the right to housing is only expressed through other rights, in the *European Social Charter (Revised)*, the right to housing has been written as in individual, separate right[158]. We may also see that Article 25 of the Universal Declaration of Human Rights explicitly states that: *"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances*

[151] Gailiūtė, *supra note*, 26: p. 15.
[152] *European Social Charter (Revised)*, *supra note*, 13: art. 31.
[153] *Ibid*, art 16.
[154] *Ibid*, art 15.
[155] *Ibid*, art 19.
[156] *Ibid*, art 23
[157] *Ibid*, art 17.
[158] Gailiūtė, *op. cit*., p. 23.

beyond his control"[159]. Of course, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms in its first Article also states that: *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law"*[160]. Thus, one has to agree with Christophe Golay and Melik Özden that: "*the right to adequate housing is a universal right, recognized at the international level and in more than one hundred national constitutions throughout the world*"[161]. And even if the wording or regulation varies a bit from a country to country, according to D. Gailiūtė, we may simply group national constitutions or other acts depending on its level or scope[162]. For example, first category would be of countries that have classified the right to housing as one of the main human rights. Second group of constitutions only protect the minimum standard of living. Third group would see the right to housing as a principle or a governmental (social) goal. The fourth category of constitutions would not have the right to housing directly enshrined in their text, nonetheless, the right to housing could be protected through various other Articles. Finally, the last category of constitutions would not have the right to housing protected at all. However, the states would have international agreements which would guarantee the latter right.[163]

Nonetheless, as important as the right to housing is, it must be pointed that there is no common definition of it. However, according to L. Fox and D. Gailiūtė there are 5 main concepts of housing – "*home as a financial investment*", home as a territory, "*home as a social and cultural unit*", "*home as identity*", "*home as a physical structure*". Also, *European Committee of Social Rights in its case International Federation for Human Rights (FIDH) v. Belgium* have pointed that: "*any place in which a family resides legally or illegally, whether a building or a movable piece of property such as a caravan, must be regarded as housing within the meaning of the Charter… the site on which the caravan is installed must also be considered to form part of the dwelling*"[164]. In other words, the place of living may take many shapes or forms, even movable trailer homes and the soil beneath it should be understood as a place of living (housing). This is important because the broader understanding of housing helps traveler families to keep their life style intact. Afterall, it is well known that Roma (Gypsies) mainly live in mobile houses and it is very important aspect of their culture. What is more, with a broader interpretation of a term 'home' agrees and professor Dejan Bodul as well as ECtHR practice. According

[159] Universal Declaration of Human Rights, *supra note*, 3: art. 25.
[160] "Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms", Council of Europe, art. 1, accessed May 6., https://rm.coe.int/168006377c.
[161] Christophe Golay and Melik Özden, *the right to housing: A fundamental human right affirmed by the United Nations and recognized in regional treaties and numerous national constitutions* (Geneva: CETIM, 2007), p. 2.
[162] Gailiūtė, *supra note*, 26: p. 29.
[163] *Ibid*, p. 30-31.
[164] „European Committee of Social Rights 2012 March 21 decision in the case *International Federation of Human Rights (FIDH) v. Belgium* (No. 62/2010)", HUDOC database, para. 73, accessed 2020 May 10., https://hudoc.esc.coe.int/eng#{%22sort%22:[%22ESCPublicationDate%20Descending%22],%22ESCDcIdentifier%22:[%22cc-62-2010-dmerits-en%22]}.

to Mr. Bodul: "*The concept of home is an autonomous term within the meaning of Article 8, paragraph 1 of the ECHR. The French version of the ECHR text uses the term domincile that has a much wider meaning than the English term home*"[165].

Moreover, in the case *Oluić v Croatia*[166], the court also refers to a broader home definition. ECtHR here reasoned that individuals must have a possibility to enjoy the physical area of their home. Nonetheless, as important as this aspect of the private life may sound, some factor such as sound pollution, emission, smells or other form of interferences are just as important, in courts opinion. "*A serious violation may result in the breach of a person's right to respect their home if it prevents them from enjoying the amenities of their home*"[167]. However, it should also be stated that even if the term is understood in a broader way, a person must have a sufficient and permanent links with a certain area or property[168]. It shall be understood as a requirement for an individual, so a certain place of living could be considered as their 'home' in particular. Furthermore, the right to housing can only be fulfilled when it meets certain minimum standards. These standards are set in place so all human beings would live with dignity and prosper. According to World Health Organization: "*the right to adequate housing requires more than just four walls and a roof (Article 11.1 of the International covenant on economic, social and cultural rights) It includes the right to have a safe and secure house and community in which to live in peace and dignity*"[169]. Hence, various international organizations through its practice have indicated a proper housing standard. Even though it must be pointed out that an adequate standard may vary depending on certain factors like economy, social and cultural aspects, climate etc. Nonetheless, United Nations Human Rights Office of the High Commissioner have formulated seven elements of the right to adequate housing: 1. Legal security of tenure – Regardless of the type of the conditions under which land or buildings are held or occupied, every human should hold a degree of security of tenure. It guarantees all persons' legal protection against unlawful or forced evictions and other threats. 2. Affordability – One of the top three priorities for anyone buying or renting a place to live in is the cost of it. The most important thing to understand here is that the cost should never be so huge that it would drain most of the personal finances. The household must be affordable and it should not threaten or compromise the satisfaction of one's basic needs. 3. Habitability - Conformance of a residence is not the only thing that fits in this term. For a place to be considered as adequately habitable it must have enough

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[165] Dejan Bodul, *the right to a home in the case-law of ECHR vs. the right to a home in the case law of Croatian courts (*Croatia: Faculty of Law, Josip Juraj Strossmayer University of Osijek, 2018), p. 554.

[166] „European Court of Human Rights 2010 May 20 judgement in the case *Oluić v Croatia* (No. 61260/08)", HUDOC database, para. 44, accessed 2020 May 10., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-98829%22]}.

[167] *Ibid*

[168] „European Court of Human Rights 2009 October 22 judgement in the case *Oluić v. Croatia* (No. 3572/06)", HUDOC database, para. 33, accessed 2020 May 10., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-95327%22]}.

[169] „The right to adequate housing", World Health Organization, accessed 2020 June 5., https://www.who.int/ageing/features/adequate-housing/en/.

space per person, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. 4. Availability of services, materials, facilities and infrastructure – Another very important element for an adequate housing is to be connected with possible services. For example, a proper place of living must have access to a safe potable water, good sanitation, ways of heating, electricity, refusal disposal, etc. 5. Accessibility – The latter element means that the needs of disadvantaged people must be taken into account. Adequate housing has to be accessible to everyone and without discrimination regardless if a person is poor, disabled, victim of some natural disaster, etc. 6. Location – It is stated that the living quarters may not be built on polluted sites or close to pollution source. Moreover, the location is very important for other reasons too. For example, location of an adequate home should allow access to health-care services, employment, schools, day care and other social or governmental facilities. 7. Cultural adequacy – Lastly, the final element of an adequate housing claims that the living place must be fitting to one's cultural identity and ways of life.[170]

Now, as we have answered what is the right to housing it is possible to analyze the Court's case law in order to figure out whether the latter right could be derived from the Court's case law when interpreting Article 8 of the convention? Hence, let's start with the unlawful eviction cases. As the research show - among European Union member states at least one fourth of the evicted will become homeless.[171] Moreover, charter expresses position towards a reduction of homelessness, against forced evictions, equality towards social benefits and family needs[172]. Not to mention there is a rule that the member states have to take appropriate actions in their power to make sure that those who were moved out of their housing would get an alternative place of living. Also, the UN Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 4 has pointed that: "*States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups*"[173]. Moreover, it is also important to say that during the process of forced evictions, UN has a standard for all members states to make sure that there will be governmental authorities or their representatives with proper identification present on a scene. CESCR has also highlighted that states must guarantee accessibility of legal options and remedies for persons unable to pay their mortgage loans. Furthermore, member states should adopt proper legal means to make sure that eviction procedures would not breach human rights and be in accordance with the General comment 7[174]. The

[170] „The Right to Adequate Housing Toolkit", United Nations Human Rights Office of the High Commissioner, accessed 2020 June 5., https://www.ohchr.org/en/issues/housing/toolkit/pages/righttoadequatehousingtoolkit.aspx.
[171] *Pilot project - Promoting protection of the right to housing - Homelessness prevention in the context of evictions* (Luxembourg: Publications Office of the European Union, 2016), p. 1.
[172] Ibid, p. 2.
[173] "General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)", refworld, p. 4, accessed 2020 June 15., https://www.refworld.org/docid/47a7079a1.html.
[174] "General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions", refworld, p. 1-6, accessed 2020 June 15., https://www.refworld.org/docid/47a70799d.html.

final remark regarding forced evictions shall be made in the light of ECHR. As this document is ratified by every single EU member state it has a great legal weight. Under its Article 8, as mentioned before there is a requirement to respect one's home. This means that there always has to be a legitimate reasoning for an eviction and of course such eviction must be proportionate to the legal aim pursued. For instance, in *Moldovan v. Romania (No. 2)*,[175] applicants were Roma families whose houses were burned by the revenge seeking local people. From the gathered information it is also clear that the police authorities were as well involved in the happening. Moreover, after the incident Roma families had to suffer from a poor living condition. As it was recorded: "*the applicants had to live, and some of them still live, in crowded and improper conditions – cellars, hen-houses, stables, etc. - and frequently changed address, moving in with friends or family in extremely overcrowded conditions*"[176]. Hence, the ECtHR held that the living conditions, unfairness and intolerance towards the Roma families as well as unlawful eviction accumulated to a degrading treatment[177]. Therefore, the Court agreed that there has been a violation of Article 8 and Article 3 of the Convention.

Further, in *Yordanova and Others v. Bulgaria*[178] The Court found that it was against the Convention to evict a Roma community, because it would breach the right to respect for home. ECtHR stated: "*Having regard to the fact that the case concerns the expulsion of the applicants as part of a community of several hundred persons and that this measure could have repercussions on the applicants' lifestyle and social and family ties, it may be considered that the interference would affect not only their homes, but also their private and family life*"[179]. Thus, the question remained whether the eviction is lawful and necessary in the democratic society for the achievement of one or several of the legitimate aims set out in paragraph 2 of Article 8[180]. Finally, the Court agreed that Article 8 would be breached in the event of enforcement of the deficient order of 17 September 2005. ECtHR considered that the document was based on a legislation which did not call for the analysis of proportionality. Moreover, during the executive process it failed to consider the question of "necessity in a democratic society"[181]. Therefore, the judgement was that there would be a violation of Article 8 of the Convention in the event of the enforcement of the order of 17 September 2005.

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[175] „European Court of Human Rights 2005 July 12 judgement no. 2 in the case *Moldovan and others v. Romania* (No. 41138/98, 64320/01)", HUDOC database, para. 15, accessed 2020 June 18., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-69670%22]}.
[176] *Ibid*, para 103.
[177] *Ibid*, para 113.
[178] „European Court of Human Rights 2012 April 24 judgement in the case *Yordanova and Others v Bulgaria* (No. 25446/06)", HUDOC database, para. 144, accessed 2020 June 18., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-110449%22]}.
[179] *Ibid*, para. 105.
[180] *Ibid*, para. 106.
[181] *Yordanova and Others v Bulgaria*, *supra note*, 172: para. 144.

In another case of May 27, 2004 *Connors v., the United Kingdom*[182] ECtHR has found a violation of Article 8 because the applicants' family was evicted from a local authority gypsy caravan site. The Court went further, stating that: "*The family was, in effect, rendered homeless, with the adverse consequences on security and well-being which that entails*"[183]. All in all, the Court reasoned that forced eviction from the applicants' place of living "*was not attended by the requisite procedural safeguards*"[184]. ECtHR ruled that the lack of a "*proper justification*" for such interference cannot be regarded as just or proportionate. Hence found a violation of the convention.

In a similar case *Winterstein and Others v. France*[185] we have a situation in which French travelers has been evicted from a private land by the authorities, where they have been living for decades. The judgement of this case concerned nearly a hundred people, their future and home. The domestic courts in this situation reasoned that the applicants living on the territory contradicts the land-use plan. As regards the authorities, they had not provided with any argument why the eviction was necessary. Moreover, the land in question has been marked as protected area in the previous land-use plan. Hence, there were no third-party rights at stake. In this case the Court points out that there should be some special consideration regarding the applicants. They said that: "*the vulnerable position of Roma and travelers as a minority means that some special consideration should be given to their needs and their different lifestyle*"[186]. Moreover, the Court points out that the authorities never considered a fact that the Roma families had lived on the latter land for a very long time and for all these years government had never taken any actions to evict them. Thus, "*de facto tolerated the unlawful settlement*". Furthermore, by doing so the authorities should be responsible for inactively developing a community life there, which now have strong links with the place. For this reason, ECtHR concluded that this situation is different from a regular removal of individuals from unlawfully occupied property. All in all, "*The Court finds that, in respect of all the applicants, there has been a violation of Article 8 of the Convention since they did not have the benefit, in the context of the eviction proceedings, of an examination of the proportionality of the interference in accordance with the requirements of that Article*"[187].

Also, in the case *McCann v. the United Kingdom*[188], husband has been evicted from a local authority housing. Such eviction had violated his procedural rights; thus, the Court found a violation of Article 8.

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[182] „European Court of Human Rights 2004 May 27 judgement in the case *Connors v. the United Kingdom* (No. 66746/01)", HUDOC database, para. 95, accessed 2020 June 25., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-61795%22]}.
[183] *Ibid*, para 85.
[184] *Ibid*, para 95.
[185] „European Court of Human Rights 2013 October 17 judgement in the case *Winterstein and Others v. France* (No. 27013/07)", HUDOC database, para. 8, accessed 2020 June 25., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-127539%22]}.
[186] *Ibid*, para 148.
[187] *Winterstein and Others v. France*, *supra note*, 179: para 167.
[188] „European Court of Human Rights 2008 May 13 judgement in the case *McCann v. the United Kingdom* (No. 19009/04)", HUDOC database, para. 8, accessed 2020 July 5., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-86233%22]}.

Moreover, in a similar case of *Yevgeniy Zakharov v. Russia*[189] the applicant has been evicted from a communal flat after his wife passed away. In this case, the courts did not recognize Mr. Zakharov as a family member of his partner and for this reason did not acknowledge his right to live in her room. However, ECtHR reasoned that the applicant indeed has formed a continuous link with the room of his wife in a communal flat, for he has lived there for more than ten years. Hence, the room may be considered as his home under Article 8 of the convention. The Court has also pointed that the domestic decision not to acknowledge the applicant as a family member of his wife, who passed away, has accumulated to interference with his right respect for his home. In this case, the ECtHR ruled that the domestic courts failed to balance the interests of neighbors occupying other rooms against Mr. Zakharov's right to respect for his home. Therefore, the interference was not 'necessary' and in violation of Article 8 of the convention.

On the other hand, in the case *Bah v. the United Kingdom*[190] the applicant was an asylum seeker from Sierra Leone. Even though the asylum claim has not been granted, she obtained an indefinite leave to remain. Shortly after, Ms. Husenatu Bah applied for her son to join her in the UK. However, the applicant's landlord was not happy about accommodating both Ms. Bah and her son and ordered them to move out. For this reason, Ms. Bah and her son had become unintentionally homeless. Therefore, she applied for assistance in order to find a place of living. Moreover, she claimed that according to section 189 of the Housing Act 1996, a person with a minor child should have a priority to obtain a suitable housing. Nonetheless, due to a fact that her son was subject to immigration control he was not considered by the Council in the determination of whether the applicant was in priority need. For this reason, the applicant complained that she had been discriminated against by not being treated with priority for social housing. However, the ECtHR ruled that the different treatment was reasonable and justified. They have said that: "*the differential treatment to which the applicant was subjected was reasonably and objectively justified by the need to allocate, as fairly as possible, the scarce stock of social housing available in the United Kingdom and the legitimacy, in so allocating, of having regard to the immigration status of those who are in need of housing*"[191]. Hence, the Court agreed that there has been no violation of Article 14 of the Convention taken in conjunction with Article 8.

To sum up, the right to housing is an extremely important social right. It is very interrelated with the Article 8 of the Convention and we may see from the above examples that the Court often derives the latter socio-economic right while interpreting Article 8 of the Convention. However, when we talk

[189] „European Court of Human Rights 2017 March 14 judgement in the case *Yevgeniy Zakharov v. Russia* (No. 66610/10)", HUDOC database, para. 7, accessed 2020 July 5., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-172073%22]}.
[190] „European Court of Human Rights 2011 September 27 judgement in the case *Bah v. the United Kingdom* (No. 56328/07)", HUDOC database, para. 6, accessed 2020 July 5., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-106448%22]}.
[191] *Bah v. the United Kingdom*, *supra note*, 184: para 52.

about the unlawful evictions, we may see that the Court usually tends not to trigger Article 3 of the Convention. In Author's opinion, however, many of these cases consists of situations where the applicants have nowhere else to go. After an eviction they suffer from having to live in an odd place, unfit for a human being. Hence, even though the State has a positive obligation to try and prevent such things from happening, they do quite opposite – evict people from their shelters. Living in poor conditions negatively impact individuals' health both physically and mentally. Hence, in most cases it should accumulate to violation of Article 3 of the Convention. Thus, the Court should be more active and dynamic when interpreting certain political rights. Perhaps, having an additional protocol to the ECHR for the protection of socio-economic rights would solve the issue. Afterall, when we talk about housing it's not only a shelter or a place of living. It is also a human dignity and health. Therefore, to ensure a more effective protection of the right to housing it would be a good idea to add an additional protocol to ECHR for social right protection.

3.3.1. Article 1 of Protocol No. 1

Article 1 of Protocol No. 1 of the Convention also protects property which in Author's opinion is closely interrelated with the right to housing. However, as appose to article 8, it may be used to protect different aspects of it. As they have stated in the guide on the Article 1 of Protocol No. 1: "*The essential object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her "possessions" (negative obligations)*"[192]. Nonetheless, later it explains that Member States have also a positive obligation to ensure the effective protection of the rights in the Convention. Meaning that the positive obligations require countries to take appropriate steps in order to protect property and peaceful possession of it. In this context, as explained in the guide, possession means both immovable and movable property. That is why Author suggests that it may be used in order to protect the right to housing. To be precise, Article 1 of Protocol No. 1 of the Convention may be used in situations where people have been evicted from their place of living or when a state did not take an appropriate action to secure living space of persons if that living space could be acknowledged as a possession. On the other hand, even though there may be a significant overlap between Article 8 and Article 1 of Protocol No. 1, however, as further explained in the guide: "*the existence of a "home" is not dependent on the existence of a right or interest in respect of real property*"[193]. Meaning, that a person may be an owner of a property, but at a same time may lack in "*sufficient ties*" with it to be understood as his/her home. Nevertheless, property owners may still engage Article 1 of Protocol No. 1 in order to protect their home and the right to housing. However, legal

[192] „Protection of property", European Court of Human Rights, accessed 2020 November 19., https://www.echr.coe.int/Documents/Guide_Art_1_Protocol_1_ENG.pdf.

[193] „Protection of property", *supra note*, 192, p. 45.

analysis of the Court's case law would be required to answer weather the protection of the right to housing is effective under the ECtHR's interpretation of Article 1 of Protocol No. 1 of the Convention.

For instance, in the case of *Doğan and others v. Turkey*[194], the applicants were displaced from their place of living due to a difficult living conditions and security issues, because of terrorist activity in the area. The Court in this case noted that the villagers: "*had unchallenged rights over the common lands in the village, such as the pasture, grazing and the forest land, and that they earned their living from stockbreeding and tree-felling. Accordingly, in the Court's opinion, all these economic resources and the revenue that the applicants derived from them may qualify as "possessions" for the purposes of Article 1*"[195]. The Court had also agreed that the denial of access to the village may be regarded as an "*interference with the applicants' right to the peaceful enjoyment of their possessions*"[196]. Hence, after a careful evaluation of facts, the Court agreed that there has been a violation of Article 1 Protocol No. 1 of the Convention.

In another case of *Flamenbaum and others v. France*[197] the extension of the main runway at Deauville Airport resulted in a disturbance and affected the properties of local residents. However, the Court noted that Article 1 of Protocol No. 1 does not guarantee a "*pleasant*" enjoyment of one's possession. ECHR also didn't find a violation of Article 8 of the Convention in this case. Hence, Author suggests that the right to housing has not been effectively protected in this case. The argument for this being that the right to housing, as previously explained, has certain adequacy standards. Hence, if a person is forced to live in poor conditions all the time it should accumulate to a violation of a latter right. Of course, in Author's opinion if a person knew about the possible disturbances and still bought the property for a cheaper price expecting the disturbances to stop in a future, such individual should not be eligible for a compensation. However, if a person bought their home without knowing or having any means to know that one day in a future, certain disturbances will appear, thus, effectively, harming an individual's living conditions and reducing the price of his/her property, then such person should be eligible for a compensation or the Court should order such "*disturbances*" to be stopped.

Also, as regards the positive obligations of a state to protect one's property and home the case of *Oneryildiz v. Turkey*[198] shall be mentioned. In this case, state's dangerous activity resulted in numerous deaths and destruction of home. Therefore, ECHR held that the local Authorities did not comply with the Article 1 of Protocol No. 1 of the Convention. The Court have stated that: "*the State officials and authorities did not do everything within their power to protect them from the immediate and known risks*

[194] „European Court of Human Rights 2004 November 18 judgement in the case *Doğan and others v. Turkey* (No. 8813/02)", HUDOC database, accessed 2020 November 22., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61854%22]}.
[195] *Ibid*, para. 139.
[196] *Ibid*, para. 143.
[197] „European Court of Human Rights 2012 December 13 judgement in the case *Flamenbaum and others v. France* (No. 3675/04; 23264/04)", HUDOC database, accessed 2020 November 22., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115143%22]}.
[198] *Oneryildiz v. Turkey*, *supra note*, 55.

to which they were exposed"[199]. Meaning, that the state had a positive obligation to act in such way that would not put individuals at risk of losing their home. It has been said in particular that the Authorities had failed to inform people about the dangerous area.

On the other hand, the guide further explains that unlike Article 2, the positive obligation of a state then it comes to Article 1 of Protocol No. 1 of the Convention is not absolute. For instance, in the case of *Vladimirov v. Bulgaria*[200], "*The applicant bought a plot of agricultural land in 1983 situated in the area affected by the landslide*"[201]. He later started his business there, fully knowing about the dangers in that area. The Court in this case notes that: "*right to the peaceful enjoyment of possessions is not absolute*"[202] and that "*the applicant's own responsibility in this respect cannot be transferred to the State*"[203]. Hence, it appears that the positive obligation of a state to respect peaceful enjoyment of one's property cannot be engaged in a natural disaster situations ("*the Court has already held that Article 1 of Protocol No. 1 does not go as far as requiring States to take preventive measures to protect private possessions in all situations and all areas prone to flooding or other natural disasters*"[204]). Thus, Author is drawing a conclusion that one's home loss due to a natural disaster cause, would not accumulate to a violation of any positive obligation of Article 1 of Protocol No. 1 of the Convention.

Therefore, it may be stated that even though the latter Article may be used in order to protect one's right to housing in certain cases, it is not very effective. Perhaps, the effectiveness of protection would increase if an additional protocol for social rights protection would be added to the ECHR.

[199] *Ibid*, para. 109.
[200] „European Court of Human Rights 2018 September 25 decision in the case *Vladimirov v. Bulgaria* (No. 58043/10)", HUDOC database, accessed 2020 November 22., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187316%22]}.
[201] *Ibid*, para. 4.
[202] *Ibid*, para. 35.
[203] *Ibid*, para 37.
[204] *Ibid*, para 41.

4. PROHIBITION OF SLAVERY AND FORCED LABOUR UNDER THE ECHR

The ECHR states that: "*No one shall be held in slavery or servitude and no one shall be required to perform forced or compulsory labour*"[205]. However, what social rights could be derived from the Court's interpretation of Article 4 of the convention? To answer the above question, scholars' works and the jurisprudence of ECtHR will be analyzed.

To begin with, labour may be simply understood as an agreement between an employer and an employee to provide work or services for a certain remuneration. Nonetheless, after going into such agreement many other national and international rules (legislation) will apply. However, it is important to point out that even before signing a job contract, all persons have certain working related rights. For example, in the Charter the Contracting States agreed that one of their goals will be to maintain a high level of employment, meaning states must have an organ dealing with occupation in case a person is not capable in finding a job himself. Furthermore, the following part of the Article reads that the countries must protect the right of worker to make their living, which means there shall be a way to protect one's salary, in situations where employer is unable to pay. What is more, perhaps certain funds of insurance shall also be functional in case of an employer bankruptcy, so the government could cover at least some percentage of employees' salaries. Further, employment possibility shall be available to everybody, which simply means prohibition of discrimination. lastly, states agreed to spread vocational guidance and training.[206] To sum up, everybody shall have a possibility to seek employment in their desired field without any discrimination and that for their work or services the employer shall pay remuneration. Moreover, there must be no unfair dismissals from the working position and in case needed, employee should be able to defend his or her rights in court. Hence, state should have a positive obligation to ensure certain minimal standards and dignity at work.

For example, in the case *Van der Musselle v. Belgium*[207], the applicant had acted as an advocate for Mr. Ebrima throughout many proceedings. It has been later estimated that the applicant spent from approximately seventeen to eighteen hours on the matter. However, Mr. Van der Musselle did not receive any remuneration for his services. Thus, he brought a complaint arguing that he had been required to provide legal services without receiving any payment or being reimbursed for his expenses. The applicant also had pointed out that according to the Judicial Code of Belgium, he would have been made liable to certain sanctions if he decided not to represent Mr. Ebrima. Hence, in the applicant's opinion,

[205] „European Convention on Human Rights ", *supra note*, 11: art. 3.
[206] "European Social Charter (Revised)", *supra note*, 13: art. 1.
[207] „European Court of Human Rights 1983 November 23 judgement in the case *Van der Musselle v. Belgium* (No. 8919/80)", HUDOC database, para. 10, accessed 2020 July 10., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-57591%22]}.

mentioned circumstances gave rise to a forced labour, which is a violation of Article 4 of the convention. However, two definitions had to be analyzed first – what is "*labour*" and what is "*forced labour*". The Court found that the pro bono services provided by the applicant indeed resulted to "*labour*" for the purpose of Article 4 of the ECHR. Even more so, The Court very clearly ruled that labour should be understood as a broad term. ECtHR stated: "*English word "labour" is often used in the narrow sense of manual work, but it also bears the broad meaning of the French word "travail" and it is* ***the latter that should be adopted in the present context****. The Court finds corroboration of this in the definition included in Article 2 § 1 of Convention No. 29 ("all work or service", "tout travail ou service")*"[208]. To put it simply, any job or any services provided shall fall under labour definition. On the other hand, The Court have also expressed their opinion on forced labour. ECtHR agreed fully that the work must be performed against the will of the person concerned. In other words, the forced labour would be considered as such work, for which the person "*has not offered himself voluntarily*". Hence, according to The Court, two conditions may be identified – 1. labour has to be performed by the person against his or her will, 2. the obligation to carry it out must be 'unjust' or 'oppressive. In this case ECtHR agreed that there has been no physical or mental limitation or control over the applicant. Therefore, the first condition was considered not met. As regards the second condition, The Court considered that it would not mean that just about any legal obligation or compulsion falls under the meaning of oppression. For instance, the Court gave an example that just because there is a sanction foreseen in a contract for not honoring the promise (not providing agreed work or a service), it is not sufficient enough reason to consider such work as forced labour.[209] In other words, it is normal to have certain sanctions for a party that fails to complete an obligation. Hence, ECtHR concluded as follows: "*What there has to be is work* "*exacted ... under the menace of any penalty*" *and also performed against the will of the person concerned, that is work for which he "has not offered himself voluntarily*"[210]. Considering that in this case the applicant lacked in these conditions, The Court ruled that there has been no breach of Article 4 of the Convention.

4.1. Children protection, labour and the right to education

Benjamin Franklin often said: "If a man empties his purse into his head, no one can take it from him"[211]. An infamous quote, by a very famous person, till this day has a great meaning. One could interpret that doctor Franklin meant an investment in knowledge and considering that no one could take away knowledge from a person, such investment would always be profitable. It could be understood as a logical sequence even. For example, brighter society tends to make more educated decisions, which

[208] Van der *Musselle v. Belgium*, *supra note*, 188: para. 33.
[209] *Ibid*, para. 34.
[210] *Ibid*, para. 34.
[211] "A safe investment", *Indiana State Sentinel*, 1849 January 9., https://chroniclingamerica.loc.gov/lccn/sn82014301/1849-01-09/ed-1/seq-2/#date1=1836&sort=date&date2=1922&searchType=advanced&language=&sequence=0&index=0&words=empties+head+his+purse&proxdistance=5&rows=20&ortext=&proxtext=&phrasetext=empties+his+purse+into+his+head&andtext=&dateFilterType=yearRange&page=1.

lead to a better governmental ruling, less corruption and clearer political decisions. Less corruption and better politicians mean wiser legislation and smarter budget, which helps the state's economy grow. Better economy equals better paid jobs, better healthcare, better education and much more. In other words, smarter society is programmed to be more successful. Therefore, the Author would argue that the right to education guaranteed by the International Covenant on Economic, Social and Cultural Rights as well as by the ECHR's protocol 1, Article 2 is one of the most important rights for a bright future. Even more so, the latter right would not simply provide its benefits actively. Sure, we may see active benefits of right to education. However, the real fruits of this right tend to reap later in the future, thus, in a long run it should be understood as a passive benefit. Hence, it is crucial to educate and protect our youth. That is why Article 7 of the Revised European Social Charter enshrines the right of children and young persons to protection.[212] Moreover, children rights are protected under the Convention on the Rights of the Child. Here it is specified that any human being under 18 years old is considered to be a child: *"…a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*"[213]. In the latter document, there are 54 Articles regarding the children rights and their protection. Furthermore, these rules are applicable to all European Union member states. Thus, it is clearly visible that children have a right to their protection from possible harms. For instance, employment should not negatively influence education, or otherwise harm young adults. Moreover, under a certain age labour is prohibited whatsoever, as it is stated in Article 32 of EU Charter of Fundamental Rights[214]. Also, the same is backed in the Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work[215], as well as in Article 7 of the Revised Social Charter. Hence, from the above legislation we may draw a conclusion that children labour is prohibited if a child is younger than 14-15 years old (the specific age depends on a country of origin and other details). Also, if a young adult who is older than 14 but younger than 18 years old, wishes to work it is possible to do so, but various rules apply. For example, work should not influence child's education. Moreover, various other conditions at work should be met. As it is specified in an official website of the European Union regarding the employment, social affairs and inclusion: "*The Directive sets out the employer's general obligations to protect and monitor young workers' health and safety. It also specifies types of employment which must not be carried out by young people. This includes work which exceeds*

[212] "European Social Charter (Revised)", *supra note*, 13: art. 7.
[213] „Convention on the Rights of the Child ", United Nations Human Rights Office of the High Commissioner, art. 1, accessed 2020 August 1., https://www.ohchr.org/en/professionalinterest/pages/crc.aspx.
[214] "Charter of Fundamental Rights of the European Union", EUR-lex, art. 12, accessed 2019 August 25., https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012P/TXT#:~:text=The%20European%20Parliament%2C%20the%20Council,Rights%20of%20the%20European%20Union.&text=It%20places%20the%20individual%20at,of%20freedom%2C%20security%20and%20justice..
[215] "Council Directive 94/33/EC on the protection of young people at work", EUR-lex, art. 1, accessed 2020 August 1., https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31994L0033.

their mental or physical capacities and work involving harmful exposure to dangerous substances. There are also provisions on working hours, night work, rest periods, annual leave and rest breaks"[216]. However, even though on paper children protection seems great, the actual situation around the world is a bit different. International Labour Organization (ILO) has estimated that around 246 million children aged 5-17 years are working. It is said that about 179 million of these children are caught in the worst form of child labour. For instance, the latter kids suffer from "*slavery, debt bondage, prostitution, pornography, forced recruitment of children for use in armed conflict, use of children in drug trafficking and other illicit activities, and all other work likely to be harmful or hazardous to the health, safety or morals of girls and boys under 18 years of age*"[217]. Moreover, the International Labour Office estimates that: "*Roughly 2.5 million children are economically active in the developed economies, 2.4 million in the transition countries, 127.3 million in Asia and the Pacific, 17.4 million in Latin America and the Caribbean, 48 million in Sub-Saharan Africa and 13.4 million in the Middle East and North Africa*"[218]. Thus, we may see that children are illegally working all around the world, with no exceptions. This is of course should not be tolerated. Thus, as a possible solution Author suggests keep raising even bigger awareness of children labour problem. As mentioned at the very beginning of this chapter, the only way of breaking the vicious cycle would be if states' governments would take a proactive action and increase funding in the education field and perhaps better support families in poverty. Also, authorities could take additional actions in order to lower corruption rates in the labour inspection agencies, so persons' in right positions would do their work adequately. Lastly, states should actively fight against children trafficking. Nonetheless, the question still stands whether the above-mentioned social rights may be derived from the Court's interpretation of Article 4 of the convention? To answer it, Court's case law in relation to Article 4 of the Convention must be analyzed.

For instance, the case of *C.N. and V. v. France*[219] is about underaged girls who left their country following the 1993 civil war. Upon an arrival to France, the applicants were kept in servitude by their aunt and uncle. From the case data it also appeared that the girls were forced to live in a basement, with no bathroom. Also, they had to carry out various tasks and chores. The applicants worked with no days off or remuneration and amongst other things suffered from verbal and physical harassment. Therefore, the Court concluded, that the first applicant had been subjected to forced labour, as she had had to work,

[216] „Employment, Social Affairs & Inclusion ", Europa, accessed 2020 August 10., https://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=209#:~:text=The%20EU%20Directive%20on%20the,full%2Dtime%20compulsory%20education).&text=It%20also%20specifies%20types%20of,carried%20out%20by%20young%20people.

[217] "Child labour in Europe", International Labour Office, accessed 2020 August 10., https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_47_en.pdf

[218] *Ibid*

[219] „European Court of Human Rights 20012 October 11 judgement in the case *C.N. and V. v. France* (No. 67724/09)", HUDOC database, para. 8, accessed 2020 August 15., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-114032%22]}.

under threat of being returned to her country of origin. Moreover, ECtHR ruled that the France had failed to meet its conventional obligations. And so, the Court found a violation of Article 4 of the convention and said that: "*the State had not put in place a legislative and administrative framework making it possible to fight effectively against servitude and forced labour*"[220]. Meaning States have a positive obligation to ensure a minimal standard of security for children and minors.

In another case of *Siliadin v. France*[221] the applicant was a 15 years old girl. As she arrived to France, it had been agreed that the girl would work for Mrs. D until the cost of the plane ticket would be covered fully. However, as it appears later the applicant unwillingly had become an unpaid maid for the family and her passport was taken away. From the case facts it is also visible that the applicant worked seven days a week. Her chores included but was not limited to preparing food, dressing the children, looking after the baby, washing and ironing clothes. Moreover, she had to clean the other apartment which was in the same building. Lastly, the applicant was made to sleep on a mattress on the floor in the baby's room, so she could look after him if he was to wake up. As she worked 15 hours a day without a pay for several years, the applicant complained about having been a domestic slave. In any case, ECtHR ruled that the applicant had not been enslaved. The Court stated: "*although the applicant was, in the instant case, clearly deprived of her personal autonomy, the evidence does not suggest that she was held in slavery in the proper sense*"[222]. However, the Court had also agreed that the criminal law did not protect the girl either. Thus, ECtHR agreed that there was a violation of Article 4 of the convention (prohibition of slavery, servitude, forced or compulsory labour). They stated that: "*the applicant was, at the least, subjected to forced labour within the meaning of Article 4 of the Convention at a time when she was a minor*"[223].

Having a closer look at this case, the Author raises another question, perhaps, there has also been a violation of Article 5 of the Convention? Afterall, it is impossible to deny a fact that the child in this case has not been protected, the State did not ensure her social right of children and young persons to protection. Even more so, the Court did not talk about this either. However, working 15 hours a day as a child is extremely difficult. Not to mention her living conditions was also poor as she was forced to sleep on the matters on the floor. One could argue that this, over a long period of time could accumulate to a cruel and degrading treatment. Not to mention, sleeping on the floor for just a few hours a day could negatively influence one's health, both mentally and physically. Thus, in the Author's opinion perhaps, Article 3 of the convention could also be engaged in this case. Nonetheless, the Court did not analyze these conditions and did not found violations of Articles 5 or 3 of the Convention. From this case it's

[220] *Ibid*, para. 105.
[221] „European Court of Human Rights 2005 July 26 judgement in the case *Siliadin v. France* (No. 73316/01)", HUDOC database, para. 10, accessed 2020 August 15., https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-69891%22]}.
[222] *Siliadin v. France*, *supra note*, 202: para 122.
[223] *Ibid*, para 120.

quite clear that ECtHR is trying to include social rights aspects in while interpreting certain aspects of the Conventional rights. However, it is still extremely important for the Court to be even more active and dynamic when interpreting and deriving social rights from the Convention's perspective.

4.1.1. Article 2 of Protocol No. 1

Article 2 of Protocol No. 1 ensures the right to education. This is one of a few articles in the Convention that may in theory, directly protect a social right in question. In this particular situation, Author is talking about Article 17 of the European Social Charter (Revised), which guarantees the right of children and young persons to social, legal and economic protection. To begin with, it is important to point out that Article 2 of Protocol No. 1 does not create a positive obligation for a Member State to create public education system, it is simply left for a discretion of every jurisdiction[224]. On the other hand, positive obligations do exist, states would not be in a position to deny the right education for the schools they've decided to authorize. Of course, another thing is that the right to education is not absolute, it may have certain restrictions. For instance, there may be admission criteria for entrance, admission exams, etc. Hence, children's right to education, at least in theory, should be protected quite effectively. Nonetheless, to determine actual protection effectiveness of the latter right, Court's case law must be analyzed.

For example, in the case of *Timishev v. Russia*[225], the applicant's children have been denied an admission to the school they had been going to for the past two years, because the applicant could not produce his migrant's card[226]. In regards to this question, the Court stated that: "*In a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1 would not be consistent with the aim or purpose of that provision*"[227]. Hence, firstly, the Court agrees with the Authors opinion that the right to education is of a fundamental value in a democratic society. Secondly, it points out that everyone should have access to it. Thirdly, the Court states that this right should be understood broadly. Thus, it means that the right to education should be accessible for everybody in the jurisdiction of Member States. Hence, any domestic law that would interfere with the right to education is understood as incompatible with the requirements of Article 2 of Protocol No. 1. The latter statement is backed by the Court's opinion: "*the Convention and its Protocols do not tolerate a denial of the right to education. The Government confirmed that Russian law did not allow the exercise of that right by*

[224] "Right to Education", European Court of Human Rights, p. 5, accessed 2020 November 23., https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf.
[225] „European Court of Human Rights 2005 December 13 judgement in the case *Timishev v. Russia* (No. 55762/00; 55974/00)", HUDOC database, accessed 2020 November 23., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-71627%22]}.
[226] *Ibid*, para. 23.
[227] *Ibid*, para. 64.

children to be made conditional on the registration of their parents' residence […] Their exclusion from school was therefore incompatible with the requirements of Article 2 of Protocol No. 1.[228]".

On the other hand, the Court had also expressed an opinion regarding admissibility criteria. For instance, in the case of *Çiftçi v. Turkey*[229], ECtHR agreed that certain age regulation for a child to attend Koranic studies should be understood as proportional and not in a violation of child's right to education. "*In the Court's view, the restriction in question is intended to ensure that children who wish to receive religious instruction in Koranic study classes have attained a certain "maturity" through the education provided at primary school*"[230]. The court further state that such requirement does not aim to prevent religious instructions, nor it tries to deny children of learning from their parents philosophical and religious views. Therefore, no violation of Article 2 of Protocol No. 1 was found in this case.

In another case of *Lee v., the United Kingdom*[231] the applicant's grandchildren were thrown at risk of losing possibility of education due to a forced eviction from their place of living. The Court in this case stated that: "*the applicant has failed to substantiate his complaints that his grandchildren have effectively been denied the right to education as a result of the planning measures complained of*"[232]. However, in applicant's opinion, his grandchildren are now studying in a stable environment in a proper way. If they were forced to leave their place of living, they would have to travel from place to a place again, meaning technically, children would not have an actual possibility to study during that time. Hence, the Court's opinion that since technically, right to access education for the applicant's grandchildren is not restricted by the state, thus, the right to education is not violated, in Author's opinion feels a bit disappointing. Here we could bring up *Airey v. Ireland* case again, the Court in this case stated that the rights enshrined in the Convention must be effective and real. Therefore, if in *Lee v., the United Kingdom* the applicant's grandchildren after eviction would no longer have an actual way of accessing school and studying, their right to education is no longer effective and real. Of course, on the other hand, it is possible that just because they are evicted from their current place of living, it does not mean that they would not be able to afford or access school. Hence, in Author's opinion it is extremely important for the Court to analyze every case thoroughly. In this case, ECtHR made its judgement purely based on provisions enshrined in Article 2 of Protocol No. 1. Author believes that this was the reason why the Court did not consider whether the grandchildren would have an actual possibility to attend school. Since for the latter Article it is enough to prove that there were no preventive measures for the applicant's grandchildren to go to any school in general. From this point of view Author must agree with the Court's

[228] *Ibid*, para. 66.
[229] „European Court of Human Rights 2004 June 17 judgement in the case *Çiftçi v. Turkey* (No. 71860/01)", HUDOC database, accessed 2020 November 23., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-68089%22]}.
[230] *Ibid*
[231] „European Court of Human Rights 2001 January 18 judgement in the case *Lee v., the United Kingdom* (No. 25289/94)", HUDOC database, accessed 2020 November 23., https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59157%22]}.
[232] *Ibid*, para. 125.

judgement. However, if the Court was to interpret this Article, it could have derived a social right: "*of children and young persons to social, legal and economic protection*"[233], which includes regular school attendance. Hence, looking strictly from the point of view of children protection and education, it could mean that the Court could be more dynamic and that the protection of the children's right to education is currently not that effective.

[233] "European Social Charter (Revised)", *supra note*, 13: art. 17.

CONCLUSIONS

1. In order to analyze the framework of the protection of social rights and its effectiveness under the ECHR, Author has chosen the concrete Articles of the Convention - Article 2, 3, 4, 8 as well as Article 1 and Article 2 of Protocol No. 1 of the Convention.
2. The above-mentioned Articles of the ECHR have been selected due to their fundamental value and their crucial importance for the social rights and (or) their various aspects which had been derived from those provisions. Author has proved in the Thesis that the interpretation and application of the above-mentioned Articles of the Convention cover, in principle, all the main parts of an individual's life as well as the most important social aspect areas such as - health, work, education and living conditions.
3. It has been shown in the Thesis that the right to life, prohibition of inhuman or degrading treatment and the right to health are very closely interrelated. The Author evaluated Court's interpretation of both Articles 2 and 3 of the Convention and can draw a positive conclusion - that even though social right to health is not directly enshrined in the text of the ECHR, nevertheless, Article 3 and Article 2 of the Convention may be used as a background in order to protect the mentioned social right to health and its various aspects while dynamically interpreting and applying the mentioned Convention provisions. However, despite the fact the Court in numerous cases has been demonstrating a clear intention to rely on its fundamental principle – to use in its case law dynamic and evolutive interpretation of the Convention rights – and this principle enables also to reflect and, moreover, to protect effectively social rights even if they are not included in the text of the Convention, nonetheless, in some cases the effectiveness of such protection can be regarded as being too restrictive or even failed, because in some cases the Court fails to effectively protect the right to health. For example, only in a very limited number of cases where the lack of protection did not result in someone's death, had the protection of Article 2 of the Convention (see as example, case *Nitecki v. Poland*[234]). Or for example, in another case the Court was unable to derive the right to social and medical assistance, thus, leaving a patient to suffer until she dies from a stressful and painful death, because she had no right for euthanasia (see as example, case *Pretty v. UK*[235]).
4. The Author has also proved that Articles 4 and 8 of the Convention are closely related to the right to work and the rights at work. After a careful evaluation of the Court's case law under that mentioned Articles 4 and 8, it may be stated that the ECtHR in many cases has demonstrated an intention for an effective social rights protection. However, even though for example Author can agree with the judgement in the case *Van der Musselle v. Belgium*[236], working with no remuneration should not be a

[234] *Nitecki v. Poland, supra note*, 72.
[235] *Pretty v. UK, supra note*, 111.
[236] *Van der Musselle v. Belgium, supra note*, 207.

common practice and situations regarding this should never be taken lightly. Moreover, another question may be raised, would the Court evaluate this case in the same way given the present-day conditions?

5. Article 8 of the Convention as well as Article 1 of Protocol No. 1 of the Convention have also been analyzed in order to see the protection effectiveness of the right to property and the right to housing. The right to housing is an extremely important social right. It is very interrelated with the Article 8 of the Convention. However, as regards the unlawful evictions, we may see that the Court usually tends not to trigger in such cases Article 3 of the Convention. In Author's opinion, many cases consist of situations where the applicants have nowhere else to go. After an eviction they suffer from having to live in places unfit for a person. Hence, even though the State has a positive obligation to try and prevent such things from happening, they do quite opposite as the Courts case law indicates – evict people from their shelters (see as example, case *Connors v., the United Kingdom*[237], *Winterstein and Others v. France*[238]). Poor living conditions negatively impact individuals' health both physically and mentally. Hence, it could accumulate to violation of Article 3 of the Convention. In any case, the Court should be more active and dynamic in order to have more effective protection of the right to housing. On the other hand, the Court cannot impose positive obligations on the States which are not executable/impossible to implement.
6. However, concerning the protection of the right to property, Author is drawing a conclusion that one's home loss due to a natural disaster cause (for which the State cannot be held responsible), would not accumulate to a violation of any positive obligation of the State under Article 1 of Protocol No. 1 of the Convention. Therefore, it may be stated that even though the latter Article may be used in order to protect one's right to housing in certain cases, but, from practical point of view, it is not very effective.
7. The case law of the ECtHR under Articles 8 and 4 of the Convention as well as under Article 2 of Protocol No. 1 has been analyzed in order to see the effectiveness of the protection of the right to education. In the Author's opinion, even though the Court is trying to ensure an effective protection of the right to education through its jurisprudence; nevertheless, sometimes the protection is not that effective. As we have discovered from the Court's case law in *Lee v., the United Kingdom*[239], ECtHR made its judgement purely based on provisions enshrined in Article 2 of Protocol No. 1. Author believes that this was the reason why the Court did not consider whether the grandchildren would have an actual possibility to attend school. Since for the latter Article it is enough to prove that there were no preventive measures for the applicant's grandchildren to go to any school in general. From this point of view Author must agree with the Court's judgement. However, if the Court was to interpret this Article, it could have derived a social right: "*of children and young persons to social, legal and economic protection*", which includes regular school attendance. Hence, looking strictly from the point of view of children protection

[237] *Connors v. the United Kingdom*, supra note, 182.
[238] *Winterstein and Others v. France*, supra note, 185.
[239] *Lee v., the United Kingdom, supra note*, 231.

and education, it could mean that the Court could be more dynamic and that the protection of the children's right to education is currently not that effective.

8. The defense statement of this Master Thesis - that social rights are not directly enshrined in the text of the European Convention on Human Rights; nevertheless, they are protected through the case law of the ECtHR when interpreting and applying various provisions of the Convention's rights and fundamental freedoms – has been partly confirmed; from the analyzed Court's case law is quite clear that such protection does exist, however, the effectiveness of such protection can vary from case to case; it would be quite impossible to determine the exact standards and unified principles developed by the ECtHR under the selected Articles of the Convention concerning the protection of social rights and its effectiveness.
9. Also, even if the mentioned Defence statement has been partially confirmed by the analysis of the ECtHR case law in this Master Thesis, on the other hand, it can also be stated, that the separate Protocol on social rights, if adopted, would be a better legal background to protect more effectively social rights in the case law of the ECtHR.

SUGGESTIONS

1. Perhaps it is time to initiate the adoption of the new additional Protocol to the Convention on social rights. Afterall, why the Convention system, inheriting already 16 additional Protocols, does not have an additional Protocol for the social rights? Perhaps, if there was such Protocol, the Court would be given an effective tool to protect social rights more effectively in its jurisprudence.
2. In the Author's opinion, it would be a good idea to add an additional protocol to ECHR devoted specifically for social rights protection. This would ease Court's function under Article 19 of the Convention and, also, would ensure more effective protection of social rights; such protection would be based in such case not only on the social rights as they would be formulated and enshrined in that Protocol, but also, on the continuous dynamic interpretation of the [all] Convention rights and fundamental freedoms developing one or another aspect related to social rights.

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ANNOTATION

Having in mind the idea of Human Rights indivisibility, interdependence and interrelation it is really important to point out that the socio-economic and cultural rights are just as important as civil-political rights. Hence, in this Master Thesis we have analyzed the protection of social rights and its effectiveness in the jurisprudence of the European Court of Human Rights. First of all, we have glanced at the positive obligations of the state and the role of the European Court. Here we have answered what positive obligations the State has when it comes to the right to life and how it is connected to the social right to health. Secondly, we have analyzed the prohibition of torture, its connection to the right to health, as well as analyzed states' positive obligations in this area. Moreover, we have evaluated prisoners living conditions and their health while in state's detention. The biggest part of the thesis has been dedicated to the right to a private life and the social rights that may be derived of the latter provision. Here we have looked at the patients' rights, right to work and the rights at work, right to housing and property. Also, we have given an insight on the forced labour in the area of children protection and the right to education. Lastly, we have provided with an information on the above-mentioned problems, gave a legal analysis of the ECtHR's cases in relation to the above-mentioned areas and provided with a possible solution to ensure even more dynamic and effective social rights protection in the jurisprudence of European Court of Human Rights.

Key words: *European Court of the Human Rights, ECHR, ECtHR, European Court, European Convention, the Court, the Convention, Article, positive obligation, social rights, socio-economic rights, socio-economic and cultural rights, civil-political rights, jurisprudence, health, housing, education, rights at work, protection, Human Rights.*

ANOTACIJA

Atsižvelgiant į tai, jog Žmogaus Teisės yra nedalomos ir labai tarpusavyje susiję, yra labai svarbu pabrėžti, jog socio-ekonominės ir kultūrinės teisės turi tokią pat didelę reikšmę kaip ir civilinės-politinės teisės. Taigi, šiame magistro darbe analizavome socialinių teisių apsaugą ir šios apsaugos efektyvumą Europos Žmogaus Teisių Teismo jurisprudencijoje. Visų pirma, mes pažvelgėme į pozityviuosius šalių įsipareigojimus ir EŽTT vaidmenį juose. Šioje vietoje mes atsakėme į klausimą kokias pozityviąsias pareigas turi valstybė kai kalbama apie teisę į gyvybę, socialinės teisės į sveikatą kontekste. Antra, analizavome kankinimų draudimą bei kaip šis straipsnis yra susijęs su teise į sveikatą, bei pozityviuosius valstybių įsipareigojimus šioje srityje. Papildomai, buvo nagrinėjama kalinių sveikata ir gyvenimo sąlygos, kol jie yra valstybės kontrolėje. Didžiausia Magistro darbo dalis buvo dedikuota teisei į privatų

gyvenimą ir kokios socialinės teisės iš to išplaukia. Čia mes pažvelgėme į pacientų teises, teisę dirbti ir teises darbe, teisę į būstą bei nuosavybę. Taip pat, buvo pateikta įžvalgų dėl priverstinio darbo vaikų apsaugos kontekste, bei dėl jų mokslo. Pabaigai, buvo pateikta informacija dėl aukščiau minimų problemų, bei atlikta teisinė EŽTT bylų analizė dėl aukščiau minimų sričių. O taip pat, pateikti sprendimo būdai, užtikrinti dar dinamiškesnį ir efektyvesnį socialinių teisių apsaugos mechanizmą Europos Žmogaus Teisių Teismo jurisprudencijoje.

Raktiniai žodžiai: *Europos Žmogaus Teisių Teismas, EŽTK, EŽTT, Europos Teismas, Europos Konvencija, Teismas, Konvencija, Straipsnis, pozityvūs įsipareigojimai, socialinės teisės, socio-ekonominės teisės, socio-ekonominės ir kultūrinės teisės, civilinės-politinės teisės, jurisprudencija, sveikata, apgyvendinimas, mokslas, teisės darbe, apsauga, Žmogaus Teisės.*

SUMMARY

In this Master Thesis we have analyzed the idea that even though social rights are not directly enshrined in the text of the European Convention on Human Rights, nevertheless, it has been shown that the protection of social rights has been developing in the jurisprudence of ECtHR. Hence, Author has analyzed the possible protection and its effectiveness of social rights in the case law of the European Court of Human Rights when interpreting and applying the rights and freedoms enshrined in the text of the Convention. In other words, what social rights or, what aspects related to social rights can be derived from the provisions of the Convention relying on the case law of the ECtHR when interpreting and applying those provisions. More precisely, in order to execute the above-mentioned task, Author has taken the concrete Articles such as Article 2, 3, 4, 8 as well as Article 1 and Article 2 of Protocol No. 1 of the Convention. Because, in Author's opinion, interpretation and application of the above-mentioned Articles of the Convention cover all the main parts of an individual's life as well as the most important social aspect areas – health, work, living conditions and education.

At the very begging of the Thesis we have glanced at the international obligations of the states under the Convention as well as the positive obligations and the role of ECtHR. Further, we have look at the close connection between the right to life, prohibition of inhuman or degrading treatment and the right to health. Therefore, in order to analyze the protection and its effectiveness of the mentioned social right - the right to health – Author has analyzed both Articles 2 and 3 of the Convention.

Furthermore, Author has shown a close connection between Articles 4 (Prohibition of slavery and forced labour) and 8 (Respect for private and family life) of the Convention when it comes to the right to work and the rights at work. Hence, the above-mentioned articles have been analyzed in order to evaluate a possible protection and its effectiveness of the social right to work.

Also, the right to the protection of property which in its nature is an economic right and the right to education which in its nature is a cultural right have both been taken because they have some social aspects and are also considered as an extremely important part of a human's life; therefore, in order to analyze a possible protection and its effectiveness of the above-mentioned social rights Article 8 of the Convention, as well as Articles 1 and 2 of the First Protocol of the Convention have also been analyzed in the Thesis.

Lastly, throughout the Thesis Author has been wondering why the Convention system, inheriting already 16 additional Protocols, does not have an additional Protocol devoted specifically for the protection of social rights.

SANTRAUKA

Šiame magistro baigiamajame darbe analizuojama idėja apie tai, jog nors ir socialinės teisės nėra įtrauktos į Europos Žmogaus Teisių Konvencijos tekstą, jos vis tiek buvo plėtojamos ir ginamos per EŽTT praktiką. Taigi, Autorius analizavo galimą socialinių teisių apsaugos lygį ir jos efektyvumą Europos Žmogaus Teisių Teismo jurisprudencijoje, interpretuojant ir taikant teises ir laisves išreikštas Konvencijos tekste. Kitaip sakant, kokios socialinės teisės arba, kokie aspektai susiję su socialinėmis teisėmis gali būti kildinami iš Konvencijos normų, pasikliaunant EŽTT praktika interpretuojant ir taikant šias normas. Tiksliau, norint atlikti užsibrėžtą užduotį, Autorius nusprendė naudoti konkrečius Straipsnius, tai yra, 2, 3, 4, 8 bei 1 ir 2 pirmojo Konvencijos Protokolo Straipsnius. Autoriaus nuomone, aukščiau minimų Konvencijos Straipsnių interpretacija ir taikymas apima visus svarbiausius - žmogaus gyvenimo aspektus – sveikatą, darbą, gyvenimo sąlygas ir mokslą.

Pačioje darbo pradžioje pažvelgėme tarptautinius šalių įsipareigojimus pagal Konvenciją, o taip pat į pozityviuosius įsipareigojimus bei EŽTT rolę šioje srityje. Vėliau Autorius apžvelgė artimą ryšį tarp teisės į gyvybę, kankinimų draudimo bei teisės į sveikatą. Taigi, kad būtų tinkamai atlikta galima teisės į sveikatą apsaugos analizė bei jos efektyvumo, Autorius išnagrinėjo abu 2 ir 3 Konvencijos Straipsnius.

Atlikto tyrimo metu išaiškinta, jog yra glaudus ryšys tarp Konvencijos 4 Straipsnio (Vergovės ir priverstinio darbo draudimas) ir 8 Straipsnio (Teisė į privataus ir šeimos gyvenimo gerbimą) teisės į darbą ir teisių darbe kontekste. Taigi, aukščiau minimi Straipsniai buvo analizuojami tam, jog būtų galima įvertinti teisės į darbą galimą apsaugą ir jos efektyvumą.

Taip pat, teisė į nuosavybės apsaugą kuri iš prigimties yra ekonominė teisė bei teisė į mokslą kuri iš prigimties yra kultūrinė teisė, buvo analizuotos nes turi tam tikrų socialinių elementų bei yra labai svarbios žmogaus gyvenime. Taigi, norint nustatyti aukščiau minimų socialinių teisių apsaugą bei jos efektyvumą, Autorius Konvencijos ribose nagrinėjo 8 Straipsnį bei 1 ir 2 Pirmojo Protokolo Straipsnius.

Pabaigai, viso darbo metu Autorius svarstė kodėl Konvencijos sistema, jau priėmusi 16 papildomų Protokolų, neturi papildomo Protokolo skirto vien tik socialinių teisių apsaugai.

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2020-12-02

Vilnius

Aš Mykolo Romerio Universiteto (toliau Universitetas), Teisės mokyklos, Tarptautinės ir Europos Sąjungos teisės instituto, Tarptautinės teisės (anglų kalba) nuolatinių studijų programos studentas Edvinas Butkevičius patvirtinu, kad šis magistro baigiamasis darbas:

„Socialinių teisių apsauga Europos Žmogaus Teisių Teismo praktikoje“

1. Yra atliktas savarankiškai ir sąžiningai;
2. Nebuvo pristatytas ir gintas kitoje mokslo įstaigoje Lietuvoje ar užsienyje;
3. Yra parašytas remiantis akademinio rašymo principais ir susipažinus su rašto darbų metodiniais nurodymais.

Man žinoma, kad už sąžiningos konkurencijos principo pažeidimą – plagijavimą studentas gali būti šalinamas iš Universiteto kaip už akademinės etikos pažeidimą.

(parašas)

Edvinas Butkevičius

(vardas, pavardė)