неадекватної оцінки того, що відбувається, хворими, які знаходяться у вкрай важкому стані.

Враховуючи вище перераховані фактори, міжнародну практику, а також те, що на сучасному етапі розвиток медицини дозволяє активно боротись з патологічними станами, лікування яких ще не так давно було досить проблематичним, я вважаю, що необхідно закріпити в міжнародному праві норми, які б регулювали питання евтаназії. У даному випадку під регулюванням права на евтаназію я розумію закріплення в міжнародно-правових актах заборони «вбивства на прохання хворого», але також передбачення переліку умов та особливостей проведення евтаназії в окремих виняткових випадках.

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PROTECTION OF THE RIGHT TO LIFE THROUGH THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS (IN UKRAINIAN PERCEPTIONS)

The right to life in its trivial meaning is the most important right which every person has. It is considered to be the logical prerequisite to all other rights. Taking into account significant violations of human life during world wars of the 20th century, it is natural for postwar conventions to start with the problem of the right to life which main

principle is laid in the protection of individual from any kind of voluntary deprivation of life.

During the second half of the 20th century international community signed a lot of conventions, covenants and protocols dealing with the right to life, such as Universal Declaration of Human Rights, Convention on the rights of the Child etc. Thus, the Article 6 of the International Covenant on Civil and Political Rights adopted on the 16th of December, 1966 states that:

«…Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life…»

Meanwhile the Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms comes out with the idea that:

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

Constitution of Ukraine in its Article 3 and Article 27 stipulates that right to life alongside with other basic rights recognized as supreme social value and no one shall be arbitrarily deprived of his life. According to the supreme law of Ukraine and its principles, the state acts as a warrant of everyone's basic rights and freedoms.

The guarantees enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms are a minimum standard. While signatory parties must not afford a level of human rights protection lower than that required by the Convention, they are free to exceed it. It means that the government shall protect and avoid deprivation of the right to life, freedoms, liberties and other fundamental values if other is not provided by the law. Illegal, unlawful and voluntary violation of basic human rights should be recognized as the subject for litigation in the European Court on Human Rights (ECHR).

The European Convention for the Protection of Human Rights and Fundamental Freedoms obliges member states to secure certain rights, but it is silent as to how precisely they have to meet this obligation. States have a margin of appreciation when ensuring the rights enshrined in the Convention.

The practice of ECHR proves that there are three types of obligations that should be followed by each contracting state:

1. An obligation to create and maintain effective system of courts and litigation. This means that states can be obliged to act and to take active steps to ensure an effective enjoyment of the rights protected by the Convention. (Positive obligation);

2. An obligation to restrain from the violation of human rights and compliance with non-violent treatments (Negative obligation);

3. An obligation of the contracting states to organize their institutions in a fashion that ensures that rights guaranteed by the Convention become effective and to maintain effective procedure of pre-trial investigations. (Procedural obligation).

Moreover, provisions of international agreements shall have imperativeness and priority before national legislation. Thus, article 27 of the Vienna Convention on the Law of Treaties stipulates that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Ukraine as a member of international and democratic society is obliged to follow all of its obligations in accordance with international law and principles. But the practice of the ECHR reveals numerous violations of the positive and procedural obligations, analysis of the cases led to the conclusion over the major problem, when the state fails to comply effectively with procedural limb of the Article 2 of the Convention.

The case *Gongadze v. Ukraine*, is one of the most discussed and flagrant example of failure of the state to comply with its duty to protect the life of an individual and to organize effective investigation. The applicant, Myroslava Gongadze, Ukrainian national, complained that the State authorities failed to protect the life of her husband and to investigate his disappearance and death. The Court therefore concluded that there had been a violation of Article 2 concerning the failure of positive obligation to protect Mr. Gongadze from a known risk to his life and to conduct an effective investigation into the case.

The case *Mosendz v. Ukraine* was raised regarding the applicant's only son, Mr. Denys Mosendz, who was performing mandatory military service with the Ukrainian Internal Troops and was found dead after desertion from the army. The corpse had gunshot wounds to his head and the conclusion was reached that the victim had committed suicide, but later the expert concluded that at least two shots had been fired in a single round. Also the corpse had wounds that had been inflicted when the victim was still alive. The state authorities carried out inappropriate

investigation and the Court further reiterates in this connection that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant's allegations.

The case *Khaylo vs. Ukraine* gives a rise to the issue of inappropriate investigation, prejudice and confrontation of investigations results. Activities related to investigation process often resulted in establishment of different and confronting facts, and that may have caused wrong interpretation of the case in the court and subsequently the breach of the Article 2 (procedural limb).

In the case *Shevchenko vs. Ukraine,* the Court ruled that the state must provide effective investigation even of the case which looks like suicide, investigation cannot be successful unless all facts and testimonies are examined, officials have to be independent from those who may have relation to the case.

Large quantity of cases concerning Article 2 of the Convention filed against Ukraine gives a reason to believe that the State does not have an effective implementation system, state bodies of Ukraine are likely to breach both procedural and substantive aspect and do not really consider the practice of ECHR. Decisions of this institution should serve as a legal and practical ground to the state bodies in securing human rights. Social, political and economic crisis significantly decrease the quality of the state control over basic human values and rights, and that is why despite on this background, recognition of the practice of ECHR and its effective implementation in national jurisdiction and law enforcement shall be one of the main goals of current activity of the state of Ukraine.

Right to life may be protected properly only if it is understood the same way as in the international practice. Different approaches to the understanding of the Article 2 by the state and international community may cause its repudiation and depreciation.

Moreover, in order to provide greater security of human rights, straighten positions of international legislation, herein the Convention for the Protection of Human Rights and Fundamental Freedoms, its authority should be raised and the general approach to exercising international agreements should be challenged. Currently, international agreements, ratified by the Parliament of Ukraine, are considered to be

part of Ukrainian legislation. But there is no link stipulating priority of international law before national legislation. Constitutional Court of Ukraine should pass its interpretation of the Article 9 of the Constitution of Ukraine and of the Law of Ukraine «On International Agreements of Ukraine» from 29.06.2004. Interpretation should have provision that could ensure prevalence of international standards and rights of human beings before laws passed by the national legislator. This would be an effective mechanism to raise authority of the Convention and other international legal acts, development of democracy, fair investigation and litigation in national courts of Ukraine.

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СМЕРТНАЯ КАЗНЬ: ПРОБЛЕМЫ И ИХ РЕШЕНИЯ

Актуальность затронутой темы исследования находит свое проявление в анализе основного права человека и гражданина – праве на жизнь, рассматриваемом в контексте и неразрывной связи с другими правами и свободами человека и гражданина, а также с общепризнанными принципами и нормами международного права, правилами и положениями международных договоров. (Источник: Шабанов, Арик Гуршумович. Политическая оценка международно-правового регулирования смертной казни). Проблема смертной казни является сложной и многогранной. Она затрагивает политико-правовые, социально-экономические, нравственно-религиозные, культурно-психологические и другие сферы нашей жизнедеятельности (Источник: http://deathpenalty.narod.ru/nauka/malko.htm).

Смертная казнь как уголовное наказание выступает в качестве правового ограничения, юридического средства, сдерживающего преступников, что вытекает из ее природы, и является объективным свойством, несмотря ни на какие субъективные оценки и общественное мнение Источник: http://deathpenalty.narod.ru/nauka/malko.htm). Существует много высказываний учёных-юристов: одни «защищают» смертную казнь, другие – наоборот. Противники смертной казни указывают на то, что судебные ошибки неминуемо приводят к казням невиновных. Также приводится статистика,