



ORDO IURIS

INSTYTUT NA RZECZ KULTURY PRAWNEJ

June 11th, Warsaw

**Honorable Members
Human Rights Committee
Geneva**

Dear Madam or Sir, Member of the Human Rights Committee,

The *Ordo Iuris* Institute for Legal Culture welcomes the opportunity to assist the Human Rights Committee in its preparations for the third General Comment on Article 6 of the International Covenant on Civil and Political Rights¹.

The *Ordo Iuris* Institute for Legal Culture is an independent legal organization incorporated as a foundation in Poland. It gathers academics and legal practitioners aimed at the promotion of a legal culture based on the respect for human dignity and rights. *Ordo Iuris* pursues its objectives by means of research and other academic activity as well as advocacy and litigation.

Ordo Iuris is among organisations consulted by the Polish Government within the legislative process. Polish courts, including Supreme Court of the Republic of Poland, have accepted our 'third parties interventions'. *Ordo Iuris* has also intervened before the European Committee of Social Rights and the European Court of Human Rights. We hope the Committee will find our intervention supportive.

I. The nature and extent of the human right to life as protected in Article 6 ICCPR

According to art. 31 (1) of the Vienna Convention on the Law of Treaties (VCLT), "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".² Thus, the Covenant should be interpreted in the light of its aim, namely to provide further protection of human rights, especially to the vulnerable. Article 6 is an expression of the right to life, which, according to the Preamble to the Covenant, is **derived from the inherent dignity of the human person**. The Article 6 (1) describes the right to life as "inherent" and belonging to "[e]very human being".

1) Inherent human right

Accordingly, the term "inherent" means an inseparable and permanent quality of a specific reality, which is neither acquired nor lost in course of its development, but is present in every case in which

¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 [hereinafter: the "ICCPR" or "the Covenant"].

² The VCLT, art. 31 (1).

the reality is so qualified. Saying that a right to life is inherent to every human being is to say that it belongs to all human beings, as long as they are human beings – regardless of the duration of time they are human beings.

The inherent and inalienable right to life is an attribute of every human being and international human rights instruments properly recognize it as a primary right,³ being a precondition for the enjoyment of any other human right. This means Article 6 (1) protects the life of every human being in every stage of its development, as the inherent dignity of a human person starts with the very first moment of its existence.

As to the beginning of the existence and further development of the human being, it is undisputable that, from the point of view of science, human life begins at conception. It is then that every uniquely defined individual member of humanity is formed and begins to exist.⁴ This was also confirmed in the ruling by the Grand Chamber of the Court of Justice of the European Union in *Oliver Brüstle v. Greenpeace e.V.* (2011)⁵, where it was clearly stated, that “fertilisation is such as to commence the process of development of a human being”.⁶ From this moment, legal protection derived from inherent human dignity, begins.

2) Every human being

Despite the different words used to describe the various stages of the development of a human being (zygote, blastocyst, embryo, foetus, infant, child, adolescent, adult, and elderly), it is not a specific stage of life that is subject to legal protection as provided by the Art. 6 (1), but the life **itself** of each human being. Different stages of the development of human life does not confer to a human being any new quality which might be described as inherent to human being. For this reason, protection of human life as a fundamental human right must be granted irrespective of a particular developmental stage of the human being. Any other interpretation would be inconsistent with the Covenant’s prohibition on discrimination based on birth or status.⁷ Protection of every child must be recognized regardless of age, including gestational age.

3) The only legitimate derogation to the protection of the right to life

³ Inter alia: *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A. U.N. Doc A/RES/17 (III) (10 December 1948); the ICCPR; *United Nations Declaration of the Rights of the Child*, G.A. Res. 1386 (XIV) (10 December 1959); *Convention on the Rights of the Child*, G.A. Res. 44/25 (20 November 1989) [hereinafter: “the CRC”]; Declaration of the Rights and Duties of Man, 9th International Conference of American States, Bogota, Colombia, 1948; Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14* (4 November 1950) [hereinafter: “European Convention on Human Rights”]; Organization of American States, *American Convention on Human Rights, “Pact of San Jose”, Costa Rica* (22 November 1969); Organization of African Unity, *African Charter on Human and Peoples’ Rights (Banjul Charter) as amended by Protocol adopted in 1998* (27 June 1981); Cairo Declaration on Human Rights in Islam (5 August 1990).

⁴ See e.g., Sadler, T.W. *Langman’s Medical Embryology*, 7th edition. Baltimore: Williams & Wilkins 1995, p. 3 (noting that “the development of a human begins with fertilization, a process by which the spermatozoon from the male and the oocyte from the female unite to give rise to a new organism...”); Moore, Keith L. and Persaud, T.V.N. *The Developing Human: Clinically Oriented Embryology*, 7th edition. Philadelphia: Saunders 2003, p. 2 (noting that “the union of an oocyte and a sperm during fertilization” marks “the beginning of the new human being.”).

⁵ *Oliver Brüstle v. Greenpeace e.V.*, C-34/10, decided on 18 October 2011 (hereinafter: *Oliver Brüstle v. Greenpeace e.V.*).

⁶ *Oliver Brüstle v. Greenpeace e.V.*, para. 35.

⁷ The ICCPR, art. 24 and 26.

The only non-discriminatory exception limiting protection of human life as provided by ICCPR Article 6 (1), is related NOT to a particular stage of the human life but to the imposition of the death penalty in situations emerging from a voluntarily committed, “serious crime”.

According to the Article 6 (2) the death penalty shall only be tolerated “for the most serious crimes in accordance with the law in force at the time of the commission of the crime”. This provision, especially if read together with the provisions of art. 6 (4)—(6), shows that this unique derogation from the protection of human life (a restrictively enacted and restrictively applied death penalty), is to be construed in a way narrowing the scope of this derogation. This amounts to the *a contrario* conclusion, that protection of the right of every human being to continue her/his life is to be construed in a widest possible manner and this is applicable to every stage of human life.

The death penalty was authorised as a legitimate derogation from the protection of the human right to life (subject to many restrictions), only because an individual had committed a “most serious crime” which endangers society and its members. Otherwise, article 6 (1) must be construed as **protecting every innocent human being regardless its stage of development**. Additionally, it also protects those who have committed crimes, which are not “most serious”. It is unequivocally clear that no derogation from the right to life can be considered acceptable with respect to an innocent human being.

4) No other legitimate derogation to the protection of the right to life

As the Article 6 of the ICCPR contains only one exception – capital punishment – there is no legitimate interpretation to find new exceptions not present in the text itself. The ICCPR read as a whole, cannot on the one hand protect the inherent right to life and at the same time provide a license to deprive an innocent human being of life. To the contrary, numerous instruments of international law provide for special protection of vulnerable persons such as children, the sick, disabled, and elderly people.⁸ In this context, Resolution n°1859/2012 of the Parliamentary Assembly of the Council of Europe (PACE) must be mentioned. It clearly states: “Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.”

II. Particular concern: protection of the human life in its early stage

The most challenging aspect of the international protection of human life concerns the early, i.e., prenatal stage of its development. Therefore it is worth some special attention⁹.

1) Prenatal protection of human life in Article 6 (5) ICCPR

⁸ Inter alia: the CRC, art. 6 (1), art. 23; UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, art. 10, art. 25 (b), art. 28.2 (b); UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, art. 11.1 (e); UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158, art. 1 (1); Universal Declaration, Art. 25 (1).

⁹ *Ordo Iuris* Institute for Legal Culture has recently published a collection of academic papers focused on this issue: A. Stepkowski (ed.), *Protection of Human Life in its Early Stage*, Peter Lang 2014.

The interpretation of Article 6 (1) ICCPR as covering all stages of human development also conforms to the content of Article 6 (5) which states: “Sentence of death shall not be carried out on pregnant women.” Whereas a woman might be eligible for a sentence of death after committing the “most serious crime”, her life is still protected as a means of protecting the life of her innocent baby. This distinct protection of the life of the unborn baby is effective even if the protection of life of its mother might otherwise be derogated in conformity with art. 6 (2). This is acknowledged in the Preparatory works for the ICCPR which are, in accordance with the Article 32 of the *Vienna Convention on the Law of Treaties*, “supplementary means of interpretation”¹⁰. The UN reports from preparatory works clarify the rationale for the provision of art. 6 (5): enacted in “consideration for the interests of the unborn child”¹¹ and in order to “save the life of an innocent the unborn child”¹².

2) Similar protection in other UN treaties

Article 6 of the Second Additional Protocol to the Geneva Conventions¹³ contains a similar objective, calling for avoidance of “the pronouncement of the death penalty on pregnant women”. For the same reason, an expectant mother is also protected by the Article 16 of the Geneva Convention relating to the Protection of Civilian Persons in Time of War¹⁴.

3) Rights of the child as applied to prenatal stage of its development in the UN Convention on the Rights of the Child

The preamble of the Convention on the Rights of the Child (CRC)¹⁵, which provides necessary interpretive context for this treaty¹⁶, explicitly recognizes that a “child, by reason of his physical and mental immaturity, need special safeguards and care, including appropriate legal protection, before as well as after birth.” This interpretative context requires that the definition of a “child” as provided in Article 1 of the CRC must include children at the prenatal stage of their development. Those conclusions are particularly important in the context of the CRC Article 6 which declares: “States Parties recognize that every child has the inherent right to life” and calling upon the States Parties to “ensure to the maximum extent possible the survival and development of the child.”

¹⁰ United Nations, Treaty Series, vol. 1155, p. 331.

¹¹ See A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly (1 July 1955).

¹² See A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly (5 December 1957).

¹³ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609.

¹⁴ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287.

¹⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

¹⁶ According to art. 31 (2) of the VCLT.

4) Other corresponding provisions from regional human rights systems

Protection of the life of the unborn child is also envisaged in regional human rights treaties. The American Convention on Human Rights stipulates in Article 4 (1) “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”

The Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that “Everyone’s right to life shall be protected by law”.

Protection of the unborn child, irrespective of the stage of development (e.g. embryo, foetus), is also present in other European legal instruments such as the Convention on Human Rights and Biomedicine (“Oviedo Convention”) with its Additional Protocol on the Prohibition of Cloning Human Beings and the Additional Protocol on Biomedical Research.¹⁷

III. Conclusion

The *Ordo Iuris* Institute for Legal Culture insists that the proper meaning of **Article 6 ICCPR must protect the life of every innocent human being regardless her/his stage of development**. This is the only reasonable and coherent way of protecting human life as an inherent and inalienable human right. For this reason, the *Ordo Iuris* Institute for Legal Culture recognizes an urgent need to emphasize that the right to life is an attribute of every human being, and as such deserves especially intensive protection as a pre-condition of the enjoyment of any other human right.

Protection of the human right to life might be limited only in case of a person, endangered with a death penalty, who has voluntarily has committed a “most serious crime”. In all other cases, the life of every innocent human being deserves the strongest possible protection.

Peculiarities of different stages of development of a human being, especially these stages in which she or he is particularly weak, vulnerable or otherwise less autonomous, must not be considered as an excuse to limit or diminish the protection of the human right to life. To the contrary: vulnerable, weak, or less autonomous human beings, whether in the early (prenatal) or late (terminal) stages should be considered as deserving stronger, and not weaker, protection of their rights, with particular emphasis on their right to life.



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¹⁷ Article 1 of that Convention (adopted by Council of Europe, 4 April 1997) emphasizes the need to “protect the dignity and identity of all human beings”. The scope of the “human being” as an undefined and broad term could thus be applied to the embryo and prenatal life.