

ECHR POSITION ON TRANSPLANTOLOGY AND REPRODUCTIVE RIGHTS: MAIN ASPECTS

POZÍCIA ESLP K TRANSPLANTOLÓGII A REPRODUK-TÍVNÝM PRÁVAM: HLAVNÉ ASPEKTY

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ABSTRACT

A rapid development of the modern technologies results in rapid development of the science and medicine, and this leads to the new issues that require legal regulation. These are the questions on transplantology and reproductive rights. At the same time the European Court of Human Rights has always been at the leading roles in the protection of human rights and defining the boundaries of these rights. This article examines the practice of the Court on transplantation and reproductive rights. It is noted that the number of cases is relatively small at present. This is due to the fact that such statements began to arrive to the Court, in fact, at the beginning of the XXI century. The article focuses on the fact that the practice of the Court will receive its further development because in these areas there are new issues that require legal assessment by the Court.

ABSTRAKT

V rámci rozvoja moderných technológií dochádza k napredovaniu aj v oblasti medicíny. Tieto nové výzvy si vyžadujú úpravu aj v oblasti práva, ktoré ako jediné má vnútornú silu a schopnosť určité záujmy lepšie chrániť. Vo svojom príspevku by sme chceli vyjadriť svoj právny názor na otázky týkajúce sa transplantácie orgánov a reprodukčných práv. V danom čase sa uvedenou otázkou zaoberá aj Európsky súd pre ľudské práva. Je potrebné poznamenať, že v súčasnej dobe je počet riešených prípadov pomerne malý, avšak predpokladá sa narastajúca tendencia, aj v dôsledku riešenia nových problémov v tejto oblasti.

I. INTRODUCTION

Creation of international mechanisms of guarantees of fundamental rights and freedoms of man is one of the greatest achievements of the international community in the twentieth century. These guarantees are reflected and consolidated through a worldwide recognition of International Human Rights, and also specialized agencies authorized to monitor the observance of fundamental rights and freedoms of man. One of most effective among such agencies is the European Court of Human Rights that in the activity goes out of the provisions of the European Convention on Human Rights¹.

Article 32 of the Convention² states that jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and its Protocols. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision

¹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, http://www.echr.coe.int/Documents/Convention_ENG.pdf Rome, 4th November 1950, accessible on 2.9.2017.

² *European Convention for the Protection of Human Rights and Fundamental Freedom*, Article 32(1).

of the Court. In fact, the practice of the Court and the provisions of Article 32 of the Convention provide an opportunity to expand the boundaries of a law that has not found its consolidation in the Convention during its adoption in 1950.

One of groups of rights that did not find the direct fixing in the Convention are bioethical human rights.

The term Bioethics (Greek *bios*, life; *ethos*, behavior) was coined in 1926 by Fritz Jahr in an article about a “bioethical imperative” regarding the use of animals and plants in scientific research³.

Further, the issue of bioethics was studied by the American biochemist Van Rensselaer Potter⁴ and by the Dutch doctor Andre Hellegers⁵.

In the legal sense the term “bioethics” has been understood as the protection of the human being in the context of the development of medical sciences, - this thesis is based on the ECHR practice.

The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine was opened for signature on 4th April by the Council of Europe⁶. Positions of this Convention is direct on the protection of the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.

As we know, the amount of EHRC cases on bioethical aspects is small. Per se, this is due to the fact that such statements began to come to the Court with the beginning of the XXI century.

II. POSITION OF EUROPEAN COURT OF HUMAN RIGHTS ON TRANSPLANTOLOGY

As for organ transplantation, we have a limited case-law in this area at the moment. Actually, this limited number contains two cases, which are “Petrova v. Latvia”⁷ and “Elberte v. Latvia”⁸.

In the first case⁹ in 2002 the applicant’s (Mrs. Petrova) adult son died in a public hospital in Riga as a result of serious injuries sustained in a car accident. The applicant subsequently discovered that her son’s kidneys and spleen had been removed immediately after his death without her knowledge or consent. Her complaint to the Prosecutor General was dismissed on the grounds that the organs had been removed in accordance with domestic law. The applicant had not been contacted because the hospital had no contact details and, as the law then stood, medical practitioners were only obliged to actively search and inform close relatives of possible organ removal if the deceased was a minor. In these cases we see that the key issue is consent for the removal of organs. It is around this issue there was a dispute between the state and

³ JAHR, F.: *A panorama of the human being’s ethical relations with animals and plants*. <https://www.ufrgs.br/bioetica/jahr-eng.pdf> 2005, p. 1, accessible on 2.9.2017.

⁴ Cf. POTTER, VAN R.: *Bioethics: Bridge to the Future*. New Jersey: Prentice-Hall; Ex-library edition, 1971, ISBN 978-0130765055, p. 13.

⁵ Cf. <http://files.school-collection.edu.ru/dlrstore/fbdcf9cb-83b4-b2e6-38ad-97ff7d6590ab/1010365A.htm>, accessible on 2.9.2017.

⁶ Council of Europe, *Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*, <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf98> Oviedo, 4th April 1997. accessible on 2.9.2017.

⁷ Judgement in the case no. 4605/05 *Petrova v. Latvia*, ECLI:CE:ECHR:2014:0624JUD000460505

⁸ Judgement in the case no. 61243/08 *Elberte v. Latvia*, ECLI:CE:ECHR:2015:0113JUD006124308

⁹ “Petrova v. Latvia”, Articles 5-9.

the applicants in the above cases.

In the second case¹⁰ the applicant's (Mrs. Elberte) husband died on the way to the hospital as a result of his injuries after he was involved in a car accident. After this a doctor had removed tissue from Mr. Elberts' body with a total area of 10 cm x 10 cm – the outer layer of the meninges (dura mater). In fact, this family was not informed about the removal of tissue. Inter alia, doctors were unable to verify whether the deceased gave consent to the removal of organs after his death. His passport was at home at this moment.

The Law on Protection of the Body of a Deceased Person and Use of Human Organs and Tissue¹¹ (which was distributed in both cases) provides in Article 2 that every living person with legal capacity is entitled to consent or object, in writing, to the use of his or her body after death. The wish expressed, unless it is contrary to the law, is binding.

Pursuant to Article 4¹² the organs and tissues of a deceased person may not be removed against his or her wishes as expressed during his or her lifetime. In the absence of express wishes, removal may be carried out if none of the closest relatives (children, parents, siblings or spouse) objects.

Article 11 of the Law¹³ provides that organs and tissue from a deceased donor may be removed for transplantation purposes if that person has not objected to such removal during his or her lifetime and if his or her closest relatives have not prohibited it.

In addition, the applicants referred to the violation of Article 8 of the Convention¹⁴. And when considering whether Article 8 of the Convention was broken the Court must answer some questions: - Whether there was any intervention in his or her private life? - Is the intervention justified? - How is the intervention regulated by the norms of the national legislation? (The national legislation must meet certain criteria and be understood by everyone and consequently, the norm envisaged in the national legislation must be clear to all, who is faced with the norm); - For what purpose was the intervention used and whether it was consistent with the principle of necessity in a democratic society? (There should be a specific social purpose and proportionality of the intervention that took place)¹⁵.

The Court considered whether there was a special mechanism in which the relatives of donors could express their consent (disagreement) for the removal of organs. When it reached the conclusion that there was a violation of Article 8 of the European Convention of Human Rights, the Court stated:

1. The court did not consider the matter abstractly but considered only the factual circumstances of the case. In particular, what was the attitude of the authorities to the family of the donor and whether the relatives were in the hospital, and if so, whether the doctors had the opportunity to tell them at this point. The relatives were not informed in advance about the removal of organs despite the fact that a few days have passed since the time of the donor's hospitalization, his death and the arrival of the relatives to the hospital.

2. Regarding the rules of the national law, the Court stated that those rules, which concerned the need for consent from the side of the Latvian legislation were formed so that the various national authorities when they were faced with this case began to interpret the rule of the law in different ways. For example, police and prosecutor's office believed that the lack of

¹⁰ "Elberte v. Latvia", Articles 5-8

¹¹ The Saeima, *The Law on Protection of the body of a Deceased Person and Use of Human Organs and Tissues* <https://www.latvija.lv/ru/DzivesSituacijas/Maja-un-vide/apbedisana> Riga, Article 2, accessible on 2.9.2017.

¹² See supra, Article 4.

¹³ *The Law on Protection of the body of a Deceased Person and Use of Human Organs and Tissues*, Article, 11.

¹⁴ *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 8 (1)(2).

¹⁵ VITKAUSKAS, D.: *The Right to Respect for Private and Family Life* <http://khpg.org/index.php?id=1094815937> 2003, accessible on 2.9.2017.

awareness of the relatives of the donor was not a violation of the national law. The Ministry of Health of Latvia believed that the national law required to inform close relatives. In this situation, the Court concluded that Latvian law rules were not formulated clearly enough and did not include the contents of the relevant duties of the national authorities in Latvia about requesting permission of the relatives for the removal of organs of the deceased donor.

3. Neither the national legislation of Latvia nor practice of public authorities of Latvia did not set forth that how "the presumption of consent" must operate on which the authorities of Latvia insisted on. Especially in cases, when relatives are not informed, as is the case with the applicant. They were not told that they had certain rights and what mechanism of application of this right in case if they would like to impose a "veto" on the organ removal from a deceased donor. In the national system there was not the adequate protecting of relatives from the possible facts of abuse. In particular, while the removal of organs, according to the law, was possible in the case of direct refusal, the national law did not require to inform relatives of their rights, such as the need to directly and in writing ban on the organ removal from a deceased donor.

We can state that the court found a violation of Article 8 of the Convention in both cases¹⁶¹⁷, having established serious defects in the legislation, which related system of obtaining consent to removal of organs from the donor and his relatives.

We need to focus on the fact that the quality of the law and the inability to clearly foresee the consequences of its application, and also the absence of a mechanism to protect the rights of the donor from abuses in the system of "presumption of agreement" and criticized the Court, because States are granted a wide discretion in the matter of the application of the legislation on transplantation.

During considering these cases the court ignored the question of the necessity of choosing between two systems of consent for organ removal, which are derived from international acts: "the presumption of agreement" and "presumption of disagreement".

The Court did not try to make commitments on the need to establish this or that system of consent and stated that it will not impose the state one of the existing systems.

However, the Court considered the question in the plane, in which the Latvian legislation has formulated the relevant rules, which allow carrying out the transplantation and only to the extent in which the Convention sets forth requirements for national law under which such interference occurs.

The decision of the Court in both cases emphasized necessity for the introduction of special guarantees and mechanism of protection of the rights of the donor in the case when national law clearly defines the system of removal of organs. The Court also concluded that there should be a balance between discrete state to transplantation and guarantees the protection of the donor from whom organs are removed and its close relatives.

It is necessary to note that in the case of "Petrova against Latvia" judge Woytyczek presented a particular opinion, which coincides with the others. He said: «When considering the question of the exhaustion of domestic remedies, the majority affirms that», - he applicant's complaint relates to the application and interpretation of domestic law, in the light particularly of the absence of relevant administrative regulation"¹⁸. For the purpose of deciding on the issue of the complaint's admissibility, the nature of the legal issue at stake is the manner in which the law is construed and applied, not the content of the law. At the same time, the judgment states that the issues under consideration "appertain to the quality of domestic law,

¹⁶ *Petrova v. Latvia*, Articles 85-98.

¹⁷ *Elberte v. Latvia*, Articles 103-117.

¹⁸ "Petrova v. Latvia", A particular opinion of the judge Woytyczek, which coincides with the others, Article 2.

in particular, whether the domestic legislation was formulated with sufficient precision or afforded adequate legal protection against arbitrariness in the absence of the relevant administrative regulation”¹⁹.

In the case “Petrova against Latvia” ECHR noted that “concepts of private and family life are broad terms not susceptible to exhaustive definition”²⁰. As a judge Woytyczek we cannot agree with this interpretation, because it entails a high level of uncertainty as to the meaning and scope of Article 8 of the Convention. Should be added that in the case “Abdulaziz, Cabales and Balkandali against United Kingdom”²¹ was presented thesis which indicates a lack of clarity on the concept of “respect for family and private life”.

Judge Woytyczek stresses that the present case raises the question of the necessity of ensuring protection of human rights after the death of the right-holder²².

The wording in the reasoning suggests that the applicant’s right to object to the transplantation of her deceased son’s organs is one of her personal rights protected under the Convention²³. It may further suggest that this right may be exercised freely by the relatives, who can chose to agree or to object to transplantation.

In this regard, there is another question: is the personal right of relatives of deceased persons the right to object to transplant? Must be emphasized, that in such situations, the relatives do not act as autonomous right-holders, but as depositaries of a right which belonged to the deceased person.

In the case “Elberte against Latvia” ECHR also found violation of Article 3 of the Convention²⁴. In this situation, the condition of husband’s body – with the legs tied. The applicant submitted that the unlawful tissue removal amounted to inhuman and degrading treatment prohibited by Article 3 of the Convention, since it had caused her shock and suffering. In addition, the violation concerned that the state more than 5 years could not determine the order or allows national legislation to remove organs without the consent of relatives and, accordingly, the state was unable to complete the legal process in this case, since surfaced all possible terms prosecution. ECHR concluded that the suffering of relatives inhibit their dignity in these circumstances.

III. POSITION OF EUROPEAN COURT OF HUMAN RIGHTS ON REPRODUCTIVE RIGHTS AND SOME ASPECTS OF INTERNATIONAL LEGISLATION

Over time, the problem has remained highly relevant and acute, moral and ethical issues of abortion are still present, including its illegal administration, all these issues require urgent regulation, primarily due to the significant progress in the field of healthcare and the active prevalence of new treatments on one hand and commercialization of medicine and commercial use of biological materials on the other hand. For example, the use of neurotransplantation to treat Parkinson's disease. The aim of neurotransplantation is to compensate dopamine deficiency in the brain striatum that occurs in people with Parkinson's disease and is done by transplanting embryo tissue into this area. Embryonic material is obtained during medical abortions. In recent years, the range of diseases that can be treated with the use of embryonic tissue is increasing. The information about using neurotransplantation in post-traumatic and ischemic lesions of the CNS, child cerebral palsy, a number of atrophic processes, EPI syn-

¹⁹ *See supra*.

²⁰ “*Petrova v. Latvia*”, Article 77.

²¹ Judgement in the case no. 9214/80, 9473/81, 9474/81 *Abdulaziz, Cabales and Balkanidi v. The United Kingdom*, ECLI:CE:ECHR:1985:0528JUD000921480.

²² “*Petrova v. Latvia*”, A particular opinion of the judge Woytyczek, which coincides with the others, Article 4.

²³ *See supra*, Article 5.

²⁴ “*Elberte v. Latvia*”, Articles 133-143.

drome and genetic defects of the brain starts to appear in medical literature. For many years an important part of the Council of Europe in the field of bioethics was the comprehension of ethical issues related to the protection of the human embryo in vitro and the use of assisted reproductive technology. In the Convention on Human Rights and Biomedicine it is indicated that the human embryo or its parts can not be a source of financial gain. Equally important problem associated with the use of embryo is cloning²⁵.

February 19, 2005 the UN called on UN member states to adopt legislation prohibiting all forms of cloning, due to the fact that they are “contrary to human dignity” and oppose “the protection of human life”. UN Declaration on Human Cloning adopted resolution 59/280 of the General Assembly on 8 March 2005; it includes a call to all member states to prohibit all forms of human cloning as far as they are incompatible with human dignity and the protection of human life²⁶.

The Universal Declaration on the Human Genome and Human Rights, adopted in 1997 and approved by the UN in 1998, states that the human genome “marks the heritage of humanity” and is recognized as “inherent dignity and diversity” of all members of the human race. “Dignity makes it imperative not to reduce individuals to their genetic characteristics”²⁷. In Article 11, human cloning is acknowledged to be contrary to human dignity. In chapter “Research on the human genome” it is indicated: “Practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted”²⁸.

In Helsinki Declaration by WMA it is stated: “While the primary purpose of medical research is to generate new knowledge, this goal can never take precedence over the rights and interests of individual research subjects”²⁹. However, can this be applied to experiments on human embryos when the status of an embryo is not clearly defined? In Article 18 of the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine the following is stated about such studies: “1. Where the law allows research on embryos in vitro, it shall ensure adequate protection of the embryo. 2. The creation of human embryos for research purposes is prohibited”³⁰.

On October 18, 2011 the European Court banned patenting methods that involve the use of human ESC (embryonic stem cells). European Court decision is mandatory in the European Union and is not subject to appeal. Thirteen judges of the Grand Chamber of the European Court made a decision, according to which even those patenting methods are banned that involve the use of human ESCs, if during their extraction embryos get destroyed. The ban has retrospective force³¹.

So, this problem, which until recently was understandable only to a narrow circle of specialists in philosophy and ethical questions, becomes the important issue for everyone. Modern Biomedicine extends the technological intervention capabilities in natural processes of birth, end, the flow of life. The various methods of artificial human reproduction, the replacement of damaged organs and tissues become everyday practice. This leads to a situation, when it is difficult to define, if we are dealing with another human being or only with a par-

²⁵ *Convention on Human Rights and Biomedicine*.

²⁶ United Nations, *International Convention against the Reproductive Cloning of Human Beings* https://digitallibrary.un.org/record/541409/files/A_C.6_59_L.27_Add.1-EN.pdf New York, 16th February 2005, accessible on 2.9.2017.

²⁷ The United Nations Educational, Scientific and Cultural Organization (UNESCO), *Universal Declaration on the Human Genome and Human Rights* http://portal.unesco.org/en/ev.php-URL_ID=13177&URL_DO=DO_TOPIC&URL_SECTION=201.html Paris, 21st October 1997, Article 1, accessible on 2.9.2017.

²⁸ See supra, Article, 11.

²⁹ The World Medical Association, *The Declaration of Helsinki – Ethical Principles for Medical Research Involving Human* http://zakon3.rada.gov.ua/laws/show/990_005 Helsinki, June 1964, Article, 6.

³⁰ *Convention on Human Rights and Biomedicine*, Article, 18.

³¹ Judgement in the case C-34/10, *Oliver Brüstle v. Greenpeace* e.V., 2011 E.C.R. I-9849 (hereinafter “Brüstle”).

ticular combination of cells, tissues and organs. The boundaries of our intervention in life processes and functions are defined not only by scientific and technological processes, that are constantly expanding, but by our understanding of what human is and what actions and procedures are in allowable, and what - is unacceptable.

A particular difficulty in adjusting reproduction law is caused by the need of creation an optimal balance between the interests of society as a whole and the individual rights.

The ECHR has established a fairly clear position regarding the moment of the emergence of life in the case of “Vo against France”³².

The applicant is a citizen of France. Being six months pregnant, she went to General Hospital to undergo a medical examination she was appointed earlier. On the same day another woman was scheduled a surgery to remove a coil.

The doctor mistook the applicant for another citizen and during the gynecological examination of the applicant he pierced her fetus. Consequently, the applicant had to do an abortion. Referring to Article 2 of the Convention³³, the applicant complained about the refusal of state authorities to qualify the deprivation of life of her unborn child as a homicide through negligence. Mrs. Vo argued that France had to introduce the legislation, which would punish such actions within the framework of criminal law.

The Court noted that answering the question, at what point there is a right to life, must be done at a national level. The Court expressed its conviction about the undesirability and ultimately inability to solve the issues in an abstract way, at the current state of affairs, whether the unborn child can be considered a person (in French terminology – “personne”) in the meaning according to Article 2 of the Convention. In this case, the Court drew attention to the lack of agreement in Europe concerning a unified regulation of the status of the fetus. The European Court also noted that the potential of an embryo to become a person needs protection under the right to dignity. However, at the same time it was mentioned that it is not required to recognize an embryo as a human who can enjoy the right to life in the meaning according to Article 2 of the European Convention on Human Rights. The Court decided not to take responsibility in identifying the right to life of a fetus; thus, a fetus that is not a human being is not protected by the criminal law.

It should be noted that the Council of Europe in 1986 adopted Recommendation number 1046³⁴; it defined the provisions that laid the foundation for the decision in the Vo case because the main idea of this Recommendation is that embryos should be treated with the same dignity as people.

Anatoly Kovler, a famous researcher in legal anthropology, emphasizes that “the human embryo and fetus under all circumstances must be handled with appropriate respect for human dignity, because we are talking about a “prohuman””³⁵.

The European Court of Human Rights takes the own attitude toward the human embryo, as illustrated in the following example, which received considerable attention³⁶. 32-year-old citizen of UK with his fiancé had gone through in vitro fertilization procedure, in which six embryos were created and frozen. Later the citizen was diagnosed with ovarian cancer; thus, the frozen embryos were the last opportunity for the woman to have her own child. Under the Human Fertilisation and Embryology Act of 1990, both parties had to agree to the procedure

³² Judgement in the case no. 53924/00 *Vo v. France* ECLI:CE:ECHR:2004:0708JUD005392400.

³³ *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 2.

³⁴ Recommendation 1046 of the Parliamentary Assembly and of the Council of Europe of 24th September 1986 *on the use of human embryos and fetuses for diagnostic, therapeutic, scientific, industrial and commercial purposes*. Texts of the Council of Europe on bioethical matters. Volume II. [http://www.coe.int/t/dg3/healthbioethic/Texts_and_documents/INF_2014_5_vol_II_textes_%20CoE_%20bio%20C3%A9thique_E%20\(2\).pdf](http://www.coe.int/t/dg3/healthbioethic/Texts_and_documents/INF_2014_5_vol_II_textes_%20CoE_%20bio%20C3%A9thique_E%20(2).pdf) Strasbourg, 2014, 16 p. accessible on 2.9.2017.

³⁵ KOVLER, ANATOLY: *Anthropology of Law*. Moscow: Norma – INFRA M, 2002, ISBN 5-89123-597-8, 461 p.

³⁶ Judgement in the case no. 6339/05 *Evans v. The United Kingdom* (dec.), ECLI:CE:ECHR:2007:0410JUD000633905.

of fertilization in vitro, i.e. to carry out each fertilization stage the consent of both a woman and man were required. Groom originally gave such consent, but after the termination of their relationship, he changed his mind and opposed the defrosting of embryos. Another problem was that the five-year storage term of embryos was coming to an end and they had to be destroyed. High Court and Court of Appeal of England denied the citizen the right to use the embryos, after which the House of Lords refused to accept her claim for consideration. In response, the citizen appealed to the European Court of Human Rights. Despite the deep sympathy of judges to the desire of the women to have her own children, the members of the court did not see a possibility for her to use the embryos against the wishes of her former fiancé, as his position on the refusal of having children with her after the breakup of their couple, was an insurmountable obstacle. The judges took into account the fact that the right to life does not apply to a human embryo. In its preliminary rulings the European Court of Human Rights has already rejected the guaranteed protection of life of the fetus because: "The right of the embryo to life is priceless, but the right to life of a person already born has even higher value". Not recognizing the unborn child as a person, the court stresses that since the life of the fetus is closely connected with the life of the pregnant woman, if we argue that the fetus has the absolute right to life, we would have to admit that abortion is not possible even when we talk about the life of the expectant mother. If the abortion was performed in order to avoid a serious threat to the physical and mental health of a woman, then such acts should be regarded as restrictions imposed on the right to life of the fetus and implemented to protect the life and health of the woman.

The issue concerning the right to life of a fetus is left to the states. Thus, for example the Criminal Code of the State of New York³⁷ considers a deprivation of life of an unborn child whose age is more than 24 weeks to be a murder. In France, a person receives legal protection 10 days after the conception, in Denmark this period is 12 weeks, in Sweden it is 20 weeks, in Japan – since birth. These terms are associated with appropriate medical and biological indicators. However, these approaches reveal the attitude of countries toward the issue of abortion, yet in most countries, a person acquires a legal capacity at birth.

IV. CONCLUSION

As we can see, ECHR practice on transplantology and reproductive rights is not too extensive. ECHR found violation of Article 8 in the case «Petrova against Latvia» and violations of Articles 8 and 3 in the case «Elberte against Latvia». In both cases ECHR sought an answer to the question «what is consent to organ harvesting?» according to Latvian legislation.

We expect to expand ECHR in cases of organ transplantation, because the relations arising in the transplantation of organs and other anatomical materials directly related to life and health, both donors and recipients and their relatives. However, there are still a lot of questions, such as the question about is it the personal right of relatives of a deceased person the right to deny transplantation?

As for reproductive rights, we can see that ECHR faced with many issues in practice. Among them we can highlight the following: about cloning ban; about human genome; about life definition; about in vitro fertilisation etc. We have extensive international legal regulations on reproductive rights, which include not only the Council of Europe acts.

In the end we have noted that human rights are absolute in the sense that they must be taken into consideration and balanced against other interests. In making and implementing law and policy, and in the delivery of services, the rule should be that violations of human rights

³⁷ New York State Legislature, *New York State Law. Penal Law. Consolidated Laws of New York's Penal Code* <http://ypdcrime.com/penal.law/> Albany, 1st September 1967.

may be justified only as measures of last resort, after all other possible means to achieve desired goals have been exhausted.

KEY WORDS

The European Court of Human Rights, The European Convention on Human Rights, organ transplantation, reproductive rights.

KLÚČOVÉ SLOVÁ

Európsky súd pre ľudské práva, Európsky dohovor o ochrane ľudských práv a základných slobôd, transplantácia, reprodukčné práva.

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