

Introduction

The right to life is self-evident. Human rights – the rights of each individual – depend on the existence of the biological process that is life. Human rights pertain both to humanity in the abstract and to real individuals sustained by the life process. The right to life is thus intended to protect the biological process that is a precondition of existence for the individual who possesses rights and freedoms. In this sense we must consider the right to life to be the primary right of every human being.

Two trends are apparent in the way that the law addresses this right. On the one hand, human lives from birth onwards, in the absence of any incurable disease or defect, are increasingly well-protected. On the other hand, the scope of protection is narrowing. For example, access to life – like access to death – may be conditional on a certain “quality threshold”. Prenatal diagnosis, and pre-implantation screening in the case of medically assisted conception, can determine whether the life process continues, just as poor “quality of life” can become a justification for its interruption through recourse to euthanasia. The issue of human embryo research raises the problem of the uses to which human life is put. Cloning, whether for medical purposes (to generate embryos for research) or for reproductive purposes (to bring about the birth of a child), introduces the question of creating human life.

Traditionally, the right to life is concerned with protecting the individual's life against potential assaults on it. More recently, the right to life has come to encompass the conditions applying to scientific and medical intervention in the creation, development or interruption of the life process itself. Human life is no longer simply a reality that the law sets out to protect; it is also an artefact requiring rules and regulations to govern what people do with it and to it. Those rules are currently as likely to be made by ethics committees as by parliaments or regulatory authorities. It is an area in which constitutional and international courts

generally tend to exercise considerable circumspection. That is why our fuller discussions of case-law will be concerned with the more traditional issues.

Our study of the right to life is in three parts. Chapter 1 situates that right within international and constitutional systems of fundamental rights. In other words, we consider the nature of the right to life. Chapter 2, which constitutes the core of the study in terms both of its subject matter and our analysis, looks at how the right has been interpreted in international and constitutional case-law. The concern here is the *scope* of the right to life. From that perspective, we will look essentially at the case-law of Europe's national constitutional courts and the European Court of Human Rights. Case-law from constitutional courts outside Europe will be considered where it offers an interesting insight into, confirmation of or contrast with the findings of European courts. The aim of Chapter 3 is to trace convergent, or indeed divergent, strands in the case-law and in the development of positive law. Here we will ask the question: is there a common European right to life?