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THE CONVENTION ON HUMAN RIGHTS AND BIOMEDICINE: EUROPEAN CONSENSUS OR LOWEST COMMON DENOMINATOR?

1. Introduction

Human rights and bioethics are two distinct set of norms[1]. The main characteristics of the former are accessibility, clarity, consistency and a binary logic. By contrast bioethics may be considered as discursive and flexible, and is able to accommodate the various and often opposing views[2]. For a long time, therefore, it seemed that bioethics may not be transferred directly into the area of human rights. Hence the Convention on Human Rights and Biomedicine (hereinafter CHRB) elaborated by the Council of Europe (hereinafter CoE) constitutes a significant step forward in the international regulation of bioethics[3].

The status of the CHRB is widely contested in the academic literature. Some authors argue that the convention represents some kind of common morality, others question its consensual nature and consider the instrument as a purely political compromise. However, the purpose of the CHRB is to guarantee the rights and freedoms enshrined in the European Convention on Human Rights (hereinafter ECHR) in the field of biomedicine. The European Court of Human Rights (ECtHR) shall therefore take into account the provisions of the CHRB regarding the interpretation of the ECHR. Since matters related to bioethics constitute delicate moral and legal issues, the court must strike a fair balance between the effective protection of human rights and fundamental freedoms, and the margin of appreciation accorded to the Member States. If in certain questions common European practice exists, the CHRB shall be considered as representing European consensus. If, however, there are different approaches then the convention shall be deemed as only the lowest common denominator among the states. To this end, the analysis of the case-law of the ECtHR regarding the CHRB may shed light on the status of the instrument.

This article examines the extent to which the CHRB may be considered as representing the consensus among the member states of the CoE. The first part discusses the significance of the convention and the positions regarding its status. The second part focuses on the relevant practice of the ECtHR. In this context, the article scrutinizes the role of consensus-analysis applied by the court, and, finally, it goes through the relevant case-law to highlight the status of the CHRB in the light of the interpretive method used by the ECtHR.

2. The Relevance of the CHRB

With nearly forty years of experience in the field, the CoE is currently one of the leading international organizations dealing with bioethics. Its basic objective in this area has been the harmonization of legal and ethical standards within the Member States. To this end the Parliamentary Assembly adopted Recommendation 1160 (1991) on the preparation of a convention on bioethics, in which it envisaged a complex regulation of human rights and bioethics consisting of "a framework convention comprising a main text with general principles and additional protocols on specific aspects"[4]. The Parliamentary Assembly also considered it preferable that "[t]he convention should provide a flexible formula with regard to its form, but must not constitute the lowest common denominator as to its content"[5]. As a result the CHRB was adopted on 19 November 1996 by the Committee of Ministers, and it entered into force on 1 December 1999.

The CHRB is one of the most important international legal instruments in the field of bioethics. Its significance originates in its unique legal status: while soft-law instruments – recommendations[6] and declarations[7] – dominate the relevant international regulation, the convention contains legally binding norms[8]. States parties to the CHRB shall adopt measures to ensure the conformity of their national legislation with the rules provided for by the convention. The CHRB, as Prof. Jože Trontelj neatly described it at the conference celebrating the 10th anniversary of its adoption, is "the first international convention of its kind, an ethical instrument with a power of law, an international treaty of eminent importance, comparable to the respected European Convention on Human Rights"[9].

The adoption of a legally binding convention was a significant development in the field of bioethics. Notwithstanding the above, the ethical pluralism that characterizes biomedicine had a great influence on the circumstances of the elaboration and adoption of the CHRB. The preparatory work lasted for six years, during which certain provisions of the convention had been in the centre of heated debates both on international and national levels[10]. Rigid opposition to arguments and counter-arguments concerning particular – morally and legally contes-

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ted – aspects of bioethics, such as the beginning of human life, the status of the embryo, etc., necessarily led to compromises. As a consequence, important but sensitive questions had been left unregulated, and those provisions that were incorporated into the CHRB had been formulated in a rather vague language to facilitate different judicial interpretations[11]. Furthermore, a so-called derogation clause was adopted which allows state parties to restrict the application of almost all convention provisions, with the narrow exception of eight particular articles[12].

Notwithstanding the omission of certain disputed aspects, the vagueness of the language of the provision, and the adoption of the derogation clause, only 35 out of 47 Member States of the CoE have signed the CHRB, and 29 states have ratified the instrument. Countries considered following a liberal approach regarding bioethical issues, like Belgium or England, and in this respect conservative countries, such as Germany, Ireland or Malta, have not signed the CHRB yet. Poland is only a signatory, and France waited for the ratification of the convention until 2011[13]. Therefore a question may arise: To what extent is the CHRB the result of some kind of a moral consensus?

3. The CHRB as an Instrument of Common European Bioethics, or Political Compromise

In the academic literature there are two opposing views regarding the status of the CHRB. According to some authors the instrument is an expression of the common European bioethics, a kind of moral consensus. The point of departure, according to the two most prominent representatives of this view, Deryck Beyleveld and Roger Brownsword, is that respect for human dignity, which is the basis of the regulation of human rights, constitutes a core value for bioethics as well[14]. However, in modern European bioethics a more collective perception of respect for human dignity prevails, which takes into account both individual and community interests.

As opposed to the Kantian concept of "human dignity as empowerment", "human dignity as constraint" assumes that in some cases individual dignity may be violated subject to the preferences of the society[15]. One of the most significant examples for this concept of dignity is Article 21 of the CHRB, which states that the human body and the body parts shall not give rise to financial gain[16]. This provision prohibits any kind of financial advantage that may be given to and received by the person concerned or a third party, in relation to human body and the body parts. The Explanatory Report expressly states in this regard that this article applies the principle of human dignity[17]. However, as Beyleveld and Brownsword argues, there may be situations in which the individual acting along with principle of autonomy may receive financial gain in relation with his or her body parts that does not violate the interest of the society as a whole. Based on this concept of dignity, Beyleveld and Brownsword considered the CHRB as the embodiment of a new, *common European morality*[18].

On the other hand, other authors argue that the convention merely bears the illusion of consensus, because it is impossible to create a common moral identity. According to Kurt Bayertz, there is no possibility of building common European bioethics based on respect for human dignity as single central value. Cultural diversity prevailing on the continent involves the plurality of bioethical views as well. For example, the legal regulation of gene technology that varies between Member States of the CoE. Most countries have enacted rather liberal laws, except for Germany and a couple of other states, who have adopted restrictive legislations. As a result, the CHRB incorporated a widely contested formula on the research carried out on human embryos *in vitro*. Paragraph 1 of Article 18 states that "[w]here the law allows research on embryos in vitro, it shall ensure adequate protection of the embryo." The flexibility of the language of the CHRB may be traced at this point: the above provisions may allow both a liberal and a conservative approach toward the status of the embryo *in vitro*. Those states, which permit research on embryos may continue their practice, since the definition of what constitutes an embryo and the adequate level of protection provided for such embryos remains in their authority. On the other hand, states with restrictive approach towards research on embryos may define the adequate level of protection as to prohibit this kind of interventions[19].

Based on the existing ethical differences among European societies, Bayertz is of the opinion that the CHRB is merely the result of political bargains, and shall be considered as a compromise rather than consensus[20]. Representatives of this view further argue that the nature of the convention is precisely the reason why several major European countries have not signed it yet. The instrument therefore shall be deemed as the *lowest common denominator*.

Despite their obvious differences, there is a common point shared by the two opposing views described above: both sides interpret the status of the convention as static, i.e. the authors analyze the instrument regarding either the process of its elaboration, or the current status of acceptance among the Member States of the CoE. These opinions however, ignore the possibility of the change in the nature of the CHRB over time. It should not be forgotten that the purpose of the convention is to guarantee human rights and fundamental freedoms enshrined in the ECHR in the particular field of biology and medicine[21]. If a sufficiently large number of states have ratified the CHRB, it would be taken into account by the ECtHR as a consensus among states concerning the interpretation of the ECHR. If, however, the convention lacks the necessary acceptance then it will only be regarded as some kind of a common minimum standard. Either case requires an examination of the case-law of the ECtHR.

4. European Consensus within the Practice of the ECtHR

According to Article 19 of the ECHR, the function of the ECtHR is to ensure the observance of the engagements undertaken by the states regarding human rights and fundamental freedoms. The jurisdiction of the court extends to all matters concerning the interpretation and application of the ECHR and its protocols[22]. Due to the formulation of the rights and freedoms[23], and the language of the rules contained by the ECHR, its provisions require extensive interpretation by the ECtHR[24]. In carrying out this task, the court must take into account two factors, a

dynamic and a static one. Firstly, in accordance with the purpose of the ECHR, effective protection should be provided for the rights and freedoms contained therein[25]. This requires the ECtHR to interpret the provisions of the ECHR with regard to current social and political circumstances. And secondly, the court must maintain a certain level of confidence from the side of the Member States in respect of its jurisdiction[26]. It must therefore take into account existing divergences between the regulations of states when ruling in a particular case[27]. This approach also ensures that states will implement the decisions of the ECtHR, which is a significant aspect of the legitimacy of the conventional system. The primary objective of the ECtHR is to achieve appropriate balance between these two factors[28]. To this end, the court applies the doctrine "European consensus" when interpreting the ECHR.

European consensus may be defined as the "general agreement among the majority of Member States of the [CoE] about certain rules and principles identified through comparative research of national and international law and practice"[29]. Once the existence of the European consensus is established regarding a certain issue, the Court may apply the so-called dynamic interpretation. The reason of this method is that the ECHR shall be interpreted in light of the present day legislative environment[30]. When there is a lack of consensus the ECtHR – in accordance with the doctrine of margin of appreciation – leaves a certain leeway to the states to establish their own legislative framework.

The consensus is related to both the dynamic interpretation and the margin of appreciation[31]. Thus the examination of the existence of consensus can be considered as a "mediator" between the two approaches[32]. The court has, however, not always been consistent with regard to the consensus-analysis. In some cases, the court recognized a restricted margin when there is a consensus in the great majority of states ("restrictive consensus-analysis")[33]. In other cases, the ECtHR was satisfied with the reference to standards or direction of national or international development of legislation, and it has set aside the examination of the opinion of the majority of Member States ("dynamic consensus-analysis")[34]. The case-law related to the CHRB shall be examined in the light of the foregoing approaches.

5. The Relevant Case-Law of the ECtHR

Two kinds of decisions may be distinguished within the relevant case-law. The first are consisted of those cases in which the ECtHR has referred to the CHRB as relevant law, but in which it has not taken into account its provision when interpreting the ECHR[35]. The second group consists of decisions in which the court referred to the convention as substantive regarding the interpretation of the ECHR. The second category of cases may be further divided along the consensus-analysis chosen by the ECtHR. So far it has applied the "dynamic consensus-analysis" exclusively to cases related to informed consent enshrined in Article 5 of the CHRB informed consent declaring meet[36].

The most significant cases are related to forced sterilization of Slovakian Roma women. The applicant in *V.C. v. Slovakia* had been taken into hospital in 2000 for caesarean section[37]. Two hours prior to the surgery the hospital staff had asked her whether wanted to have more children. Upon giving an affirmative answer, the applicant had been told that in case of a new pregnancy either she or her child would die. She was then handed a request for sterilization. As she was in the final stages of labor, the applicant's intellectual abilities had been adversely affected by the ensuing pain and the medication received, and therefore she has signed the request without opposition. The requested intervention has been subsequently performed following the cesarean section. The sterilization had adverse consequences: the applicant's physical and mental health had deteriorated, her marriage ended due to her infertility, and the local Roma community had ostracized her[38]. The applicant complained that she had been sterilized without her full and informed consent which– among others – constituted a serious violation of the prohibition of torture under Article 3 of the ECHR.

In its judgment, the Grand Chamber of the ECtHR found that the sterilization constituted a serious interference with the applicant's reproductive health status, and therefore could have only been performed with the informed consent from V.C.[39]. However, the manner in which the medical personnel had acted excluded the possibility of obtaining a legally valid consent from the applicant[40]. In this respect, the court referred to Article 5 of the CHRB together with international instruments, and – playing the "dynamic consensus-analysis" – it stated that "it is clear from *generally recognized standards* such as the [CHRB], which was in force in respect of Slovakia at the relevant time […] that medical procedures, of which sterilization is one, may be carried out only with the prior informed consent of the person concerned"[41]. The ECtHR further argued that the sterilization had not been necessary in that situation because the risk posed by the lack of intervention would only threat the life and health of the applicant in the event of a next pregnancy. Consequently, the court held that the sterilization and procedure of the hospital staff had been liable to arouse in the applicant feelings of fear, anguish and inferiority and to entail lasting suffering[42]. As a result, the medical intervention violated Article 3 of the ECHR. This position has been reiterated in two similar cases, that of NB v. Slovakia and I.G. and Others v. Slovakia[43].

The ECtHR usually applies the "restrictive consensus-analysis" in cases involving morally sensitive questions. For instance, in *Vo v. France*, the applicant has been subjected to abortion instead of a standard examination, because the doctor treating her had mixed up her with another patient with a very similar name[44]. Following a criminal complaint lodged by the applicant, the doctor concerned had been charged with causing unintentional homicide. However, the *Cour de Cassation* finally acquitted the defendant of the charges, since it had refused to recognize the foetus as a human being entitled to the protection of French criminal law[45]. The applicant complained that the refusal of the authorities to classify the unintentional killing of her unborn child as involuntary homicide constituted a violence of the right to life under Article 2 of the ECHR.

When considering the question whether the unborn foetus shall be deemed as a human being, the ECtHR took into account the provisions of the CHRB, its first additional protocol on the prohibition of cloning human beings and the Explanatory Reports attached to these instruments. The court found in this respect that although these documents contain provisions relating to the human embryo, there is no European consensus regarding the status of the foetus. "At best, it may be regarded as *common ground* between States that the embryo/foetus belongs to the human race. The potentiality of that being and its capacity to become a person […] require protection in the name of human dignity, without making it a 'person' with the 'right to life' for the purposes of Article 2"[46]. Having regard to these considerations, the ECtHR was convinced that it was neither desirable, nor even possible to answer in the abstract the question whether the unborn child was a person for the purposes of Article 2. The Court in the end found that there had been no violation of that provision. This position has also been affirmed in many cases[47].

Finally, two more cases shall be mentioned. In *Evans v. the United Kingdom* the applicant's relationship with her partner ended after which several embryos created from the couple's gametes remained stored in cryopreservation[48]. However, at the beginning of the artificial procreation process they were told that the current English law provided for both of them the possibility to withdraw their consent to the procedure at any time prior to implantation. After the breakup, the applicant's partner had informed the clinic where the embryos were stored that he did not consent to Ms Evans using the embryos alone or their continued storage. Since the embryos represented her only chance of bearing a child to which she is genetically related, the applicant brought proceedings before the English court seeking an injunction to require her former partner to give his consent. The applicant's claim had been refused on more levels of judiciary[49]. Subsequently she complained before the ECtHR that English law permitting the withdrawal of her former partner's consent to the storage and use of embryos created jointly by them, prevents her from having a genetically related child, and therefore it constituted – among others – a violation of the right to respect for private life under Article 8 of the ECHR.

The ECtHR found that central issue raised by the case had been whether the relevant legislative provisions had struck a fair balance between the competing public and private interests involved. It also recognized that issues raised by the case had been of a morally and ethically delicate nature[50]. Analyzing the relevant national and international legal materials, one of which was the CHRB, the court found that "there is no *uniform European approach* in this field. Certain States have enacted primary or secondary legislation to control the use of [in vitro fertilization] treatment, whereas in others this is a matter left to medical practice and guidelines"[51]. Since different rules and practices are applied in different states as to the storage of embryos and the provision to freely withdraw consent up until the moment of implantation, the ECtHR found no consensus regarding the stage during the in vitro fertilization treatment when the gamete providers' consent becomes irrevocable[52]. As regards the balance struck between the competing interest, the court held that the applicant's right to respect for the decision to become a parent in the genetic should not be accorded greater weight than her former partner's right to respect for his decision not to have a child[53]. In the end the Grand Chamber found that due to lack of European consensus and to the fact that the English law had struck a fair balance between the competing interests, there had been no violation of Article 8.

In the *S.H. and Others v. Austria*, the four applicants – two couples suffering from infertility – wished to use artificial procreation techniques. However, the use of sperm from a donor for in vitro fertilization and ova donation in general had been prohibited by the relevant Austrian law. Their constitutional complaint had been refused by the Austrian Constitutional Court. The applicants complained – among others – that the prohibition of sperm and ova donation for in vitro fertilization violated their right to respect for family life under Article 8 of the ECHR.

The ECtHR observed – as regards the margin of appreciation accorded to states in regulating matters of artificial procreation – that there had been "a *clear trend* in the legislation of the Contracting States towards allowing gamete donation for the purpose of in vitro fertilization, which reflects an *emerging European consensus*. That emerging consensus is not, however, based on settled and long-standing principles established in the law of the member States but rather reflects a stage of development within a particularly dynamic field of law and does not decisively narrow the margin of appreciation of the State"[54]. Since artificial procreation techniques are morally and ethically contested, and due to the lack "clear common ground" among the Member States of the CoE, the ECtHR considered that state had a wide margin of appreciation[55]. On the other hand it found that all relevant European legal instruments had been either silent on the question of ova donation, like the CHRB and its first additional protocol, or expressly left the decision on whether or not to use germ cells to the states concerned[56]. The court finally held that Austria had not exceeded the margin of appreciation afforded to it regarding the applicants' complaints, therefore the Austrian ban on using sperm and ova donation for in vitro fertilization constituted no violation of Article 8.

6. Conclusions

The relevant case-law of suggests that the ECtHR refers to the CHRB in connection with both the dynamic and the restrictive consensus analysis. In cases related to informed consent the court considered Article 5 of the convention as a standard recognized by the majority of the Member States. On the other hand, it has found in judgments concerning sensitive moral issues, like the question of beginning of life, the status of the unborn embryo, and artificial procreation techniques, that the CHRB may not be the evidence for a common European practice. This leads to the conclusion that some provisions mostly related to human rights of the convention has achieved the status of European consensus, while other, typically ethical norms are considered as minimum standards.

Although its significance has been widely recognized, the CHRB may not yet be regarded as the expression of the common European bioethics. However the situation will soon change. Today only twelve states are not signato-

ries to the instrument, and it is waiting for ratification in six states. The convention will move from the status of a lowest common denominator, but this requires social consultation and dialogue between the parties concerned. "It is obvious that bioethics can only be successfully inserted into human rights norms if more and more such norms, formulated in accordance with the principles of human rights, become widely accepted that may be applied to concrete interventions"[57].

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[1] *Judit Sándor*, 'Human Rights and Bioethics: Competitors or Allies? The Role of International Law in Shaping the Contours of a New Discipline', 27 *Med Law*, 2008, p. 28.

[2] *Judit Sándor and Márton Varjú*, 'The Multiplicity of Norms: The Bioethics and Law of Stem Cell Patents' in Andrew Webster (ed.), *The Global Dynamics of Regenerative Medicine: A Social Science Critique*, Palgrave, 2012, p. 169.

[3] 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.

[4] Recommendation 1160 (1991) on the preparation of a convention on bioethics, Article 7(i).

[5] Ibid.

[6] For a collection of relevant recommendations adopted by the Parliamentary Assembly or the Committee of Ministers see: http://www.coe.int/t/dg3/healthbioethic/Texts_and_documents/default_en.asp

[7] Declarations may serve as adequate forms of international regulation of bioethics on a universal level. These instruments provide for a principle-based approach that facilitates the development of the necessary consensus. The United Nations Educational, Scientific and Cultural Organisation has for the time being adopted three declarations concerning bioethics (Universal Declaration on the Human Genome and Human Rights, International Declaration on Human Genetic Data and Universal Declaration on Bioethics and Human Rights). See: http://www.unesco.org/new/en/social-and-human-sciences/themes/bioethics

[8] *Robert Andorno*, 'The Oviedo Convention: European Legal Framework at the Intersection of Human rights and health Law' *Journal of International Biotechnology Law*, Volume 2, Issue 4, p. 133.

[9] *Jože Trontelj*, The Convention ten years ago: an achievement and a starting point (2009), available at: www.coe.int/t/dg3/healthbioethic/source/programme%20e.doc, accessed: 2014-12-10.

[10] *Eibe Riedel*, 'Global Responsibilities and Bioethics: Reflections on the Council of Europe's Bioethics Convention' *Indiana Journal of Global Legal Studies* 5 (1): 179–182.

[11] *Aurora Plomer*, The Law and Ethics of Medical Research: International Bioethics and Human Rights (2005), Cavendish, London, p. 15.

[12] Article 26(1) of the CHRB reads as follows: "No restrictions shall be placed on the exercise of the rights and protective provisions contained in this Convention other than such as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health or for the protection of the rights and freedoms of others". Paragraph 2 of this article states that only Articles 11, 13, 14, 16, 17, 19, 20 and 21 shall be excluded from the scope of Paragraph 1.

[13] For signatures and ratifications of the CHRB see: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=164&CM=8&DF=10/12/2014&CL=ENG

[14] *Deryck Beyleveld and Roger Brownsword*, Human Dignity in Bioethics and Biolaw (2001), Oxford University Press, Oxford, p. 41.

[15] Ibid., pp. 41–42.

[16] See Article 21 of the CHRB.

[17] See Explanatory Report to the Convention on Human Rights and Biomedicine, Para. 131.

[18] *Deryck Beyleveld and Roger Brownsword*, op. cit., pp. 41–42.

[19] It shall be noted that Article 27 of the CHRB, similarly to the ECHR, allows parties to grant a wider measure of protection with regard to the application of biology and medicine than is stipulated in the convention. See Eibe Riedel, op. cit., p. 185.

[20] *Kurt Bayertz*, 'Struggling for Consensus and Living Without It: The Construction of a Common European Bioethics' in H. Tristram Engelhardt, Jr. (ed.), *Global Bioethics – The Collapse of Consensus* (2006), M & M Scrivener Press, pp. 219–220.

[21] See Explanatory Report to the Convention on Human Rights and Biomedicine, Para. 17.

[22] Article 32(1) of the ECHR.

[23] *Paul Gallagher*, 'The European Convention on Human Rights and the Margin of Appreciation' UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No. 52/2011, p. 3.

[24] *Robin C. A.* White and Clare Ovey (eds.), *Jacobs, White & Ovey: The European Convention on Human Rights* (5th Edition), Oxford University Press, Oxford, p. 64.

[25] David Harris, Michael O'Boyle, Edward Bates, and Carla Buckley (eds.), *Harris, O'Boyle, and Warbrick: Law of the European Convention on Human Rights* (3rd Edition), Oxford University Press, Oxford, p. 15.

[26] *Bilyana Petkova*, 'The Notion of Consensus as a Route to Democratic Adjudication?' *Yearbook of European Legal Studies* 14 (1): 663–695.

[27] See *Paul Martens*, 'Perplexity of the national judge faced with the vagaries of European consensus' in *Dialogue Between Judges* (2008), Council of Europe, Strasbourg.

[28] See *Bilyana Petkova*, op. cit., p. 681.

[29] *Kanstantsin Dzehtsiarou*, 'European Consensus and the Evolutive Interpretation of the European Convention on Human Rights' *German Law Journal* 12 (10): 1733.

[30] *Julian Arato*, 'Constitutional Transformation in the ECtHR: 's Expansive Recourse to External Rules of International Law' *Journal of International Law* 37 (2): 354.

[31] See *Anatoly Kovler*, 'The role of consensus in the system of the European Convention on Human Rights' in Dialogue Between Judges (2008), Council of Europe, Strasbourg.

[32] *Kanstantsin Dzehtsiarou*, op. cit., ibid.

[33] *Eszter Polgári*, 'A tagállami jog-összehasonlítás az Emberi Jogok Európai Bíróságának gyakorlatában' (Comparative legal analysis in the practice of the European Court of Human Rights) *Fundamentum* 16 (3): 49.

[34] Ibid.

[35] See for instance *Juhnke v. Turkey*, no. 52515/99, 13 May 2008.
[36] Article 5 of the CHRB states as follows: "An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time".
[37] *V.C. v. Slovakia*, no. 18968/07, ECHR 2011 (extracts).
[38] See ibid. at paras. 9–20.
[39] Ibid at para. 106.
[40] Ibid. at paras. 112 and 114.
[41] Ibid. at para. 108 (italic added, P.B.).
[42] Ibid. at para. 117.
[43] See *N.B. v. Slovakia*, no. 29518/10, § 73, 12 June 2012 and *I.G. and Others v. Slovakia*, no. 15966/04, § 118, 13 November 2012.
[44] *Vo v. France* [GC], no. 53924/00, ECHR 2004-VIII.
[45] See ibid. at paras. 9–22.
[46] Ibid. at para. 84 (italics added P.B.).
[47] See for instance *R.R. v. Poland*, no. 27617/04, § 186, ECHR 2011 (extracts).
[48] *Evans v. the* [GC], no. 6339/05, ECHR 2007-I.
[49] See ibid. at paras. 13–28.
[50] Ibid. at para. 78.
[51] Ibid. at para. 79 (italics added P.B.).
[52] Ibid.
[53] Ibid. at para. 90.
[54] Ibid at para. 96 (italics added P.B.).
[55] Ibid. at para. 94.
[56] Ibid. at para. 107.
[57] Judit Sándor, op. cit., p. 27.

Summary

Péter Buzás. **The Convention on Human Rights and Biomedicine: European consensus or lowest common denominator?**

The article examines whether the Convention on Human Rights and Biomedicine can be considered as the expression of moral consensus between the member states of the Council of Europe, or a political compromise. The second chapter focuses on the convention as one of the most important international instruments regulating bioethics and human rights. Chapter Three discusses the opposing views in the academic literature considering its status. The fourth chapter presents briefly the notion of "European consensus" within the practice of the European Court of Human Rights. Chapter Five gives a thorough analyzes of the relevant case-law of the Court. Since it regularly refers to the Convention on Human Rights and Biomedicine concerning both the dynamic interpretation and the doctrine of margin of appreciation, examination of the bioethics-related cases may highlight the status of the instrument. The Article concludes that – in the light of the previously analyzed judgments – the Court usually refers to the convention as a document of political compromise and not of common moral consensus.