

From Protection to Coercion: the Limits of Positive Obligations in Human Rights Law

Lund University, Faculty of Law, 3 and 4 October 2024

The development of positive obligations has been one of the hallmarks of the work of the European Court of Human Rights in interpreting the European Convention on Human Rights (ECHR). Various issues from various spheres of life have been reviewed by the Court as involving possible breaches of positive obligations. The systems designed to protect the public from harm or to avert risks are extensive. Consequently, positive obligations have penetrated all provisions of the ECHR and there are it seems no *a priori* limits to the situations in which they may arise. What most of these situations have in common is that an argument is formulated that the State ought to have protected a person or persons from harm (or risk) by, for example, providing a warning of a hazard, controlling a third (private) party, removing the person from a dangerous environment, better organizing its health care or child care systems, investing more in training its police officers, or generally taking more extensive protective measures.

And these developments are of course not limited to the Council of Europe system. Across the UN human rights apparatus we can see a similar dynamic emerging, in which – in the absence of principled limits on the scope or scale of intervention of the State in society - positive obligations appear to be relentlessly expanding, and far beyond what was envisaged by the drafters of the relevant treaties.

Given the extensive regulatory functions of the State and the enormous breadth of state activities, any harm could potentially be a ground for making an argument that the State failed to fulfil its positive human rights obligations by failing to prevent or mitigate harm or risk. As a result, it is rather unclear under which conditions positive obligations may be triggered and how far-reaching they may be, given how difficult it is to draw the limits of state responsibility for omissions. The difficulties we experience in determining and delimiting the role of the State in contemporary society contribute to this uncertainty.

Given the pervasiveness of positive obligations, it is important to ask whether there are any limits as to when and how they should be developed. Relatedly, what considerations should guide the development of such limits? What considerations should be relevant in determining whether a State is responsible under human rights law for omissions? The focal question is whether and how omissions by the State can be conceptualised into failures to fulfil positive obligations. In addition to this technical analytical question, the workshop also aims to reflect upon what is at stake for the political community in these matters. A central question is then how the search for a balance between intrusion and restraint by the State, between protection and freedom from invasion, defines this community and pulls the analysis of state responsibility for omissions in different directions. Another, related area of concern is how positive obligations imposed upon the State concatenate into further obligations imposed ultimately upon individuals to refrain from ‘risky’ conduct, and the consequences for liberty that necessarily follow.

A workshop bringing together interested commentators will be held on the 3rd to 4th of October at the Faculty of Law, at Lund University in Sweden, and the organisers are delighted to be able to cover the costs of travel to and from the event, and accommodation, for speakers. We also plan an agreement with Hart to publish an edited collection stemming from the event in its *Hart Studies in Constitutional Theory* series.

Interested parties should email the organisers (Dr Vladislava Stoyanova, Associate Professor, Lund University, Faculty of Law, vladislava.stoyanova@jur.lu.se and Dr David McGrogan, Associate Professor, Northumbria Law School, david.mcgrogan@northumbria.ac.uk) with a **short abstract** (about 500 words), which speaks to one of the following main themes: (1) the role of causation, (2) the role of the standard of reasonableness, (3) the logic of prevention versus the logic of precaution, (4) the distinction between the existence of obligations and the breach of these obligations; (5) correlativity between rights and obligations, and (6) context-related developments (e.g. WHO health regulation, addressing climate change through the imposition of positive obligations, online mis/disinformation and hate speech, and so on). The e mail should also include a **CV** and, if relevant, how the proposed abstract relates to the current work or past work of the applicant. Please submit proposals by **31 March 2024**.

