

## **Cordula Dröge, Positive Verpflichtungen der Staaten in der Europäischen Menschenrechtskonvention**

### **Summary**

1. The European Commission and the European Court of Human Rights have developed throughout their jurisprudence a concept of positive obligations of states arising out of the human rights guarantees of the European Convention on Human Rights. The first important cases in this sense were the cases of *Airey v. Ireland* and *Marckx v. Belgium* of 1979 and the case of *X and Y v. the Netherlands* of 1985. In these three judgments, the foundations for the later jurisprudence on positive obligations were laid.

Despite the considerable body of jurisprudence on positive obligations developed since, there is as yet no systematisation or dogmatic analysis of positive obligations as a normative category. The Court has expressly refused to adopt such a general theory in "*Plattform Ärzte für das Leben*" v. *Austria*. Such an attitude reflects the Court's approach in emphasising equity in concrete cases and avoiding broader statements of law. However, the consequence of this approach is a lack of uniformity and predictability. A jurisprudence with a certain continuity, a certain system would help to render the jurisprudence foreseeable. The rule of law and the credibility of the European Human Rights system depend on such continuity, as it is an essential condition for the acceptance of the jurisprudence by the member states and the national courts. There is therefore a need for a normative analysis of positive obligations. The more the European Court of Human Rights emphasises the particular circumstances and the individuality of the case, the higher the risk that the national courts will not let themselves be led by the Court's jurisprudence. The aim of this study therefore is to systematise positive obligations into a normative category.

The questions it addresses can be summarised into five main problems: First, a record of the existing positive obligations in the jurisprudence of the European Court of Human Rights must be drawn up, so that a comprehensive picture of positive obligations appears. Thus, they may be classified according to the interests of the right holder that they are

meant to protect. The aim here is not to analyse the positive obligations within each Convention right. Rather, the category of positive obligations is broken down into normative groups reflecting a more general idea of the way in which rights must be protected by the state. Secondly, the legitimacy of positive obligations in the Convention system has to be established, both with regard to the general evolution of human rights theory as well as the legitimate interpretation of the Convention. For it is not enough to dress a picture of the positive obligations existing in the jurisprudence of the European Court of Human Rights. The jurisprudence must, most of all, be related to a more general human rights criticism, putting it into context with the development of human rights theory. Thirdly, it must also be asked if the Court's jurisprudence on positive obligations remains within the realm of legitimate treaty interpretation or whether the Court has exceeded its interpretative power by developing a very broad jurisprudence on positive obligations. Fourthly, the question of the predictable scope and the limits of positive obligations arises. This question is linked to the aforementioned necessity of predictability and acceptance of the jurisprudence by the national courts. Only if positive obligations do not exceed the possibilities and resources of states will they be a lasting normative category accepted in the member states. Lastly, the relationship, the differences and similarities of negative and positive obligations must be assessed, in order to harmonise their dogmatic structure and assessment procedure, again, thereby, rendering them more uniform and transparent as a normative category.

2. The term positive obligation designates a protective duty of the state. Positive obligations always mirror the responsibility of the state for the realisation of the human right. Positive obligations address the question of the state as a guarantor rather than a violator of human rights. Whereas negative obligations are the obligations of the state to refrain from state interference, positive obligations address the state's wrongful omission. A negative right in this sense is a right against the state, a positive right is a demand for assistance. The negative obligation may be designated as an obligation to refrain from acting, whereas a positive obligation is an obligation to take positive action; however, the concepts of action and omission, as shall be explained, cannot be understood in a formal way, but have to be assessed materially. In other words, the differentiation between a negative and a positive obligation does not so much depend on the particular action or omission of a certain public actor in a given case, but on the question whether the human right ascertained by the right holder can be realised with or without the state's

assistance. For example, if social welfare is granted to a person for a limited period of time, the right holder will claim a positive action from the state to receive further welfare in the future, whereas if the welfare has been granted for a longer period and is then disallowed by the state, the claimant will, formally, ask for an omission of the state's disallowance decision to recover his claim to welfare; however, from a material point of view, both cases appear as cases of positive obligations, since, ultimately, the assessment of the claimant relies on the fact that his or her right to a minimum standard of welfare and human dignity can only be guaranteed through the assistance of the state.

Once positive obligations have been differentiated from negative obligations, a classification within the category of positive obligations can be attempted. The task consists in finding an order within the multitude of positive obligations and in analysing their different aspects. There are many descriptions and classifications of positive obligations both in the literature concerning the European Convention and in other writings, and their differing approaches demonstrate the difficulty in finding a system within positive obligations. For example, with regard to the European Convention, *Harris/O'Boyle/Warbrick, G. Malinverni, O. de Schutter, F. Sudre* all have a different definition of positive obligations. In the German and Austrian literature, the categorisation of positive obligation, since *G. Jellinek's* classification into the rights of the *status positivus* as opposed to rights of the *status negativus*, is manifold. In the wider human rights literature, the most famous categorisations are probably those of *W.N. Hohfeld* and *H. Shue*. The Strasbourg organs, on the other hand, do not provide a definition or classification of positive obligations.

It is submitted in this study that the violation of a right can result from two broadly described situations. It can either result from the behaviour of a third private party or have a cause that does not follow from an immediate action by the state or a private party. Accordingly, two groups of positive obligations can be made out: the first concerns the so called *horizontal dimension*, i.e. the dimension of human rights protection between several private parties (as opposed to the vertical dimension which concerns the relationship between the rights holder and the state). It is the obligation to protect the individual against interference by another private party. This is the obligation addressed by the Court for the first time in the case of *X and Y v. the Netherlands*. Other cases of this category are, for instance, the cases of *Young, James and Webster against the United Kingdom*, *Plattform "Ärzte für das Leben" v. Austria*, *Powell and Rayner v. the United Kingdom*, *Costello-Roberts v. the*

*United Kingdom, López Ostra v. Spain, A v. the United Kingdom or Osman v. the United Kingdom.*

However, not all positive obligations are related to interference by another private party; many claims by individuals or groups only concern the relation between the right holder and the state. There must therefore be another group of positive obligations, most easily defined in opposition to the group of horizontal positive obligations. This second group of positive obligations is much wider and manifold. It encompasses all human rights violation which result from a cause that can be pinpointed neither to a positive action by the state nor to the behaviour of a private party. They are all the obligations of the state to realise the effective enjoyment of human rights in social reality. They are claims of the individual to help and assistance by the state so as to realise his or her full autonomy and freedom. For the purpose of this study and for lack of a better all encompassing description, these obligations shall be called positive obligations of a *social dimension*, to differentiate them from positive obligations of the horizontal dimension. This is not so much to reflect the fact that they are in many ways equivalent to so called economic and social rights in a narrow sense of material claims against the state but rather to reflect the function that they serve, namely the realisation of human rights in social reality. They comprise not only the so called economic and social rights, but also rights to legislative action, for example to enact the laws necessary for the enjoyment of the right in a given national system. Positive obligations of this category have been accepted by the Court in the cases of *Marckx v. Belgium* and *Airey v. Ireland*. Later, such positive obligations appear, often indirectly, in the cases of *Gaskin v. the United Kingdom*, the *Transsexual cases*, *Gül v. Switzerland*, *Ahmut v. the Netherlands*, *D. v. the United Kingdom*, *Guerra v. Italy*, *Botta v. Italy*, *L.C.B. v. the United Kingdom*, *Z and others v. the United Kingdom* and in many decisions of the Commission.

These two categories of positive obligations can appear within almost every provision of the Convention and bind all state powers, i.e. the legislative, the judiciary and the executive. Also, the Strasbourg Court makes it clear that both the horizontal as well as the social positive duties can be enforced by applicants through the individual complaints procedure, which corresponds to the individualistic approach of the European Human Rights System.

Beyond the classification of positive obligations into horizontal and social positive obligations, there is another possible differentiation of positive obligations, namely the differentiation into material and proce-

dural guarantees. However, the procedural guarantees inherent to positive obligations are not a third group next to the groups of horizontal and social positive obligations. Rather, organisational and procedural guarantees lie transversally to these obligations, i.e. they are a part both of horizontal and social obligations, so that they may be qualified as an aspect of the obligations rather than a new category of positive obligations. As such, this aspect is not peculiar to positive obligations, but exists in the same way for negative obligations. They serve the effective defence against state interference as well as a better enjoyment and enforcement of positive obligations. As formal guarantees they have an auxiliary function and only come into operation when a – negative of positive – claim already exists. Accordingly, the jurisprudence of the Convention organs shows that procedural guarantees pervade the whole Convention system: they are protective guarantees against state interference and enforcement guarantees for positive obligations. For positive obligations, they are especially important as they fulfil a double function: on the one hand they are merely formal guarantees, thereby infringing little upon the state's margin of discretion; on the other hand they are a sort of minimal positive guarantee, which the state invariably has to respect, regardless of any further going substantive claims. It should be mentioned that the Convention has contained positive guarantees since its beginning, namely the express procedural guarantees in Articles 5, 6 and 13 and the later added procedural guarantees in the Protocols. These guarantees are not the object of this analysis. Merely the positive obligations read into the substantive guarantees of the Convention rights are analysed, i.e. the obligations concerning Art. 2, 3, 8, 9, 10, 11, 12, 14 ECHR and 1, 2 and 3 of the First Protocol.

3. The aim of this study is to embed the evolution of positive obligations in the European Convention into the broader context of an evolution in human rights thinking – from a mainly liberal rights thinking to a liberal as well as social thinking, from merely negative obligations to multidimensional rights, containing both negative and positive claims.

It is submitted that positive obligations reflect a change in human rights thinking. Today's human rights understanding is based on the understanding that the state does not only threaten human rights, but also guarantees their enjoyment, by creating the legislative framework for their enjoyment, by protecting them from violation by others and by ensuring the factual conditions for their enjoyment. Human rights are not merely understood in a liberal, negative way, but also in an institutional and social way. Several human rights theories complement each

other, so that one can speak of a plurality of human rights understandings and a true multidimensionality of their protective scope.

When the Convention was drafted in 1950, the understanding was rather minimalist, for the member states had to find a common denominator on the scope of human rights protection. Also, the Convention, as is often recalled, was drafted with the atrocities of the Nazi regime in mind. Although there were some discussions on economic and social rights and in particular on the right to education and although positive obligations were, of course, incorporated into the Convention in the form of procedural guarantees, it can be seen from the *travaux préparatoires* that the drafters were extremely cautious not to burden the state with obligations that would draw substantially on their resources. However, it soon became clear that the rights of the Convention could equally be understood as positive rights whenever an effective protection called for such protection. The argument was simple: it made no difference for the applicant whether the violation of his or her rights was caused by an act of the state or by any other cause. Thus, if the state had the power to remedy a situation that, in the case of an interference constituted a human rights violation, its omission constituted a similar violation.

This understanding of the Convention is not without a parallel in human rights thinking, although the evolution of human rights theory is, on the one hand, older than the evolution of the Convention rights and on the other hand less clear cut and obvious, being by its very nature in constant change and also always subject to controversy. The focus here is on the evolution of human rights thinking since the eighteenth century as this was the century of human rights codification. Here, as much as in the later European Convention on Human Rights, the beginnings were marked by a liberal approach. Although there were many authors, like Rousseau, who emphasised social inequalities, the mainstream thinking and the corresponding American and French Human Rights Declarations were marked by the idea of protection from State interference. Although the Jacobine Constitution of 1793 contained social rights, the main focus was on the protection of life, liberty and property, for these were the concerns of the bourgeoisie whose aim was to abolish the inequalities of the aristocratic system. The underlying concept was the discovery of individual liberty during the Enlightenment and the protection from state arbitrariness. Thus, human rights were negative rights against state interferences.

This liberal approach was based on the assumption of an opposition between state and society. This was a necessity, and remains until now a

fundamental basis for the protection of human rights as it shields the individual from state power. But this assumption was to be criticised, mainly in the 1930s in American writing like that of *R.L. Hale*, who challenged the so called “public-private dichotomy”. Their submission was that private relations, in particular market relations, were not independent of any state action but rather dependent on regulation by the state. Later, this was made evident with regard to family relations in feminist writing. It is exactly this recognition of an implication of state regulation and therefore of state responsibility which lies at the heart of the acceptance of positive obligations of a horizontal dimension. For, if private relations are regulated by the state, then there is a responsibility by the state to ensure that its regulatory framework and its enforcement comply with the human rights obligations to which the state has acceded. There are different methods of achieving this respect: either the state is made responsible for private actions, such as is conveyed in the so-called state action doctrine, or the state is made responsible for its own omission, which is the approach of so called positive obligations. In more recent theory, this recognition has been translated into concept of human rights focussing not so much on the relation between state and society, the individual and the public organ, but rather on the protection of rights from abuse of power, be it social or public. This way, a more comprehensive human rights protection may be achieved.

Positive obligations of the social dimension reflect the other main challenge to liberal, negatory human rights thinking. This is the challenge introduced by the concept of the welfare state. With industrialisation and the rise of socialist ideas, it became clear that the social and economic position of the individual was crucial for the enjoyment of human rights and that liberal rights had little meaning for a large part of society. It was apparent that a weak social position was not merely an abstract state but a consequence of social power relations. This also revealed the relationship between state responsibility for the action of private parties and state responsibility for a social situation. The difficulty differentiating between social and horizontal human rights is nothing but a mirror of these intricate relations. Here too, in newer human rights thinking the liberal and social approaches are formulated into a more comprehensive, more holistic human rights theory, which emphasises the multiple interests to be covered by human rights, the multitude of directions in which human rights can and must protect a person’s autonomy and integrity. This approach emphasises the importance of procedural guarantees to supplement the protection mechanism, taking into account the importance of transparency, communica-

tion and the right to knowledge in modern societies. The holistic understanding mainly underlines the importance of the enforcement and respect of human rights in social reality, thereby making human rights, which are expressions of ideals – liberty, equality, etc. – a reality for the individual. Thus, the main focus has been on the question of real threats for these ideals, and as the threats are manifold, so the rights concept becomes multidimensional.

The developing jurisprudence on positive obligations by the Strasbourg organs reflects the increasing complexity in human rights thinking and the acknowledgment that the “fundamental freedom” protected in the Convention cannot be limited to a negatory freedom from state arbitrariness. A more holistic concept of freedom has been accepted, a concept that focuses not only on the power a person already possesses but rather on empowerment itself, on the autonomy of the individual, whereby autonomy may be described as self-determination, independence, free will, freedom of choice. It is the freedom to have alternatives or, in the words of Isaiah Berlin: “The sense of freedom, in which I use this term, entails not simply the absence of frustration but the absence of obstacles to possible choices and activities – absence of obstruction on roads along which a man can decide to walk”.

4. This holistic, multidimensional human rights understanding is not only explicable through a general embedding into the development of human rights thinking. It can also be legitimated in the specific context of the European Convention on Human Rights by way of its recognised methods of interpretation, in particular the principles of effective and of dynamic, evolutive interpretation. For human rights are conceived from the start for a dynamic interpretation, so that their scope may change with time, as they have changed until now. They are, in all Declarations and Covenants formulated in such a manner as to adapt to the circumstances of the present day without losing their basic content. Thus, they were formulated in the European Convention in such general terms that there is wide scope for adapting to an ever changing environment. The principle of effectiveness is an instrument of adjustment of law to reality, thus mirroring the aforementioned focus on an adequate understanding of human rights protection against the threats of social reality. It is complemented by the principle of dynamic and evolutive interpretation, which seeks to adapt the Convention rights to present day conditions. The principle of effectiveness and dynamic interpretation mean that the positive obligations following therefrom change with time and never remain at a certain level but rather become wider or narrower. The Commission and Court have repeatedly em-



phased these two principles and it is not surprising that they are the main methods of interpretation invoked to justify the acceptance of positive obligations in the Convention.

On the other hand, the other interpretative principles of the Convention serve to limit the extent of positive obligations resulting from effective and dynamic interpretation. They are thus equally important as they render the scope of positive obligations, which are, by their very nature, ever-changing, more precise and predictable. These are the principles of historic interpretation (whenever a historical will can be established and the underlying circumstances have not changed so much as to make this will erroneous), the systematic interpretation of the Convention norms, and the wording of the specific provision. The wording provides the most important limit to evolutive interpretation, as the Convention norms cannot be interpreted in a sense that would contradict their very wording and thereby render the jurisprudence arbitrary.

Another important interpretative principle is the comparative interpretative approach, expressed in Strasbourg jurisprudence as the so called common European standard. The Strasbourg organs are, in most cases, reluctant to go further in their interpretation of Convention rights than corresponds to an already existing common European standard. This does not mean that there is an exact equivalent of an obligation recognised by the Court in all member States. Indeed, the systems are too diverse for positive obligations to exist as a common European normative theory. Nonetheless, the positive obligations recognised until now by the Commission and Court limit themselves to reflecting a standard of legal or social guarantees common to most of the member States. Thus, the horizontal positive obligations may have an equivalent in the member States either in the form of analogous positive state duties or by way of direct or indirect application of human rights between private parties (*Drittwirkung*). Similarly, social standards are only covered by subjective and enforceable individual rights in few states, but there is an accepted common minimum social standard in most States, which covers insurance for health, unemployment, motherhood and old age, a subsidiary guarantee for the existential minimum, a general and gratuitous basic school education, and legal aid for the needy. At times, the Court has extended its comparative approach by referring not only to the European Systems, but also to the international human rights systems, such as the European Social Charter, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, or the Inter-American Convention on Human Rights, seeking common standard when interpreting a Convention norm in the sense of

positive obligations. Most notably (although not expressly referred to by the Court) the United Nations Committee on Human Rights stated in its General Comment 3/13 (1981) that “[...] the obligation under the Covenant is not confined to respect of human rights, but States parties have also undertaken to ensure the enjoyment of these rights [...] in principle this undertaking relates to all rights set forth in the Covenant”. Here again, a holistic approach in human rights understanding can be recognised. The European Social Charter, on the other hand, has sometimes served the Court to show that some positive obligations of an economic and social nature do not belong to the Convention system but to the Charter system.

5. Beyond the limits provided by interpretative methods, a further limit of positive obligations follows from their normative nature as obligations of due diligence. Such obligations are recognised both in national systems as well as in public international law and have served to expand the scope of human rights protection in international human rights law, as international human rights Conventions never bind private parties but solely states, thereby creating a need to make the state responsible for rights violations between private parties. The duty of due diligence binds all state organs and can, up to a certain point, be concretised. Whereas positive duties of the legislative can only be assessed by reference to material criteria of state responsibility - which themselves rely on a more general human rights understanding and will vary with time -, the duties of the executive can be limited by the formal criteria of a concrete threat or risk for the individual.

A further limitation of positive obligations stems from the principle of proportionality. For if a due diligence obligation has been found in principle, i.e. if the particular claim falls within the scope of the right, it must be balanced against the interests of others and the community. The proportionality test has to rely on the basic principle that positive obligations have the purpose of establishing or restoring the real liberty and autonomy of the individual. Horizontal obligations protect the individual from interference by others, whereas social obligations protect the individual from threats arising out of overwhelming social power. This in turn means that positive obligations can only go so far as to ensure the autonomy of the individual. The individual must be secured the possibility to overcome powerful influence by others or social disadvantages: the positive obligation consist in empowering the individual. This way, different nuances and gradations of positive obligations exist, according to how much help the individual needs for the ensuring of his or her autonomy. The higher the restraint on the individual's

freedom of choice, the more precise the requirement put to the state. Accordingly, positive obligations can be described a sum of normative duties, which develop like concentric circles from vague to ever more precise obligations. If the autonomy and freedom of choice are merely impeded in such a way that there is still a margin of action for the individual, the state's obligation limits itself to provide procedural guarantees or an alternative, an escape possibility for the individual from the unlawful situation. If, on the other hand, there is a severe violation of the core of the individual's rights or human dignity, the positive obligation can reach as far as a duty to adopt criminal sanctions (within the horizontal dimension) or to provide an existential minimum (within the social dimension). Formal and material human rights protection complement each other in the realm of positive obligations. Whereas procedural guarantees not only infringe little upon the state's discretion but also have the advantage of providing the individual with a minimum guarantee, the material content of the obligations informs the procedural guarantees and, at times, complements it into a further substantive obligation. It is important, here again, to stress that the scope of the obligations does not depend on the origin of the violation but on the effect it has on the individual. The demands on the state increase with the diminished free choice of the individual, as, ultimately, positive obligations are always directed at maintaining or restoring autonomy.

6. These criteria – the interpretive principles, the principle of proportionality and the limitation through the idea of empowerment can help to limit the scope of positive obligations. To be applied in a uniform and predictable manner, a dogmatic structure has to be found to ensure a transparent proportionality test of positive obligations. A clear three step test exist for the assessment of negative obligations, i.e.: (1) whether the claim falls under the scope of the right, (2) whether there has been an interference with the right, (3) and whether the interference is justified, i.e. is provided for by law and necessary in a democratic society. In the realm of positive obligations, however, the Court does not always follow a uniform method. This has been criticised by some judges, in particular by Judge *Wildhaber* in his concurring opinion in the case of *Stjerna*, in which he proposes a construction of the concept of interference so as to cover negative as well as positive obligations of the state and a three step test like the test for negative obligations, thereby “making it clear that in substance there is no negative/positive dichotomy as regards the State's obligations to ensure respect for applicable private and family life, but rather a striking similarity between the applicable principles.”

Although there is a normative difference between negative and positive obligations it is submitted that positive obligations could equally follow a three step test. This test cannot be an exact replication of the test for negative obligations. Thus, positive obligations cannot fulfil the requirement of being “provided for by law” as they may indeed be obligations to enact legislative measures. Nor can they be only legitimated following the aims stated in the specific articles as the state omission may have a much wider justifying basis. Another difference is that within Article 3 of the Convention a state interference can never be justified; contrariwise, if the positive claim of an applicant falls within the scope of Article 3 (as for instance the claim for social protection and care of children in the case of *Z and others v. the United Kingdom*) there is still scope for a proportionality test to assess which exact obligation is incumbent upon the state. However, these differences do not make a three step assessment of positive obligations impossible. The steps followed could indeed be similar, if not equal to the steps of the negative test, i.e. (1) does the positive claim of the applicant fall within the scope of the right?; (2) has there been an omission by the state? (3) is the omission proportionate to the aim it pursues?. Such a uniformly applied three step approach would have the benefit of greater clarity, transparency and predictability of the scope of positive obligations in the jurisprudence of the Court.

For the assessment of proportionality the state has a certain margin of appreciation. Although it has often been said that the margin of appreciation is wider in the area of positive obligations, it is submitted that the case law of the Convention as well as normative arguments show that this is not the case, so that a difference in state discretion is no valid argument for a lack of justiciability of positive obligations. The margin of appreciation for positive obligations is indeed subject to the same criteria as for negative obligations. Thus, the wide margin of appreciation often mentioned by the Court when assessing positive obligations under Article 8 ECHR stems from the width of this provision rather than from the normative character of positive obligations. A second argument for a wide margin of appreciation is the lack of a common European standard: this again, is not peculiar to positive obligations. The only area in which the margin of appreciation is especially wide for positive obligations is the area of preventive measures by the state; this is an expression of the application of the proportionality principle to these particular cases. On the whole, therefore, the difference in the margin of appreciation is of a quantitative rather than a qualitative measure.

7. In conclusion, a few tentative remarks on the future development of positive obligations may be put forward. One concern is that some positive obligations require a substantial investment of state resources. This raises the question if a uniform human rights standard can be kept up throughout the member states of the Council of Europe, considering the great diversity of economies and states structures in the different states, particularly through the new membership of the states of Central and Eastern Europe. Horizontal positive obligations require a certain organisational structure of the state for the prevention of interferences by others and the capacity of the state to control economically powerful private actors. Social rights at times require concrete financial and material investments. The standard achieved by the jurisprudence until now is very high, and with regard to some judgments it is questionable whether their implementation in all member states can be realised. On the other hand, the social dimension can have a particularly legitimating and integrating effect in those countries with less privileged social conditions, since the identification of citizens with a human rights system can only be achieved if the system encompasses guarantees which have a practical meaning for the people concerned. The most important method of adjusting positive demands to the particular conditions of a certain state is a recourse to the margin of appreciation. This will be of particular importance to the new member states and cannot be circumvented in order to create a completely uniform standard. That the margin of appreciation creates a tension between the autonomous, European interpretation of the Convention and the sovereignty of national entities is unavoidable and must be accepted. It lies in the very nature of the international enforcement and supervision and of the Convention rights as justiciable rights, and does no more than create the same tension as exists within the national system between the executive and legislative on the one hand and the judiciary on the other. Moreover, the figure of the common European standard is a corrective that may bind the state to a certain European human rights standard.

Positive obligations are but one way of many to ensure and protect rights from threats that do not result from state action. Another method would, for example, be the direct responsibility of private parties. Although new challenges to human rights result in many ways from private parties, thereby raising new questions on the responsibility of non-state actors for human rights violations, and although the political controlling possibilities of the state are increasingly diminishing, states are, as yet, the only actors with an all-encompassing responsibility for the effective protection of human rights; an alternative

model with a comparative level of protection does not exist until today. The Strasbourg Court has shown that the state has a certain responsibility to prevent human rights violations that do not result from its own action. Thus, the question of the scope and limits of its obligations remains virulent and will be the object of more adjudication by the Court.