

'Positive Obligations' Doctrine of the European Court of Human Rights: Is it Cogent or Obscure?

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Abstract

Over the last half century, positive obligations jurisprudence of the European Court of Human Rights (ECtHR) has been playing a pivotal role in sculpting European Human Rights system. There is, however, some potential for disagreement on whether it is an effective and well-established doctrine or not. On the one hand, the activeness of the ECtHR brings about some practical benefits in order to keep out with new societal context, but on the other, unique tensions (e.g., underestimation of state's margin of discretion, increasing burden on state, inconsistencies and uncertainties of verdicts) in the implementation of that doctrine give rise to anxieties about its cogency. Since this issue is quite multifaceted, this paper aims to elucidate in what ways positive obligations doctrine is justified and to what extent it has been deliberate while deriving positive obligations regarding Article 2. At the end, it asserts that without positive obligations doctrine, the Convention might be outmoded and ineffective. However, despite some immature aspects of it, the Court at least strived to dynamically interpret the Convention thanks to this doctrine. For this reason, it is claimed that considering existing and possible benefits of that doctrine, common legitimization for the judicial creativity of the ECtHR might be assured in foreseeable future.

Keywords: Positive Obligations Doctrine, Margin of Discretion, European Human Rights, Right to Life

Introduction

As it is well known the first section of the Convention, consisting of Articles 2 to 18, identifies a list of major rights and freedoms. If any of these articles are taken together with Article 1, then these provisions bring about a set of duties on the State. More precisely, Article 1 transforms the declaration of these rights into a range of obligations for the Council of Europe states by stating that "The high contracting parties shall *secure* to everyone within their jurisdiction the rights and freedoms defined in the section one" (Ovey &White, 2006, p.18).¹

What is meant by the word "secure" was not explicitly defined. However, it is eventually admitted that since the negative obligations refer to "duties of restraint", to place states under only negative obligations will not be enough to "secure" these rights (Fredman, 2006, p.1). Then, it is proposed that Article 1 comprises a "double obligation" which means states are no longer merely being required to refrain from interfering with individuals' rights (negative rights); they are being needed to take steps or direct actions to protect those rights (positive rights) as well (Dickson, 2010, p.203 and Ovey &White, 2006, p.20). Yet, as determining whether positive obligations exist or not, the Court has to regard to the fair balance that must struck between the competing interests of the individual and broad community.² In this context, it is widely criticized that if the rights require positive obligations to be ascertained, then lesser protection will be available for applicant regarding that right (The Law Society, 2003, p.2). Thereby, even if the judicial creativity of the Court is admitted, some problems in practice draw attention. Before examining them, this paper begins by explaining general reasons of the positive obligations and then it goes on illustrating their reflections into real cases.

What justifies 'positive obligations' jurisprudence?

¹ See. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 1 (emphasis added).

² See for.ex., *McGinley v United Kingdom* (1998) 27 EHRR 1 para.98 and *Powell v United Kingdom* (1990) 12 EHRR 355, para. 41

In fact, the ECtHR has solely interpreted and applied explicit positive obligations in the Convention, not derived additional ones from apparently negative obligations until the 1970s (Mowbray, 2004, p.227). However, it has more assertively derived implicit or implied positive obligations through purposive interpretation of the ECHR after that period. To understand the root causes of that process, the main premise of this paper is that positive obligations doctrine stems from three main factors namely: (a) deficiencies in the system, (b) the nature of the Convention itself and (c) the evolving characteristics of the Court.

To begin with, deficiencies in the system mean the problematic distinction between positive and negative obligations and less reference to socio-economic rights. In this sense, it is claimed that since the interdependency and indivisibility of all human rights has been affirmed over time, the Court has further laid stress upon implied positive obligations of the Convention in due course (Vienna Declaration and Programme of Action, 1993, para.5). Therefore, this problematic distinction is disappeared and socio-economic rights are mentioned more than earlier. Also, the nature of the ECHR refers to subsidiarity and solidarity principles. In line with these principles, the Court has more actively reiterated the primacy of the State to secure the Convention rights. At last, the dynamic characteristics of the Court points out that owing to the increased complexity of the societies and a higher rigidity in assessing breaches of principal values in democratic states, to ensure properly running human rights system has become more challenging (Harris and Warbrick, 2009, 71). Thereby, the ECtHR began to strive for not only “*the prevention of destruction*” but also “*the construction of better rights framework*” (Dickson, 2010, p.204). In this context, this section mainly seeks to analyse these factors in detail.

Deficiencies in the system

The first critique to the European Convention on Human Rights (ECHR) is that it has limited association with socio-economic types of rights and what states should/have to do. Thereby, both the limited extent of the rights and overwhelmingly negative obligations in its nature are interpreted as the significant hindrances on the way of effective system. O’Gorman (2011, 1836) also draws attention to that problem by contending that the ECHR, except the right to education, only consists of civil and political rights.

Admittedly, social and economic rights cannot be guaranteed by state’s inaction. For instance, a homeless person’s need of sheltering cannot be met by the imposition of only negative obligations. Due to this reason, socio-economic and cultural rights seem to be more demanding as compared to civil and political rights. Thus, they thought to be positive in nature whereas the civil and political rights thought to be negative.

Furthermore, on Dickson’s view, the distinction between these rights results from the wording of two different international covenants on which these rights are modelled (2011, p.204). More precisely, International Covenant on Civil and Political Rights is premised upon “Everyone has right...” model whereas International Covenant on Economic, Social and Cultural Rights adopts “The States Parties recognize that...” model. Accordingly, it means that to ensure socio-economic and cultural rights is a decision left to high contracting state’s own free will. Nonetheless, since the Convention is not inclusive enough to guarantee socio-economic rights, the Court has called for more activist state to take some affirmative tasks over time.

Additionally, blurring distinction between negative and positive obligations has been emphasised to resolve these problems and this situation eventually led to a unity amongst different types of rights. The reason behind the unity was that each right can only be ascertained by the protection of one another. For instance, Sen (1987) illustrated that “political freedom may have close connection with the distribution of relief and food to vulnerable groups”. This example demonstrates that the existence of a political right is highly-attached to the guarantee of a socio-economic right.

Likewise since there is no water-tight division separating socio-economic rights from civil and political rights, the claim about limited scope of the Convention was refuted by Merrills (1993, p.94). Also Shue (1996, p. 54, 60) stated that “all basic rights involve threefold correlative duties”¹ namely: “to avoid depriving, to protect from deprivation and to aid the deprived”. Hereby, the Court stressed that positive obligations are inherent in the convention itself, so each right by its nature requires not only negative but also positive obligations.

The Nature of the Convention

¹ H Shue, *Basic Human Rights: Subsistence, Affluence, and US Foreign Policy* (2nd edn Princeton University Press, New Jersey 1996) 54

Subsidiarity and solidarity principles were the basic principles of the ECHR. As solidarity principle has emphasised the role of Contracting Parties to secure the rights, subsidiarity principle has undertaken the Court to be supplementary to the adjudication organs of domestic legal systems (Ovey & White, 2006, p.18). Thereby, since these principles strengthen the efficiency by division of labour technique, the escalation of state responsibility and the judicial creativity of the ECtHR were unavoidable.

Due to these principles, the Court has felt the necessity to stress the importance of the State as an “*Initial Protector*” and it has strengthened its role as a monitoring mechanism.¹ It also reiterated that unless the remedies are exhausted at home, the plaintiff cannot bring the case to the ECtHR. In conclusion, the Court has imposed a positive duty on States to ensure an effective national remedy system.

Besides, the Court aimed at the compatibility between state’s jurisprudence and the Convention. By this way, states structurally adjust their system to make their enforcement mechanisms more operative. Consequently, these principles has provided not only faithful state intention to secure rights but also less workload and chance to discover national courts view for Strasbourg.² Then, the inventive positive obligations jurisprudence of the Court could be justified by the nature of the Convention.

The Evolving Characteristics of the Court

Initially, the Convention aimed at providing judicial resolutions rather than imposing positive obligations (Fredman, 2006, p.1). However, while contracting states are pursuing greater unity by protecting and further realising rights and freedoms, societies have turned out to be too complex for an exclusively passive approach to rights and freedoms (Dickson, 2010, p.204). Accordingly, the Court has transformed itself from being “a factory churning out thousands of judgements each year” to “an institution that can make a real difference to the lives of people throughout the continent” (Dickson, 2010, p.205).

To exemplify, in *Artico v Italy*³, the Court points out that “the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective”.⁴ It demonstrates that European Court aims at becoming a *constitutional court* which goes beyond dealing with the allegations of human rights violation (Dickson, 2010, p.205). Briefly, the dynamic character of the Court, which aims at keeping up with new societal context, has become another stimulus for the positive obligations doctrine.

Positive Obligations Arising from Article 2 of the ECHR

Article 2(1) requires that “Everyone’s right to life shall be protected by law”.⁵ This expression consists of both negative and positive aspects of an obligation namely: (a) a negative duty to refrain from the unlawful killing and (b) a positive duty to “protect” right to life through procedural and operational measures. Even if these measures were not defined in the Convention, the Court has developed them through its jurisprudential justification. Accordingly, these measures might be interpreted as indicators of evolving nature of both the Convention and the Court.

More precisely, as indicated in *McCann and Others v the United Kingdom*⁶, “...a general legal prohibition of arbitrary killing by the agents of the State would be ineffective in practice...” because there was no procedure to scrutinize the justification for the use of lethal force in domestic legal system.⁷ Although Article 2(2) defines absolutely necessary criteria for the deprivation of life when the variability of human conduct is considered to formulate a far-reaching convention for a modern society is difficult to achieve. Consequently, the Court imposed a range of positive obligations through its judicial creativity.

¹ See. *Handyside v The United Kingdom*, (App No 5493/72) (1976) 1 EHRR 737 para 48 and N J Blake & L Fransman, *Immigration, Nationality and Asylum under the HRA 1998: Nature of the Convention: the key concepts of state responsibility, the subsidiary role of the Court, positive and negative obligations, and vertical vs horizontal effect* (Lexis Nexis Butterworths, London 2009)

² Ovey and White (n.1) 19

³ *Artico v. Italy*, (App No 6694/74) A/37 [1980] ECHR 4 para 33

⁴ *Artico v. Italy*, para 33

⁵ See. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 2

⁶ *McCann and Others v the United Kingdom*, (App No 18984/91) (1995) 21 EHRR 97

⁷ *McCann and Others v the United Kingdom*, para.161

This paper discusses them under three headings namely: (a) the planning and supervision of operations; (b) preventive and protective measures; and (c) the investigation of killings.

Planning and the Supervision of Operations

Due to being a subsidiary organ, the Court has participated into human rights protection mechanism merely through contentious proceedings. Nevertheless, since security or civilian forces did carry out their operations with lack of appropriate care and precaution, they justified the positive obligations jurisprudence of the Court.

To begin with, in *McCann and Others v the UK*, claimants alleged that the deliberate lethal shootings of Mr McCann, Ms Farrell and Mr Savage by British Special Air Service members violated Article 2(2) of the Convention.¹ Also, they claimed that Article 2(1) imposes a positive duty on state to give adequate training, briefing and instructions to its security forces and to supervise any action which might contain lethal force.² The ECtHR examined these claims and held that the killings of these people, even if their terrorist activities constitute a threat to state, was not proportional official response with appropriate care in organization and control.³ On Mowbray's view (2004, p.9), this case depicts the Court's eagerness to assess the care taken by the security forces of member states in carrying out operations.

However, in *Andronicou and Constantinou v Cyprus*⁴, although MMAD officers had shot Lefteris with 25 bullets and Elsie with 2 bullets during a rescue operation, the Court did not think that this operation was disproportional. The Court surprisingly was of the view that the authorities acknowledged this was a "lovers' quarrel", so the use of guns was not actually intended in the implementation of plan.⁵ On the Court's view, the authorities opened fire to prevent the worst possible eventualities.⁶ Thus, the Court rejected the claim that "the rescue operation was not planned and organised in a way which minimised to the greatest extent possible any risk to the lives of the couple".⁷ When this verdict is compared with the former one, it can be stated that some inconsistent applications occurred and thus the Court's doctrine is loosely legitimized.

Additionally, the ambit of positive obligations regarding supervision of operations is extended from security forces operations to civilian forces operations in due course. For example, in *Avsar v Turkey*, the Court did draw attention to the possible risk of using civilian forces in a quasi-police activity.⁸ At the end, the government was found liable for the acts of those forces. Thereby, it is noticeable that the protection of the right to life requires not only "criminal-law enactment" but also many other "affirmative actions" by officials which are imposed by the Court (Mowbray, 2004, p.15). Consequently, the Court has scrutinized many different aspects of state operations by its positive obligations doctrine.

Preventive and Protective Measures

As interpreting the Convention, the Court has highlighted that states have a duty to provide appropriate protective and preventive operational measures to the individuals who are under a real or immediate threat. For instance, in *Osman v United Kingdom*⁹, the Court pointed out that the ECHR might impose a positive obligation on a member state to protect an individual from the criminal acts of one another.¹⁰ Thus, the ECHR does not only have vertical effect. Due to positive obligation jurisprudence, the Convention has been applied with both vertical (state to individual) and horizontal effect (individual to individual) in due course.¹¹ Moreover, the *Osman v United Kingdom* coined "*Osman Test*" term into the legal literature. It is considered as an important test to measure the risk of real or immediate threat.¹²

¹ *McCann and Others v the United Kingdom*, para.145

² *McCann and Others v the United Kingdom*, para.151

³ *McCann and Others v the United Kingdom*, para.212

⁴ *Andronicou and Constantinou v Cyprus*, (App No 25052/94) (1997) 25 EHRR 491

⁵ *Andronicou and Constantinou v Cyprus*, para 183

⁶ *Andronicou and Constantinou v Cyprus*, para 185

⁷ *Andronicou and Constantinou v Cyprus*, para 186

⁸ *Avsar v. Turkey*, (App No 25657/94) (2001) 37 EHRR 53 para.414

⁹ See *Osman v The United Kingdom*, (App No 23452/94) (1998) 29 EHRR 245 para.116

¹⁰ *Osman v The United Kingdom*, para.115

¹¹ See *Costello-Roberts v United Kingdom*, (App No 13134/87) (1993) 19 EHRR 112

¹² See *Hertfordshire Police v Van Colle* [2008] UKHL 50 (30 July 2008)

At the same time, the Court indicated that “an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities”.¹ Thereby, the Court has acknowledged the capacity of the states in terms of resources and priorities and strived to impose attainable targets for officials. This situation may contribute to jurisprudential justification.

Moreover, protective measures may necessitate providing medical services to some extent. However, since the economic resources of countries hugely differ, it constitutes a big challenge on the way of establishing minimum health care provisions. For instance, in *Cyprus v Turkey*², although the Court admitted that if a State endangers an individual life by denying health care, an issue might arise under Article 2; it denied that Turkish authorities deliberately withheld medical services to Greek Cypriots and Maronites.³ Moreover, it stated that “it does not necessary to examine...the extent to which Article 2 of the Convention may impose an obligation”.⁴ The word ‘extent’ illustrates that the Court does not impose a certain standard for countries, it just reviews the failures. Thereby, Mowbray (2004, p.26) thought that positive obligations regarding health care provisions are “at early stage of development”. Considering possible economic burden on state, specifying a standard might be hard to achieve. For this reason, many aspects of positive obligations derived on this matter seems to be quite weak.

The Court also thinks that to provide sufficient information regarding possible threats is another state responsibility. For instance, in *Oneryildiz v Turkey*⁵, the claimant lost his family members due to methane gas explosion and the Chamber stated that “government authorities had failed to comply with their duty to inform the inhabitants of the Kazim Karabekir area of the risks they were taking by continuing to live near a rubbish tip”.⁶ Additionally, in *Budayeva and others v Russia*⁷, the Court has further elaborated this obligation. Although the media had informed civilians about potential risk of mudslides, the Court decided that there was a “substantive” violation of the right to life due to “the authorities’ omissions in implementation of the land-planning and emergency relief policies in the hazardous area of Tirmauz”.⁸ Therefore, the Court has gradually widened its positive obligations doctrine by imposing new duties to the States.

Investigation of Killings

The Court imposes procedural and institutional investigative duties on states both in the public and private spheres when an individual is killed or disappeared in life-threatening conditions. *Mccan and Others v the United Kingdom* was the first case which implies the necessity of the investigation by state when an individual is killed by the agents of state.

Following cases have further extended the positive obligations jurisprudence by initiating new elements. For example, *McKerr*⁹ and *Jordan*¹⁰ emphasised the importance of seeking and recording the facts regarding the fatal incidents to ensure “public confidence”. Furthermore, jurisprudential legitimization has been provided for this positive obligation through the judgements of the Court. For instance, in *Kelly and Others v the United Kingdom*¹¹, the Court indicated that main purposes of making inquiries are to effectuate the implementation of domestic laws and to make states more accountable for killings and disappearances occurred under their jurisdiction.¹²

The key elements of a proper investigation were specified by the Court while criticizing improper inquest of killings by states. In *Mccan and Others v the United Kingdom*, the applicants claimed that (a) police investigation was not independent; (b) police did not trace or interview with all eyewitnesses; (c) the Jury might had close connections with the military; (d) usual scene-of-crime procedures were not followed and so on.¹³ In the light of these claims, the Court has developed key aspects

¹ *Osman v The United Kingdom*, para.116

² *Cyprus v Turkey* (Application no. 25781/94)(ECtHR, 10 May 2002)

³ *Cyprus v Turkey*, para. 219,221

⁴ *Cyprus v Turkey*, para. 219 (emphasis added)

⁵ *Oneryildiz v. Turkey* (App no 48939/99)(2004) 41 EHRR 20

⁶ *Oneryildiz v. Turkey*, para.75

⁷ *Budayeva and others v Russia*, (App nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02) (ECtHR, 20 March 2008)

⁸ *Budayeva and others v Russia*, para 158

⁹ *McKerr v. The United Kingdom*, (App No 28883/95) (2002) 34 EHRR 553

¹⁰ *Hugh Jordan v The United Kingdom*, (App no 24746/94) (2003) 37 EHRR 52

¹¹ *Kelly and Others v the United Kingdom*, (App no 30054/96)[2001] ECHR 40

¹² *Kelly and Others v the United Kingdom*, para 94

¹³ *Mccan and Others v the United Kingdom*, para.157

of inquiry. Thereby, in *Brecknell v the United Kingdom*¹, the compliance of the State is measured according to the elements of (a) independence, (b) effectiveness, (c) accessibility to the family and public scrutiny, (d) promptness and reasonable expedition.²

Also, in *Nachova and others v Bulgaria*³, the Court reiterated that more rigid obligations will be necessary when a violent act is prompted by racial prejudice.⁴ Thus, these cases demonstrate that since the beginning duty to investigate is evolving. The Court has been striving to provide effective remedies to Article 2 violations and not to bring about onerous burden on states. Nonetheless, Chevalier-Watts (2010, p.721) states that even if the Court provides a fair balance between the burden on state and practical method of ensuring Article 2, "it will always be subject to constraints in its ability to enforce or demand regime change in a liberal democracy".⁵

Conclusion

In sum, when the Court has taken the lead to mitigate the problems arising from the European Human Rights system, the ambit of positive obligations jurisprudence has unprecedentedly broadened in due process. However, owing to the uncertainty and inconsistency in the implementation of that doctrine deep concerns have been raised about its cogency. Another anxiety was that these obligations might be underestimating state's measure of discretion and leading to onerous burden on states. Also, it is contended that while many positive duties have been laid down by the ECtHR on Article 1 of the Convention, such obligations did not arise in relation to all provisions and they are loosely justified (Campbell, 2006). Therefore, it is asserted that the positive obligation jurisprudence of the Court still does not demonstrate a "principled and systematic commitment" to all of the rights defined in the ECHR (Dickinson, 2010, p.207). For this reason, this paper preferred to examine main positive obligations derived regarding one of the most fundamental rights, right to life, and concluded that positive obligations doctrine has some impotent and vague aspects.

On the other hand, as indicated by Mowbray (2004, p.5-6) the Court's positive obligations jurisprudence is a natural result of "...dynamic interpretation of the convention in the light of changing social and moral assumptions".⁶ Additionally, even if the obligations of state appear to increase, state's role is correspondingly shifted from "rowing to steering", and therefore it may have mechanisms to share its burden (Osborne & Gaelber, 1992). In this regard, the belief was that without positive obligations doctrine, the convention might be outmoded and ineffective; however, despite immature aspects of that doctrine the Court has at least strived to prevent it. Therefore, once the relevant rights become practical and effective in practice, common legitimization for the judicial creativity of the ECtHR might be assured in foreseeable future (Mowbray, 2004, p.207).

BIBLIOGRAPHY

Table of Cases

- [1] *Andronicou and Constantinou v Cyprus*, (App No 25052/94) (1997) 25 EHRR 491
- [2] *Artico v. Italy*, (App No 6694/74) A/37 [1980] ECHR 4
- [3] *Avsar v Turkey*, (App No 25657/94) (2001) 37 EHRR 53
- [4] *Brecknell v the United Kingdom*, (App no 32457/04) [2007] All ER (D) 416
- [5] *Budayeva and others v Russia*, (App nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02) (ECtHR, 20 March 2008)
- [6] *Costello-Roberts v United Kingdom*, (App No 13134/87) (1993) 19 EHRR 112
- [7] *Cyprus v Turkey* (Application no. 25781/94)(ECtHR, 10 May 2002)
- [8] *Handyside v The United Kingdom*, (App No 5493/72) (1976) 1 EHRR 737

¹ *Brecknell v the United Kingdom*, (App no 32457/04) [2007] All ER (D) 416

² *Brecknell v the United Kingdom*, para 75-82

³ *Nachova and Others v Bulgaria*, (App nos 43577/98 and 43579/98) (2005) 42 EHRR 933

⁴ *Nachova and Others v Bulgaria*, para. 157

⁵ J Chevalier-Watts, 'Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?' (2010) 21(3) Eur J Int Law 701, 721

⁶ Quoted in A Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing, Oxford 2004) 5-6 (as cited in D Feldman, *Civil Liberties and Human Rights in England and Wales* (2nd edn, Oxford, OUP, 2002) 55.

- [9] *Hertfordshire Police v Van Colle* [2008] UKHL 50 (30 July 2008)
- [10] *Hugh Jordan v The United Kingdom*, (App no 24746/94) (2003) 37 EHRR 52
- [11] *Kelly and Others v the United Kingdom*, (App no 30054/96)[2001] ECHR 40
- [12] *McCann and Others v the United Kingdom*, (App No 18984/91) (1995) 21 EHRR 97
- [13] *McGinley and Egan v United Kingdom* (1998)27 EHRR 1
- [14] *McKerr v. The United Kingdom*, (App No 28883/95) (2002) 34 EHRR 553
- [15] *Nachova and Others v Bulgaria*, (App nos 43577/98 and 43579/98) (2005) 42 EHRR 933
- [16] *Oneryildiz v. Turkey* (App no 48939/99)(2004) 41 EHRR 20
- [17] *Osman v The United Kingdom*, (App No 23452/94) (1998) 29 EHRR 245
- [18] *Powell v United Kingdom* (1990) 12 EHRR 355

Additional Sources

- [19] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)
- [20] Vienna Declaration and Programme of Action (25 June 1993) A/CONF. 157/24, adopted by the World Conference on Human Rights

Secondary Sources

- [21] Blake NJ & Fransman L, *Immigration, Nationality and Asylum under the HRA 1998: Nature of the Convention: the key concepts of state responsibility, the subsidiary role of the Court, positive and negative obligations, and vertical vs horizontal effect* (Lexis Nexis Butterworths, London 2009)
- [22] Campbell AIL, 'Positive Obligations under the ECHR: Deprivation of Liberty by Private Actors' (2006) 10 EdinLR 403
- [23] Chevalier-Watts J, 'Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?' (2010) 21(3) Eur J Int Law 701
- [24] Dickson B, 'Positive Obligations and The European Court of Human Rights' (2010) 61(3) NILQ 203
- [25] Fredman S, 'Human rights transformed: Positive Duties and Positive Rights' (2006) Oxford Legal Research Paper 38/2006
- [26] Harris DJ & O'Boyle M & Warbrick, *Law of the European Convention on Human Rights* (2nd, Oxford University Press, New York 2009)
- [27] Merrills JG, *The Development of International Law by the European Court of Human Rights* (2nd edn, Manchester, MUP, 1993)
- [28] Mowbray A, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing, Oxford 2004)
- [29] O'Gorman R, The ECHR, 'The EU and the Weakness of Social Rights Protection at the European Level' (2011) 12 GLJ 1836
- [30] Osborne D & Gaelber T, *Reinventing Government: How the entrepreneurial spirit is transforming the public sector* (Addison-Wesley Publishing Company, 1992)
- [31] Ovey C & White R C A, *Jacobs & White The European Convention on Human Rights* (4th, Oxford University Press, United States 2006)
- [32] Sen A, 'Food and Freedom' (Sir John Crawford Memorial Lecture, 29 October 1987) <<http://www.worldbank.org/html/cgiar/publications/crawford/craw3.pdf>> accessed 26 November 2013
- [33] Shue H, *Basic Human Rights: Subsistence, Affluence, and US Foreign Policy* (2nd edn Princeton University Press, New Jersey 1996)
- [34] The Law Society, 'Human Rights Q&A: The Pluses And Minuses Of Obligations' (2003) 18 LS Gaz 1,2