

European Master's Degree in Human Rights and Democratisation

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SEARCHING FOR FAIR AND BALANCED STATE OBLIGATIONS

Case Law Study on Positive Obligations under Article 2 of the European Convention on
Human Rights

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Abstract

The thesis claims that it is important to know the extent of positive obligations under Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the Convention) because states have to know how far exactly their obligations can reach under the Article 2 and also individuals have a legitimate and justified interest to know what to expect from the state. The European Court of Human Rights (hereinafter, the Court) has ruled already over ten years ago in its judgements that states have positive duty to protect life within their jurisdiction and it is not enough just refrain from killing.¹

The case law under Article 2 has been dynamic and the Court has not hesitated to interpret the Convention in a rather evolving way. However, there are still many notable unanswered questions, such as how far the Court considers it possible to extend the protection afforded by Article 2 without placing too great a burden on the state. Furthermore, the doctrine of positive obligations is debatable because the Court has explicitly declined to develop any “general theory” of positive obligations.² In practice, however, case law of the Court demonstrates that the Convention imposes positive obligations on state authorities even though no general theory as such exists.

The research question of the study is whether there is too much burden on the state to fulfil the extended obligations under Article 2 and whether it is reasonable from the principle of proportionality point of view to extend the state obligations even further. The research question will be answered through recent case law of the Court.

The hypothesis of the study is that in order to determine the extent of the state obligations the principle of proportionality should be a key actor in the work of the Court. The positive obligations should always be considered together with the proportionality in order to ensure the justification and legitimacy of the obligations. This is also the main conclusion after analysing the recent case law under Article 2.

¹ See, e.g. case of *L.C.B. v. The United Kingdom*, app. 23413/94, Judgement of 9 June 1998, para. 36; case of *Osman v. The United Kingdom*, app. 23452/94, Judgement of 28 October 1998, para. 115.

² Case of *Plattform “Ärzte für das Leben” v. Austria*, app. 10126/82, Judgement of 21 June 1988, para. 31.

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