# Positive obligations under the European Convention on Human Rights

Hugh Tomlinson QC

Matrix Chambers

**Introduction**

In this paper I want to provide an overview of the case of the European Court of Human Rights relating to positive obligations.[[1]](#footnote-1) This case law has been developed in both Strasbourg and in other international jurisdictions and has greatly extended the range and impact of Convention rights. One recent example illustrates the point.

On 7 June 2012 the Grand Chamber of the Court of Human Rights found that Italy had violated Article 10 of the Convention by failing to allocate television frequencies to the Europa 7 Channel. Just satisfaction of €10,000,000 was awarded.[[2]](#footnote-2) A first sight this result might seem surprising. Article 10 does provide any “right to television frequencies”. So how did this failure by the Italian State to provide something which the Convention does not mention result in a finding of violation and the obligation to pay a substantial sum? This case is simply a recent and particularly striking example of the application of the doctrine of “positive obligations”.

The stages in the argument are deceptively simple. First, there can be no democracy without pluralism.[[3]](#footnote-3) Second, political pluralism requires media pluralism.[[4]](#footnote-4) Third, in order to secure pluralism in the audio visual media, the state must allow effective access to the market to guarantee diversity of overall programme content.[[5]](#footnote-5) It is said to follow, that

“in such a sensitive sector as the audiovisual media, in addition to its negative duty of non-interference the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism”[[6]](#footnote-6)

In other words, the Court has implied into Article 10 a positive obligation to guarantee effective media pluralism by providing television frequencies. There was a violation of this obligation because the applicable legislative framework was not “prescribed by law”:

“the legislative framework, as applied to the applicant company, which was unable to operate in the television broadcasting sector for more than ten years despite having been granted a licence in a public tendering procedure, did not satisfy the foreseeability requirement under the Convention and deprived the company of the measure of protection against arbitrariness required by the rule of law in a democratic society”[[7]](#footnote-7)

This case is recent illustration of the extraordinary power of the doctrine of “implied positive obligations” which has been developed by the Court of Human Rights since they were first recognised, almost exactly 44 years ago in the *Belgian Linguistics* case.[[8]](#footnote-8) This was, as the Norwegian Judge pointed out in his dissent, not justified by the wording of the Convention provision in question.[[9]](#footnote-9) But positive obligations have, since that seminal case, penetrated all parts of the Convention and have become of the first importance in its case law.

Positive obligations are controversial. States are placed under obligations to take action which affects private parties and to provide benefits which are not set out in the Convention. These benefits seem arbitrary: why, if there is an implied positive obligation to provide television frequencies is there not an obligation to provide food or housing? The problem with positive obligations is that “their scope appears open-ended” and the Strasbourg court “does not set general conceptual limitations” for its interventions” in developing them.[[10]](#footnote-10)

I will first look at the development of the doctrine of positive obligations in the court’s case law. I will then briefly consider the range of obligations which have been developed. Finally, I will say something about the “theory of positive obligations” – the circumstances in which they are imposed.

**History of the Development of the Concept**

It is important to note, at the outset, that not all positive obligations in the Convention are implied. Some derive from the express words of the Convention itself, for example: under Article 2, the obligation to protect the right to life,[[11]](#footnote-11) under Article 5 to inform and arrested person of reason for arrest and bring him or her promptly before a judge, under Article 6 the obligation to provide courts, legal aid and interpreters and under Article 3 of the First Protocol, the obligation to hold free elections.

However, over the past 44 years the Court has gradually supplemented this limited range of express positive obligations with a wide, and increasing, range of “implied positive obligations”.

The implied positive obligations recognised in *Belgian Linguistics,* did not make an immediate impact. They were not relied on in any judgment over the next decade. The decisive development came in 1979. However, the concept was developed in *Marckx v Belgium*[[12]](#footnote-12) where the Court had to consider Belgian family law which did not recognise an illegitimate child as a member of the mother’s family; and, thus, prevented mother and child from leading a normal family life. The Court[[13]](#footnote-13) said, in terms which have been repeated many times in later judgments, that:

“By proclaiming in paragraph 1 the right to respect for family life, Article 8 signifies first that the State cannot interfere with the exercise of that right otherwise than in accordance with the strict conditions set out in paragraph 2. As the Court stated in the *Belgian Linguistic* case, the object of the Article is ‘essentially’ that of protecting the individual from arbitrary interference by the public authorities.[[14]](#footnote-14) Nevertheless, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective ‘respect’ for family life”.

Four months later, in the case of *Airey v Ireland*[[15]](#footnote-15)- the case concerning judicial separation proceedings in Ireland - the Court held that because Article 6 guarantees an “effective right of access to court” this would, in some cases require the state to provide civil legal aid. There was also a breach of the positive obligation to protect the applicant’s family life by relieving her of the duty to live with her husband:

“Effective respect for private or family life obliges Ireland to make this means of protection effectively accessible, where appropriate, to anyone who may wish to have recourse thereto”[[16]](#footnote-16)

Taken together *Marckx* and *Airey* were “groundbreaking”,[[17]](#footnote-17) a “change in the legal content and function of basic rights”.[[18]](#footnote-18)

To these two important cases must be added a third, decided six years later. In *X & Y v Netherlands*[[19]](#footnote-19) the Court found that Article 8 was breached because domestic criminal law did not provide practical and effective protection of mentally ill girl who was sexually assaulted. In its judgment the court added another sentence to the now familiar formulation of the positive obligation

“there may be positive obligations inherent in an effective respect for private or family life … These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves”.[[20]](#footnote-20)

In other words, State may be under positive obligations to ensure that individuals have rights against other individuals. This introduces the *Drittwirkung* of the Convention – its application to private bodies.[[21]](#footnote-21) This is one key dimension of positive obligations.

The statement that positive obligations are inherent in the notion of “respect” for private and family life, home and correspondence in Article 8(1) set out one rationale for their implication. But this cannot be directly applied to other Articles where the obligation of “respect” does not appear.

Positive obligations in other areas have been said to derive from the overarching obligation on the state under Article 1 of the Convention to ‘secure that everyone within their jurisdiction’ has the rights and freedoms set out in the Convention. The concept also reflects the Convention principle of effectiveness, that the Convention is designed to guarantee not rights that are theoretical or illusionary but rights which are practical and effective.[[22]](#footnote-22) In addition, reliance is sometimes placed on the Article 13 “right to an effective remedy”. These three pillars have supported the implication of positive obligations in every area of the Convention.

**Some Examples of Positive Obligations in the Case Law**

**Introduction**

Since the early 1980s the Court has extended the doctrine of positive obligations to all has been most fully developed in relation to two Articles of the Convention: Articles 2 and 8. It is these areas that there are most cases relying on the doctrine. Many of these are now very familiar. I will simply mention some examples, without any attempt to be exhaustive.[[23]](#footnote-23)

**Article 2**

The positive obligations arising under Article 2 are the most fully articulated in the case law and are most familiar to practitioners.

First, there is a general obligation on the state "to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life."[[24]](#footnote-24) This involves

“the taking of reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim.”[[25]](#footnote-25)

Second there is the "operational duty" - in "well-defined circumstances" the state should take "appropriate steps" to safeguard the lives of those within its jurisdiction including a positive obligation to take "preventative operational measures" to protect an individual whose life is at risk from the criminal acts of another.[[26]](#footnote-26) The positive obligation must be interpreted "in a way which does not impose an impossible or disproportionate burden on the authorities".[[27]](#footnote-27) The Supreme Court has recently analysed the circumstances in which this duty will apply in a case concerning a person subject to voluntary admission to a mental hospital.[[28]](#footnote-28)

Third, there is a procedural obligation to initiate an effective public investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of the foregoing substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated.[[29]](#footnote-29)

**Article 3**

Very similar obligations have been recognised as arising under Article 3 of the Convention. For present purposes these do not require separate consideration.

**Article 4**

More recently, analogous obligations have been recognised under Article 4 of the Convention. There is a positive obligation to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour.[[30]](#footnote-30)

Article 4 may require the state to take operation measures to protect victims or potential victims of human trafficking where the

“the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked”[[31]](#footnote-31)

There is also a “procedural obligation” to investigate situations of potential trafficking.[[32]](#footnote-32)

**Article 5**

The court has recognised an implied positive obligation under Article 5 to take appropriate measures to protect the liberty of persons, in particular, providing effective protection of vulnerable persons, including reasonable steps to prevent a deprivation of liberty of which the authorities have or ought to have knowledge.[[33]](#footnote-33)

**Article 6**

Under Article 6 to provide, in certain circumstances, civil legal aid in order to ensure effective access to court.[[34]](#footnote-34) The State also has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay.[[35]](#footnote-35)

**Article 8**

The widest range of positive obligations has been recognised under Article 8. These include obligations to:

* To provide information – including personal and environmental information;
* Establish the legal recognition of transsexuals – a positive obligation which was only recognised by the Grand Chamber after four unsuccessful applications against the United Kingdom.[[36]](#footnote-36)
* To recognise an individual’s choice of name.[[37]](#footnote-37)
* To establish legal mechanisms to enable a prompt determination of paternity.[[38]](#footnote-38)
* Of access to environmental information[[39]](#footnote-39) or information about hazardous activities.[[40]](#footnote-40)
* To provide of housing to seriously ill individuals.[[41]](#footnote-41)
* To protect individuals against the effects of environmental pollution by private bodies.[[42]](#footnote-42)
* To protect individuals from media intrusion into their private lives.[[43]](#footnote-43)
* To protect a person’s Article 8 right to reputation by taking appropriate measures against the publishers of defamatory material.[[44]](#footnote-44)
* To protect citizens from criminal acts by others.[[45]](#footnote-45)
* To have a fair decision making process where an individual’s Article 8 rights are in issue.[[46]](#footnote-46)

**Article 10**

Positive obligations under Article 10 have already been mentioned. The state has an obligation to protect the freedom of expression of the media.[[47]](#footnote-47) The Court has also recognised the existence of a positive obligation to safeguard freedom of expression from threats stemming from private persons.[[48]](#footnote-48) There is also a positive obligation to provide information in certain circumstances.

**Article 11**

There is a positive obligation implied into Article 11 to protect freedom of assembly. This will sometimes require positive measures to be taken[[49]](#footnote-49) in order to protect a lawful demonstration against counter-demonstrations.[[50]](#footnote-50)

**Article 1, Protocol1**

There are positive obligations under Article 1 of Protocol No. 1, to take the measures necessary to protect the right of property,[[51]](#footnote-51) even in cases of litigation between private parties. It has been said:

“When an interference with the right to peaceful enjoyment of possessions is perpetrated by a private individual, a positive obligation arises for the State to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights, including, where appropriate, by claiming damages in respect of any loss sustained”.[[52]](#footnote-52)

**Article 3, Protocol 1**

Although this right is expressed in positive terms the Court has held that it contains further implied positive obligations.[[53]](#footnote-53) For example, P1A3 requires the existence of a “domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights”.[[54]](#footnote-54)

**Classification of Positive Obligations**

Various attempts have been made to classify the types of positive obligations established by the Court and the analyses which have been suggested differ widely.

In his book on “positive obligations” Mowbray[[55]](#footnote-55) identified two categories of positive obligation:

•  a duty to protect individuals by, for example, the state taking reasonable measures to protect individuals from infringements of their Convention rights by other private individuals, deploying personnel to provide physical measures of security for potential victims known to be facing immediate threats of violence, undertaking a broad collection of duties which concern the manner in which states treat individuals detained under their criminal justice system and

•  a duty to aid individuals by conducting effective investigations into credible claims that serious Convention rights have been violated.

In contrast Beatson and Grosz suggest there are five broad categories of positive obligations:[[56]](#footnote-56)

•  a duty requiring the state to rearrange its legal relations to protect individual rights;

•  a duty to protect private individuals from other non state individuals or entities by, for example, protecting Article 3 rights by punishing the assailant by criminal sanctions;

•  a duty to take positive operational steps to secure individual rights in fact;

•  a duty on the state to conduct an effective and independent official investigation into alleged breaches of various Convention rights; and

•  an emerging duty to make information available including, for example, health hazards arising from environmental pollution.

It is, perhaps, most useful to distinguish between positive obligations have “horizontal” effect – which protect of human rights between private parties - and those which impose social or investigation obligations on the state.[[57]](#footnote-57)

The importance of the former was recently recognised by the Advocate-General in Luxembourg. She noted that although there is no foundation for horizontal effect in any of the guarantees of the Convention, instead:

“protection of fundamental rights in relationships between private individuals is achieved on the basis that a duty of protection is imposed upon the State, which it is obliged to fulfil by adopting positive measures (so-called 'positive obligations'). According to that concept it is for the State to repel challenges made by private individuals (disturbers) to the legal positions of the respective beneficiaries of fundamental rights (victims)”[[58]](#footnote-58)

**When do Positive Obligations Arise?**

The Court has, unsurprisingly, not provided any general theory of positive obligations.[[59]](#footnote-59) At an early stage of the development of the concept it was said that

“In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which balance is inherent in the whole of the Convention. In striking this balance the aims mentioned in the second paragraph of Article 8 (art. 8-2) may be of a certain relevance, although this provision refers in terms only to "interferences" with the right protected by the first paragraph - in other words is concerned with the negative obligations flowing therefrom”[[60]](#footnote-60)

To this formulation was later added the observation that

“the boundaries between the State’s positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, none the less, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation”[[61]](#footnote-61)

There, however, obvious problems with this approach. There is the question as to whether and in what way an interference with a positive obligation can be justified. Saying that the considerations under, for example, Article 8(2), “have a certain relevance” does not take matters much further. This is, as Judge Wildhaber described said in a Concurring Opinion a “somewhat incoherent jurisprudence”. He proposed that

“it would therefore be preferable to construe the notion of "interference" so as to cover facts capable of breaching an obligation incumbent on the State under Article 8 para. 1 (art. 8-1), whether negative or positive. Whenever a so-called positive obligation arises the Court should examine, as in the event of a so-called negative obligation, whether there has been an interference with the right to respect for private and family life under paragraph 1 of Article 8 (art. 8-1), and whether such interference was "in accordance with the law", pursued legitimate aims and was "necessary in a democratic society" within the meaning of paragraph 2 (art. 8-2).”[[62]](#footnote-62)

This approach is now well established – although not without its own difficulties

Furthermore “fair balance” and “margin of appreciation” are part of the proportionality analysis – part of the determination as to whether an interference which is “prescribed by law” and for a “legitimate aim” is “necessary in a democratic society”. In other words, while they are relevant at the “justification” phase it is difficult to see how they can be used to decide whether or not a positive obligation exists in the first place.

There are, nevertheless some limited some indications in the case law as to the circumstances in which a positive obligation might be recognised by the Court. In particular, three interrelated factors have been mentioned:

***First***, it has been said the activity in question must go to the “core” of the right in question. In Article 8 cases it has been said that it must involve “an important aspect of personal identity” or an “intimate aspect of private life”.[[63]](#footnote-63) The Court has often said, in the Article 8 context, that there must be a “direct and immediate link” between the measures requested and the applicant’s private life.[[64]](#footnote-64)

Put another way, a positive obligation will only be recognised when there has been some serious interference with a fundamental right by a private body or where State action is required to protect core elements of a right. It is noteworthy that that one of the most extensive areas of development of positive obligations has been in relation to the protection of the “absolute rights” under Articles 2, 3 and 4 of the Convention.

***Second***, a positive obligation is imposed in circumstances where the State can “reasonably be expected to act so as to prevent or put an end to the alleged infringement of the applicant's rights.”[[65]](#footnote-65) An important factor will be whether the obligation which would involve imposing on the State significant additional expenditure.[[66]](#footnote-66) This factor will mean that, in general, it will be easier to recognise “horizontal” positive obligations than those which require the State to take action.

***Third***, in deciding whether or not there is a positive obligation, the Court must have regard to the diversity of practices in different Contracting States.[[67]](#footnote-67) A strong indication in favour of a positive obligation will be a “broad consensus” on the issue among Council of Europe States or internationally either as to the relative importance of the interest at stake or as to the best means of protecting it.”[[68]](#footnote-68)

It should, however, be noted these factors are derived from scattered dicta in cases which often use the well-established formula mentioned above. The Court rarely conducts an explicit analysis in terms of these factors, often subsuming considerations of this kind in a general reference to a “fair balance” between the general interest of the community and the interests of the individual.

**Conclusion**

Over the past half century the Court has recognised a powerful and wide ranging set of positive obligations, what has been described as “decisive weapon”[[69]](#footnote-69) to give effect to Convention rights. Powerful though this weapon is the precise rules for its manufacture and use remain obscure. It is likely that both the Strasbourg court will continue to proceed cautiously in this area, eschewing analysis of general principle in favour of case by case responses to manifest injustice.

Hugh Tomlinson QC

Matrix Chambers

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1. This is an expanded version of a paper presented at the ALBA Summer Conference in July 2012. The positive obligation under Articles 8 and 10 to provide information was considered in a paper by Karen Steyn: “Positive obligations to provide access to information under the European Convention on Human Rights”. [↑](#footnote-ref-1)
2. Centro Europa 7 S.r.l. and Di Stefano v. Italy (application no. 38433/09)([2012] ECHR 974), [↑](#footnote-ref-2)
3. Ibid, [129] [↑](#footnote-ref-3)
4. Ibid [130] [↑](#footnote-ref-4)
5. Loc cit. [↑](#footnote-ref-5)
6. Ibid [134] [↑](#footnote-ref-6)
7. Ibid [156] [↑](#footnote-ref-7)
8. *Belgian Linguistic (No 2)* (1968) 1 EHRR 252 para 7. [↑](#footnote-ref-8)
9. Article 2 of Protocol 1 [↑](#footnote-ref-9)
10. See D Xenos, *The Positive Obligations of the State under the European Convention of Human Rights* (London, Routledge, 2011), p.3. [↑](#footnote-ref-10)
11. Art 2(1) states that ‘Everbody’s right to life shall be protected by law’. [↑](#footnote-ref-11)
12. (1979) 2 EHRR 330. [↑](#footnote-ref-12)
13. ibid para 31. [↑](#footnote-ref-13)
14. *Belgian Linguistic (No 2)* (1968) 1 EHRR 252 para 7. [↑](#footnote-ref-14)
15. (1979) 2 EHRR 305 [↑](#footnote-ref-15)
16. Ibid, 319 [33] [↑](#footnote-ref-16)
17. See E Bates, *The Evolution of the European Convention on Human Rights* (Oxford, OUP, 2010), p.346ff. [↑](#footnote-ref-17)
18. D Evrigenis, “Recent Case law of the European Court of Human Rights, Arts 8 and 10 of the ECHR” [1982] HRLJ 121, 126. [↑](#footnote-ref-18)
19. (1985) 8 EHHR 235 [↑](#footnote-ref-19)
20. Ibid, para 23 [↑](#footnote-ref-20)
21. See A Clapham, “The ‘Drittwirkung’ of the Convention” in R St J Macdonald, F Matscher and H Petzold, *The European System for the Protection of Human Rights* (Nijhoff, 1993), p.163ff [↑](#footnote-ref-21)
22. See *Artico v Italy* (1980) 3 EHRR 1 [33]. [↑](#footnote-ref-22)
23. A fuller treatment can be found in Jean-François Akandji-Kombe *Positive Obligations under the European Convention on Human Rights, (*Council of Europe, Human Rights handbook, No.7”, 2007), pp.20-64. [↑](#footnote-ref-23)
24. See *Oneryildiz v Turkey* (2005) 41 EHRR 20 [89]. [↑](#footnote-ref-24)
25. See *Gorgiev v former Yugoslav Republic of Macedonia* (App. No. 49382/06) [2012] ECHR 49382/06 [43]. [↑](#footnote-ref-25)
26. See *Osman v United Kingdom* (2000) 29 EHRR 245 [115] [↑](#footnote-ref-26)
27. Ibid, [116] [↑](#footnote-ref-27)
28. For a recent analysis of the case law in the context of the mentally ill in voluntary detention see *Rabone v Pennine Care NHS Trust* [2012] UKSC 2. [↑](#footnote-ref-28)
29. See, for example, *Taylor v United Kingdom* (1994) 79-A DR 127, 137; *McCann v United Kingdom* (1995) 21 EHRR 97, para 161; *Powell v United Kingdom, supra* p 17; *Salman v Turkey* (2000) 34 EHRR 425, para 104; *Sieminska v Poland* (App No 37602/97, unreported, 29 March 2001); *Jordan v United Kingdom* (2001) 37 EHRR 52, para 105; *Edwards v United Kingdom, supra,* para 69; Ö*neryildiz v Turkey, supra,* paras 90-91; *Mastromatteo v Italy* (App No 37703/97, unreported, 24 October 2002). [↑](#footnote-ref-29)
30. *Siliadin v France* (2006) 43 EHRR 16 [89] and [112] [↑](#footnote-ref-30)
31. *Rantsev v. Cyprus and Russia*(2010) 51 EHRR 1 [286]; see also *M and others v Italy and Bulgaria,* Judgment of 31 July 2012 [↑](#footnote-ref-31)
32. Ibid, [288] [↑](#footnote-ref-32)
33. *Storck v Germany* (2005) 43 EHRR 96 [101] to [102]; see also *Stanev v Bulgaria* Judgment of 12 January 2012 (GC) [120]. [↑](#footnote-ref-33)
34. *Steel and Morris v UK,* (2005) 41 EHRR 22 [72] [↑](#footnote-ref-34)
35. *Fuklev v. Ukraine,* Judgment of 7 June 2005 [84] [↑](#footnote-ref-35)
36. *Goodwin v United Kingdom* (2002) 35 EHRR 18 (GC), [84-85] [↑](#footnote-ref-36)
37. *Burghartz v Switzerland*(1994) 18 EHRR 101;  *Stjerna v Finland* (1994) 24 EHRR 194, [↑](#footnote-ref-37)
38. *Mikulic v Croatia* (2002) 11 BHRC 689; [↑](#footnote-ref-38)
39. *Guerra v Italy* (1998) 26 EHRR 357 [↑](#footnote-ref-39)
40. *Roche v United Kingdom* (2006) 42 EHRR 30 (GC). [↑](#footnote-ref-40)
41. *Marzari v. Italy* (no. 36448/97, 4 May 1999 [↑](#footnote-ref-41)
42. *Lopez-Ostra v Spain*  (1994) 20 EHRR 277 [↑](#footnote-ref-42)
43. *Van Hannover v Germany* (2005) 40 EHRR 1. [↑](#footnote-ref-43)
44. *Pfeifer v Austria* (2008) 24 BHRC 167; *Mikolajová v. Slovakia,* Judgment of 18 January 2011 [53]. [↑](#footnote-ref-44)
45. *X & Y v Netherlands*  (1985) 8 EHRR 235 [↑](#footnote-ref-45)
46. *VC v Slovakia* (App. No. 18968/07) [2011] ECHR 18968/07 [141] [↑](#footnote-ref-46)
47. *Özgür Gündem v Turkey* 16 March 2000; *VgT Verein gegen Tierfabriken v. Switzerland*, 28 June 2001  [45] [↑](#footnote-ref-47)
48. See *Feuntes Bobo v Spain* (2001) 31 EHRR 50 [↑](#footnote-ref-48)
49. *Plattform 'Ärzte für das Leben' v Austria* (1988) 13 EHRR 204 [32] [↑](#footnote-ref-49)
50. *Öllinger v Austria* (2008) 46 EHRR 38 [37] [↑](#footnote-ref-50)
51. see *Sovtransavto Holding v. Ukraine*, ECHR 2002-VII [96]. [↑](#footnote-ref-51)
52. *Blumberga v. Latvia* Judgment of 14 October 2008 [67] [↑](#footnote-ref-52)
53. See generally, Rory O'Connell 'Realising Political Equality: The European Court of Human Rights and Positive Obligations in a Democracy', (2010) 61-63 NILLQ 263-279. [↑](#footnote-ref-53)
54. see *Namat Aliyev v. Azerbaijan*, Judgment of 8 April 2010 [81]ff. [↑](#footnote-ref-54)
55. A Mowbray *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart, 2002) pp.225-227. [↑](#footnote-ref-55)
56. Sir J Beatson S Grosz T Hickman and R Singh *Human Rights: Judicial protection in the United Kingdom* (Sweet & Maxwell, 2008) paras 2-123 to 2-128. [↑](#footnote-ref-56)
57. See generally, C Drogue, *Positive Verpflichtungen der Staaten in der Europaischen Menschenrechtskonvention* (Springer, 2003). [↑](#footnote-ref-57)
58. Opinion of Advocate General Trstenjak delivered on 8 September 2011. *Maribel Dominguez v Centre informatique du Centre Ouest Atlantique and Préfet de la région Centre* [2012] IRLR 321 at 329. [↑](#footnote-ref-58)
59. cf *Platform Artze v Austria* (1991) 13 EHRR 204 para 31 [↑](#footnote-ref-59)
60. *Rees v United Kingdom* (1986) 9 EHRR 56 [37]; [↑](#footnote-ref-60)
61. *Keegan v Ireland* (1994) 18 EHRR 342 [49]; this formula has been repeated in many subsequent cases, see eg *Hatton v United Kingdom* (2003) 37 EHRR 28[98] (GC). [↑](#footnote-ref-61)
62. *Stjerna v Finland* (1997) 24 EHRR 195, 000 [↑](#footnote-ref-62)
63. *Mosley v United Kingdom* [2012] 1 FCR 99 [109]; see also the analysis in *Swift v Secretary of State for Justice* [2012] EWHC 2000 (QB), [27]. [↑](#footnote-ref-63)
64. see e.g. *Draon v France* (2006) 42 EHRR 40 at [106]; see also *R (McDonald) v RB Kensington and Chelsea*[2011] UKSC 33 [15] (Lord Brown). [↑](#footnote-ref-64)
65. *Fadeyeva v Russia,* Judgment of 9 June 2005 [89]. [↑](#footnote-ref-65)
66. *Sentges v The Netherlands* (2003) 7 CCLR 400, 405; also see *Draon v France* (2006) 42 EHRR 40, [108] (GC). [↑](#footnote-ref-66)
67. *Tysiac v Poland* (2007) 45 EHRR42[112] [↑](#footnote-ref-67)
68. *Goodwin v United Kingdom* (2002) 35 EHRR 18 (GC), [84-85]; *Draon v France,* op cit; [110] [↑](#footnote-ref-68)
69. See J.-P. Marguénaud *La Cour europeenne des Droits de l’Homme*, (Dalloz, Paris, coll. Connaissance du droit) 2nd Edn, p. 36. [↑](#footnote-ref-69)