

Introducing the Book Review Symposium on ‘Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries’

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2024-05-27T08:00:53

The European Court of Human Rights (ECtHR, Court) has played a prominent role in the development of positive obligations while interpreting the European Convention on Human Rights (ECHR). Variable factual backgrounds of applications brought before the ECtHR have been reviewed by the latter as involving possible breaches of positive obligations. Yet, the Court has remained secretive about the circumstances under which positive obligations may be triggered, and how their content and scope is determined. In fact, the Court has not revealed a general analytical framework regarding how it reviews the rise of these obligations and the breadth of their scope.

Vladislava Stoyanova’s book [‘Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries’](#) purports to answer precisely these questions, by unveiling the triggers, scope, and content of positive obligations, as developed in the ECtHR’s jurisprudence, and further aims to identify the key analytical issues that need to be tackled in determining whether a State is responsible under the ECHR for failure to fulfil positive obligations (pp. 1-7). Acknowledging the significance of the questions that the book seeks to address, the present book review symposium comprises of various scholars’ reflections on the book’s contribution to the study of positive obligations under the ECHR.

Elena Abrusci kicks off the symposium with a reflection on the duality of positive obligations, which may only be breached by the State on the one hand, but may also only be ensured by the State on the other. To cope with this duality, the ECtHR is required to strike a delicate balance between respecting the principle of subsidiarity though granting deference to Member States and demanding proper compliance with positive obligations. Abrusci centres precisely on the role of the margin of appreciation and its use by the Court in this context, and, partly disagreeing with Stoyanova on whether the margin of appreciation allows a wider review of the States’ compliance with their positive obligations, she questions whether other regional human rights courts have managed to achieve better compliance with positive obligations via other approaches.

Maria Louiza Deftou similarly emphasizes that the ECtHR ‘steps on thin ice’ while trying to balance delineating positive obligations on the one hand, and the need to avoid an intrusive review, which does not align with its subsidiary role, on the other. Deftou agrees with Stoyanova on the fact that this intrusive review is watered down

by the requirements of causality and reasonableness, and highlights the ambiguity and inconsistency surrounding the application of these requirements in the ECtHR's jurisprudence.

Despite his disagreement with Stoyanova on the interrelationship between due diligence and positive obligations, Vassilis Tzevelekos highlights the value of Stoyanova's book for other international, regional, and national human rights systems, as well as for all areas and rules of international law that produce effects under the principle of due diligence. Moreover, Tzevelekos draws inspiration from Stoyanova's analysis and highlights the significance of the book's chapter on the standard of reasonableness for the standard-setting exercise that positive obligations prerequisite. As he stresses, this standard is essential for the self-restraint of the ECtHR (and other human rights fora), when it comes to determining the content and scope of positive obligations.

Lea Raible views the ECtHR's recent judgement in [Verein KlimaSeniorinnen v Switzerland](#) through the lens of the book's analysis and observes that the Court's assessment of state knowledge is deeply normative, just as Stoyanova has highlighted in her book. The fact that this judgement, which was issued after the book's publication, can be analysed based on the book's propositions evinces, according to Raible, that Stoyanova's work will prove as lasting as it is useful. Nonetheless, the author also stresses that a more comprehensive analysis on normative considerations with regard to state knowledge would have been welcome.

Influenced by Stoyanova's analysis, Mariana Ferolla Vallandro do Valle recalls that the determination of the scope of positive human rights obligations prerequisites making sensitive choices between different values and worldviews. From this starting point, she draws attention to various jurisdictional models that allow for the emergence of a wide scope of extraterritorial positive obligations and warns that such approaches may lead to the imposition of foreign standards on a community without consideration of that community's members' values and interests. Such tensions could deprive positive obligations of any evolution in contexts of extraterritorial application. Thus, the author concludes that Stoyanova's book, which is mindful of both the Court's practice and the tensions that come with expanded or narrower jurisdictional thresholds in the context of positive obligations, is a useful tool regarding debates on extraterritorial jurisdiction.

After revisiting the 25 years of confusion in the ECtHR's case-law on extraterritorial jurisdiction and the extraterritorial reach of positive obligations, Rick Lawson characterises Stoyanova's contribution to relevant literature as a 'true oasis in the desert'. Lawson highlights that Stoyanova's inspiration from normative preconditions (such as the State's role in society or the democratic legitimacy of decisions taken within that society) enables her to present a fresh take on the Court's case-law and encourages readers to envisage how different the Court's jurisprudence could have been, if such "normative preconditions" had found their way into the ECtHR's reasoning and practice.

The symposium concludes on Friday with the author's response.

With this brief preview, we wish all readers an inspiring read!

