



UNIVERSITY OF
BIRMINGHAM

Seminar concept note

“Positive obligations under the ECHR and the Criminal Law: towards a Coercive Human Rights Law?”

Organized by Dr. Laurens Lavrysen (Ghent University) and Dr. Natasa Mavronicola (University of Birmingham)

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Traditionally, human rights in the context of the criminal justice system mainly served to protect the rights of defendants against the exercise of State power. The European Court of Human Rights has, however, used the positive obligations doctrine to infuse the ECHR with victim rights or duties to protect persons from becoming victims of human rights violations that may also amount to criminal wrongs. At the same time, the Court is increasingly requiring States to protect ECHR rights by recourse to the criminal law. On the one hand, States now have to criminalize certain human rights violations, such as human trafficking, torture and rape. On the other hand, States may be under an obligation to prosecute offenders and to impose criminal sanctions.

This evolution gives rise to a whole host of questions, such as: How did this evolution come about? To what extent does the ECHR now require criminalization and criminal punishment? How does this evolution towards a coercive dimension of human rights fit into broader trends in international human rights law (e.g. the anti-impunity turn)? Is it feasible and institutionally appropriate for the Court to make such demands and, if so, to what extent? How should we understand the relationship between the human rights of victims and those of defendants and how should we address any tensions between these? Is there a risk of coercive overreach? Moreover, to what extent does the Court’s criminal law approach contribute to the protection of victims and what are the limitations, if any, of a criminal law approach from the viewpoint of victims’ rights? What is the perspective of victims of human rights violations in this regard?

The proposed seminar/workshop is an opportunity to interrogate a set of issues which not only raise important legal conundrums but also go to the heart of the purpose and function of human rights law and doctrine.

Venue: Faculty Board Room, Law Faculty of Ghent University (Voldersstraat 3, 9000 Gent)

Programme

Coffee and Registration (9:30 – 10:00)

Morning Session (10:00– 13:00)

Chair: *Prof. Dr. Eva Brems (Ghent University)*

- 1) A bird's-eye view on the ECtHR's case law on positive obligations and the criminal law
Dr. Laurens Lavrysen (Ghent University)
- 2) Criminal justice and positive duties: duties to protect or coerce?
Prof. Dr. Liora Lazarus (University of Oxford)

Coffee break

- 3) Coercive overreach and dilution: the potential dangers of requiring recourse to the criminal law
Dr. Natasa Mavronicola (University of Birmingham)
- 4) A view from the criminal law theory: Positive obligations in light of the principle of criminalisation as a last resort
Prof. Dr. Nina Peršak (Institute for Criminal-law Ethics and Criminology, Ljubjana / Central European University, Budapest)

Lunch (13:00 – 14:00)

Afternoon Session (14:00 – 17:30)

Chair: *Dr. Natasa Mavronicola (University of Birmingham)*

- 5) Coercive human rights: a victims' rights perspective
Alina Balta (Tilburg University)
- 6) The potential and limitations of coercive human rights law in protecting the victims of human trafficking
Dr. Vladislava Stoyanova (Lund University)
- 7) A duty to prosecute hate speech under the European Convention on Human Rights
Dr. Stephanos Stavros (DGI Human Rights and the Rule of Law, Council of Europe)

Coffee break

- 8) Substantive and procedural criminal-law protection of human rights in practical legal reasoning
Dr. Krešimir Kamber (European Court of Human Rights, Ghent University)
- 9) Positive obligations and coercion: a view from the European Court of Human Rights
Judge Paul Lemmens (European Court of Human Rights)