

Positive Obligations of the State Concerning the Protection of Human Rights

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Abstract : The model of positive obligations of the state concerning the protection of the rights of an individual was created within the jurisdiction of the German Federal Constitutional Court in the 1970s. That model assumes that the state should protect an individual against infringement of their fundamental rights by another individual. It is based on the idea concerning the modification of the function and duties of the state towards an individual and society. Initially the state was perceived as the main infringer of the fundamental rights of an individual formulating the individual's obligations of negative nature (obligation of noninterference), however, at present the state is perceived as a guarantor and protector of the fundamental rights of an individual of positive nature (obligation of protection). Examination of the chosen judicial decisions of that court will enable us to determine what the obligation of protection is specifically about, when it is updated and whether it is accompanied by claims of an individual requesting the state to take actions protecting their fundamental rights against infringement by the private entities. The comparative perspective for the German model of positive obligations of the state will be an analogous model present in the jurisdiction of the European Court of Human Rights. It is justified to include it in the research as the Convention, similarly to the constitution, focuses on the protection of an individual against the infringement of their rights by the state and both models have been developed within the jurisdiction for several dozens of years. Analysis of the provisions of the Constitution of the Republic of Poland as well as judgements of the Polish Constitutional Tribunal will allow for the presentation of the application the model of the protective duties of the state in Poland.

Keywords : human rights, horizontal relationships, constitution, state protection

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