

Justin Friedrich Krahé

Legal Services and the European Convention on Human Rights

Securing Private Rights and Public Interests



Nomos

Beiträge zum
ausländischen öffentlichen Recht und Völkerrecht

Edited by

the Max Planck Society
for the Advancement of Science
represented by Prof. Dr. Armin von Bogdandy
and Prof. Dr. Anne Peters

Volume 340

Justin Friedrich Krahé

Legal Services and the European Convention on Human Rights

Securing Private Rights and Public Interests



Nomos

Open Access funding provided by Max Planck Society.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

a.t.: Heidelberg, Ruprecht-Karls-Universität, Diss., 2024

1st Edition 2025

© Justin Friedrich Krahé

Published by
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden
www.nomos.de

Production of the printed version:
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3–5 | 76530 Baden-Baden

ISBN (Print): 978-3-7560-1009-7
ISBN (ePDF): 978-3-7489-4662-5

DOI: <https://doi.org/10.5771/9783748946625>



Online Version
Nomos eLibrary



This work is licensed under a Creative Commons Attribution 4.0 International License.

Acknowledgements

The present volume is based on my doctoral thesis, defended at the Faculty of Law, Heidelberg University on 10 July 2024 and updated to include developments and case law until August 2024.

I am deeply indebted to my supervisor Professor Anne Peters for her invaluable advice and constant encouragement at all stages of this project from its inception to its completion. I also thank Professor Ute Mager for chairing the viva and Professors Daniel Halberstam and Martin Borowski for agreeing to be rapporteurs on my thesis. I am grateful to my colleagues and friends at the Max Planck Institute for Comparative Public Law and International Law for valuable input on parts of the text at various stages. I also thank the German Academic Scholarship Foundation for providing a doctoral scholarship for my research, and the Max Planck Society for enabling its Open Access publication.

Most of all, I thank my wife, my family and my friends for their unwavering support.

Frankfurt/Lausanne, August 2024

Justin Friedrich Krahe

Overview

Table of Contents	11
Table of Abbreviations	23
Summary	25
Chapter One: Introduction, Case Selection and Definitions	27
I. Legal services at the intersection of private and public interests	28
II. International law on legal services: Setting the scene for the study	32
III. The European Convention on Human Rights and legal services	49
IV. Case selection and definitions	54
Chapter Two: Legal Services and the Client's Private Interests: The Internal Dimension	69
I. Foundation of trust for the relationship between client and lawyer	70
II. An autonomously determined relationship between lawyer and client	121
III. Conclusion: Convention protection for the internal dimension of legal services	151
Chapter Three: Legal Services and the Client's Private Interests: The External Dimension	153
I. Protection for legal services provided at the domestic level	153
II. Protection for legal services regarding individual applications under Art. 34 ECHR	190
III. Conclusion: Protecting the client's private interest in legal services	197

Chapter Four: Legal Services and Lawyers' Private Interests	201
I. The Court's case law protecting the provision of legal services	201
II. A 'watchdog' function for lawyers?	208
III. Conclusion: Legal services and lawyers' private interests	221
Chapter Five: The Public Interest in Legal Services in the Court's Case Law	223
I. The 'special status of lawyers' as part of the 'very heart of the Convention system'	225
II. Specific arrangements for legal services?	260
III. Conclusion: The public interest in legal services in the Court's case law	306
Chapter Six: 'Essential' to the Convention System: Comparing Legal Services and the Media	309
I. A template for legal services? The Court's case law on the media	309
II. The Court's case law on the media and on legal services: Similar problems, different analyses	324
III. Conclusion: Comparing legal services and the media	354
Chapter Seven: Convention Obligations Beyond Rights: An Introduction to Undirected Duties	355
I. A typology of duties: Rights-based, non-rights-based, directed and undirected	356
II. Undirected duties in the law	360
III. Undirected duties in Convention law	362
IV. Conclusion: Undirected duties under the Convention	391

Chapter Eight: Individualistic and Systemic Conceptions of Human Rights	393
I. Individualistic conceptions of human rights	399
II. Systemic conceptions of human rights	410
III. Mixing individualistic and systemic conceptions leads to inconsistent case law	425
IV. Why does the Court draw on systemic conceptions?	447
V. Conclusion: Individualistic and systemic conceptions of human rights	452
Chapter Nine: Combining Rights and Undirected Duties to Protect Legal Services under the Convention	453
I. The Court's vision of the public interest in legal services	454
II. Undirected duties and individual rights: Disconnect	455
III. Undirected duties and individual rights: Harmony	460
IV. Undirected duties and individual rights: Conflict	470
V. Conclusion: Combining rights and undirected duties	476
Chapter Ten: What Do Undirected Duties Add?	477
I. Added explanatory value	478
II. Remedying the problems in the current case law	481
III. Conclusion: The advantages of combining rights and undirected duties	497
Conclusions, Outlook and Directions for Further Research	499
Zusammenfassung in deutscher Sprache	505
Table of ECtHR Cases Cited	517
Bibliography	529
Index of terms and key cases	541

Table of Contents

Table of Abbreviations	23
Summary	25
Chapter One: Introduction, Case Selection and Definitions	27
I. Legal services at the intersection of private and public interests	28
II. International law on legal services: Setting the scene for the study	32
1. Soft law on legal services	33
(a) <i>Soft law standards from the UN system</i>	34
i. <i>The 1990 UN Basic Principles on the Role of Lawyers</i>	34
ii. <i>The UN Special Rapporteur on the Independence of Judges and Lawyers</i>	36
iii. <i>The ‘right to defend human rights’</i>	36
(b) <i>Council of Europe Recommendation R(2000)21 on the freedom of exercise of the profession of lawyer</i>	38
(c) <i>Soft law standards by international NGOs</i>	39
2. Hard international law on legal services	45
3. A ‘European Convention on the Profession of Lawyer’?	47
4. Legal services and international human rights law	47
III. The European Convention on Human Rights and legal services	49
1. Research questions	50
2. Structure of inquiry and chapter overview	50
IV. Case selection and definitions	54
1. Case selection	55
2. Definitions	57
(a) <i>The Court’s understanding of the terms ‘legal services’ and ‘lawyer’</i>	58
i. <i>The Court’s references to ‘legal services’</i>	58
ii. <i>The Court’s references to ‘lawyers’</i>	59

iii. <i>The Court's rationale for legal services</i>	62
(b) <i>Definitions used in the course of the study</i>	63
i. <i>'Legal services'</i>	63
ii. <i>'Lawyer' and 'client'</i>	64
iii. <i>'Bar associations'</i>	64
iv. <i>'Private interest' and 'public interest'</i>	65
3. A note on interactions with domestic legal systems: Translations and references	68
 Chapter Two: Legal Services and the Client's Private Interests: The Internal Dimension	 69
I. Foundation of trust for the relationship between client and lawyer	70
1. Free choice of lawyer	71
(a) <i>Criminal defence through legal assistance of the accused's choosing, Art. 6 § 3 (c) ECHR</i>	73
i. <i>Dvorski [GC] and the principle of informed choice</i>	74
ii. <i>The importance of free choice of lawyer as conducive to trust</i>	81
iii. <i>Abusive bans on legal representation</i>	82
(b) <i>Correia de Matos [GC] and defending oneself in person, Art. 6 § 3 (c) ECHR</i>	84
(c) <i>Protection of choice of legal services rather than choice of lawyer</i>	85
2. Communication between client and lawyer	86
(a) <i>Freedom to communicate between client and lawyer</i>	87
i. <i>Freedom of communication as the rule</i>	88
ii. <i>Restrictions in the context of counter-terrorism law</i>	89
iii. <i>Art. 34 ECHR and freedom to communicate with representatives before the Court</i>	92
iv. <i>Communication with detained clients</i>	93
v. <i>A right for the client or the lawyer?</i>	95
vi. <i>Conclusion: Freedom to communicate between client and lawyer</i>	96

(b)	<i>Freedom to communicate confidentially between client and lawyer</i>	96
i.	<i>Confidential communication as a prerequisite of effective legal services</i>	98
ii.	<i>Confidential communication with detainees</i>	102
iii.	<i>Covert surveillance, particularly wiretaps</i>	107
iv.	<i>Search and seizure at lawyers' premises</i>	110
v.	<i>Requirements on lawyers to report on their clients ('gatekeeper' legislation)</i>	115
vi.	<i>Enforcement of the confidentiality norm</i>	119
II.	An autonomously determined relationship between lawyer and client	121
1.	State responsibility for lawyers' actions?	122
(a)	<i>The State's due diligence obligation to remedy severe shortcomings in legal services</i>	124
(b)	<i>The State's obligation to counter manifest failings in the provision of legal services in practice</i>	128
(c)	<i>Conclusion: State responsibility for lawyers' actions</i>	132
2.	The Court's vision of high-quality legal services	133
(a)	<i>Activity and attendance</i>	135
(b)	<i>Defence of the client's interests</i>	136
(c)	<i>Communication with the client</i>	138
(d)	<i>Preparation of the case</i>	141
(e)	<i>Lawyers' expertise</i>	142
(f)	<i>Lawyers' independence</i>	145
(g)	<i>The client's contribution</i>	147
(h)	<i>Sources of quality standards</i>	148
(i)	<i>Domestic rules on professional negligence</i>	149
(j)	<i>Conclusion: The Court's vision of high-quality legal services</i>	150
III.	Conclusion: Convention protection for the internal dimension of legal services	151

Chapter Three: Legal Services and the Client’s Private Interests: The External Dimension	153
I. Protection for legal services provided at the domestic level	153
1. Freedom of expression for lawyers exercising representative functions	154
(a) <i>Freedom of expression in court proceedings</i>	158
i. <i>Nikula v Finland and conflicts between lawyers and prosecutors</i>	158
ii. <i>Kyprianou v Cyprus [GC] and conflicts between lawyers and judges</i>	161
iii. <i>Conflicts between lawyers and experts</i>	163
iv. <i>Elevated protection for statements made in judicial proceedings</i>	165
(b) <i>Freedom of expression outside the courtroom</i>	170
i. <i>Schöpfer v Switzerland</i>	171
ii. <i>Morice v France [GC]</i>	172
iii. <i>Morice in practice</i>	176
(c) <i>Freedom of expression on ‘non-legal’ topics</i>	180
(d) <i>Relationship between lawyers’ and clients’ rights</i>	181
(e) <i>Conclusion: Freedom of expression for lawyers exercising representative functions</i>	182
2. Protection of legal services in fields other than freedom of expression	183
(a) <i>Protection against physical attacks by State actors</i>	183
(b) <i>No additional protection against physical attacks by non-State actors</i>	188
(c) <i>Additional protection against unlawful detention by the State</i>	189
II. Protection for legal services regarding individual applications under Art. 34 ECHR	190
1. A protective regime for legal services related to individual applications	191
2. The relationship between the applicant’s and the representative’s rights	194
3. Minimum quality requirements under Art. 34 ECHR	195
4. Abstract risk suffices	196
III. Conclusion: Protecting the client’s private interest in legal services	197

Chapter Four: Legal Services and Lawyers' Private Interests	201
I. The Court's case law protecting the provision of legal services	201
1. Protection of access to the legal profession	202
2. Protection of exercise of the legal profession	202
3. Protection of lawyers' professional reputation	203
4. Occasional reinforcement by reference to the public interest	205
5. Protection against disbarment	207
II. A 'watchdog' function for lawyers?	208
1. The public interest in lawyers' expertise	209
2. <i>Reznik v Russia</i>	211
3. Lawyers' freedom to comment	214
4. Limits to lawyers' freedom to comment	216
5. The public interest in comment by lawyers	218
III. Conclusion: Legal services and lawyers' private interests	221
Chapter Five: The Public Interest in Legal Services in the Court's Case Law	223
I. The 'special status of lawyers' as part of the 'very heart of the Convention system'	225
1. 'The special status of lawyers'	227
(a) <i>Casado Coca and the origins of the Nikula dictum</i>	231
(b) <i>The Nikula dictum as a means of restricting rights</i>	235
2. 'The very heart of the Convention system'	240
(a) <i>Elçi and others v Turkey</i>	242
(b) <i>Elçi as protecting the legal profession</i>	244
(c) <i>Aliyev v Azerbaijan and the public interest in legal services</i>	248
(d) <i>Elçi in the Court's case law</i>	252
3. 'The legal profession'	257
II. Specific arrangements for legal services?	260
1. A (partially) regulated market for legal services?	261
(a) <i>Reservation of the provision of legal services</i>	261
i. <i>Reservations based on qualification</i>	264
ii. <i>Reservations based on personal standing</i>	267
iii. <i>Liberalising tendencies</i>	270

(b) <i>A sustainable economic basis?</i>	271
2. A separate administrative regime for legal services?	275
(a) <i>Separate disciplinary rules?</i>	275
i. <i>Disciplinary law as a particularly sensitive area</i>	276
ii. <i>Disciplinary law as a component of the Court's vision</i>	280
(1) <i>Lower requirements for 'quality of the law'</i>	281
(2) <i>Procedural rights in disciplinary law</i>	282
iii. <i>Delegation to professional bodies</i>	284
iv. <i>Conclusion: Separate disciplinary rules for lawyers</i>	285
(b) <i>The role of Bar associations</i>	286
i. <i>Bar associations as part of the State</i>	288
(1) <i>State responsibility for Bar associations</i>	289
(2) <i>Legal consequences of the State's responsibility for Bar associations</i>	292
(3) <i>In particular: No standing for Bar associations under Art. 34 ECHR</i>	294
ii. <i>The 'independence' of Bar associations – self-regulation?</i>	299
III. Conclusion: The public interest in legal services in the Court's case law	306
Chapter Six: 'Essential' to the Convention System: Comparing Legal Services and the Media	309
I. A template for legal services? The Court's case law on the media	309
1. The Court's view of the media's function in the Convention system	310
2. Case law securing the media's ability to fulfil their Convention functions	314
(a) <i>The State as the 'ultimate guarantor of pluralism'</i>	315
(b) <i>The obligation to create 'a favourable environment for participation in public debate'</i>	317
(c) <i>The independence of the media</i>	317
(d) <i>The obligation to protect the media against State and non-State attacks</i>	318
(e) <i>Protecting the public's right to receive information</i>	320

(f) <i>Elevated protection only for 'responsible journalism'</i>	321
(g) <i>Pluralism as a justification for restricting rights</i>	322
(h) <i>Expanding case law to other actors fulfilling similar functions to journalists</i>	323
II. The Court's case law on the media and on legal services:	
Similar problems, different analyses	324
1. Media and legal services: Doctrinal similarities	324
(a) <i>Structural differences between the case law on media and on legal services</i>	325
(b) <i>Special legal regimes for both the media and legal services</i>	326
i. <i>Protection against the State</i>	327
ii. <i>Independence</i>	328
iii. <i>Differences regarding protection and restriction of rights?</i>	329
iv. <i>The Court's greater awareness of the public interest in the media</i>	333
2. Media and legal services: The Court's analyses	335
(a) <i>Human rights in the interests of others</i>	336
(b) <i>Rights to provide and receive</i>	341
(c) <i>The Court's difficulties with legal services: Mesić v Croatia as a model case</i>	343
3. The Court's case law on the media: A source of inspiration for the case law on legal services?	350
III. Conclusion: Comparing legal services and the media	354
 Chapter Seven: Convention Obligations Beyond Rights: An Introduction to Undirected Duties	 355
I. A typology of duties: Rights-based, non-rights-based, directed and undirected	356
1. Duties based on rights and duties based on other concerns	357
2. Directed and undirected duties	358
II. Undirected duties in the law	360
1. Undirected duties in constitutional law	361
2. Undirected duties in public international law	362

III. Undirected duties in Convention law	362
1. The Convention imposes undirected duties on States	362
2. Examples of undirected duties from the Court's case law	365
(a) <i>The State's duty to maintain a Convention-compliant judiciary</i>	366
(b) <i>The State's duty to maintain a democratic form of government</i>	372
(c) <i>The State's duty to maintain a functioning executive</i>	374
(d) <i>The State's 'obligation to protect the rule of law and prevent arbitrariness'</i>	375
(e) <i>The State's duty as 'the ultimate guarantor of pluralism'</i>	375
(f) <i>The State's duty to maintain separation of powers</i>	377
(g) <i>The State's duty to take climate action</i>	378
(h) <i>Undirected duties as reflecting public interests</i>	379
3. Possible reasons for the lack of attention to undirected duties	380
(a) <i>The individual application mechanism's focus on directed duties</i>	381
(b) <i>Convention scholarship's focus on rights and directed duties</i>	384
(c) <i>The Convention's assumption that undirected duties will not be violated</i>	385
(d) <i>Insufficient inspiration from domestic human rights law</i>	387
(e) <i>Public international law is not traditionally understood as regulating domestic organisational law</i>	389
IV. Conclusion: Undirected duties under the Convention	391

Chapter Eight: Individualistic and Systemic Conceptions of Human Rights	393
I. Individualistic conceptions of human rights	399
1. Individualistic conceptions in moral human rights theory	400
(a) <i>Interest theories of rights as individualistic conceptions</i>	402
(b) <i>The role of public interests in individualistic conceptions</i>	405
2. Individualistic conceptions of Convention rights	406
II. Systemic conceptions of human rights	410
1. Systemic conceptions in moral human rights theory	411
2. Systemic conceptions of Convention rights	415
3. Role-bearer rights as an example of the shortcomings of individualistic conceptions?	418
(a) <i>Moral human rights debate on journalists as role-bearers</i>	420
(b) <i>Lawyers as a particularly complicated case of role-bearer rights</i>	423
III. Mixing individualistic and systemic conceptions leads to inconsistent case law	425
1. Tensions regarding scope <i>ratione personae</i>	426
(a) <i>Is a private interest always required?</i>	426
(b) <i>Is a private interest always sufficient?</i>	428
(c) <i>Can the categories of scope <i>ratione personae</i> and <i>ratione materiae</i> be maintained on a systemic understanding?</i>	430
2. Tensions regarding scope <i>ratione materiae</i>	431
(a) <i>Is a private interest always required?</i>	431
(b) <i>Is a private interest always sufficient?</i>	435
3. The Court's proportionality analysis as essentially premised on an individualistic conception	436
(a) <i>Suitability</i>	438
(b) <i>Necessity</i>	441
(c) <i>Balancing</i>	443
4. Procedural implications	446

Table of Contents

IV. Why does the Court draw on systemic conceptions?	447
1. Systemic conceptions as a coincidental by-product of case law evolution	448
2. Systemic conceptions as an attempt to expand the State's duties	450
V. Conclusion: Individualistic and systemic conceptions of human rights	452
Chapter Nine: Combining Rights and Undirected Duties to Protect Legal Services under the Convention	453
I. The Court's vision of the public interest in legal services	454
II. Undirected duties and individual rights: Disconnect	455
1. Only private interests involved	455
(a) <i>No link to legal activities whatsoever</i>	456
(b) <i>General right of lawyers to exercise their profession</i>	456
(c) <i>Attacks on lawyers by private individuals</i>	457
(d) <i>'Exceptional circumstances' cases</i>	458
2. Only public interests involved	459
III. Undirected duties and individual rights: Harmony	460
1. Elevated protection for the internal lawyer-client relationship, particularly confidential communication	460
(a) <i>Freedom to communicate confidentially</i>	461
(b) <i>An autonomously determined relationship</i>	463
2. Elevated protection for lawyers' external activities	464
(a) <i>Freedom of expression for lawyers in court proceedings</i>	464
(b) <i>Protection of lawyers against the State in fields other than freedom of expression</i>	466
3. Protection against disbarment	467
4. Watchdog cases	468
5. The <i>Elçi</i> doctrine as recognition of the State's undirected duties?	469
IV. Undirected duties and individual rights: Conflict	470
1. Lawyers' freedom of expression outside the courtroom	470
2. State regulation of legal services	471
3. Protecting legal services against third parties	473
4. Recognition of the conflict cases in the Convention?	474

5. The <i>Nikula</i> doctrine as recognition of the State's undirected duties?	474
V. Conclusion: Combining rights and undirected duties	476
Chapter Ten: What Do Undirected Duties Add?	477
I. Added explanatory value	478
1. Explain why the right applied makes little difference	478
2. Explain why the applicant's person makes little difference	479
3. Explain why the Court tests for scope twice	480
4. Explain why the Court sets out general measures	481
II. Remedying the problems in the current case law	481
1. Clarity regarding the point of reference	482
(a) <i>Point of reference for the directed duty: The individual's interests</i>	482
(b) <i>Point of reference for the undirected duty: The rule of law and the administration of justice</i>	483
2. Greater clarity regarding the State's undirected duties	483
(a) <i>Clarity regarding the legal bindingness of the State's undirected duties</i>	484
(b) <i>Clarity regarding the content of the State's undirected duties</i>	486
i. <i>Separating between margin of appreciation and minimum requirements</i>	486
ii. <i>Does the public interest justify reservation of legal services to a certain group?</i>	487
iii. <i>Does the public interest require protecting only certain legal services?</i>	488
(1) <i>Does the State's undirected duty require elevated protection of activities other than human rights defence?</i>	488
(2) <i>Does the State's undirected duty require elevated protection of activities other than litigation?</i>	489
(3) <i>Which case law is transferable?</i>	490
(c) <i>Clarity regarding who may invoke the State's undirected duties</i>	491

Table of Contents

3. More stringent use of proportionality analysis	494
(a) <i>Application of proportionality analysis</i>	495
(b) <i>Clearer criteria for balancing</i>	495
III. Conclusion: The advantages of combining rights and undirected duties	497
Conclusions, Outlook and Directions for Further Research	499
Zusammenfassung in deutscher Sprache	505
Table of ECtHR Cases Cited	517
Bibliography	529
Index of terms and key cases	541

Table of Abbreviations

(dec)	Decision
CCBE	Council of Bars and Law Societies of Europe
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
GC	Grand Chamber
IBA	International Bar Association
ICCPR	International Covenant on Civil and Political Rights
UDHR	Universal Declaration on Human Rights
UIA	Union Internationale des Avocats

Summary

Protection of legal services by means of human rights instruments is a complex matter. Legal representation and advice advance the private interests of clients and lawyers. Simultaneously, they further the general public interest in the rule of law. Since traditional understandings of human rights focus primarily on human rights as protecting the interests of the rights holder, this can lead to tensions: Here, human rights instruments protect not only private, but also public interests, arguably going beyond the ambit of individual rights to regulate questions of State organisation and adding a further dimension of ‘constitutional’ significance to human rights law.

This study assesses how the European Court of Human Rights has dealt with this interplay of private and public interests. It aims to answer two research questions:

What obligations securing the private and public interests in legal services does the Court’s case law impose on States?

Does the Court’s approach to cases involving legal services comprehensively reflect the private and public interests involved while maintaining consistency with the rest of its case law, or are there other ways of reflecting these interests which are both more comprehensive and consistent?

In a first, doctrinal part (Chapter Two to Chapter Five), the study determines States’ obligations by setting out the Court’s case law on legal services. While the Court emphasises the public interest in legal services rhetorically, highlighting the ‘special status of lawyers’¹ as ‘part of the very heart of the Convention system’², it does not assign this public interest a clear normative status. Instead, it takes only the private interests of individuals as its point of departure, modifying these in light of their relationship with the public interest in legal services. This leads to inconsistent and incomplete case law, which at times elevates the level of protection applicants will enjoy, but at other times limits their rights without clear justification.

1 *Nikula v Finland* App no 31611/96 (ECtHR, 21 March 2002), para 45, discussed in detail in Chapter Five, 227ff.

2 *Elçi and others v Turkey* App no 23145/93; 25091/94 (ECtHR, 13 November 2003), para 669, discussed in detail in Chapter Five, 240ff.

In a second, conceptual part (Chapter Six to Chapter Ten), the study then examines whether this analysis focused exclusively on obligations owed to individuals can convincingly explain the case law. It begins by comparing the case law on legal services to the case law on the media, since in both areas the exercise of private rights also serves public interests (pluralism/democracy for the media). It is then argued that the Court's difficulties flow from the fact that it focuses only on rights and the corresponding directed duties and ignores undirected duties under the Convention. The use of rights to protect public interests is problematic because most of the Court's general doctrines, particularly as regards the scope of the Convention rights and proportionality analysis, have been developed on an individualistic vision of human rights as protecting the rights bearer regardless of whether their activities further any public interest.

The study then proposes an alternative analysis which recognises that the Convention has the capacity not only to impose on States directed duties with corresponding individual rights protecting private interests, but also undirected duties protecting public interests. One of these is the obligation to ensure that legal services exist. Using this second category, the Court's case law can be understood as the result of the relationship between the obligation to protect the applicant's private interests and the public-interest obligation to protect legal services. Where a case touches on both of these obligations, the obligations can be in harmony or conflict, which explains the variations in the level of human rights protection the Court accords. However, clearly separating into two different obligations has the advantage of providing a clearer standard because the impact on the applicant's private interests and on the public interest in legal services can be determined separately.

The study thus establishes that the Court's case law imposes on States certain obligations in the public interest which cannot be reduced to individual rights. While the main focus here is on legal services, similar obligations exist in a number of other areas of the Court's case law, including on judicial organisation, democratic procedures, separation of powers or the rule of law. This finding indicates that beyond protection of individual rights, the Convention also regulates elements of the internal organisation of the State and therefore exhibits 'constitutional' features in a broader sense than previously assumed.