

Workshop:

**The Role of the Causal Inquiry for Finding Breaches of**

**Human Rights Obligations under the European Convention on Human Rights**

5th and 6th June 2025, Faculty of Law, Lund University, Sweden

**Organizers**

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# **Background**

Causation is widely applied in national law for determining responsibility. More generally, it can be regarded as an inherent feature of reasoning about legal responsibility. It underlines any legal inquiry about responsibility and the consequences flowing once responsibility established (see AM Honoré, ‘Causation and Remoteness of Damage’ in A Tunc (ed), International Encyclopaedia of Comparative Law: (Mohr 1983)). At the same time, causation has been difficult to define. (Wright, ‘Causation, Responsibility, Risk, Probability, Naked Statistics, and Proof: Pruning the Bramble Bush by Clarifying the Concepts’, 73 Iowa Law Review (1987–1988) 1001.) National tort law has struggled with this difficulty (Steel, *Proof of Causation in Tort Law* (Cambridge University Press)).

In contrast, causation has received relatively little attention in international law. It has received barely any attention in human rights law (see the work of [Vladislava Stoyanova](https://global.oup.com/academic/product/positive-obligations-under-the-european-convention-on-human-rights-9780192888044?cc=se&lang=en&) and [David McGrogan](https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/problem-of-causality-in-international-human-rights-law/D70EB8F349E5774878F90167F1CB971A)). The question as to what causal links are applied in human rights law between state conduct (that can be in the form of acts or omissions) and harm for the purpose of establishing state responsibility, has remained underexplored. No causation standard/test has ever been developed. Any causal inquiries performed by adjudicative bodies, such as the European Court of Human Rights (ECtHR), have been chaotic and inconsistent. One can also say quite unprincipled since different terms that appear to reflect the notion of causation, are used in different judgments. The test of causation required or any evidentiary standards for proving causation, have barely been discussed in the ECtHR’s reasoning.

Recently with the climate-change litigation before the Court, the importance of addressing causation in human rights law, has more clearly emerged. *KlimaSeniorinnen*is the *first* judgment where the ECtHR devoted whole sections to the question of causation. In *KlimaSeniorinnen*, ECtHR addressed causation upfront. The analytical gymnastics that the Court performed in its causation inquiry are yet to be fully understood. The confusion as to what is meant by causation and the links between which things are actually addressed, is pervasive in the reasoning. Overall, it is fair to say that the reasoning regarding causation is confusing and that it is not clear how specifically the ‘real prospect’ test is applied for finding a breach for the claimed omissions in *KlimaSeniorinnen*.

Such a confusion is not helpful for any national legislator or national court that has to address the problem of climate change and environmental harm from a human rights law perspective. Such a confusion is not helpful since it creates uncertainty at domestic level as to the role of human right law more generally.

Conceptually causation is a key element in the reasoning not only in cases where there might be multiple causes and complex cause-effect relationships, such as climate-change related cases. For example, in every case where an applicant formulates an argument that the State should be found responsible under the ECHR for omissions, a link needs to be established between the claimed omissions and the harm. For example, in the recent case of *Biba v Albania*, where a child was harmed by another child during their break at the school premises, the ECtHR was clear to the effect that such a link might not be established for the purposes of national civil proceedings (tort law); yet, the link might be found existing for the purposes of establishing responsibility under the European Convention on Human Rights. This could be explained by the different normative underpinnings of human rights law. All of this implies that while national tort law might be relatively more restrictive in finding causal links; human rights law appears to be more generous (possibly to be point of being simply unconcerned about the question of causation). This discrepancy itself can raise a whole set of separate questions regarding, for example, the requirement for exhaustion of domestic remedies.

**Purpose and scientific relevance of the proposed workshop**

In light of the above-described absence of clarity and unprincipled approach (or rather absence of any approach) to causation in human rights law, the objective of this workshop is to try to disentangle the different ways in which causation is relevant for establishing state responsibility under the ECHR. The objective is to gather a mix of scholars: scholars that have a more theoretical/analytical background, scholars that have a more ECHR case-law oriented research profile and scholars that have addressed causation in national settings (such as tort law).

The objectives of the workshop can be specified in the following way.

First, the participants will be invited to reflect upon certain foundational questions, such as *why* should causation matter in the context of responsibility in human rights law? How is the answer to this question affected by the normative underpinnings of the ECHR (corrective/individual justice versus deterrence/constitutional justice)?

Second, drawing from analytical jurisprudence, what is the difference between factual causation and legal causation for the purposes of human rights law? What considerations might be identified in the Court’s reasoning that might be possible to frame as legal causation? Possible examples here are foreseeability of harm, risk of harm, reasonableness.

Third, how is causation relevant in the different admissibility requirements (e.g. victim status, exhaustion of domestic remedies)? Relatedly, how is causation relevant for the purposes of determining remedies? Does the absence of remedial orders (i.e. the Court normally simply grants financial compensation and the execution of the judgment is left to the political body of Committee of Ministers) affect the causation inquiry in the reasoning *on the merits*? This suggests that there might be linkages between the different stages (i.e. admissibility, merits and remedies) in terms of how causation is approached under the ECHR.

Fourth, how is causation relevant for determining the definitional scope of the right (e.g. in the context of Article 8, the Court has referred to ‘direct and immediate link’ to assess whether the definitional scope of the right is engaged), the existence of an obligation and the breach of this obligation?

The workshop and the publication that will follow, will aim to achieve greater clarity when it comes to causation, particularly given the substantial impact its analysis can have on remedies and the scope of responsibility. The publication will aim to offer the first systematic examination of the rules on state responsibility under the ECHR that require a causal inquiry, and their application and interpretation in the practice of the court.

**Timeline**

January 2025 – Call for paper proposals. Abstracts should be sent to Vladislava.Stoyanova@jur.lu.se Abstracts should be about **one page** plus **one page bio** about the author.

20 February 2025 - Deadline for the call for paper proposals

End of February 2025 - Selection of the participants based on the proposals

March 2025 - Final Program

Workshop – 5th and 6th June 2025 in Lund, Sweden

# **Publication plans**

Selected papers will be considered for publication in an edited volume.

# **Practical considerations**

The [Centre for European Studies at Lund University](https://www.cfe.lu.se/en/front-page) has kindly agreed to fund the refreshments and the lunches during the workshop. Unfortunately, travel and accommodation expenses cannot be covered.