Chapter 8

The Right to Social Cash Benefits Under the ECHR

1 The Right to Social Cash Benefits as a Cross-Cutting Issue

Consideration for people who cannot work or cannot find work whether because of old age, lack of jobs, sickness or childbirth is of the utmost importance for more than one reason. Placing people in destitution is not conducive for their ability to re-enter the labour market and recover the ability to provide for themselves and their families, and an extra burden is, moreover, placed on poor parents if they are to prevent their children from making a false start. Thus, the existence of a well-functioning social welfare system is of fundamental importance not only for the individual in question but also for society as such.

It should be recalled that having to live on social cash benefits is in itself likely to marginalise the person in question. With few exceptions the recipient will have to reduce his standard of living often to a considerable extent with the risk of being socially excluded from society. It goes without saying that without a decent level for the payment of social cash benefits people are not able to care for themselves or their families with respect to the basic necessities of life such as food, clothing, housing, medical care, etc. Having to live on social cash benefits may affect the self-worth of the individual depending on when and why the ability to provide for oneself has ceased – temporarily or

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2 I have chosen to apply the term ‘social cash benefits’ as a shorthand expression for a number of social benefits, which are traditionally designated as e.g. social assistance, social security, welfare payments, social relief or supplementary benefits. The more specified distinction between these various benefits does not have my interest in this context. The term, ‘social cash benefits’ is chosen to distinguish these benefits from social welfare services such as home help, home care, placement in social institution etc.
permanently – and the level of social cash benefits is crucial for the preservation of contacts with other people and for participation in the life of society. He, who cannot afford to subscribe to a newspaper, go to the cinema not to mention theatre, runs the risk of leading a life in intellectual poverty without any incentive to exercise his civil and political participatory rights to the full.

Therefore, a missing or inadequate level of social cash benefits is likely to create indignity and inequality in so many aspects of life, not only with regard to what is traditionally considered economic, social and cultural rights but also within the field of civil and political rights.

2 The Relevant Provisions

On the face of it, the ECHR is not the right place to search for the right to social cash benefits, and the Convention surely does not contain specific provisions on this issue. Rather, the social counterpart to the ECHR would be the place to search cf. e.g. Articles 12 and 13 of the ESC/RESC. However, the exclusion of specific provisions concerning social cash benefits from the ECHR does not imply that such protection is entirely irrelevant to the Convention. Several articles may be of relevance.

Firstly, the ECtHR has not entirely ruled out that social demands within the field of cash benefits may be of relevance to the interpretation of Article 3 of the ECHR in the sense that Member States are obliged to provide a certain minimum protection cf. below in Section 3. Secondly, Article 6 of the ECHR has proved relevant as the Court has gradually applied a rather proactive and extended interpretation of the notion of “civil rights” which has proved relevant not only for the procedural but also for the substantial protection of demands concerning social cash benefits, cf. below in Section 4. Thirdly, the Court has held on several occasions that social demands within the field of social cash benefits may fall within the ambit of private and family life, cf. below in Section 5. Finally, the notion of “possession” in Article 1 of Protocol No. 1 encompasses some social cash benefits, one of the implications being that the Court may examine allegations concerning discrimination within that field, cf. Article 14 in conjunction with Article 1 of Protocol No. 1, cf. below in Section 6. The following presentation will be limited to the above-mentioned four topics, and I have no ambition to claim that the right to social cash benefits as such is protected under the ECHR. The purpose of the chapter is to prove that it makes sense to talk about aspects of the right to social security and social assistance under the ECHR, even though the issue is much more broadly covered under e.g. the ESC/RESC. However, considering the relative strength between the two conventions and their control mechanisms, it is of practical and theoretical interest to explore the issue.