Chapter 11

The Relation between the ECHR and the ESC/RESC

1 Initial Remarks

In previous chapters I have illustrated how and why the ECtHR by applying an integrated hermeneutic approach to human rights interpretation has been able to read a variety of socio-economic elements into the substantial provisions of the ECHR. Moreover, I have drawn attention to the fact that the Court on several occasions has chosen an interpretation of the ECHR which harmonises with the sister treaty body, the ECSR's interpretation of the ESC/RESC.

The time has now come to address the reverse relation namely that of the impact of the ECHR on the interpretation of the ESC/RESC. Thus, as already indicated in Chapter 1 the notion of indivisibility can easily be understood as something more than the protection of socio-economic demands under conventions primarily protecting civil-political rights. It might also make sense to talk about the protection of civil-political demands under socio-economic rights. In addition, it might be worth while touching upon the issue of overlapping protection between the two treaties and considering which of the two gives the better protection. Moreover, as the two treaties are both COE bodies, thus having their roots in the same legal culture and tradition, it seems relevant to analyse the style of interpretation of the ECSR in order to see to which extent this body and the ECtHR do in fact belong to the same legal community, cf. Chapter 4 about the legal community’s communicative qualification norm.

Arguably, this exercise has greater theoretical than practical interest. Civil and political rights are already given judicial protection under the ECHR and the CCPR, and one might not expect that protection under the collective complaints procedure to the ESC/RESC would add much to the already existing judicial protection. However, it cannot necessarily be taken for granted that the protection of civil-political demands is always better under the ECHR than the ESC/RESC.
As indicated in Chapter 1 case law under the collective complaints procedure\(^1\) is rather sparse at the present stage. As of 1 January 2009, 53 cases have been lodged. Most of them have been declared admissible, and as of the same date, 39 cases had been considered on their merits. Making comparison with the overwhelming amount of case law under the ECHR would be completely reckless, and a lack of balance in the presentation is unavoidable. It follows that the present chapter can only give a very cautious, tentative and provisional idea of where the ECSR is heading.\(^2\)

2 The ECSR’s Style of Interpretation

The ECSR did not initiate its examination of cases under the collective complaints procedure by presenting its overall view on human rights interpretation. However, already in case No. 1 about the prohibition of child labour under Article 7 the ECSR established that:

> **the aim and purpose** of the Charter, being a human rights protection instrument, is to protect rights *not merely theoretically, but also in fact*. In this regard it considers that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if it is not *effectively* applied and rigorously supervised [...]. [author’s emphasis].\(^3\)

Thus, the **aim and the purpose** of the Charter is to provide an *effective human rights protection* which takes into consideration the factual circumstances, and

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\(^1\) In 1995, the Council of Europe adopted a Protocol Providing for a System of Collective Complaints, ETS No. 158. This Protocol came into force in 1998 and as of 7 October 2008, 14 of the Member States who have ratified either the original Charter from 1961 or the revised Social Charter from 1996 have accepted to be bound by the Collective Complaints Procedure. According to this procedure various organisations are entitled to submit complaints, i.e. international organisations of employers and trade unions, other international NGOs with consultative status under the COE and representative national organisations of employers and trade unions. The same applies to other national NGOs with particular competence, if the State in question has declared that it recognises this right. Finland is to my knowledge the only country to have made such a declaration.
