Chapter 12

Concluding Forward-looking Observations

1 Initial Remarks

It has been the aim of this work to explore how in particular the ECtHR perceives of the notion of human rights as indivisible, interrelated and interdependent. Not that the Court deliberately has been working with the express purpose of examining this notion. On the contrary, the Court has simply dealt with a great number of cases brought before it by numerous individuals from the COE Member States. However, some of these cases encompass facts belonging in the socio-economic sphere.

The examination illustrates that the Court has no rigid perception of the ECHR and its Protocols as belonging to a particular category of human rights. The Court seems willing to argue for the abolition of the classical categorisation of human rights as belonging in (at least two) different categories if that is what it takes to provide proper, effective and up-to-date human rights protection. The Court seems to dissociate itself from the perception of human rights as either ‘positive’ or ‘negative’, and an understanding of human rights as appearing in generations is not reflected in the Court’s case law either. Waldron’s perception of human rights obligation as *waves of duties* seems to come closer to the Court’s perception of the States’ human rights obligations towards individuals, cf. Chapter 2. Not that the Court sees no difference between various human rights provisions. It does indeed, and it should be repeated that the Court has a cautious approach to issues which have a bearing on policy choices, in particular those which have budgetary implications. However, is has become increasingly evident that a separation of human rights in civil-political rights and economic, social and cultural rights respectively can not be upheld.

Thus, the notion of human rights as indivisible rights does have *legal* implications, and case law illustrates that judicial are bodies obliged or authorised to take into consideration the complexity of ‘real life’ when making assessments of human rights compliance under the ECHR. Craig Scott’s concern that the
inter-treaty textual relations might create ceiling effects\textsuperscript{1} in the sense that a treaty body’s reference to human rights commitments in a legal instrument other than its own can be used as a means not to expand but to limit the meaning, and thus the scope, of the protection does not seem to be reflected at least in the Court’s recent case law. On the contrary, the Court’s reference to human rights commitments in a legal instrument other than the ECHR seems to be used to widen and not to narrow the perspective, and the potential of the integrated approach is hardly exhausted. What is worth mentioning in this context is also that the ECSR in its interpretation of the ESC/RESC often refers to the Court’s case law, cf. Chapter 11, and the tendency seems to be that the two treaty bodies, the ECtHR and the ECSR are keen on harmonising their interpretation of the two treaty systems.

Thus, case law over the years from the ECtHR and the ECSR brings to light the interconnectedness of the two sets of rights, and the question is what could or should be the legal and institutional consequences of this development if any. If human rights are indivisible, interrelated and interconnected, how is it possible to uphold a legal and institutional machinery dealing with the two kinds of rights as if they were separate rights? Before dealing with that issue some further remarks are, however, to be made about the added value of hermeneutics.

2 \textit{Returning to the Issue about the Added Value of Hermeneutics}

I suggested in Chapter 4 that a hermeneutic perspective on human rights might bring the integration further on its way because it arranges in an ordered whole a series of interpretative principles developed in legal theory and practice. Looked at in this way the added value of hermeneutic thinking is what it does for the \textit{structuring} and \textit{fixing of the order of priority} of – not necessarily consistent – legal principles and traditions. The relevance of the individual interpretative principle – the detail – is to be considered in terms of the whole and \textit{vice versa}, and the right interpretative approach is the one that contributes in the best possible way to maintaining or even improving coherence in the human rights system. Therefore, one might say that the hermeneutic situation does not only concern the relations between text, context and interpreter and the relations between the legislative, executive and judicial powers, but also the relation between various interpretative principles and traditions.

Moreover, applying a hermeneutic perspective to human rights makes it superfluous to speak of social rights \textit{permeating} the civil rights norm system – as

\textsuperscript{1} Cf. Chapter 3.