

THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND SOCIAL SECURITY LAW

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Distribution for the UK:

Hart Publishing Ltd.

16C Worcester Place

Oxford OX1 2JW

UK

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Fax: + 44 1865 51 07 10

Distribution for the USA and Canada:

International Specialized Book Services

920 NE 58th Ave Suite 300

Portland, OR 97213

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*Distribution for Switzerland and
Germany:*

Schulthess Verlag

Zwingliplatz 2

CH-8022 Zürich

Switzerland

Tel.: + 41 1 251 93 36

Fax: + 41 1 261 63 94

Distribution for other countries:

Intersentia Publishers

Groenstraat 31

BE-2640 Mortsel

Belgium

Tel.: + 32 3 680 15 50

Fax: + 32 3 658 71 21

The European Convention on Human Rights and Social Security Law

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Antwerp – Oxford – Portland

<http://www.intersentia.be>

ISBN 978-90-5095-763-2

D/2008/7849/24

NUR 825

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INTRODUCTION

The European Convention on Human Rights and the case law of the European Court of Human Rights are of increasing importance in the area of social security. This is for a number of reasons. Firstly, the number of Contracting States has increased enormously in recent decades bringing a range of new countries within the jurisdiction of the Court. Secondly, a number of countries – such as Ireland and the United Kingdom – have recently ‘incorporated’ the European Convention into their national law giving rise (at least in the case of the United Kingdom) to a dramatic increase in the extent to which the ECHR is cited in national social security cases.¹ Finally, the European Court itself has taken an increasing broad approach to the extent to which social security matters are included within the remit of the Convention.² All these factors have meant that, while in the past the number of important social security cases certainly did not go into three figures and concerned mainly procedural issues, today the Court’s case law on social security is increasing rapidly and becoming more and more difficult to keep track of.³ While there are several excellent books on the European Convention,⁴ these obviously do not focus in particular on social security issues.

In that context – and based on my own experience of trying to establish the current state of the ECHR law as concerns different aspects of the social security code – it seemed useful to try and bring together in one book the main features of the Court’s interpretation of the Convention as it specifically concerns social security. This book aims to provide a practical guide to the social security issues which have been considered by the Court of Human Rights and to give an overview of

¹ See, in contrast, the perhaps more limited impact of ILO social security conventions: F. Penning ed., *Between Soft and Hard Law: the Impact of International Social Security Standards on National Social Security Law*, Kluwer Law, 2006.

² Firstly, in relation to the scope of disputes covered by the right of access to a court (Article 6 of the Convention) and now – and most importantly – in relation to the scope of property rights protected by the Convention. See, in particular, *Stec v United Kingdom*, 65731/01 and 65900/01, 6 July 2005, ECHR 2005-X, (2005) 41 EHRR SE 295

³ The later point is not helped by the Court’s website which makes it extremely difficult to identify cases in particular areas of law. However, many of the most important social security cases are now available in K. Kapuy, D. Pieters and B. Zaglmayer, *Social Security Cases in Europe: The European Court of Human Rights*, Intersentia, 2007.

⁴ I refer in this book to C. Ovey and R.C.A. White, *Jacobs and White, The European Convention on Human Rights*, Oxford University Press, 2006 (hereafter *Jacobs and White*).

how these have been analysed by the Court. In addition, some examples are given as to how the provisions of the Convention have been interpreted by a range of national courts.⁵

Given the different understandings of the term ‘social security’ in the Contracting States, I have adopted a broad definition of the concept including income maintenance and family allowances, issues concerning access to (but not the quality of) public health care, and issues relating to financial support for housing needs. On occasion I have referred to cases concerning occupational or public service pensions where these seemed to throw light on the approach which the Court might adopt to social security cases.

Chapter 1 examines the preliminary issues as to who can be considered to be a “victim of a violation” of a right under the Convention in order to bring a claim before the Court and as to the time limit for bringing a claim. Chapter 2 examines the right to life; rights as to inhuman or degrading treatment; and prohibition of slavery and forced labour (set out in Articles 2, 3 and 4 of the Convention). Chapter 3 goes on to look at the right to property (or possessions) set out in Article 1 of Protocol 1 to the Convention (P1-1) which provides the largest body of case law concerning social security brought before the Court. Chapter 4 examines the case law concerning the right to respect for private and family life, home and correspondence (set out in Article 8) and the related right to marry and found a family (established in Article 12). The following chapter (chapter 5) discusses article 14 which provides for the enjoyment of the rights and freedoms set out Convention without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Chapter 6 looks at the case law concerning freedom of thought, conscience and religion, and freedom of expression, and of association (in Articles 9, 10 and 11), issues which have, to date, been the subject of relatively little litigation in this area. Perhaps surprisingly, the Convention does not contain any provisions concerning a freedom to move between states or a right of entry to another Contracting State. The only specific provisions in the Convention concerning liberty of movement and freedom to choose one’s residence are those in Article 2 of Protocol 4 (P 4-2) which are confined to movement “within the territory of a State” and freedom to leave any country. Nonetheless, issues concerning residence – many of which have been discussed in other chapters – have arisen under the Convention and these are brought together in chapter 7. Chapter 8 looks at the extensive case law concerning the right to a fair

⁵ This is by way of illustration only and makes no claim to be a comprehensive account. Obviously to provide a detailed analysis of the national case law in all (or even many) Contracting States falls well outside the scope of this book.

hearing (Article 6) and the much more limited case law on the right to an effective remedy (Article 13). Finally, in Chapter 9 we examine the developing relationship between the European Convention on Human Rights and EU law and the extent to which developments in one area of law influence those of the other.

ACCESS TO DECISIONS

It is, of course, critically important that people should be aware of the decisions of the Court. However, one would have to say that the dissemination of the Court's decisions is not assisted by the absence of any system of classification by subject matter on the Court's website. The website provides quick and easy access to a decision as long as you know the decision you want. If you want to look at recent decisions concerning, say, social security, using the website compares somewhat unfavourably to the proverbial search for a needle in a haystack.

A NOTE ON CITATION

Unlike the European Court of Justice, the Court of Human Rights has not managed to adopt a simple system of case citation. While judgements are (in general) readily accessible on its website, the Court's own system of reporting is incomprehensible and incomplete. Nor is there a widely accepted alternative. Given that the basic objective of case citation is to enable the reader to locate the relevant decision, I have chosen to give the name of the case followed by the official application number, date of judgment (as ECHR cases may often involve more than one judgment), the official court report (where this exists) and the citation in the widely available European Human Rights Reports (again where the case is reported).⁶ Unlike some other authors, I have not distinguished between substantive judgements of the Court and admissibility decisions. Firstly, the Court does not itself always make this distinction in its citation of case law. Secondly, because of the nature of the Convention process, very many social security cases are disposed of at the admissibility stage. It seems to me incorrect to suggest that the approach taken by the Court in these decisions is somehow less important than that adopted in those cases which make it past the admissibility stage.

⁶ There are, of course, a range of other human rights reports.

ACKNOWLEDGEMENTS

I would like to thank a number of different people for their assistance with this project. In particular I would like to thank Kris Moeremans, Tom Scheirs and Intersentia for their support. I would also like to thank a number of colleagues who provided me with advice and information in relation to aspects of the book in particular Frans Pennings, Gerry White, Francis Kessler,⁷ and William Chiromonte. Frans Pennings, André van der Walt and Tom Allen kindly read and commented on a draft chapter or chapters. Needless to say any remaining errors or omissions are entirely my own responsibility.

⁷ Reference to the French case law cited in this book is drawn from Francis Kessler and Jean-Philippe Lhernould, *Code annoté européen de la protection sociale*, Groupe Revue Fiduciaire, 2006.