

# **Of indivisibility and interdependence: Children's Rights under the European Social Charter (ESC)**

Professor Aoife Nolan

Co-Director, Human Rights Law Centre, University of Nottingham/Vice-  
President, European Committee of Social Rights (ECSR)

# Interdependence, indivisibility & inter-relatedness (III)

- Concepts of indivisibility/interdependence/inter-relatedness are a feature of IHRL from the UDHR onwards
  - E.g., Tehran Proclamation (1968); UN General Assembly Resolution 32/130 (1977); Vienna Declaration and Programme of Action (1993)
- Strongly and repeatedly reflected in the work and statements of UN and regional treaty bodies

**The key role of III in intl/regional human rights law has been as the basis of 'linkage arguments' :**

- (i) to justify/defend status of 'controversial' economic and social rights**
- (ii) to advance the protection ESC rights (or elements thereof) through the interpretation/application of CPR standards**

**NEITHER OF THESE IS RELEVANT IN THE ESC CONTEXT!**

# III made manifest: 'Crossover' children's rights under the ESC

- Article 7(10)
- With a view to ensuring the effective exercise of **the right of children and young persons to protection**, the Parties undertake...
  - 10) **to ensure special protection against physical and moral dangers to which children and young persons are exposed**, and particularly against those resulting directly or indirectly from their work.
- Article 17
  - With a view to ensuring the effective exercise of **the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities**, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:
    - 1) (a) to ensure that children and young persons, taking account of the rights and duties of their parents, have **the care, the assistance, the education and the training** they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;  
(b) **to protect children and young persons against negligence, violence or exploitation**;  
(c) **to provide protection and special aid from the state** for children and young persons temporarily or definitively deprived of their family's support;

# III in action: Civil and political child rights-related protections addressed by the ECSR

- Prohibition on **discrimination** between marital and non-marital children (Article 17 conclusions)
- Obligation to reduce **statelessness** and the right to **birth registration** (Article 17 conclusions)
- Limitations on removal from the **family** and **institutionalisation** (Article 17 conclusions)
- Prohibition on all forms of **violence against the child** in all contexts (*OMCT* and *APPROACH* – collective complaints decisions)
- Protection against **child trafficking, sexual exploitation and pornography** (conclusions Article 7(10))
- **Criminal justice-related protections** – incl minimum age of criminal responsibility, criminal procedural protections, detention as a last resort, prohibition on solitary confinement (conclusions Article 17)

# How is Ill reflected in the child rights collective complaints work of the ECSR?

- In justifying protection for children in an irregular migration situation
  - FIDH v France 14/2003 (paras 27-29)  
'according to the **Vienna Declaration of 1993, all human rights are “universal, indivisible and interdependent and interrelated”** (para. 5). The Committee is therefore mindful of the complex interaction between both sets of rights ... the Committee has to decide how **the restriction in the Appendix** ought to be read given the primary purpose of the Charter as defined above. **The restriction attaches to a wide variety of social rights in Articles 1-17 and impacts on them differently.** In the circumstances of this particular case, it **treads on a right of fundamental importance to the individual since it is connected to the right to life itself and goes to the very dignity of the human being.** Furthermore, the restriction in this instance impacts adversely on children who are exposed to the risk of no medical treatment.'

# *ICJ v Czech Republic 148/2017*

- Concerned a number of legal procedural protections in the child justice context
- ‘The ECtHR has emphasised that there is no water-tight division separating the sphere of social and economic rights from the field covered by the European Convention on Human Rights [citing *Airey v. Ireland*] ... Similarly, **the Charter sets forth what are essentially social or economic rights, but many of them have implications of a civil and political nature.** The Committee recalls that it attaches great importance to the indivisibility of all human rights which form the European system of human rights ... **The Committee thus interprets the rights under the Charter in light of the principle of indivisibility and interrelatedness of human rights.** This has been a feature of its Article 17 jurisprudence under both the 1961 Charter and the Revised Charter ... **The Committee’s work on Article 17 has directly engaged with a range of issues with strong civil and political rights-related aspects,** including physical punishment of children ... and protection of psychological and physical integrity. Indeed, the Committee considers that Article 17 of the Charter embodies the indivisibility of human rights as it imposes on States Parties obligations to prohibit and penalise all forms of violence against children, including all forms of corporal punishment, as well as positive obligations to ensure the accommodation, basic care and protection of children, including children in conflict with the law. Any other reading would be contrary to the Committee’s established practice, which is consistent with the principle of seeking the interpretation of the Charter that is most appropriate in order to realise the aim and object of the Charter’

# What next?

- Looking forward
  - Risk of an ever-expanding child rights mandate for the ECSR?
    - Raises issue of legitimacy and capacity
  - Need for the ECSR to consistently **ensure mandate adherence and justify its focus** on areas beyond 'classic' social rights issues
  - Need for a unified approach: to ensure ambition of scope of child rights-related conclusions can be sustained in collective complaints context
    - Time for a unified **statement of interpretation on child rights?**