



# Exploring the child's right to social security

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# The child's right to social security

## Article 26 UNCRC

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

# The child's right to social security

## Interpreting article 26

European Convention  
on Human Rights  
Respect for private/family life  
Enjoyment of possessions  
Non-discrimination

### Other UNCRC rights

The best interests of the child as a primary consideration  
No arbitrary interference with privacy/family/home  
Adequate standard of living for development  
Assist parents to secure an adequate standard of living

Intl. Covenant on  
Economic, Social &  
Cultural Rights  
Social security  
Adequate standard of living

**The child's  
right to  
social  
security**

### European Social Charter

Social security  
Social assistance  
Social & economic protection  
of the family

# The child's right to social security

## Interpreting article 26

### Other UNCRC provisions

Art 3(1): In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Art 12(1): States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Art 16(1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence

Art 27 (1) & (3): States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development [and] shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

# The child's right to social security

## Interpreting article 26

### ICESCR

Art 9: The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance

Art 11(1): The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself **and his family**, including adequate food, clothing and housing, and to the continuous improvement of living conditions

### ESC

Art 12(1): The Contracting Parties undertake to establish or maintain a system of social security

Art 13(1): The Contracting Parties undertake to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources... be granted adequate assistance

Art 16: The Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits

# The child's right to social security

## CESCR general comment 19

### Art 9: the right to social security

- 9 social risks: Healthcare, sickness, old age, unemployment, employment injury, family/child support, maternity, disability, bereavement
- 10<sup>th</sup> social risk: low income? “Social security, through its redistributive character, plays an important role in poverty reduction and alleviation”
- Adequacy: sufficient for family protection, healthcare, an adequate standard of living, enjoyment of other Covenant rights; respect human dignity
- Coverage: universal (non-contributory schemes required); non-discriminatory
- Conditionality: reasonable, proportionate and subject to due process
- Retrogression: “strong presumption that retrogressive measures... are prohibited”

# The child's right to social security

## Social protection rights in the ESC

### **Article 12 (social security)**

- Social risks: healthcare, sickness, unemployment, old age, employment injury, family benefit, maternity
- Coverage: a 'significant percentage' of the population
- Replacement rate: at least 40% of equivalised median income

### **Article 13 (social assistance)**

- Social risks: low income
- Coverage: universal
- Replacement rate: not manifestly below 50% of equivalised median income
- Conditionality: must not deprive claimant of means of subsistence

### **Article 16 (social & economic protection of the family)**

- Social risk: family benefit
- Level: at least 5% of equivalised median income per child

# The child's right to social security

A right to social security in the ECHR?

“It would be surprising if the standards of the ECHR were below those believed 200 years ago to be applicable as the law of humanity”

Collins J, *R(Q) v SSHD* [2003] EWHC 195 Admin

“I think it is well arguable that human rights include the right to a minimum standard of living, without which many of the other rights would be a mockery.”

Lord Hoffmann, *Matthews v MOD* [2003] UKHL 4



# The child's right to social security

## A right to social security in the ECHR?

### **Art 3 (protection from inhuman and degrading treatment)**

- Severe poverty could lead to degrading treatment (*Limbuella*)

### **Art 8 (respect for private and family life)**

- Child's right to family life may require sufficient income to keep the family unit together (*Anufrijeva*)

### **P1-1 (peaceful enjoyment of possessions)**

- No arbitrary interference with/revocation of social security entitlements (*Stec*)

### **Art 14 (prohibition of discrimination)**

- Discrimination in enjoyment of art 8 and P1-1 rights prohibited if manifestly without reasonable foundation (*Stec*)

# The child's right to social security

## The right in an age of retrogression

Threats and challenges:

- Benefit cap
- Housing benefit cuts ('bedroom tax'/LHA)
- Two child rule
- Below-inflation uprating and benefit freeze
- Sanctions
- Discrimination against unmarried couples in bereavement benefits

# The child's right to social security

## The right in an age of retrogression

### Litigating for social justice

- *SG* [2015] – benefit cap contrary to best interests of child but lawful
- *McLaughlin* [2016] – discrimination against unmarried couples lawful (appeal pending)
- *MA* [2016] – social security cuts engage the art 8 (ECHR) rights of those affected, not just the claimant
- *DA* [2017] – benefit cap contrary to best interests of child, unlawful in application to lone parents of children under 2 (appeal pending)
- Two child rule – judgment pending...

# The child's right to social security

## Where next?

2016 proposal:

- Longitudinal empirical legal research project on the impact of social security sanctions on children
- Semi-structured interviews with parents to investigate experiences of the sanctioning process and life following a sanction
- Child-friendly data collection methods devised with children to investigate experiences of sanctions
- Aims:
  - Explore the ability of households with children to meet their essential needs when subject to a sanction
  - Consider the compatibility of sanctions with human rights obligations

# The child's right to social security

## Where next?

Future research directions:

- The 'legal'
  - what should be included in a general comment on art 26 UNCRC?
  - at what point might a sanction, social security cuts or the resulting poverty/destitution contravene rights under the ECHR/UNCRC/ESC/ICESCR?
- The 'socio'
  - do the living conditions of households subject to sanctions/cuts or experiences of the decision making process risk contravening these rights?



# Thank you

## Further reading:

M Simpson, 'Assessing the compliance of the UK social security system with the state's obligations under the European Social Charter' (forthcoming, 2018) *Human Rights Law Review*

M Simpson, 'Social rights, child rights, discrimination and devolution: untangling the web' (2018) 40(1) [Journal of Social Welfare and Family Law](#) 3

M Simpson, 'Renegotiating social citizenship in the age of devolution' (2017) 44(4) [Journal of Law and Society](#) 646

M Simpson, "'Designed to reduce people... to complete destitution": human dignity in the active welfare state' (2015) 1 *European Human Rights Law Review* 66

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