of children of undocumented migrants was held to breach the right of children and young persons to social, legal, and economic protection under Article 17 of the Revised ESC.[164] While that conclusion appeared contrary to the clear wording of the Appendix, the Committee ruled that the exclusion of irregular migrants would be contrary to human dignity, which constitutes one of the document's most fundamental underlying values.[165] This interpretation was confirmed in a subsequent ruling against the Netherlands, which held that the exclusion of children in an irregular position from access to housing was a breach of the specific right to housing in Article 31 of the Revised ESC, and the right of migrants to protection in Article 17.[166]

The decision to interpret the Appendix in a manner apparently opposed to its wording is not uncontroversial. It is difficult to predict with certainty whether the Committee would be prepared to extend the coverage of other Charter Articles to irregular migrants. It may be that it was willing to extend the coverage of the Charter only in cases of those that are most vulnerable, namely migrant children. More fundamentally, it might have been preferable for a re-examination of the personal scope of the ESC to be achieved through a revision of the text, so as to extend key principles of protection to irregular migrants. In that way, the ECSR would not find itself in the invidious situation of feeling compelled to disregard the wording of the documents that it interprets.

B. European Convention on Human Rights

Like the ICCPR, which was discussed earlier, the ECHR protects civil and political rights. Even though the ECHR does not contain social rights, the European Court of Human Rights (ECtHR) stated early on in its case law, in *Airey v. Ireland*, that there is no watertight division between the Convention and the area of socio-economic rights.[167] In recent years, the Court has adopted what has come to be known as an 'integrated approach' to interpretation.[168] In the case of the ECHR, that approach has meant that certain labour and social labour rights are treated as essential elements of what is primarily a civil and political rights document, and protected as such.[169]

[164] *International Federation of Human Rights Leagues (FIDH) v. France*, ECSR (2004) Complaint No. 14/2003, Decision of 8 September 2004.

[165] *International Federation of Human Rights Leagues (FIDH) v. France*, paras 26 ff.

[166] *Defence for Children International (DCI) v. Netherlands*, ECSR (2009) Complaint No. 47/2008, Decision of 20 October 2009.

[167] *Airey v. Ireland*, ECHR (1979) Series A, No. 32, Appl. No. 6289/73, judgment of 9 October 1979.

[168] See M. Scheinin, 'Economic and Social Rights as Legal Rights', in A. Eide, C. Krause, and A. Rosas (eds), *Economic, Social and Cultural Rights: A Textbook* (2001) 32, and V. Mantouvalou, 'Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation', 13 *Human Rights Law Review* (2013) (forthcoming; available at: <http://doi:10.1093/hrlr/ngt001>).

[169] See *Sidabras and Dziautas v. Lithuania*, ECHR (2004) Appl. Nos. 55480/00 and 59330/00, judgment of 27 July 2004. For analysis, see V. Mantouvalou, 'Work and Private Life: *Sidabras and Dziautas v Lithuania*', 30 *European Law Review* (2005) 573.

Article 3 ECHR, which prohibits torture and inhuman or degrading treatment or punishment, is of particular relevance to migrants. In the case of *M.S.S. v. Belgium and Greece*, the Grand Chamber of the European Court of Human Rights examined whether the extreme poverty in which an asylum seeker lived in Greece, while his asylum application was pending, was compatible with that prohibition.[170] The applicant had found himself homeless with no access to sanitary facilities; had slept in fear that he would be attacked; and had spent days looking for food, receiving some material support only from passers-by and a church. His claim before the Court was that his situation amounted to such vulnerability and deprivation that it breached Article 3. In response, the Greek government argued that the Convention did not contain a right to asylum or a right to housing, which raised budgetary issues. Nevertheless, the Court held that 'the applicant had been the victim of humiliating treatment showing a lack of respect of his dignity and . . . this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation'.[171] As these living conditions were due to the inaction of the authorities, Greece was in breach of Article 3. It is significant that in *M.S.S.* the Court took note of budgetary limitations that Greece faced because of an economic crisis, but ruled that such circumstances could not absolve a contracting state from its duties under Article 3, which contains an absolute prohibition.[172]

Article 4 ECHR, which prohibits slavery, servitude, and forced and compulsory labour, is a second provision from which migrants may benefit. The landmark case of *Siliadin v. France* illustrated the operation of an integrated approach to interpretation.[173] It involved a migrant domestic worker from Togo who lived and worked in appalling conditions in France. The Court did not classify the situation as 'slavery' because the employers did not exercise a right of legal ownership over the applicant, but did find that the situation amounted to 'servitude, forced and compulsory labour'. The applicant's immigration status was viewed as a factor that made her particularly prone to exploitation. The Court placed special emphasis on the fact that she had been promised by her employers that her status would be regularized—something that never occurred—and on her fear that she would be arrested, which as the Court stressed, the employers further nurtured.[174] In relation to France, the Court held that the lack of legislation criminalizing these extremely harsh working conditions amounted to a breach of Article 4. In support of the imposition of positive obligations on the state, the Court made reference to the ILO Forced Labour Convention, 1929 (No. 30), which contains a special provision on the horizontal application of the prohibition on private individuals.

[170] *M.S.S. v. Belgium and Greece*, ECHR (2011), Appl. No. 30696/09, judgment of 21 January 2011 (GC). For analysis see G. Clayton, 'Asylum Seekers in Europe: *M.S.S. v Belgium and Greece*', 11 *Human Rights Law Review* (2011) 758.

[171] *M.S.S.* (n 170), para. 263.

[172] *M.S.S.* (n 170), para. 223.

[173] *Siliadin v. France*, ECHR (2005) Appl. No. 73316/01, judgment of 26 July 2005. For analysis, see V. Mantouvalou, 'Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers', 35 *Industrial Law Journal* (2006) 135. On the social rights of domestic workers, see also V. Mantouvalou, 'Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor', 34 *Comparative Labor Law and Policy Journal* (2012) 133.

[174] See, for example, paras 118 and 126.

The situation of migrant domestic workers was again examined in the case of *C.N. v. United Kingdom*.[175] The applicant had entered the United Kingdom unlawfully, and worked as a live-in domestic worker for an elderly couple, with only one afternoon off per month. During her employment, her wages were withheld in order to pay off a debt of which she was unaware, her passport was withheld, and she was threatened with denunciation to the authorities. When she did contact the authorities, the police investigation unit specializing in human trafficking concluded that there was no evidence of that offence. At the time (2007–2009) there was no legislation in the United Kingdom criminalizing slavery, servitude, or forced or compulsory labour. The absence of such legislation was incompatible with the Convention, as *Siliadin* had already shown. In addition, the Court ruled that the authorities had not had an adequate basis to investigate the offence of 'domestic servitude', which was the aspect of Article 4 at issue in the case. This ineffective investigation on the part of the authorities, due to the lack of criminal legislation, was also ruled to have breached Article 4 of the Convention.

The Convention contains a non-discrimination provision (Article 14), which is not a free-standing equality right; instead, it prohibits discrimination in the enjoyment of the rest of the Convention rights. It also contains a right of everyone to the peaceful enjoyment of their possessions (Article 1 of Additional Protocol 1). These two provisions were examined in the case of *Gaygusuz v. Austria*, which concerned the social security benefits of foreign nationals.[176] The applicant was a Turkish national lawfully resident and working in Austria, who had paid contributions to an unemployment insurance fund in the same way as Austrian nationals. The authorities refused to pay an advance on his pension as an emergency payment under Austrian legislation for the sole reason that he did not have Austrian nationality. Reading social rights into the right to property and in this way adopting an integrated approach to the interpretation of the Convention, the ECtHR held that the benefit that Mr Gaygusuz claimed could be classified as 'possessions', so that his claim was within the ambit of Article 1 of Additional Protocol 1. Turning to Article 14, the Court considered whether the difference of treatment between the applicant and Austrian nationals was justified, and ruled that it was not based on an 'objective and reasonable justification'. There was therefore a violation of the prohibition of discrimination in conjunction with the right to property. A similar finding was later made in the case *Koua Poirrez v. France*, where the authorities refused a non-contributory disability benefit to the applicant, who was a lawful resident in France.[177] The refusal of the authorities was again ruled to breach Article 14, in conjunction with Article 1 of Protocol 1.

This case law shows that the ECtHR recognizes an overlap between civil, political, economic, and social rights.[178] The coverage of the ECHR, as developed

[175] *CN v. UK*, ECHR (2012) Appl. No. 4239/08, judgment of 13 November 2012.
[176] *Gaygusuz v. Austria*, ECHR (1996) Appl. No. 17371/90, judgment of 16 September 1996.
[177] *Koua Poirrez v. France*, ECHR (2003) Appl. No. 40892/98, judgment of 30 September 2003.
[178] Cf. *N v. UK*, ECHR (2008) Appl. No. 26565/05, judgment of 27 May 2008 (GC). For criticism of *N v. UK*, see V. Mantouvalou, '*N v UK*: No Duty to Rescue the Nearby Needy?', 72 *Modern Law Review* (2009) 815.

through the case law of the Court, appears to address some of the shortcomings of the ESC with its narrow personal scope. The ECtHR does not hesitate to extend the scope of protection to irregular migrants when faced with grave hardship in circumstances that can fall within the scope of the ECHR, and is willing to find that the discriminatory treatment of migrant workers is incompatible with the Convention.

C. The Organization of American States

The key regional organization in the Americas is the Organization of American States (OAS), which has thirty-five member states. It has adopted three significant texts in the field of human rights. The first was the American Declaration of the Rights and Duties of Man (1948). It mainly covers civil and political rights, but also includes three labour and social rights: the right to health (Article XI), the right to education (Article XII) and the right to work (Article XIV). The second is the American Convention on Human Rights (ACHR) (1978).[179] It focuses on civil and political rights, and its only provision concerning labour and social rights is a general, vague provision for the 'progressive implementation' of those rights (Article 26). The third is the Additional Protocol in the Area of Economic, Social and Cultural Rights (the San Salvador Protocol), which was adopted in 1988 and entered into force in 1999. Labour and social rights included in the San Salvador Protocol are the right to work, which makes reference to states' duty to promote full employment (Article 6), the right to just conditions of work, including a right to decent remuneration, rest, and leisure (Article 7), trade union rights (Article 8), the right to social security (Article 9) and the right to health (Article 10).

The ACHR protects the rights of everyone within the contracting states' jurisdiction, irrespective of national origin (Article 1). The San Salvador Protocol contains a similar obligation (Article 3), which is also emphasized in its Preamble, which states: 'the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human person, for which reason they merit international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States'.

The American Convention on Human Rights is monitored by the Inter-American Court of Human Rights (IACtHR), where individuals can lodge an application for an alleged violation of rights under the Convention. An integrated approach to interpretation, which reads certain labour and social rights in a civil and political rights document, has appeared in the case law under the ACHR as well.[180] Two

[179] For a discussion of the relationship between the Declaration and the Convention, see M. Craven, 'The Protection of Economic, Social and Cultural Rights under the Inter-American System of Human Rights', in D. Harris and S. Livingstone (eds), *The Inter-American System of Human Rights* (1998) 292.

[180] See the discussion in T. Melish, 'Rethinking the "Less as More" Thesis: Supranational Litigation of Economic, Social and Cultural Rights in the Americas', 39 *NYU Journal of International Law and Politics* (2006–2007) 171, at 193 ff.