



Justiciability of social and economic rights in Europe: the role of international and national judicial and quasi-judicial bodies, National Human Rights Institutions and National Equality Bodies

9th Meeting

of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform on Social and Economic Rights

28 November 2019

Strasbourg

Council of Europe, Agora Building (Room G.04)

OBJECTIVES

The main objectives of the 9th Meeting of the CoE-FRA-ENNHRI-EQUINET Collaborative Platform on Social and Economic Rights:

- To introduce and discuss the role played by domestic courts and international judicial and quasi-judicial bodies in ensuring legal enforcement of social and economic rights.
- To specifically examine the role of National Human Rights Institutions (NHRIs) and National Equality Bodies (NEBs) in litigating social and economic rights and the way they can support domestic courts and international judicial and quasi-judicial bodies with an aim to enhance the implementation of social and economic rights in Europe.

BACKGROUND

The debate about the justiciability of social and economic rights is an old and well-worn one. In a significant number of jurisdictions, judicial and quasi-judicial bodies and other legal entities have intervened to protect a wide range of social and economic rights from States' violations or violations committed by non-State actors such as private businesses and their lobby groups. National and international judicial and quasi-judicial bodies have developed a considerable case law related to the right of children with intellectual and mental disabilities, to mainstream education and training, the right of foreign unaccompanied minors to accommodation and care, the right of transgender persons to protection of health, the right to medical assistance and care, the right to housing and protection of the family from poverty and social exclusions.

At European level, the European Committee of Social Rights and the European Court of Human Rights have recognised, through their case-law, that social and economic rights have become central to human rights and democratic accountability. At the EU level the Charter of Fundamental Rights enshrines a list of social and economic rights and principles that are binding for EU institutions, as well as EU Member States when they act within the scope of EU law. Given the division of competences among the EU and Member States in the area of social policy and the scope of application of the Charter, the Court of Justice of the EU is developing interesting jurisprudence, in particular when EU secondary law has been adopted. The UN Committee on Economic, Social and Cultural Rights (UN CESCR) has made it clear that, regardless of whether or not domestic courts in a particular legal system are able to enforce all, or only some aspects of social and economic rights, these rights must still be subject to effective remedies¹.

NHRIs and NEBs have a key role in ensuring the justiciability of social and economic rights through engaging with both national and international judicial and quasi-judicial bodies. These engagements can take a wide variety of forms, depending on the specific mandate, functions and powers that the NHRIs and NEBs have been given by their national legislators. For example, NHRIs and NEBs bring cases to court on behalf of defendants, go to court on their own initiative (*ex officio*), decide cases with binding or non-binding recommendations (for those NHRIs and NEBs with quasi-judicial powers) and submit *amicus curies* or third-party interventions in connection with cases brought by others. In addition, NHRIs and NEBs frequently provide legal support to victims of human rights violations, thus enabling them to assert their rights before the courts and/or relevant quasi-judicial bodies. Last, but not least, through their independent research and monitoring and reporting activities, NHRIs and NEBs provide courts and committees with reliable, evidence-based information on the situation and experiences of the most vulnerable groups in society such as unaccompanied minors, persons with disabilities, etc.

Justiciability of all human rights is fundamental, given that a right without a remedy raises questions of whether it is in fact a right at all. Numerous international bodies such as UN CESCR, the UN Special Rapporteur on Extreme Poverty and Human Rights and the European Committee of Social Rights emphasised that economic, social, and cultural rights and civil and political rights should not be conceived in opposition to each other but as intrinsically interdependent and indivisible in ensuring that they are all fully respected. The importance of this basic tenet of international human rights law is consistently borne out in practice: in countries where there are obstacles to the enjoyment of civil and political rights, economic, social and cultural rights are less likely to flourish and, conversely, where economic, social and cultural rights fail to thrive, there is little scope for the full development of civil and political rights and democratic values.

FORMAT / WORKING LANGUAGES

The meeting will be held in plenary and in small working group sessions and focus on peer-exchange and mutual learning of all participants. The working languages will be English and French.

¹ CESCR *General Comment No. 9, The Domestic Application of the Covenant*, (Nineteenth Session, 1998), U.N. Doc. E/C.12/1998/24 (1998), para 2.

PROGRAMME

9.00-9.30 Opening and Introduction

Welcome remarks

- **Jan MALINOWSKI**, *Head of Department, European Social Charter, Council of Europe*

Introduction to justiciability of social and economic rights: concept and challenges

- **Susie Talbot**, *Human Rights Lawyer*

9.30-11.00 International and European judicial and quasi-judicial bodies addressing social and economic rights

Moderator: Susie Talbot, Human Rights Lawyer

Application of the European Social Charter by domestic courts

Potential role of National Human Rights Institutions and Equality Bodies?

- **Stein Evju**, *Former President of the European Committee of Social Rights*

Current developments with regard to the European Court of Human Rights case law and protection of social and economic rights

Potential role of National Human Rights Institutions and Equality Bodies?

- **Branko Lubarda**, *Judge, European Court of Human Rights*

Protection of social rights in the framework of the United Nations including individual communications under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Potential role of National Human Rights Institutions and Equality Bodies?

- **Zdzisław Kędzia**, *Professor, Vice-Chair of the UN Committee on Economic, Social and Cultural Rights, President of the Global Campus of Human Rights (Venice)*

The social and economic rights provisions of the EU Charter of Fundamental Rights and the approach of the Court of Justice of the European Union

Potential role of National Human Rights Institutions and Equality Bodies?

- **Grigorios Tsioukas**, *Seconded National Expert, Fundamental Rights Agency*

Questions and answers

Coffee Break 11.00-11.30

11.30-12.30 **The obligation to give effect: the role of domestic courts in the legal enforcement of social and economic rights at national level**

Moderator: Kavita Chetty, Scottish Human Rights Commission

Concretisation and implementation of social and economic rights by the Constitutional Court of Latvia – challenges and solutions for advancing social and economic rights at national level

- **Daiga Rezevska**, Judge, Constitutional Court of Latvia

Justiciability of social and economic rights: application of the European Social Charter by Polish courts

- **Monika Smusz-Kulesza**, Assistant Professor, Institute of European and Collective Labour Law, University of Lodz, Poland

The role of national judges in the application of the European Social Charter in France

- **Carole Nivard**, Lecturer at the University of Rouen, France

Questions and answers

Lunch break 12.30-14.00

14.00-15.15 **The role of National Human Rights Institutions and National Equality Bodies in the judicial enforcement of social and economic rights: practical examples from the field, challenges and opportunities**

Moderator: Iain Byrne, Adviser on Economic, Social and Cultural Rights, Amnesty International

Intervention of the Scottish Human Rights Commission in the civil litigation case *Ali v. Serco* and the Home Secretary and short presentation of the Report on Models of Incorporation and Justiciability for Economic, Social and Cultural Rights

- **Kavita Chetty**, Scottish Human Rights Commission

Third-party intervention to the ECtHR in the case *Khan v. France* on the reception conditions of unaccompanied foreign minors in Calais

- **Ophélie Marrel**, Legal Adviser, National Consultative Commission of Human Rights (CNCDH)

Best practice on justiciability of social and economic rights - Amicus Curiae submitted by the Public Defender of Georgia to the Constitutional Court on social security

- **Nino Shalamberidze**, *Office of Public Defender (Ombudsman) of Georgia*

Litigation powers of the Commissioner for Protection of Equality and presentation of a case study

- **Emila Spasojevic**, *Commissioner for Protection of Equality, Serbia*

Opportunities for increased engagement by National Human Rights Institutions and National Equality Bodies: how to make social and economic rights justiciable through the introduction of a protected ground in EU and national anti-discrimination legislation related to socio-economic status

- **Bert Luyts**, *Advocacy officer Europe, ATD Fourth World*

Questions and answers

15.15-16.15	From theory to action (working group sessions): identifying specific tools and approaches for the effective enforcement of social and economic rights at national level
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Zooming in: the role of National Human Rights Institutions and National Equality Bodies in justiciability of social and economic rights

The objective of the small group discussion is to collate a list of actions on how National Human Rights Institutions and National Equality Bodies can contribute to justiciability of social and economic rights given the specific situation in their national context.

- 1. Engaging with the UN Committee of Economic, Social and Cultural Rights, the European Committee of Social Rights and the European Court of Human rights**

Moderator: Tanya Montanari

- Experience engaging with committees
 - Added value and lessons learned
 - Tips and tricks for other National Human Rights Institutions and National Equality Bodies
- 2. Using domestic anti-discrimination legislation and advocating for the introduction of a protected ground in domestic anti-discrimination legislation related to socio-economic status**

Moderator: Milla Vidina

- Experience in addressing violations of social and economic rights through anti-discrimination legislation including through using the discrimination ground of socio-economic status
- Added value and lessons learned
- Tips and tricks for other National Human Rights Institutions and National Equality Bodies

3. Litigating social and economic rights at the national level and addressing different levels of domestic courts including through amicus curiae

Moderator: Nina Pániková

- Experience in addressing social and economic rights through bringing complaints before domestic courts
- Added value and lessons learned
- Tips and tricks for other National Human Rights Institutions and National Equality Bodies

Working group sessions wrap-up

Coffee break 16.15-16.30

16.30 – 17.00	Conclusions and next steps for the Platform
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Moderator: Milla Vidina, Equinet, European Network of Equality Bodies

Working methods, capacity building needs and outline for the next meeting of the Platform

General discussion

Conclusions of the meeting by Tanya Montanari, Department of the European Social Charter