

Social Rights: Concepts of their justiciability - developments

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- **Schism : negative-positive liberties**
- **Wide range of social rights**
- **Non-discrimination/equality issues**



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International Instruments

- **UN Committee on Economic, Social and Cultural Rights (ICESCR)**
- **UN Committee on the Elimination of Racial Discrimination**
- **UN Committee on the Elimination of Discrimination against Women**
- **UN Committee for the Rights of the Child**
- **European Committee of Social Rights**
- **ILO**
- **European Court of Human Rights**



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Practical Issues of Justiciability

- **Justiciability of international norms: monist/dualist states**
- **Human rights justiciability**
- **For cases of wrong decisions AND inactions of the state**
- **Legal aid mechanisms**
- **Equality of arms**
- **Provisional measures/suspensive effect**
- **Independent court systems**
- **Limitations clauses: e.g. proportionality**
- **Control of administrative discretion**
- **Jurisprudence of constitutional courts**
- **Expertise for judges/resources of courts/enforceable decisions**



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ECtHR jurisprudence

- **Social security and social assistance have been linked with the right to property according to Art. 1 AP 1 of ECHR**
- **Trade unions rights and right to work: Art. 4/Art. 11 para. 1 of ECHR**
- **mental and physical health: Art. 8 ECHR**
- **Art. 3 ECHR: living conditions**
- **Airey vs Ireland case//Van Kück v. Germany// Stec and Others v. The United Kingdom// Budina v. Russia// Dodov vs Bulgaria //Moldovan and others vs Romania**



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Further reading

- **“Courts and the legal Enforcement of Economic, Social and Cultural rights, Comparative Experiences of Justiciability” by International Commission of Jurists, Human rights and Rule of Law Series: No. 2; accessible under: <https://www.refworld.org/pdfid/4a7840562.pdf>**
- **“Social security as a human right”, Human rights files, No 23, by Ana Comez Heredero, CoE, 2007; accessible under: [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-23\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-23(2007).pdf)**
- **“Elderly people and the European Convention on Human Rights”, Factsheet of European Court of Human Rights, February 2019; accessible under: https://www.echr.coe.int/Documents/FS_Elderly_ENG.pdf**



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