

Economic and Social Rights in the Courtroom

A Litigator's Guide to Using Equality and Non-discrimination Strategies to Advance Economic and Social Rights

Technical Appendix: Online Case Compendium

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Explanatory Note

This Case Compendium is a technical appendix which accompanies the Equal Rights Trust publication, [*Economic and Social Rights in the Courtroom: A Litigator's Guide to Using Equality and Non-discrimination Strategies to Advance Economic and Social Rights*](#). It contains summaries of relevant cases from a variety of international, regional and national jurisdictions. The Compendium does not provide an exhaustive list of all cases in which courts and international bodies have adjudicated on matters relating to equal economic and social rights. Instead, we have sought to include cases which provide useful lessons or potential precedents for litigators seeking to employ equality and non-discrimination strategies to pursue economic and social rights, wherever they may be situated in the world.

This version of the Online Case Compendium is up to date as of 10 December 2014. The Trust will attempt to update the Compendium on an annual basis.

Where it has been necessary to rely upon an unofficial translation of a judgment in preparing a case summary, the Trust cannot verify the accuracy of the translation. Users are encouraged to refer back to the original judgment if it is the authoritative version is in a language other than English.

We are keen to make this resource as collaborative as possible. Should you have any suggestions as to cases you believe should be included in the Compendium or comments relating to individual cases, please contact info@equalrightstrust.org.

A. INTERNATIONAL BODIES

i) Committee On The Elimination Of Discrimination Against Women (CEDAW)

CEDAW watches over the progress of the 1979 Convention on the Elimination of all forms of Discrimination against Women. It can also receive and consider complaints from individuals or groups whose states have ratified the Optional Protocol.

CEDAW			
	<u>Case</u>	<u>Summary:</u>	<u>Key findings/reasoning:</u>
		1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
1.	<u><i>Alyne da Silva Pimentel v Brazil</i></u> Communication No. 17/2008 CEDAW/C/49/D/17/2008 10 August 2011	1) Alyne Pimentel died of complications resulting from her pregnancy after a health centre in Brazil failed to provide for appropriate and timely access to emergency obstetric care. Her death could have been prevented if the health centre had diagnosed and treated her intrauterine foetal death. Petition filed to ensure women have access to appropriate services in connection with pregnancy. 2) Health. 3) Articles 2 (discrimination) and 12(2), (provision of health services during and after pregnancy) Convention on the Elimination of Discrimination Against Women. 4) CEDAW found that the State had violated articles 2 and 12(2). Also confirmed that the State is directly responsible for the actions of private institutions where it has outsourced its medical services and the State has a duty to regulate and monitor private health care institutions. 5) State to ensure affordable access for all women to adequate	1) Direct discrimination. 2) Sex, race and socio-economic background. 4) State responsibility for action of private institutions when it outsources medical services. State duty to regulate and monitor such institutions. Due diligence obligation of State. 6) State ordered to pay reparation and to: ensure women's right to safe motherhood and affordable access for all women to adequate emergency obstetric care; provide adequate professional training for health workers; ensure access to effective remedies; ensure private health care facilities comply with relevant standards on reproductive health care; ensure adequate sanctions are imposed on health professionals who violate women's rights; and reduce preventable maternal deaths through the implementation of the National Pact for the Reduction of Maternal Mortality.

CEDAW			
	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		emergency obstetric care and to effective judicial remedies. State also to provide adequate professional training for health workers.	
2.	AS v Hungary Communication No. 4/2004 CEDAW/C/36/D/4/2004 29 August 2006	1) A Roma woman attended hospital in labour. The foetus died <i>in utero</i> and she was to have a caesarean section to remove it. She signed a consent form, which also included, using a Latin term which she did not understand, an instruction to sterilise her. The applicant argued that she was sterilised without her informed consent. 2) Health. 3) Articles 10(h), 12 and 16(1)(e) Convention on the Elimination of Discrimination Against Women. 4) There had been a violation of the aforementioned articles in that the hospital failed to provide the applicant with access to information on family planning; failed to guarantee appropriate medical services in connection with pregnancy; and failed to allow her to freely choose the number and spacing of her children. 5) Compensation; State to ensure that Convention is adhered to by all public and private health care centres; recommended review of domestic legislation; monitoring of public and private health centres.	2) Sex, race. 4) Public and private health centres, including hospitals and clinics, have to take measures to ensure that the relevant provisions of the Convention and the Committee's general recommendations are known and adhered to by relevant personnel. State obligation to monitor both public and private health centres.

ii) [Committee On The Elimination of Racial Discrimination \(CERD\)](#)

The Committee monitors the implementation the Convention on the Elimination of All Forms of Racial Discrimination. It also hears complaints brought under the Convention.

CERD			
	<u>Case</u>	<u>Case Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
3.	Ms. L. R. et al. v Slovakia Communication No. 31/2003 CERD/C/66/D/31/2003 10 March 2005	1) A municipality adopted a resolution approving construction of low cost housing for the Roma community within that municipality. The resolution was subsequently cancelled following a petition which protested the construction of houses for persons of “gypsy origin” in the area. 2) The right to adequate housing. 3) Articles 2(1)(a), 5(d)(iii) and 6 Convention on the Elimination of All Forms of Racial Discrimination. 4) Violation of above provisions. State’s argument that resolution did not confer enforceable rights so that no harm was done when it was cancelled, rejected. The resolution was an important policy step towards the realisation of the right to housing. The revocation of the resolution amounted to an “ <i>impairment of the recognition or exercise on an equal basis of the right to housing</i> ” (Para 10.7). Further, there was a breach of the obligation “ <i>to guarantee the right of everyone to equality before the law in the enjoyment of the right to housing</i> ” (Para 10.9). 5) State obliged to: provide effective remedy which puts petitioners in same position they were in following the resolution of the municipality; ensure no future violations; inform Committee within 90 days of how it will implement decision; and widely publicise	1) Right to equality before the law in the enjoyment of housing. CERD applies both to explicit discrimination and to measures which are not discriminatory on their face but are in fact and effect. 2) Race/ethnicity.

CERD			
	<u>Case</u>	<u>Case Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		decision.	

iii) [Human Rights Committee \(HRC\)](#)

The HRC is comprised of a body of experts who monitor the implementation of the International Covenant on Civil and Political Rights ICCPR by state parties. The HRC may consider individual complaints from parties to the Optional Protocol.

HRC			
	Case	Case Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
4.	Gueye et al v France (Communication No. 196/1985) CCPR/C/35/D/196/1985 6 April 1989	1) French legislation provided for superior pensions for soldiers of French nationality than it did for retired soldiers of Senegalese nationality (who had served in the French Army prior to the independence of Senegal). 2) Right to social security. 3) Article 26 (equal protection) ICCPR. 4) The legislation was in violation of Article 26. It was services rendered in the past that determined the granting of pensions and these services were the same as those rendered by the French soldiers. The HRC rejected the State's arguments for justifying the lesser pensions for soldiers of Senegalese descent. 5) The HRC held that the State is under an obligation to make an effective remedy.	2) Nationality acquired on independence as "other status". 3) The State attempted to state that their actions were justified because: Senegal gained independence in 1960, which meant that the soldiers in question lost their French nationality; there were differing economic, financial and social conditions between France and Senegal; and France was not able to carry out checks of identity and family situations to prevent abuse of the pension scheme. All these reasons were rejected by the HRC which held difference in treatment not based on " <i>reasonable and objective criteria</i> " (Para 9.5).
5.	Zwaan-de Vries v The Netherlands (Communication No. 182/1984)	1) Mrs Zwaan-de Vries was denied long-term unemployment benefits because she was a married woman and not the family breadwinner. Married men were able to receive unemployment benefits even if their wife was the principal income earner.	1) Direct Discrimination. 2) Sex and marital status combined.

HRC			
	Case	Case Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	CCPR/C/29/D/182/1 984 9 April 1987	2) Right to social security. 3) Article 26 (equal protection of the law) ICCPR. 4) The HRC held that the protection in Article 26 applied to the socio-economic domain and was not limited to the rights explicitly within the ICCPR. The legislation was discriminatory and violated Article 26. 5) Legislation was repealed before the decision was released. The HRC recommended that the Netherlands provide an appropriate remedy for Mrs Zwaan de Vries.	

B. REGIONAL BODIES

i) [African Commission On Human And Peoples' Rights \(ACHPR\)](#)

The ACHPR is comprised of a body of experts mandated with the protection, promotion and interpretation of the rights contained within the African Charter of Human and Peoples' Rights. The ACHPR may also consider individual complaints.

ACHPR			
	Case	Case Summary:	Key findings/reasoning:
		<ol style="list-style-type: none"> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy 	<ol style="list-style-type: none"> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
6.	<p>Malawi Africa Association and Ors. v Mauritania</p> <p>Communication 54/91-61/91-96/93-98/93-164/97_196/97-210/98</p> <p>11 May 2000</p>	<ol style="list-style-type: none"> 1) Multiple complaints were levelled against the government of Mauritania, all of which alleged discrimination based on race. The complainants alleged that that while in detention, they were subjected to inhumane treatment coupled with poor nutrition and hygiene. Within the community, it is alleged that Black Mauritians were denied access to employment and that those in the employ of government were not afforded the same benefits as other racial groups. Further, Black Mauritians were evicted and displaced from their lands. 2) Right to health. 3) Articles 2, 16 and 19 ACHPR. 4) "During the period 1989-1992, there were grave or massive violations of human rights as proclaimed in the African Charter" including Articles 2 and 16. 5) Recommendation that the State take a number of measures including setting up an independent enquiry in relation to disappeared persons and paying compensation. 	<ol style="list-style-type: none"> 1) Direct discrimination. 2) Race. 6) Independent enquiry recommendation.

ACHPR			
	<u>Case</u>	<u>Case Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
7.	<p>Purohit and Moore v The Gambia</p> <p>Communication 241/01</p> <p>29 May 2003</p>	<p>1) The complaint was brought on behalf of existing and future mental health patients detained under The Gambia's mental health legislation, alleging that the State's mental health law was outdated and that, together with some current practices, it constituted a violation of numerous Charter rights. The Complainants allegations included: the practice of detaining persons regarded as mentally ill indefinitely and without due process constituted disability discrimination; the law lacked necessary safeguards during the diagnosis, certification and detention of patients; and patients were housed in overcrowded units and did not have a say, nor was there a review mechanism in place, with regards to their continued treatment.</p> <p>2) Right to health.</p> <p>3) Articles 2 (non-discrimination), 3 (equality), 16 (health) and 18(4) (special measures of protection for aged and disabled in keeping with their physical and moral needs) ACHPR amongst others.</p> <p>4) The situation under the relevant mental health law "clearly" violates Articles 2 and 3. Right to health crucial to realisation of other fundamental rights. Includes right to health facilities, access to goods and services without discrimination. The mental health law system falls short of the requirements of Article 16 read together with Article 18(4) of the Charter. A violation of the above provisions was found.</p> <p>5) Recommendations to: repeal of the mental health law in question; create an expert body to review the cases of all persons detained under the relevant law and make appropriate recommendations for their treatment or release; and Provide adequate medical and material care for persons suffering from mental health problems in the territory of The Gambia.</p>	<p>1) Discrimination, right to equality, special treatment for patients with mental conditions because of their condition and their disability.</p> <p>2) Disability (mental illness).</p> <p>5) <i>"As a result of their condition and by virtue of their disabilities, mental health patients should be accorded special treatment which would enable them not only attain but also sustain their optimum level of independence and performance in keeping with Article 18(4) of the African Charter."</i> (Para 81)</p> <p>6) Recommendation to repeal law and set up expert review body.</p> <p>7) Less positively, the Commission read into Article 16 (health) of the Charter a provision that the government need do no more than resources permit – there is no such limitation in the text of the Charter.</p>

ii) [Court Of Justice Of The European Union \(CJEU\)](#)

The CJEU interprets EU law and hears complaints between EU governments and EU institutions and also accepts complaints from individuals, companies and organisations.

CJEU			
	Case	Case Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/Reasoning 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
8.	Commission of the European Communities v Austria C-147/03 7 July 2005 Second Chamber	1) The European Commission sought a declaration that a law which imposed conditions on students with secondary education diplomas from outside Austria that were not imposed upon students with diplomas from Austria for entry into higher or university education, was discriminatory on the basis of nationality. 2) Right to education. 3) Articles 12, 149 and 150 EC Treaty. 4) The conditions were indirectly discriminatory on grounds of nationality. The right of equal treatment in Article 12 EC Treaty included the right for holders of diplomas awarded in another Member State, once their diplomas were deemed to be equivalent, not to be made subject to conditions which were not imposed on students who had obtained their diplomas in Austria for the purpose of gaining access to the same Austrian higher or university education course. 5) Austria found to be in violation of the Treaty and ordered to pay costs.	1) Indirect discrimination 2) Nationality 3) The argument that without restriction demand for courses would exceed supply, did not justify the discrimination: <i>“excessive demand for access to specific courses could be met by the adoption of specific non-discriminatory measures such as the establishment of an entry examination or the requirement of a minimum grade”</i> (Para 62).
9.	Mrs A. DIK and Others v College Van Burgemeester en Wethouders (Court of	1) Married women were refused unemployment benefit as they could not be described as “wage earners” under the relevant social security law due to the fact that they were married. Directive 79/7/EEC required equal treatment for men and women in matters of social security, however the “wage earners”	1) Discrimination, equal treatment 2) Sex and marital status.

CJEU			
	<u>Case</u>	<u>Case Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/Reasoning</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	<u>Mayor and Aldermen, Arnhem, and Another</u> C-80/87 8 March 1988 Second Chamber	<p>definition was retained after the expiry date for implementation of Directive 79/7 where the women's claim for benefit accrued prior to that date, as part of transitional provisions.</p> <p>2) Social security.</p> <p>3) Article 4(1) EC Directive 79/7 (no discrimination on the grounds of sex either directly, or indirectly by reference in particular to marital or family status in matters of social security).</p> <p>4) Progressive implementation of Directive 79/7 on the principle of equal treatment for men and women in matters of social security does not confer on the Member States a discretion to include a transitional provision on the basis of which a married woman who became unemployed before the expiry date for implementation remains subject to the discriminatory requirement that she be a "wage earner".</p>	<p>3) Retention of the "wage earners" requirement as part of transitional measures in implementing the Directive was not permissible.</p>
10.	<u>Emmott v Minister for Social Welfare and Attorney General</u> C-208/90 25 July 1991	<p>1) Ireland had failed to transpose Council Directive 79/7/EEC 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security within the period allowed. Prior to 1986, Mrs Emmott received disability benefit at the rate for a married woman, which was only increased to be equivalent to the rate for a man in 1986. Emmott sought to recover the benefits she was entitled to between 1984 and 1986.</p> <p>2) Social security.</p> <p>3) Article 4(1) Council Directive 79/7/EEC 19 December 1978 on the progressive implementation of the principle of equal treatment for men and</p>	<p>1) Discrimination, equal treatment.</p> <p>2) Gender and marital status.</p> <p>3) <i>"Until such time as a directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon him by the provisions of the directive and that a period laid down by national law within which proceedings</i></p>

CJEU			
	<u>Case</u>	<u>Case Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/Reasoning</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		women in matters of social security. Also Article 5 requiring Member States to take measures necessary to ensure any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. 4) Article 4(1) <i>“had to be interpreted as meaning that married women were entitled to the same increases in benefits and compensatory payments as those awarded to married men in family situations identical to theirs”</i> (Para 7). It could be relied on from the date by which it should have been transposed to preclude the application of inconsistent national provisions. In the absence of measures implementing the Directive, women were entitled to have the same rules applied to them as were applied to men in the same situation. Member States are precluded from relying on national procedural rules relating to time-limits for bringing proceedings so long as they have not properly transposed the Directive in question into their domestic legal system.	<i>must be initiated cannot begin to run before that time.”</i> (Para 23)
11.	Maria Martinez Sala v Friestaat Bayern Case C-85/96 12 May 1998	1) A German law provided that non-nationals wishing to receive a “Child-Raising Allowance” must be in possession of a residence entitlement or residence permit whereas nationals were required to be only permanently or ordinarily resident in the territory. A Spanish national who sought to claim this benefit, but was unsuccessful as she did not possess a residence permit, brought an action arguing this additional requirement was discriminatory. 2) Social security. 3) Regulation No 1612/68 Article 7(2) (workers from other Member States enjoy the same social and tax advantages as national workers), Regulation 1408/71 Article 3(1) (persons resident in the territory of a Member State shall be subject to the same obligations and enjoy the same benefits under as	1) Equal treatment, direct discrimination. 2) Nationality.

CJEU			
	<u>Case</u>	<u>Case Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/Reasoning</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		<p>nationals of that State), and EEC Treaty Article 6 (including prohibition of discrimination on grounds of nationality).</p> <p>4) Violation found. Community law precludes a Member State from requiring nationals of other Member States authorised to reside in its territory to produce a formal residence permit in order to receive child-raising allowance when its own nationals are only required to be permanently or ordinarily resident within the State. “[F]or a Member State to require a national of another Member State who wishes to receive a benefit such as the allowance in question to produce a document which is constitutive of the right to the benefit and which is issued by its own authorities, when its own nationals are not required to produce any document of that kind, amounts to unequal treatment.” (Para 54)</p>	
12.	<p>The Queen v Secretary of State for Social Security, ex parte John Henry Taylor</p> <p>Case C-382/98</p> <p>16 December 1999</p> <p>Sixth Chamber</p>	<p>1) Taylor, a 62 year old man, complained that a law which entitled women to a winter fuel payment from the age of 60 and men from the age of 65 violated the principle of equal treatment for men and women in matters of social security.</p> <p>2) Social security.</p> <p>3) Council Directive 79/7 Article 3(1) on the progressive implementation of the principle of equal treatment for men and women in matters of social security.</p> <p>4) The winter fuel payment was covered by the Directive as it provided protection against the risks of old age. The differential age requirements were discriminatory between men and women and could not be justified by reference to differences in pensionable ages as the basis of the payment was old age, not consistency of retirement schemes.</p>	<p>1) Direct discrimination, equal treatment.</p> <p>2) Sex.</p> <p>3) The UK argued that the differential age requirements could be justified on the basis that state retirement pensions were granted at different ages for men and women, as pensions are largely exempt from the Directive. The Court rejected this argument as the basis for the payment was old age, not the consistency of retirement schemes and the discrimination was not objectively and necessarily linked to the difference in retirement age for men and women.</p>

CJEU			
	<u>Case</u>	<u>Case Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/Reasoning</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
13.	Gravier v Ville de Liège C-293/83 13 February 1985	1) A French student sought repayment of the enrolment fee she paid to a Belgian university on the basis that Belgian students did not have to pay the fee and it was therefore discriminatory. 2) Education. 3) Article 7 (non-discrimination on grounds of nationality) and Article 59 (progressive abolition of restrictions on the free supply of services) EEC Treaty. 4) The term “vocational training” was deemed to include university studies which provide specific training and skills needed in pursuit of a profession, even if no legislative or administrative provisions make acquisition of that knowledge a prerequisite for the profession. The imposition on students who are nationals of another Member State of a charge or registration fee as a condition of access to university studies where the same fee is not imposed on nationals of the home state therefore constitutes discrimination on grounds of nationality.	1) Direct discrimination. 2) Nationality. 3) Belgium unsuccessfully argued that the fee was justified due to the effect on the education budget of the larger number of foreign students living in Belgium compared to Belgian nationals studying abroad and that, due to the contributions to the state Belgian nationals had made, the fee in fact put foreign students on the same footing at Belgian nationals.

iii) [European Committee Of Social Rights \(ECSR\)](#)

The ECSR determines whether states are in compliance with the European social Charter. It adopts conclusions in respect of national reports and also hears and gives opinions on collective complaints of violations of the Charter.

ECSR			
	Case	Case Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) 3) Relevant provision(s) 4) The decision 5) The remedy	Key findings/Reasoning 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
14.	<p>Centre on Housing Rights and Evictions (COHRE) v Italy</p> <p>Collective Complaint No. 58/2009</p> <p>25 June 2010</p>	<p>1) In numerous Italian cities “pacts for security” were introduced to deal with a “nomad/Roma emergency”. These were given legal basis in 2008. COHRE alleged that the pacts violated the right to adequate housing of Roma and Sinti people in Italy through forced eviction measures and Roma and Sinti populations being forcibly assigned to segregated camps with substandard living conditions.</p> <p>2) Housing.</p> <p>3) Article 16 (social, legal and economic protection for the family), Article 19 (protection and assistance for migrant workers and their families), Article 30 (protection against poverty and social exclusion) and Article 31 (housing) in conjunction with Article E (non-discrimination) Revised European Social Charter.</p> <p>4) The Committee found that the legislation amounted to a violation of the right to adequate housing, to social, legal and economic protection, to protection against poverty and social exclusion and the right of migrant Roma families to protection and assistance taken in conjunction with the Article E non-discrimination provision. “[T]he living conditions of Roma and Sinti in camps worsened following the adoption of the contested security measures. As, on the one hand, the measures in question directly target these vulnerable groups and, on the other, no adequate steps are taken to take due and positive account of the differences of the</p>	<p>1) Direct discrimination, failure to take positive measures.</p> <p>2) Race/ ethnicity.</p> <p>3) The Italian government’s justification that evictions may be carried out in collective interests in the event of illegal occupancy was rejected by the Committee as the government failed to provide secure alternative accommodation or take positive account of the differences of the populations concerned.</p> <p>5) <i>“Under Article 30, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation”</i> (Para 30).</p> <p>7) N.B. Violations of combinations of Articles 16, 19, 30, 31 and Article E have been found on similar facts relating to forced evictions and inadequate housing provision for Roma and traveller populations in France (Cases 64/2011, 63/2011, 51/2008, 33/2006 and pending case 67/2011), Belgium (Case 62/2010), Portugal (Case 61/2010), Greece</p>

ECSR			
	Case	Case Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) 3) Relevant provision(s) 4) The decision 5) The remedy	Key findings/Reasoning 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		<i>population concerned, the situation amounts to stigmatisation which constitutes discriminatory treatment” (Para 58).</i>	(Case 49/2008, 15/2003), Bulgaria (Case 31/2005), Italy (Case 27/2004).
15.	International Movement ATD Fourth World v France No. 33/2006 5 December 2007	<p>1) ATD Fourth World alleged that French national legislation and practice fell short of the Charter obligations in relation to the right to housing of those in extreme poverty, including Roma and Travellers. The allegations included that unsecure housing, eviction procedures, inadequate supply of affordable housing, inappropriate methods used to allocate social housing and excessive waiting times for allocation of housing violated the Charter. It was also alleged that there was a failure to prioritise appropriately.</p> <p>2) Housing.</p> <p>3) Article 16 (social, legal and economic protection for the family), Article 30 (protection against poverty and social exclusion) and Article 31 (housing) in conjunction with Article E (non-discrimination) Revised European Social Charter.</p> <p>4) Inadequate safeguards in eviction procedures, “manifest inadequacy of the existing policy mechanisms for ensuring due priority for the provision of social housing for the most socially deprived”, inadequate arrangement for allocating social housing, system of legal redress shortcomings violated the right to housing and many violated the obligation to protect against poverty and exclusion in a manner which discriminated against the poor. Deficiencies in the implementation of legislation on stopping places for Travellers were a violation of the right to non-discrimination in relation to housing.</p>	<p>1) Direct and indirect discrimination, need to take account of the needs of specific groups. “[T]here appears to have been a long period during which local authorities and the State have failed to take into account to a sufficient degree the specific needs of the Roma/Traveller community” (Para 154).</p> <p>2) Wealth, poverty, homelessness, race/ ethnicity.</p> <p>5) Positive obligation to address “multidimensional phenomena of poverty and exclusion” including measures “to promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance.” (Para 165). Positive duty to make measurable progress towards conformity with the Charter. “[F]or the situation to be in conformity with the treaty, states party must: a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter; b. maintain meaningful statistics on needs, resources and results; c. undertake regular reviews of the impact of the strategies adopted; d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage; e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable” (Para 59).</p>

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16.	European Roma Rights Centre (ERRC) v Bulgaria No. 46/2007 3 December 2008	<p>1) The ERRC argued that Bulgaria was violating its obligation to ensure access to healthcare and the right to social and medical assistance towards its Roma population because: failure to guarantee health insurance for the poorest in society and the long-term unemployed disproportionately impacted Roma; inadequate measures to address spread of disease caused by substandard housing conditions amongst Roma populations; not addressed geographical barriers to access to treatment, or discrimination against Roma patients by medical staff. Further alleged disproportionate impact on Roma women including segregation in inferior facilities in maternity wards.</p> <p>2) Health.</p> <p>3) Article 11 (health) and Article 13 (social and medical assistance) in conjunction with Article E (non-discrimination) Revised European Social Charter.</p> <p>4) Discrimination in relation to the right to health and violation of right to social and medical assistance. Certain elements of legislation which limited access to healthcare for the poorest and long-term unemployed inadequate. Practical barriers to access to health care for Roma populations, including distance from clinics and less preferential treatment by medical staff amounting to discrimination with regards to the right of access to healthcare. Bulgaria failed in its positive obligations to reduce the spread of infectious disease amongst Roma populations caused by substandard housing and sanitation.</p>	<p>1) Direct and indirect discrimination.</p> <p>2) Race/ethnicity. Some discussion of poor and socially disadvantaged and compounded discrimination faced by Roma women.</p> <p>5) Right to health demands positive measures from the state and “<i>the Committee assesses compliance</i>” with this obligation “<i>paying particular attention to the situation of disadvantaged and vulnerable groups.</i>” (Para 45). Need for “<i>systematic, long-term government measures to promote health awareness</i>” (Para 48). “[T]he State has failed to meet its positive obligations to ensure that Roma enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services” (Para 49).</p> <p>7) Use of individual cases in relation to collective complaints. “<i>As regards the examples provided by the complainant of discriminatory practices against Roma in the provision of medical services, namely the refusal to send emergency aid ambulances to Roma districts, the segregation of Roma women in maternity wards or the use of racially offensive language by doctors, the Committee considers that these significant cases cannot be relied on to conclude that there are systematic discrimination practices against Roma in the health care system. However, it finds that these specific cases taken together with all other evidence submitted by the complainant serve to reinforce the Committee’s overall</i></p>

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			<i>conclusion that Roma in Bulgaria do not benefit from appropriate responses to their general and specific health care needs” (Para 50).</i>
17.	<p>Centre on Housing Rights and Evictions (COHRE) v Croatia</p> <p>No. 52/2008</p> <p>22 June 2010</p>	<p>1) COHRE argued that the lack of an effective remedy, such as adequate restitution or compensation, for the loss of special occupancy rights to social housing by ethnic Serbs and other minorities expelled from their homes during the conflict in the former Yugoslavia, constituted a continuing and discriminatory violation of housing rights.</p> <p>2) Housing.</p> <p>3) Article 16 (social, legal and economic protection for the family) in conjunction with Article E (non-discrimination) Revised European Social Charter.</p> <p>4) The Article 16 obligation was only owed to the displaced families who had indicated a wish to return to Croatia, or who would return but for lack of housing and other forms of protection for family life. Article 16 did not confer a right to restitution or compensation for loss of families’ occupancy rights or an entitlement to acquire property rights which they may have been entitled to had they not been displaced. The housing programme was not implemented within a reasonable timeframe and the delays and uncertainty associated with implementation of the programme has failed to accommodate the heightened vulnerability of the displaced families, and ethnic Serb families in particular. Violation of Article 16 read with Article E.</p>	<p>1) Direct and indirect discrimination.</p> <p>2) Displaced families “<i>who constitute a distinctive group who suffer particular disadvantage</i>” (Para 87), ethnicity.</p> <p>3) Croatia claimed the loss of occupancy rights was not discriminatory, as it was conducted by a procedure founded by law and affected many non-Serbs, whilst many ethnic Serbs remained unaffected, the conflict having had a negative effect on the entire population. However the Committee found Croatia had failed to take into account the heightened vulnerabilities of many displaced Serbian families.</p>

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18.	Mental Disability Advocacy Center (MDAC) v Bulgaria No. 41/2007 3 June 2008	1) The majority (approximately 94%) of children living in homes for the intellectually disabled received no education. MDAC argued this was a violation of the obligation to provide access to education for young people and was discriminatory on grounds of intellectual disabilities. 2) Education. 3) Article 17(2) (free primary and secondary education for young people) in conjunction with Article E (non-discrimination) Revised European Social Charter. 4) The right to education for intellectually disabled children was being implemented progressively by Bulgaria but Bulgaria had not met the requirements for adequate progressive implementation (reasonable timeframe, measureable progress and financing consistent with the maximum use of available resources) as set out in Case 31/2005 <i>European Roma Rights Centre v Bulgaria</i> . The Committee found Bulgaria in violation of Article 17(2) alone and in conjunction with Article E as the number of children with moderate, severe or profound intellectual disabilities receiving any type of education was significantly lower when compared to other Bulgarian children. Article E required Bulgaria to treat those in unequal situations, e.g. people with disabilities, differently.	1) Discrimination through failure to treat differently. 2) Disability (Intellectual). 5) “[F]ailure to take appropriate measures to take account of existing differences may amount to discrimination” (Para 51).
19.	International Association Autism Europe v France Complaint No. 13/2002	1) 80-90% of young adults and children with autism had no access to adequate educational services in France. Autism Europe claimed France’s failure to improve its provision for education of children and adults with autism as effectively as for those without autism put it in violation of its responsibilities under the Charter.	1) Direct and indirect discrimination. “[H]uman difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination.

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	4 November 2003	<p>2) Education.</p> <p>3) Article 15(1) (take the necessary measures to provide persons with disabilities with guidance, education and vocational training) and Article 17(1) (take all appropriate and necessary measures designed to ensure that children and young persons have the assistance, the education and the training they need) taken in conjunction with Article E (non-discrimination) Revised European Social Charter.</p> <p>4) The lack of measureable progress to address the unacceptable and chronic shortage of educational places for persons with autism was in violation of Articles 15(1) and 17(1) when read alone, or in combination with Article E.</p>	<p><i>Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all</i> (Para 52).</p> <p>2) Disability (as “other status”).</p>
20.	<p>European Roma and Travellers Forum (ERTF) v France</p> <p>Complaint No. 64/2011</p> <p>January 2012</p>	<p>1) Forced eviction from Roma houses and expulsion of Roma. Hundreds of Roma “voluntarily” sent back to Romania. The “voluntary” nature of these returns has been highly contested with there being no proof demonstrated by the French authorities that the “volunteering” returnees gave their informed consent.</p> <p>2) Housing.</p> <p>3) Articles 16 (social, legal and economic protection for the family), 30 (protection against poverty and social exclusion) and 31(3) (housing – accessibly priced) of the Revised European Social Charter, alone or in conjunction with Article E (non-discrimination).</p> <p>4) Unanimous finding of violations of the above rights. “[T]he administrative decisions whereby, during the period under</p>	<p>1) Direct discrimination (“systematic discrimination”).</p> <p>2) Ethnicity.</p>

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		<i>consideration, Roma of Romanian and Bulgarian origin were ordered to leave French territory, where they were resident, are incompatible with the Charter in that they were not founded on an examination of their personal circumstances, did not respect the proportionality principle and were discriminatory in nature since they targeted the Roma community” (Para 66).</i>	
21.	European Federation of National Organisations working with the homeless (FEANTSA) v Slovenia Complaint No. 53/2008 September 2009	<p>1) The case relates to the situation of tenants living in flats which were denationalised by Slovenia. FEANTSA alleged that their Charter rights were violated in part as a result of lack of security of tenure putting vulnerable families in a precarious position.</p> <p>2) Housing.</p> <p>3) Articles 16 (social, legal and economic protection for the family), 31 (housing) both taken together with Article E (non-discrimination) Revised European Social Charter.</p> <p>4) Violations found in relation to all above rights. <i>“The Committee considers (...) that as regards former holders of the Housing Right over flats that have been restored to their private owners, the combination of insufficient measures for the acquisition or access to a substitute flat, the evolution of the rules on occupancy and the increase in rents, are, after the Slovenian Government’s reforms, likely to place a significant number of households in a very precarious position, and to prevent them from effectively exercising their right to housing” (Para 70). “The Committee considers that the treatment accorded to former holders of the Housing Right in respect of flats acquired by the state through nationalisation or expropriation, and restored to their owners, is manifestly discriminatory in relation to the treatment accorded to other tenants</i></p>	<p>1) Direct discrimination.</p> <p>2) Type of tenancy.</p> <p>3) Justification sought on basis of need to protect the rights of the new private owners of the flats. Legitimate. However, this did not justify the lack of provision of substitute housing or other provision for the affected tenants.</p>

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		<i>of flats that were transferred to public ownership by other means, there being no evidence of any difference in the situation of the two categories of tenants, and the original distinction between the forms of public ownership in question, of which, moreover, they were not necessarily aware, being in no way imputable to them, and having no bearing on the nature of their own relationship with the public owner or administrator” (Para 74).</i>	
22.	International Centre for the Legal Protection of Human Rights (INTERIGHTS) v Croatia Complaint No. 45/2007 30 March 2009	1) The complainant organisation claimed that Croatian schools did not provide comprehensive or adequate sexual and reproductive health education to children and young people and that the education materials in Croatian schools discriminated on grounds of sexual orientation or gender. 2) Health/education. 3) Articles 11(2) (health education) and 16 (social, legal and economic protection for the family) in conjunction with Article E (non-discrimination) Revised European Social Charter. 4) No violation of Article 16 but violation of Article 11(2) in conjunction with the non-discrimination provisions in the preamble to the Charter on grounds of sexual orientation. <i>“[C]hildren must not be subject to discrimination in accessing such education, which should also not be used as a tool for reinforcing demeaning stereotypes and perpetuating forms of prejudice which contribute to the social exclusion of historically marginalised groups and others that face embedded discrimination and other forms of social disadvantage which has the effect of denying their human dignity.” (Para 48) Certain elements of the education material “are manifestly biased, discriminatory and demeaning, notably in how persons of non-heterosexual orientation are described and depicted.”</i>	1) Direct discrimination. 2) Sexual orientation, gender. But the latter rejected due to the arguments being “imprecise and undeveloped”.

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		(Para 60) <i>“By officially approving or allowing the use of the textbooks that contain these anti-homosexual statements, the Croatian authorities have failed in their positive obligation to ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education which does not perpetuate or reinforce social exclusion and the denial of human dignity”</i> (Para 61).	

iv) [European Court Of Human Rights \(ECtHR\)](#)

The ECtHR is responsible for adjudicating complaints of breaches by states parties to the European Convention on Human Rights.

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	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
23.	<p>D.H. and others v Croatia</p> <p>Application No. 57325/00</p> <p>13 November 2007</p> <p>Grand Chamber</p>	<p>1) The applicants were 18 children of Roma origin who were placed in schools for children with learning difficulties. They claimed that this amounted to discrimination in the enjoyment of their right to education on the basis of race or ethnicity.</p> <p>2) Education</p> <p>3) Article 14 (non-discrimination) ECHR in conjunction with Article 2 of Protocol 1 (education).</p> <p>4) The Roma required special protection as their turbulent history had resulted in them being a disadvantaged and vulnerable minority. The evidence provided by the applicants established that Roma children formed the majority of pupils in special schools and that the number of Roma children in special schools was disproportionately high. There was no objective and reasonable justification for the different treatment of Roma children. The applicants therefore suffered discriminatory treatment in violation of Article 14 ECHR taken in conjunction with Article 2 of Protocol</p>	<p>1) Indirect discrimination</p> <p>2) Race and ethnicity</p> <p>3) The use of special schools by the State was motivated by a desire to assist children with special educational needs. However, it was concerning that this system followed a basic curriculum and caused segregation. Further, although all children were given the same test to determine whether they would attend special schools, the results were not analysed in light of the particular characteristics of the Roma children who sat them and there was at least a danger that the results were biased. The parents of Roma children placed in special schools gave consent but in circumstances where this consent was not informed. Nor could the parents waive the right not to be subject to racial discrimination:</p> <p><i>"In view of the fundamental importance of the prohibition of racial discrimination (...), the Grand Chamber considers that (...) no waiver of the right not to be subjected to racial discrimination can be accepted, as it would be counter to an important public interest."</i> (Para 204).</p>

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		1. 5) 4,000 EUR non-pecuniary damages to each applicant plus costs and expenses.	
24.	Oršuš and Others v Croatia Application No. 15766/03 16 March 2010 Grand Chamber	1) The applicants were 18 Czech nationals of Roma origin who attended both Roma-only classes and mixed classes with non-Roma children. The applicants claimed that the Roma-only classes had 30% less content than the national curriculum and that this was discriminatory and violated their right to education. 2) Education 3) Article 6(1) ECHR and Article 2 of Protocol 1 (education) taken alone or in conjunction with Article 14 (non-discrimination). 4) As a result of their history, the Roma are a “specific type of disadvantaged and vulnerable minority” and require special protection. There was a clear difference in the way that Roma children were treated as only Roma children were placed in separate classes. There was no objective and reasonable justification for this different treatment, which amounted to discrimination in violation of Article 14 ECHR, taken in conjunction with Article 2 of Protocol 1. In addition, the applicants’ right to a fair trial under article 6 ECHR had not been	1) Indirect discrimination 2) Ethnicity 3) The reason given by the State for placing the applicants in Roma-only classes was that they lacked adequate Croatian language skills. Although this was not automatically in violation of article 14, adequate safeguards needed to be in place. The law in Croatia at the time provided no clear basis for separate classes on the grounds of language. It was not demonstrated that this practice was applied to all children. Further, the tests used did not test language skills but rather tested psycho-physical condition. The applicants may have had some learning difficulties but these were not addressed by simply placing them in a separate class nor was a curriculum used in these classes which aimed to address these difficulties. In addition, there was no monitoring of the progress of the applicants in these classes. The high drop-out rate of Roma students required positive measures on the part of the State. Finally, in regard to the lack of objection from the applicant’s parents to the placement in separate classes, the parents own disadvantaged background meant that they were not capable of weighing up the situation and providing consent. It was not sufficient to say that the applicants could attend government funded evening school.

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		respected due to the length of the proceedings in the national courts. 5) 4,500 EUR non-pecuniary damages to each applicant plus costs and expenses.	
25.	Ponomaryovi v Bulgaria Application No. 5335/05 21 June 2011 Fourth Section	1) The applicants were two brothers of Russian descent who had lived with their mother in Bulgaria for most of their childhood. The applicants claimed that it was discriminatory that they were required to pay for their secondary school education, when secondary education was provided free of charge to Bulgarian nationals. 2) Education 3) Article 2 of Protocol 1 (education) in conjunction with Article 14 (non-discrimination) ECHR. 4) The prohibition of discrimination extended beyond the rights and freedoms in the Convention to the additional rights within the general scope of the Convention which the State had voluntarily decided to provide. Requirement for aliens, but not nationals, to pay secondary education fees found to be discriminatory and infringe Article 2 of Protocol 1. The action was discriminatory since but for their national and immigration status, the applicants had been in an identical situation to their fellow secondary education pupils.	1) Direct discrimination. 2) Nationality and immigration status. 3) Weighty reasons would have to be given before different treatment based exclusively on nationality would be compatible with the Convention (Para 52). Justification of the need to stem the flow of illegal immigrants was not applicable as the applicants had at all times been legally resident in the country. <i>"[A] State may have legitimate reasons for curtailing the use of resource-hungry public services – such as welfare programmes, public benefits and health care – by short-term and illegal immigrants, who, as a rule, do not contribute to their funding (...) However, the Court cannot overlook the fact that, unlike some other public services education is a right that enjoys direct protection under the Convention. It is also a very particular type of public service, which not only directly benefits those using it but also serves broader societal functions ... Moreover, in order to achieve pluralism and thus democracy, society has an interest in the integration of minorities (...) In the Court's view, the State's margin of appreciation in this domain increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large"</i> (Paras 54-56).

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		5) Compensation.	
26.	Airey v Ireland Application No. 6289/73 9 October 1979	<p>1) The applicant sought to obtain a judicial separation from her abusive husband. He had previously been convicted for assaulting her. A decree for a judicial separation was only available from the Irish High Court and the applicant could not afford the court fees and no civil legal aid was available. The Irish Government argued that the applicant could have applied for such a decree through self-representation. In respect of ESRs, the applicant claimed that the right to non-discrimination guaranteed a right to legal aid in cases for a judicially ordered separation.</p> <p>2) Social security (legal aid).</p> <p>3) European Convention on Human Rights, Article 14 (non-discrimination) taken in conjunction with Article 6(1) (fair trial).</p> <p>4) Five to Two judges found violation under Article 6(1) ECHR of the applicant's right to access to a court for the determination of her civil rights and obligations. Tight majority (four to three) held unnecessary to also examine the case under Article 14 taken in conjunction with Article 6(1).</p>	<p>1) No finding of discrimination. Alleged indirect discrimination. Right to a fair trial interpreted broadly to include the right to legal aid.</p> <p>2) Property/poverty/socio-economic disadvantage (but discrimination claim not considered by court).</p> <p>7) The Court noted that many civil and political rights had social and economic implications involve positive obligations. <i>"The Court is aware that the further realisation of social and economic rights is largely dependent on the situation - notably financial - reigning in the State in question. On the other hand, the Convention must be interpreted in the light of present-day conditions (...) and it is designed to safeguard the individual in a real and practical way as regards those areas with which it deals (...) Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention"</i> (Para 26).</p> <p>There was a right to legal assistance if it was indispensable for effective access to the courts under Article 6(1) ECHR.</p> <p>N.B. The Court, in line with the finding of the Commission, did not address the claim of discrimination under Article 14 ECHR (in conjunction with</p>

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	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
			Article 6) that raised the question as to whether denial of civil rights due to poverty (on grounds of “property”) amounts to discrimination. Two dissenting judges did consider the Article 14 submission, and found that that was no violation. One dissenting judge stated that the court should have addressed this point (but did not go on to consider it).
27.	Chapman v United Kingdom Application No. 27238/95 (2001) 33 E.H.R.R. 399 18 January 2001 Grand Chamber	1) The applicant was a gypsy and travelled by caravan constantly with her family in search of work. She and her family stopped in a number of temporary and unofficial campsites while on a waiting list for a permanent site but were repeatedly moved on by the police and this disruption interfered with the education of their children. The applicant bought a piece of land to use for residential purposes but was refused permission to do so by the relevant local authority as the area in question was protected from residential development. The applicant was fined. She alleged interference with her home, private and family life as a gypsy with a traditional lifestyle of living in a mobile home and also complained that she had been discriminated against on the basis of her status as a gypsy. 2) Adequate standard of living. 3) Articles 8 (right to respect to home, private and	1) No discrimination found. However, right to adequate standard of living interpreted under Article 8 ECHR with reference to “the needs of special minorities”. 2) Race/ethnicity/travelling community. 3) This treatment was justified in this case, based on ensuring the advancement of public interests in orderly development and conservation. There were “ <i>relevant and sufficient reasons</i> ” for such measures to have been taken against the applicant (Paras 112-114) 5) The Court accepted that a positive obligation applies to Contracting States in respect of Article 8 to facilitate “ <i>the gypsy way of life</i> ” (Para 95). Reference was made in the judgment the “ <i>emerging international consensus</i> ” amongst the Contracting States of the Council of Europe recognising the needs of special minorities and an obligation to protect their security, identity and lifestyle (Para 93). 7) N.B. Mowbray highlights the minority’s strong dissent and observes that the “ <i>relatively large size of the group in dissent</i> ” in <i>Chapman</i> that believed that the emerging European consensus required more practical

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	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		family life) and 14 (non-discrimination) ECHR. 4) The refusals of planning permission and the subsequent sanctions amounted to an interference with the applicant's rights under Article 8 to the respect for her home, private and family life. However, the interferences were "in accordance with the law" and pursuing the legitimate aim of protecting the rights of others. In relation as to whether the domestic measures met the test of being "necessary in a democratic society", the Court ultimately determined that the measures taken against the applicant satisfied this requirement. No violation of Article 8 or Article 14.	measures of support "suggests that future cases may require even greater practical measures of support for minorities from governments." ¹
28.	<i>Belgian Linguistic Case (No. 1 & 2)</i> Application No. 147/62; 1677/62; 1769/63; 1994/6; 2126/64 (1979-1980) 1 E.H.R.R. 241;	1) French-speaking residents in Flemish-speaking areas of Belgium wanted their children to be educated in French but could not and the children had to attend their local Dutch-language schools. Dutch-speaking children in French-speaking areas were allowed to be educated at Dutch-speaking schools. The applicants alleged that aspects of the relevant legislation were in breach of the right to non-discrimination in conjunction with their right to education under the Convention.	1) Direct discrimination. 2) Parental residency. 3) The Court held that not all types of differential treatment in the provision of rights and freedoms constitute prohibited discrimination under the Convention. "[T]he principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which

¹ Mowbray, A., *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, Oxford: Hart Publishing, 2004, pp. 179-180.

ECtHR			
	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	(1979-1980) 1 E.H.R.R. 252. 9 February 1967; 23 July 1968 Plenary	2) Education. 3) Article 14 (non-discrimination) ECHR in conjunction with the Article 2 of Protocol 1 (education). 4) The Court by a small majority (eight votes to seven) found that the relevant legislation violated Article 14 of the Convention read in conjunction with Article 2 of Protocol 1 although it found no violation based on the facts relating to the applicants. Other claims were rejected.	<i>normally prevail in democratic societies"</i> (Para 10).

v) [Inter-American Commission On Human Rights \(IACHR\)](#)

The IACHR is one of the institutions within the inter-American system for the protection of human rights ensue from the American Declaration of the Rights and duties of Man

IACHR			
	<u>Case</u>	<u>Summary:</u>	<u>Key findings/reasoning:</u>
		1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
29.	Jorg Odir Miranda Cortez et al. Report No. 29/09 Case 12.249 20 March 2009	1) Petitioners alleged that the State failed to provide the triple therapy medication needed to improve the quality of life of 27 HIV carriers and prevent them from dying. They also alleged that they had faced discriminatory treatment such as segregating bed linen and utensils of HIV patients. 2) Health. 3) Article 24 (equal protection before the law) and 26 (economic, social and cultural rights) American Convention on Human Rights amongst others. 4) Legitimate for state to take measures to prevent spreading of HIV. The measures relating to 26 of the 27 patients were legitimate. But some of the measures adopted in relation to the 27 th petitioner were “utterly unreasonable and demeaning” and violated his right to non-discrimination. No violation of the right to health found.	1) Petitioners alleged direct discrimination. Wide interpretation of Article 26 of the American Convention on Human Rights to read in a right to health. However, no finding on the merits of the discrimination arguments as this hearing only involved admissibility. In a subsequent merits decision, the IACHR did not accept that the 27 HIV carriers had been discriminated against in their treatment as any difference in treatment was legitimate (see Para 73). However, the IACHR accepted that Mr Cortez had been discriminated against personally in his treatment and this was not legitimate (see Para 74). 2) HIV/AIDS patient. <i>“There can be no doubt that the principle of non-discrimination must be very strictly observed to ensure the human rights of persons affected by HIV/AIDS. Public health considerations must also be taken into account since the stigmatisation of, or discrimination against, a person who carries the virus can lead to reluctance to go for medical controls, which creates difficulties for preventing infection”</i> (Para 70). 3) Preventing the spread of HIV is legitimate. But the means must be reasonable.

vi) [Inter-American Court Of Human Rights \(IACtHR\)](#)

The IACtHR is responsible for adjudicating complaints of breaches by states parties to the American Declaration of the Rights and duties of Man.

IACtHR			
	Case	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
30.	Case of the Ituango Massacres v Colombia Series C No. 148 1 July 2006	1) The IACHR alleged that paramilitaries associated with Colombia were responsible for the forced eviction, displacement and destruction of housing in the villages of Ituango, La Granja and El Aro. Serious human rights violations also alleged. 2) Housing. 3) Article 21 (Right to Property) ACHR, amongst others. 4) The forced evictions and destruction of housing violated Articles 11(2) (Right to be free from arbitrary or abusive interference with the home) and 21 (Right to Property). 5) State ordered to pay compensation, to provide justice in this case and a number of other related items.	1) N.B. Rights to non-discrimination and equality not directly invoked, but important comments made on equality and property (see below). 6) Orders that the state: provide free treatment through the national health service, where “ <i>required by the next of kin of the victims</i> ”; take measures to guarantee safe conditions to enable displaced persons to return; organise a public act to acknowledge its international responsibility; “ <i>implement a housing program, to provide appropriate housing to the surviving victims who lost their homes</i> ”; erect a commemorative plaque; “ <i>implement, within a reasonable time, permanent training programs on human rights and international humanitarian law for the Colombian Armed Forces</i> ”; publish the judgment. 7) “ <i>The Court also wishes to record that the right to property is a human right whose violation in this case is particularly serious. In this regard, the Colombian Constitutional Court has established that “property shall be considered a fundamental right, provided it is so closely related to the maintenance of basic living conditions, that its violation affects the right to equality and a decent life” (Para 81).</i>
31.	Case of the Girls Yean and Bosico v Dominican Republic	1) Dilci A Yean and Violeta Bosica were born in the Dominican Republic to parents of Haitian-descent. Two of many Dominicans who were denied birth	1) Direct discrimination. “[T]he principle of the right to equal protection and non-discrimination is irrespective of a person’s migratory status in a State” (Para 155).

IACtHR		
Case	Summary:	Key findings/reasoning:
	1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
Series C No. 130 8 September 2005	<p>certificates to prove that they were citizens of the Dominican Republic as a result of the descent of their parents. Without birth certificates the petitioners were then unable to enrol in school.</p> <p>2) Education.</p> <p>3) Articles 19 (rights of the child), 20 (nationality) and 24 (right to equal protection) ACHR.</p> <p>4) The Inter-American Court of Human Rights held that the State had, by refusing to issue birth certificates, violated the children's rights to protective measures, equality and non-discrimination, nationality, legal status and a name. Also held that under Article 19, the State was obligated to provide special protections to children including preventing economic and social degradation (which included the right to education). Article 19 also violated.</p> <p>5) The State was required to adopt measures to address the historical discrimination caused by the birth record and education system. Also required to guarantee access to free education for all children regardless of background or origin (consequence of special protection for children). Compensation and other matters also ordered.</p>	<p>2) National origin.</p> <p>6) Remedies included requirement on state to publish judgment, issue public apology and organise public act to acknowledge international responsibility and <i>“adopt within its domestic law, within a reasonable time, in accordance with Article 2 of the American Convention, the legislative, administrative and any other measures needed to regulate the procedure and requirements for acquiring Dominican nationality based on late declaration of birth. This procedure should be simple, accessible and reasonable since, to the contrary, applicants could remain stateless. Also, an effective remedy should exist for cases in which the request is rejected in the terms of the American Convention”</i>.</p> <p>7) <i>“It is worth noting that, according to the child's right to special protection embodied in Article 19 of the American Convention, interpreted in light of the Convention on the Rights of the Child and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, in relation to the obligation to ensure progressive development contained in Article 26 of the American Convention, the State must provide free primary education to all children in an appropriate environment and in the conditions necessary to ensure their full intellectual development”</i> (Para 185).</p>

IACtHR			
	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		<u>N.B.</u> This ruling has been ignored by the State and the discrimination continues. See the decision of the Constitutional Court of the Dominican Republic Sentencia/0168/13 of 23 September 2013.	
32.	<u>Case of the Yakye Axa Indigenous Community v Paraguay</u> Series C No. 125 17 June 2005	1) The Yakye Axa Indigenous Community of the Enxet-Lengua People alleged that Paraguay breached its right to life by failing to ensure ancestral property rights. It was alleged that the breach of the right to life had resulted in the Yakye Axa Community being in a vulnerable situation in terms of food, medical and public health care. 2) Right to life (interpreted broadly to include conditions needed to live with dignity). 3) Article 4(1) ACHR. 4) The State did not guarantee the right of the members of the Yakye Axa Community to communal property and that this fact had a negative effect of the right of the members of the Community to a decent life. The State had not taken the necessary positive measures to ensure that the members of the Community had living conditions compatible with their dignity. Economic and social rights read into Article 4(1). Article 4(1) breached. 5) Damages, establishment of a fund to purchase	5) “[T]he Court deems it appropriate to recall that, pursuant to Articles 24 (Right to Equal Protection) and 1(1) (Obligation to Respect Rights) of the American Convention, the States must ensure, on an equal basis, full exercise and enjoyment of the rights of these individuals who are not subject to their jurisdiction. However, it is necessary to emphasize that to effectively ensure those rights, when they interpret and apply their domestic legislation, the States must take into account the specific characteristics that differentiate the members of the indigenous peoples from the general population and that constitute their cultural identity. The Court must apply that same reasoning, as it will do in the instant case, to assess the scope and content of the Articles of the American Convention, which the Commission and the representatives allege were breached by the State” (Para 51). Cross-referring to Para 51, the Court said “As regards indigenous peoples, it is essential for the States to grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs” (Para 63). 6) Numerous orders including: the setting up of funds and programmes for the community, takings of effective legislative and administrative steps to ensure right to property of indigenous peoples and funding a radio broadcast of the judgment.

IACtHR			
	<u>Case</u>	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		land for the Yakye Axa Community, transfer the traditional lands of the Yakye Axa Community at no cost, the public act of acknowledgement of international responsibility and the provision of goods and services until the land recovered.	7) Broad interpretation of right to life to include ESRs. In order to protect and ensure the right to life, the State must generate <i>“minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the State has the duty to take positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority”</i> (Para 162). It went on: <i>“The Court recognizes and appreciates the initiatives taken by Paraguay to provide food, medical-sanitary care and educational materials to the members of the Yakye Axa Community (...) however, it deems that said measures have not been sufficient or appropriate to correct their situation of vulnerability, given the special gravity of the instant case”</i> (Para 169).

C. DOMESTIC JURISDICTIONS

i) AUSTRALIA

AUSTRALIA			
Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Constitution of the World Health Organization</p>	<p>International Covenant on Civil and Political Rights</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Convention on the Elimination of All Forms of Discrimination against Women</p> <p>Convention on the Rights of Persons with Disabilities</p> <p>Convention on the Rights of the Child</p> <p>Convention Against Torture</p> <p>Convention on the Political Rights of Women</p>	<p>Constitution does not have justiciable economic and social rights.</p> <p>Some protection of economic and social within Commonwealth legislation listed in final column.</p>	<p>Age Discrimination Act 2004</p> <p>Disability Discrimination Act 1992</p> <p>Racial Discrimination Act 1975</p> <p>Sex Discrimination Act 1984</p>

AUSTRALIA			
	Case	Summary:	Key findings/reasoning:
		1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
33.	Purvis v New South Wales (Department of Education and Training) [2003] HCA 62 11 November 2003 High Court of Australia	<p>1) The complainant was brain damaged and exhibited anti-social and violent behaviour as a result. Consequently, he was expelled from school. Australia's Human Rights and Equal Opportunity Commission found that the expulsion and some other aspects of his management were in breach of s 22 of the Disability Discrimination Act 1992 (Cth). The issue on appeal was whether the exclusion (and previous suspension) of the complainant contravened the Act.</p> <p>2) Education</p> <p>3) Section 22 Disability Discrimination Act 1992.</p> <p>4) Appeal dismissed (majority). Section 5(1) of the Act required a comparison of how the discriminator treated or would have treated a person without a disability in the actual circumstance of violent behaviour. Action of state not unlawful.</p>	<p>1) Direct discrimination.</p> <p>2) Disability.</p> <p>3) Exclusion did not violate Act (quotes from decision of Gummow, Hayne and Heyden JJ).</p> <p><i>"For present purposes, it is enough to say that we doubt that distinctions between motive, purpose or effect will greatly assist the resolution of any problem about whether treatment occurred or was proposed "because of" disability. Rather, the central question will always be - why was the aggrieved person treated as he or she was? If the aggrieved person was treated less favourably was it "because of", "by reason of", that person's disability? Motive, purpose, effect may all bear on that question. But it would be a mistake to treat those words as substitutes for the statutory expression "because of"."</i> (Para 236)</p>

ii) CANADA

CANADA			
Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Constitution of the World Health Organization</p>	<p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Convention on the Elimination of All Forms of Discrimination against Women</p> <p>Convention on the Rights of Persons with Disabilities</p> <p>International Covenant on Civil and Political Rights</p> <p>Convention on the Rights of the Child</p> <p>Convention on the Political Rights of Women</p> <p>Inter-American Convention on the Granting of Political Rights to Women</p> <p>Convention Against Torture</p>		<p>Constitution Act 1982, section 15 – equality and non-discrimination clause, including positive action.</p> <p>Canadian Human Rights Act 1985, s 3 – discrimination, included compound factors.</p> <p>Canadian Bill of Rights 1960.</p>

CANADA			
	<u>Case</u>	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
34.	<i>Gosselin v Attorney General of Quebec</i> [2002] 4 SCR 429 19 December 2002 Supreme Court of Canada	<p>1) The applicant was unemployed and homeless. She argued that the system of benefits whereby unemployed people under 30 (such as herself) received a smaller sum of money in benefit than those who were older was discriminatory based on age.</p> <p>2) Social security</p> <p>3) Canadian Charter of Rights and Freedoms sections 7 and 15 (equality before the law without discrimination) and the Quebec Charter of Rights and Freedoms section 45.</p> <p>4) By a five to four majority the Supreme Court held there was no discrimination since (i) young adults did not have a pre-existing disadvantage; (ii) the scheme was designed around actual characteristics of young people; (iii) the aim of the scheme was to encourage autonomy by getting young people into training programmes, and (iv) no adverse effects had been shown.</p> <p>N.B. A number of strong dissenting judgments were given (of particular note see that of L'Hereux-Dubé J). The majority judgment has been criticised in many quarters.</p>	<p>1) Direct discrimination, equality before the law</p> <p>2) Age</p> <p>3) The court held that the scheme was not discriminatory despite the fact that people of different ages were treated differently. The crux of the matter was whether welfare recipients under 30 were treated <i>"less worthy of respect than those 30 and over, marginalizing them on the basis of their youth"</i> (Para 28). The court examined four reasons before finding that the applicant had not been discriminated against: (i) pre-existing disadvantage was <i>"[a] key marker of discrimination and denial of human dignity"</i> and young people were not subject to the same <i>"stereotypical or prejudicial views that have marginalized its members and prevented them from participating fully in society"</i> (Para 30) as, for example, some racial groups are; (ii) Was the rationale of the rule based on an accurate portrayal of those under 30? The rule was not imposed in a <i>"stereotypical or arbitrary"</i> way but <i>"corresponded to the actual needs and circumstances of individuals under 30"</i> (Para 38). The purpose of the regime was to encourage young people to <i>"participate in On-the-job Training, Community Work or Remedial Education Programs"</i> (Para 41) which would bring their benefits up to the same (or almost the same) as those over 30; (iii) The rule in question was designed to improve the situation of young people by attempting to get them back into work and was thus <i>"aimed at ameliorating the situation of welfare recipients under 30"</i> (Para 62);</p> <p>(iv) The rule caused no <i>"actual adverse effects"</i> (Para 64) on those under 30.</p> <p>7) In a powerful dissent, L'Hereux-Dubé J states: <i>"The purpose of a section 15 inquiry is to determine whether the claimant has received substantive equality or equal benefit before and under the law.</i></p>

CANADA		
Case	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		<p><i>Equality is denied when the claimant suffers the pernicious effects of a distinction drawn on the basis of an irrelevant characteristic. Such a distinction may be drawn on an enumerated or analogous ground and appear on the face of the law. Alternatively, the distinction may be facially neutral and the negative effects may uniquely be visited upon individuals who possess a personal characteristic that corresponds to the enumerated or analogous grounds. In either case, discrimination is the result.</i>" (Para 102) She goes on to state that, in her view, the discrimination in this case could not be justified. Further:</p> <p><i>"[T]here should be a strong presumption that a legislative scheme which causes individuals to suffer severe threats to their physical and psychological integrity as a result of their possessing a characteristic which cannot be changed does not adequately take into account the needs, capacity or circumstances of the individual or group in question."</i> (Para 135)</p>
<p>35. <i>Eldridge v British Columbia (Attorney General)</i> 9 October 1997 [1997] 3 S.C.R. 624 Supreme Court of Canada</p>	<p>1) The issue under consideration was whether the absence of interpreters subjected deaf persons to an increased risk of misdiagnosis and ineffective treatment and whether not including such services in the relevant legislation was a violation of the right to equality under section 15 of the Canadian Charter of Rights and Freedoms.</p> <p>2) Health</p> <p>3) Canadian Charter of Rights and Freedoms section 15 (equality before the law without discrimination) and Quebec Charter.</p>	<p>1) Equality before law, failure to make a reasonable accommodation. <i>"It is also a cornerstone of human rights jurisprudence, of course, that the duty to take positive action to ensure that members of disadvantaged groups benefit equally from services offered to the general public is subject to the principle of reasonable accommodation (...) [I]n s. 15(1) cases this principle is best addressed as a component of the s. 1 analysis."</i> (Para 79).</p> <p>2) Disability.</p> <p>3) <i>"[I]t is impossible to characterise the government's decision not to fund sign language interpretation as one which reasonably balances the competing social demands which our society must address".</i> (Para 93).</p>

CANADA		
Case	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	<p>4) The Court upheld the appeal – sign language interpreters had to be provided.</p> <p>5) The Court considered that a declaration to suspend for 6 months was the appropriate remedy, because that period of time would give the government the opportunity to rectify the system.</p>	<p>6) Declaration suspended for 6 months for the government to rectify the current system.</p> <p>7) The Charter applied to the failure of hospitals and the Medical Services Commission to provide sign language interpreters because “[T]here is a ‘direct and ... precisely-defined connection’ between a specific government policy and the hospital’s impugned conduct. The alleged discrimination - the failure to provide sign language interpretation - is intimately connected to the medical service delivery system instituted by the legislation. The provision of these services is not simply a matter of internal hospital management; it is an expression of government policy”. (Para 51).</p>
<p>36. Eaton v Brant County Board of Education [1997] 1 S.C.R. 241 6 February 1997 Supreme Court of Canada</p>	<p>1) Whether a decision of the Ontario Special Education Tribunal confirming the placement of a disabled child in a special education class contrary to the wishes of her parents contravened the equality provisions of section 15(1) of the Canadian Charter of Rights and Freedoms.</p> <p>2) Education</p> <p>3) Canadian Charter of Rights and Freedoms section 15 (equality before the law without discrimination).</p> <p>4) No violation of section 15. The placement of the child did not constitute the imposition of a burden or disadvantage, nor did it constitute the withholding of a benefit or advantage from the</p>	<p>2) Disability. The disability ground “means vastly different things depending upon the individual and the context” (Para 69).</p> <p>3) That disability means vastly different things depending on the individual and context “produces, among other things, the ‘difference dilemma’ (...) whereby segregation can be both protective of equality and violative of equality depending upon the person and the state of disability”. (Para 69).</p> <p>7) In cases concerning children, decisions are usually taken by adults, who must act from a subjective, child-centred perspective, one which attempts to make equality meaningful from the child’s point of view as opposed to that of the adult’s in his or her life: “For older children and those who are able to communicate their wishes and needs, their own views will play an important role in the determination of best interests. For younger children, and those like Emily, who are either incapable of making a choice or have a very limited means of communicating their wishes, the decision-maker must make this determination on the basis of the other evidence before it”. (Para 77).</p>

CANADA		
Case	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	child.	
37. Withler v Canada (Attorney General) [2011] 1 S.C.R. 396 4 March 2011 Supreme Court of Canada	1) The appellants, representative plaintiffs in two class actions, were widows whose federal supplementary death benefits were reduced because of the age of their husbands at the time of death, which they claimed was a violation of Section 15(1) of the Canadian Charter of Rights and Freedoms 2) Social security 3) Section 15(1) of the Canadian Charter of Rights and Freedoms (equality before the law without discrimination). 4) The appeal was dismissed due to the conclusion that the social security package as a whole did not impose or perpetuate discrimination. However, the Court established that substantive discrimination can be made out by showing that the impugned law, in purpose or effect, perpetuates prejudice and disadvantage to members of a group on the basis of personal characteristics. The case was part of a trend toward a more contextual analysis by the Court on substantive discrimination highlighting the possible discriminatory <i>impact</i> of the law.	2) Age 3) The Court emphasised that the focus of a section 15 analysis is the actual effect of the differential treatment, and therefore the analysis requires a contextual consideration of the impact. The contextual assessment led the Court to decide that the age-based benefit reduction did not breach section 15 as the scheme was designed to benefit a number of different groups, and the benefit reductions reflected the reality that different groups of survivors have different needs. The Court noted that the impugned benefit was not meant to provide a long-term income scheme for older surviving spouses, as such a scheme is provided by a distinct pension benefit.

CANADA			
	<u>Case</u>	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
38.	<i>Egan v Canada</i> [1995] 2 S.C.R. 513 25 May 1995 Supreme Court of Canada	<p>1) Whether the opposite-sex definition of common-law “spouse” used to determine social security benefits under section 2 of the Old Age Security Act 1985 discriminated on the basis of sexual orientation.</p> <p>The applicant’s were a gay couple who have lived together since 1948. When one of them turned 65 in 1986, he began to receive old age security and guaranteed income supplements under the Old Age Security Act. On reaching age 60, the other applied for a spousal allowance under s. 19(1) of the Act, but the benefit was denied.</p> <p>2) Social Security</p> <p>3) Section 15(1) of the Canadian Charter of Rights and Freedoms (equality and non-discrimination).</p> <p>4) The appeal was dismissed, but sexual orientation was recognised as an analogous ground protected against discrimination under section 15 of the Charter.</p>	<p>2) Sexual orientation.</p> <p>3) The Court applied an established two-step test on 1) whether there had been an infringement of Section 15, and if so 2) whether it was “demonstrably justified in a free and democratic society”. The Court was divided on its reasoning as its members disagreed on whether there was an infringement in the first place and if so, whether it was it justified. In the end, the Court ruled with votes 5-4 that no discrimination took place in the current case. 4 of the judges reached this conclusion as they saw the distinction being relevant to the objective of the legislation, while the fifth judge reasoned that the legislation did discriminate, but it was justified given the novelty of recognising same-sex couples and the need to allow the government to proceed incrementally in the extension of social benefits.</p>

iii) COLOMBIA

Colombia			
Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
<p>International Covenant on Economic, Social and Cultural Rights</p> <p>American Convention on Human Rights</p> <p>American Declaration of the Rights and Duties of Man</p>	<p>International Covenant on Civil and Political Rights</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Convention on the Elimination of All Forms of Discrimination against Women</p> <p>Convention on the Rights of Persons with Disabilities</p> <p>Convention on the Rights of the Child</p> <p>Convention Against Torture</p> <p>American Convention on Human Rights</p> <p>American Declaration of the Rights and Duties of Man</p>	<p>Constitution's Chapter 2 ('Economic, social and cultural rights')</p> <p>Law 10, 1990 (National Health Service)</p> <p>Law 115, 1994 (General Law of Education)</p> <p>Law 100, 1993 (Social Security)</p> <p>Law 99, 1993 (Environment Law)</p>	<p>Constitution (Articles 5, 13, 14)</p> <p>Law 1492, 2011 (Anti Discrimination law)</p> <p>Law 1542, 2012 (Domestic Violence)</p> <p>Law 82, 1993 (Law supporting women as breadwinners)</p>

Corte Constitucional de Colombia			
	Case	Summary:	Key findings/reasoning:
		1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	1) Discriminatory conduct/equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
39.	C-521/07 11 July 2007 <i>Corte Constitucional de Colombia</i>	1) Article 163 of Law 100, 1993 stated that unmarried couples had to live together for two years to be able to include their partner as a beneficiary of the State's Mandatory Health Programme. That was not required for married couples. The Programme comprises more than 5,000 procedures and surgeries as well as access to 730 medicines. 2) Right to Health 3) Colombian Constitution (Articles 1, 2, 11, 13, 16, 42, 48 and 49) 4) The challenged article was deemed unconstitutional by 5 out of the 8 judges.	1) Married couples were able to include their partners as beneficiaries of the Mandatory Health Programme regardless of the time they had been together. On the other hand, de facto couples had to live together for a minimum of two years in order to do the same. 2) Marital status 3) The two-year time frame was used to be sure that the unmarried couples were serious about their commitment. Allowing unmarried couples to opt for the health benefits, regardless of their time together, could allow unscrupulous people to abuse the health system. The Court rejected this argument declaring that both citizens and public servants are expected to carry out their businesses in good faith. Good faith is considered a fundamental moral principle: <i>"La Sala reitera el deber que tienen los particulares y las autoridades de ceñirse a los postulados de la buena fe, la cual se presume en todas las gestiones que aquellos adelanten ante éstas"</i> 6) Article 42 of the Constitution protects families that come from both married and unmarried couples. Article 163 of Law 100 was clearly unconstitutional. Furthermore, Article 163 violated the rights to equality, social security, health, life and protection to the family: <i>"Para la Sala, la exigencia de convivir durante un lapso superior a dos años para lograr afiliarse como beneficiario del Plan Obligatorio de Salud al compañero (a) permanente, quebranta los derechos a la igualdad, seguridad social, salud, vida, libre desarrollo de la personalidad y protección integral de la familia, por cuanto el constituyente consagró una protección igual para las uniones familiares constituidas por vínculos naturales o jurídicos, como también para las conformadas por la decisión libre de contraer matrimonio o</i>

Corte Constitucional de Colombia			
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			<p><i>la voluntad responsable de conformarlas”</i></p> <p>The challenged article has in fact discriminated against a certain sector of the society, going against the main principles and rights established in the Constitution:</p> <p><i>“El legislador ha excluido de la condición de beneficiario del Plan a un sector de la sociedad a partir de un criterio temporal, incurriendo de esta manera en un acto de discriminación, pues tal comportamiento no encuentra justificación objetiva y razonable desde una perspectiva constitucional acorde con los principios, derechos, libertades y garantías fijados por el constituyente”</i></p> <p>The Constitution acknowledges that a family can originate from both married and unmarried couples but it does not makes any distinction between them:</p> <p><i>“Si bien el Texto Superior distingue entre los diversos orígenes que puede tener la familia, en ningún momento genera discriminación entre ellas”</i></p>
40.	<p>T-654/04</p> <p>8 July 2004</p> <p><i>Corte Constitucional de Colombia</i></p>	<p>1) The petitioner needed a perineoplasty but the authorisation was refused because this particular procedure was not included in the Mandatory Health Programme. The Programme comprises more than 5,000 procedures and surgeries as well as access to 730 medicines. In addition to that, the perineoplasty was considered as plastic surgery. All kinds of plastic surgery are explicitly excluded from the programme.</p> <p>2) Right to health</p>	<p>1) Perineoplasty was not included in the Mandatory Health Programme because it was considered as plastic surgery. However, in the discussed case, perineoplasty was a medical procedure geared towards improving the quality of life of the patient and not her aesthetic.</p> <p>2) The petitioner’s financial situation.</p> <p>3) The petitioner’s life was not in danger and, in addition to that, the perineoplasty was considered cosmetic surgery and therefore was not a priority for the health service. The Court ruled that, in attention to the petitioner’s precarious financial situation that made her impossible to pay</p>

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		<p>3) Colombian Constitution (Articles 1, 2, 13, 49, 366)</p> <p>4) The Court ordered a health centre to perform the procedure</p> <p>5) Perineoplasty to be performed.</p>	<p>for the surgery privately, it was the State's duty to provide for her:</p> <p><i>"El Estado debe suministrar un bien o servicio que la persona requiere para satisfacer sus necesidades básicas"</i></p> <p>The State has a duty of care towards its citizens which includes among other things guarantee both their physical and psychological wellbeing:</p> <p><i>"Se deduce de las circunstancias que atraviesa la accionante, tanto económica como de salud, que se le están vulnerando los derechos fundamentales a tener una vida digna, a su integridad física en conexión con el derecho a la salud, por parte de la entidad demandada al no realizarle la intervención de Perineoplastía."</i></p> <p>6) It is the State's duty to care about the health of all its citizens, specially the most vulnerable ones:</p> <p><i>"El Estado tiene el deber de asegurar a todas las personas, y en especial a aquellas que se encuentran en situaciones de vulnerabilidad (niños, ancianos, etc), unos servicios de salud básicos"</i></p> <p>The right to health should be considered as a right on its own and not in connection with the right of life or the right to social security:</p> <p><i>"La mejor doctrina constitucional en la materia no es la de considerar la salud como un derecho fundamental por conexidad sino como un derecho fundamental en sí mismo"</i></p> <p>Not considering the right to health as a right on its own means that the Court</p>

Corte Constitucional de Colombia			
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			<p>has not taken into account the link between the protection of the right and equality:</p> <p><i>“la gran debilidad de la jurisprudencia en salud de la Corte es que su concepción de la salud como un derecho fundamental por conexidad la ha llevado a no tomar en consideración la relación que debe existir entre la protección de este derecho social y el respeto de la igualdad, tanto en su dimensión formal (igualdad de trato) como su dimensión sustantiva (igualdad material y efectiva)”</i></p> <p>If questioned medical procedure/surgery cannot be provided to all citizens because it is too expensive, that in itself consists of something against the general principle of equality:</p> <p><i>“La jurisprudencia de la Corte corre el riesgo de establecer una doctrina que, en nombre de la igualdad y de la realización de los derechos sociales, puede provocar profundas desigualdades, pues si la prestación otorgada es tan costosa que no puede ser concedida por el sistema de salud a todos los que la requieren, entonces la decisión judicial estaría consagrando privilegios contrarios al principio de igualdad de trato, según el cual, todas las personas que se encuentren en una misma situación deben recibir un mismo tratamiento por las autoridades”</i></p>

iv) INDIA

INDIA			
Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Constitution of the World Health Organization</p>	<p>International Covenant on Civil and Political Rights</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Convention on the Elimination of All Forms of Discrimination Against Women</p> <p>Convention on the Rights of Persons with Disabilities</p> <p>Convention Against Torture (signed, but not ratified)</p> <p>Convention on the Rights of the Child</p> <p>Convention on the Political Rights of Women</p>	<p>Constitution of India provides for the rights to education (Arts. 21A, 29-30, 41 and 45); work (Arts. 41-43A) and social security (Arts. 41 and 42), within the limits of the State's economic capacity (except education for 6-14 year olds).</p> <p>Duty of the State to raise the level of nutrition and the standard of living and to improve public health (Art. 47).</p>	<p>Constitution of India, Articles 14-18 (Right to Equality).</p> <p>The Caste Disabilities Removal Act 1850</p> <p>Hindu Succession Act 1956</p> <p>Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989</p>

INDIA			
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41.	Mohini Jain v State of Karnataka 1992 AIR 1858 30 July 1992 Supreme Court of India	<p>1) Whether there is a "right to education" guaranteed under the Constitution of India and whether the charging of "capitation fees" violates this right and the right to equality. The Karnataka state government passed a notification enabling private medical colleges to charge fees ("capitation fees") to students other than those who were admitted to "government seats" (seats reserved for students requiring support to overcome historic discrimination, or coming from other groups designated by the government). Fees for students admitted to "government seats" could not exceed Rs 2,000 annually, while other students could be charged up to Rs 60,000 in a private medical college.</p> <p>2) Right to education.</p> <p>3) Article 14 (right to equality), Article 21 (right to life and personal liberty) and Article 41 (right to education) of the Indian Constitution.</p> <p>4) Firstly, the Court ruled that there is a constitutional right to education as education is essential to the fulfilment of the fundamental rights of dignity and life. Secondly, it held that accessibility to education should be realised for all people, regardless of their wealth. As admission was based on income, rather than merit, the fees also violated the right to equality. The decision established that the fulfilment of the right to life</p>	<p>1) Violation of right to equality. <i>"The capitation fees brings to the fore a clear class bias. It enable the rich to take admission whereas the poor has to withdraw dur (sic) to financial inability. A poor student with better merit canoot (sic) get admission because he has no money whereas the rich can purchase the admission. Such a treatment is patently unreasonable, unfair and unjust. There is, therefore, no escape from the conclusion that charging of capitation fee in consideration of admissions to educational institutions is wholly arbitrary and as such infracts Article 14 of the Constitution."</i> (page 661, at 1.08)</p> <p>2) Arbitrary distinction between rich and poor, wealth.</p> <p>3) The state argued that there was a distinction between meritorious students (who may be allocated the Government seats) and others and that the high fees charged to the others were necessary for the running of the medical college which did not receive any aid from the government. The court however rejected this argument and found a distinction based on wealth to be arbitrary and contrary to the right to equality under Article 14. It stated <i>"the only method of admission to the medical colleges in consonance with the fair play and equity is by ways of merit and merit alone."</i> (p. 674)</p> <p>4) The Court ruled that the state is responsible for the conduct of a private college as by discharging its obligation to private educational institutions, the state created an "agency-relationship". Thus, the State government had to take responsibility for ensuring that the private college does not charge fees which are in violation of the Constitution.</p>

INDIA			
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		requires a life of dignity, and therefore must be interpreted to include economic and social rights. 5) The Court struck down the payment of “capitation fee” as a condition for entry into any educational institution.	6) By the decision, the Court confirmed that the right to education poses an obligation on the State to provide basic education to all citizens.
42.	<i>Unni Krishnan J.P. & Ors. v State of Andhra Pradesh & Ors.</i> 1993 AIR 217 4 February 1993 Supreme Court of India	1) Private professional educational facilities challenged the constitutionality of state laws regulating “capitation fees” by asking whether the right to life guarantees a fundamental right to education, taking into account the limits posed by economic resources and whether the right to education includes adult professional education. 2) Right to education. 3) Articles 14 (right to equality), 19(1)(g)(right to practise any profession), 21 (right to life), 41 (right to work, education and public assistance) and 45 (providing free and compulsory education for all children under 14) of the Constitution of India. 4) The Supreme Court held that the right to basic education is implied by the fundamental right to life (Article 21) when read in conjunction with the directive principle on education (Article 41). However, there is no fundamental right to education for a professional degree that flows from Article 21, when,	1) Applying arbitrary fees in state-recognised educational institutions. 3) The Court did not specifically address discrimination in ruling that the right to education of children over 14 years is limited by economic and social circumstances of the state. 4) Private institutions receiving state aid are bound by terms and conditions imposed by the general interest of the public. 5) The state's obligation to provide higher education requires it to take steps to the maximum of its available resources with a view to achieving progressively the full realisation of the right of education by all appropriate means.

INDIA			
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		<p>after the age of 14, the right to education is subject to the limits of economic capacity and development of the state (Article 41). The State's obligation to provide higher education does, however, require it to take steps to the maximum of its available resources to fully realise that right (as enshrined in Article 13 of the ICESCR)</p> <p>5) The state amended the Constitution by inserting the Article 21-A, which provides for the fundamental right to education for children between the ages of six and fourteen.</p>	
43.	<p><i>Olga Tellis & Ors. v Bombay Municipal Council</i> [1985] 2 Supp SCR 51 10 July 1985 Supreme Court of India</p>	<p>1) The city of Bombay had decided to evict all pavement and slum dwellers. Various parties claimed that this would violate the right to life under the Constitution because a home in the city allowed them to attain a livelihood and because the right to life includes protection of means of livelihood. The applicants demanded that adequate resettlement be provided if the evictions proceeded.</p> <p>2) Right to life. right to housing; adequate standard of living. (Right to life was interpreted to include livelihood).</p> <p>3) Article 21 (right to life) of the Constitution of India.</p> <p>4) The Court held that the right to life, stipulated in</p>	<p>3) Deprivation of the right to livelihood was justified as the procedure was “just” and “fair”. The Court concluded that as the removal of encroachments on the footpaths or pavements over which the public has the right of passage or access, could not be regarded as unreasonable, unfair or unjust, they did not amount to a breach of equality.</p> <p>5)The state did not have a positive obligation to provide adequate means of livelihood or work to the citizens, but it did have a duty to hear the people who were affected by the evictions already in the planning phase.</p>

INDIA			
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		<p>Article 21 of the Constitution, encompassed means of livelihood, but the right to a livelihood was not absolute. It concluded that it was reasonable for the government to evict those living on public pavements, footpaths and public roads and hence no violation had occurred in this regard. However, the Court did rule that the residents had been denied the opportunity to be heard on a matter affecting them at the time of the planning.</p> <p>5) The court declined to provide the remedies requested. It stated that the evicted dwellers did not have a right to resettlement at an alternative site, but instead made orders that: (i) sites should be provided to residents presented with census cards in 1976; (ii) slums in existence for 20 years or more were not to be removed unless land was required for public purposes and, in that case, alternative sites must be provided; and (iii) high priority should be given to resettlement. Afterwards, the pavement dwellers were evicted without resettlement.</p>	
44.	<p><i>Municipal Council, Ratlam v Shri Vardhichand & Ors.</i> (1981) SCR (1) 97 29 July 1980</p>	<p>1) The Council of Ratlam had failed to provide sanitary facilities or public conveniences for slum dwellers. As a result, people in informal settlements were using the road for that purpose. Open drains attracted mosquitoes, posing a threat to health. The open sewage was worsened by a distillery discharging bad smelling fluids into the street. The applicants sought an order</p>	<p>3) The Court held that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties. It further emphasised that the law shall protect rich and poor alike.</p> <p>5) The Court held that maintaining sanitation in the area, and removing public nuisance caused by the absence of it, are mandatory duties of the</p>

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	Supreme Court of India	<p>directing the Municipal Council of Ratlam to take the necessary action to stop these unbearable conditions. The municipality relied on financial difficulties in its argumentation.</p> <p>2) Health; adequate standard of living</p> <p>3) Article 47 (Duty of the State to raise the level of nutrition and the standard of living and to improve public health) of the Constitution of India.</p> <p>4) The Court stressed the overall social justice orientation of the Constitution by ruling that the municipality must provide proper sanitation facilities in the area. It held that it runs contrary to the orientation of the Constitution when pollutants of big factories are being discharged to the detriment of poorer sections of the population. It further stated that “[d]ecency and dignity are non-negotiable facets of human rights” (page 11).</p> <p>5) The petition was dismissed. The court ordered the municipality to prioritise by decreasing its budget in other areas and using the savings for sanitary facilities and public health measures within a certain time limit. Also, it issued detailed directions to stop effluents from the distillery flowing into the street.</p>	<p>Council. In fulfilling these positive duties, the Court ordered ‘affirmative action’ to be taken to ensure that the situation would be remedied efficiently.</p>

INDIA			
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45.	<u>Consumer Education and Research Centre v Union of India</u> AIR 1995 SC 922 27 January 1995 Supreme Court of India	1) Whether right to health is included in article 21 of the Constitution protecting the right to life and personal liberty. -The case concerned the occupational health hazards faced by workers in the asbestos industry. 2) Right to health. 3) The case was brought under Article 21(right to life), but the court also referred to equality in its argumentation. 4) The Court held that right to health and medical care is a fundamental right included in article 21. This recognition established a framework for addressing health concerns within the rubric of public interest litigation and in a series of subsequent cases. Furthermore, the Court ruled that Article 21 includes the right to live with equality and dignity.	3) The court held that the constitution obliged the government to provide social justice to its citizens, and that the concept of social justice included equality to give practical content to 'life'. It further stated that social justice and equality are complementary to each other and that law should be used to bring about equality. 4) Yes, to the extent that the directions would apply to them. 5) The Court held that it is the obligation of the state not only to provide emergency medical services but also to ensure the creation of conditions necessary for good health, including provisions for basic curative and preventive health services and the assurance of healthy living and working conditions.
46.	<u>Kirloskar Brothers Ltd vs Employees' State Insurance Corpn</u> 1996 SCALE (2)1 24 January 1996 Supreme Court of	1) Whether the Employees' State Insurance Act, 1948 ('the Act') would apply to the regional offices of the appellant. 2) Right to health. 3) The court held that even private industries have to ensure safety of workers and to provide facilities for health which is an integral part of right to equality.	4) Yes, to the extent that the relevant statute applied to them.

INDIA			
	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	India	4) Appeal dismissed.	
47.	<u>Society of Unaided Private schools of Rajasthan v. Union of India</u> AIR 2012 SC 3445 12 April 2012 Supreme Court of India	1) Whether the Right of Children to Free and Compulsory Education Act 2009, requiring schools to reserve 25% of their seats for students from disadvantaged background, applied to unaided non-minority schools. Right to education. 2) Article 14 (right to equality) and 21A (Right to education). 3) The Court held that the Act does apply to unaided non-minority schools but not to unaided minority ones.	2) Financial disadvantage. 3) The Court upheld the constitutionality of the Act and concluded that the law passed the reasonableness test under Article 14 and that earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14. 4) Yes, to the extent that it was held that the statute applied to them, but not applicable to unaided minority schools.

v) IRELAND

IRELAND			
Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
<p>International Covenant on Economic, Social and Cultural Rights.</p> <p>European Social Charter</p> <p>Constitution of the World Health Organization</p>	<p>European Convention on Human Rights</p> <p>International Convention on the Elimination of all Forms of Racial Discrimination</p> <p>Convention on the Elimination of All Forms of Discrimination against Women</p> <p>Convention on the Rights of the Child</p> <p>Convention on the Rights of Persons with Disabilities (ratification pending)</p> <p>Convention Against Torture</p> <p>Convention on the Political Rights of Women</p>	<p>Employment Equality Act 1998 (protected characteristics include membership of the traveller community).</p> <p>Education for Persons with Special Educational Needs (EPSEN) Act 2004</p> <p>The Constitution of Ireland 1937 does not contain any express provisions in respect of ESR that can be judicially enforced.</p> <p>Article 45 of the Constitution enumerates ESR but states that these rights are exempt from judicial enforcement:</p> <p>“The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas [the legislature]. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution.” (Emphasis added).</p>	<p>Constitution of Ireland 1937, Article 40 (equality, protected characteristics include social conditions).</p> <p>Disability Act 2005</p> <p>Equality Act 2004</p> <p>Equal Status Act 2000</p> <p>National Disability Authority Act 1999</p>

IRELAND			
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48.	<i>O'Reilly v Limerick Corporation</i> (unavailable online) [1989] ILRM 181 High Court of Ireland	1) The applicants were members of the traveller community residing in caravans on unofficial sites in the city of Limerick in conditions of considerable poverty and deprivation. They did not desire to be rehoused by the State, but required sites with hard surfaces on which their caravans could be placed, toilet facilities, running water and a regular refuse collection that had not been provided. The applicants stated that their constitutional rights had been violated due to the conditions they were forced to live in. 2) Right to an adequate standard of living. 3) Article 40.3.1 of the Constitution of Ireland ("The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.") 4) The High Court held that it had no jurisdiction to entertain the applicant's claim as there was no constitutional right to the basic materials conditions to provide a certain minimum standard of living.	2) Lifestyle, membership of traveller community. 3) The Court did not consider whether the state had violated the applicants' constitutional rights as it found it lacked jurisdiction to do so. This was because the claim for damages was based on a failure to distribute the community's wealth, which was seen as task of the Parliament rather than the Court.
49.	<i>MhicMhathuna v Attorney General</i> (unavailable online)	1) The applicants disputed the differential treatment of married and unmarried parents under income tax and social welfare codes.	1) Direct discrimination. 2) Marital status.

IRELAND			
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	[1995] 1 IR 484 14 July 1994 Supreme Court of Ireland	They argued that the relevant statutory provisions for the abolition of tax allowance for married parents in respect of their dependent children constituted discrimination as this did not treat them equally before the law in view of the treatment of other parents. In the applicants' view the level of financial support received was insufficient. 2) Right to social security. 3) Articles 40.1 (general right to equality) and 41 (protection of family) 4) Following the High Court decision of <i>O'Reilly v Limerick Corporation</i> , the Supreme Court held that it could not adjudicate on the fairness or otherwise of the manner in which the State administered public resources. The adequacy, therefore, of the financial support being received could not therefore be determined by the Supreme Court.	3) The Court held that there were several justified grounds for distinguishing between single and married parents as they had different needs. It concluded that it shall not interfere in assessing the extent of a disparity between them. Only in certain cases, such as when financial aid would be denied from a family altogether, could the state be seen as violating article 41 (protection of family). As above, the Court held that it had no jurisdiction to entertain the applicant's complaints based on the separation of powers doctrine.
50.	<i>Sinnott v Minister for Education</i> [2001] IESC 63 12 July 2001	1) Mother and carer of Mr. Sinnott (aged 23), sought a mandatory injunction to direct the government to provide adequate primary education facilities for her son who suffered from severe mental and physical disablement and autism. Both applicants, the mother and the son,	2) Disability. 3) Again, the Court emphasised the separation of powers doctrine and the role of the Parliament in distributing the nation's wealth. Thus, only in the most extreme cases would the courts enforce positive obligations on the state.

IRELAND			
	<u>Case</u>	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	Supreme Court of Ireland	<p>also sought damages for breach of the Constitutional rights in question.</p> <p>2) Right to adequate social conditions; right to education.</p> <p>3) Articles 40.1 (right to equality) and 42.4 (right to free primary education) of the Constitution.</p> <p>4) The Supreme Court held that the State's duty to provide for free primary education applies to children only, not adults, and that the duty ceased to apply even in the case of a person with severe mental handicap once the age of majority at 18 was reached. Hence, Court found a constitutional violation of Mr. Sinnott's right to education only regarding the time before he turned 18.</p> <p>5) The Supreme Court (by a majority of four to three) upheld the finding of the High Court that relief should be granted, but that this should be by way of a declaration and not a mandatory injunction.</p>	

vi) SOUTH AFRICA

SOUTH AFRICA			
Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
<p>International Covenant on Economic, Social and Cultural Rights (signed, but not ratified)</p> <p>Constitution of the World Health Organization</p>	<p>International Covenant on Civil and Political Rights</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Convention on the Elimination of All Forms of Discrimination against Women</p> <p>Convention on the Rights of Persons with Disabilities</p> <p>Convention Against Torture</p> <p>Convention on the Rights of the Child</p> <p>Convention on the Political Rights of Women (signed, but not ratified)</p> <p>African Charter on Human and Peoples' Rights</p>	<p>Housing (Constitution of South Africa, section 26)</p> <p>Healthcare, food and water and social security (Constitution of South Africa, section 27)</p> <p>Education (Constitution of South Africa, section 29)</p> <p>But the above (except a basic education) are all subject to available resources.</p> <p>Socio-economic rights of children (Constitution of South Africa, section 28)</p> <p>Prevention of Illegal Evictions from and Unlawful Occupation of Land Act No. 19 of 1998</p>	<p>Right to equality and non-discrimination (Constitution of South Africa, section 9)</p> <p>Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000</p>

SOUTH AFRICA			
	Case	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
51.	<p><i>Khosa and Others v The Minister of Social Development and Others</i></p> <p>2004 (6) SA 505 (CC)</p> <p>4 March 2004</p> <p>Constitutional Court of South Africa</p>	<p>1) The case concerned an application for an order confirming the constitutional invalidity of certain provisions of the Social Assistance Act No. 59 of 1992 (the "Act") granted in the Pretoria High Court ("High Court"). The challenged sections disqualified persons who were not South African citizens from receiving certain welfare grants. The applicants in both matters were permanent residents. They argued that the citizenship requirement infringed their Constitutional rights to equality, social security, and the rights of their children.</p> <p>2) Right to social security.</p> <p>3) Constitution of the Republic of South Africa sections 27(1)(c)(right to social security and social assistance), 28 (in so far as the grants to children are concerned) and 9 (right to equality).</p> <p>4) The court stated that the Constitution vests the right to social security in "everyone" and that permanent residents are bearers of this right. Furthermore, the Court held that the exclusion of permanent residents from the scheme is discriminatory and unfair and infringed the right to equality. With regard to Section 28, the Court confirmed that the exclusion of children from access to these grants amounted to unfair</p>	<p>2) Citizenship: this, however, is not a listed ground for discrimination but an analogous one. At Para 68 the Court held that <i>"If the differentiation is based on a ground listed in s 9(3) of the Constitution, a rebuttable presumption that the discrimination is unfair is created by s9(5). However, where, as in this case, the ground for differentiation is not itself listed but is analogous to such listed grounds, there is no presumption in favour of unfairness and the unfairness first has to be established."</i></p> <p>3) The Court held that socio-economic rights are closely related to the founding values of human dignity equality and freedom. Further, the rights enshrined in the Bill of Rights intersect in a manner that reinforces this. Therefore, <i>"equality in respect to access to socio-economic rights is implicit in the reference to 'everyone' being entitled to have access to such rights in s 27"</i> (Para 42).</p> <p>The Court recalled that when dealing with socio-economic rights, the availability of human and financial resources must be taken into account. Still, even where resources are limited, the criteria upon which they choose to limit the payment of benefits (in this case, citizenship) must be consistent with the Bill of Rights as a whole. Thus if the means chosen unreasonably limit other constitutional rights, that too must be taken into account.</p> <p>In the present case, the importance of providing social assistance to all who permanently reside in South Africa and the impact upon life and dignity, outweighed the financial and immigration considerations on which the State relied. Therefore, the exclusion of permanent residents was not reasonable within the meaning of the Section 27(2).</p>

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	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		discrimination on the basis of their parents' nationality. 5) The Court set aside the order of the High Court which sought the striking down of the impugned provisions but instead opted for the reading in of the words "or permanent resident" after the word "citizen" in each of the challenged sections.	
52.	<i>Jaftha v Schoeman</i> 2005 (2) SA 140 (CC) 8 October 2004 Constitutional Court of South Africa	1) The issue was whether a law which permits the sale in execution of peoples' homes because they have not paid their debts, thereby removing their security of tenure, violates the right to have access to adequate housing, protected in section 26 of the Constitution. The appellants were poor persons who faced a threat of losing their homes by virtue of a sale in execution against their immovable property. Both appellants were able to purchase their homes after receiving a State subsidy. However, if they lost their homes, there was a possibility that they would be disqualified from ever receiving another subsidy. They therefore approached the court with the request that the relevant provision in the Magistrates Court Act 32 of 1944 which provides for sales in execution of immovable property of judgment debtors be declared unconstitutional. 2) Right to adequate housing (security of tenure in	1) Indirect discrimination. The Court stated that the need to protect security of tenure in section 26 must be viewed in light of the history and injustices of forced removals from land and evictions from homes. Such a history shows that the right to access to adequate housing is linked to dignity and self-worth and that is why it is particularly important to protect this right. 3) No justification in this case. The Court stated that although the Act provides for a debtor to approach the Court and request a stay or setting aside of a warrant of execution on good cause shown, this step was to be initiated by the debtor. This approach overlooks the fact that persons such as the present appellants are usually unaware of these provisions. Even if they know of the provisions, it may be difficult for them to approach the court because of their poverty. Thus, the poverty put the applicant's in a vulnerable position, in which they could not fully enjoy their rights. 6) The courts were placed under an obligation to provide judicial oversight over sales in execution against immovable property of judgment debtors. This excludes the need for debtors to seek redress on their own initiative. 7) The Court ordered that judicial oversight at the point of sale in execution

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	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		<p>relation to adequate housing).</p> <p>3) The Constitution of the Republic of South Africa, section 26 (right to adequate housing). However, unlike with previous cases this case dealt with the negative aspect of the right i.e. the right not to interfere with existing access to adequate housing.</p> <p>4) Appeal was upheld. The court ruled that section 26 of the Constitution, guaranteeing the right to housing, needed to be read as a whole and that the eviction could not occur without considering all of the circumstances relevant to the case. The impugned provision was declared unconstitutional to the extent that it allowed sale in execution of immovable property of indigent persons where it was unjustifiable to do so.</p> <p>5) To remedy this, the Court ordered that judicial oversight at the point of sale in execution against the immovable property must be provided. Such a provision was made through a reading in of the appropriate words into the section</p>	<p>against the immovable property must be provided. Such a provision was made through a reading in of the appropriate words into the impugned section.</p>
53.	<u>Port Elizabeth Municipality v Various Occupiers</u>	1) Port Elizabeth Municipality sought the eviction of persons living in shacks erected on private property. The occupiers stated that they were willing to move as long as suitable alternative land	1) In considering the entitlement of the Municipality to obtain the eviction of the occupiers, the Court made the following remarks on equality: <i>“The blatant disregard manifested by racist statutes for property rights in the past makes it all the more important that property rights be fully respected in</i>

SOUTH AFRICA			
	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	2005 (1) SA 217 (CC) 1 October 2004 Constitutional Court of South Africa	<p>was provided. In the lower court, it was held that because they were in unlawful occupation of the land they must be evicted. On appeal, this decision was overturned. The current case is an application for leave to appeal the previous decision in which the Municipality is seeking a ruling that they are not constitutionally obliged to find alternative housing or land when seeking an eviction order against unlawful occupiers.</p> <p>2) Right to housing and land.</p> <p>3) Constitution of the Republic of South Africa, section 26(3) dealing with eviction and The Prevention of Illegal Eviction and Unlawful Occupation of Land Act (PIE Act), section 6. These are to be balanced with section 25 of the Constitution which provides for the right not to be deprived of property.</p> <p>4) The Court held that although the Municipality was not under a constitutional duty in all cases to provide alternative accommodation or land, its failure to take all reasonable steps to do so would be an important consideration in deciding what was just and equitable as per the requirements in the PIE Act. Thus in these circumstances, it was not just and equitable for the eviction order to be granted.</p>	<p><i>the new dispensation, both by the state and by private persons.</i> <i>"The judiciary cannot of itself correct all the systemic unfairness to be found in our society. Yet it can at least soften and minimise the degree of injustice and inequity which the eviction of the weaker parties in conditions of inequality of necessity entails."</i> (Para 38).</p> <p>3) No justification in this case. The Court stated that its duty in interpreting constitutionally protected rights is to affirm the values of dignity, equality and freedom. This applies to both the occupiers' right to just and equitable eviction as well as the property owners' right to protection of property rights. There must always be an attempt to find suitable alternative accommodation without prejudicing the claims of lawful occupiers and those in line for formal housing. It is not enough for a Municipality to point to a programme that works in theory, it must demonstrate equal care and concern for everyone. This decision provided advocates with a basic defence against eviction from private property where no alternative accommodation is available. It established that homeless people who have occupied land have to be negotiated with as people who have rights.</p> <p>4) The unlawful occupiers could not be evicted from private property until the Municipality was able to point out a suitable alternative.</p> <p>6) The Court stated that the Municipality was not precluded from making further efforts to resolve the issue. It further stated that the Municipality must not be partial but has a duty to show equal accountability to both sides.</p> <p>7) The court further stated that in future, mediation must be viewed as a necessary step prior to litigation.</p>

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	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
54.	<p><u>Minister of Health v Treatment Action Campaign</u></p> <p>2002 (5) SA 721 (CC)</p> <p>5 July 2002</p> <p>Constitutional Court of South Africa</p>	<p>1) The appellants, in an effort to deal with mother-to-child transmission of HIV, adopted a policy in which Nevirapine (an anti-retroviral drug) was to be made available to patients in certain public hospitals and not others. The reason stated for this restricted access was that the government wanted to create research and training sites, the results of which would be used to develop the very best possible prevention programme. The respondents thus applied to court, arguing that the policy was not comprehensive in that it excluded a large part of society from its ambit.</p> <p>2) Right to health care.</p> <p>3) The Constitution of the Republic of South Africa, sections 27(1)(a)(right to health care) and (2) and 28(1)(c) (the right of children to be afforded special protection).</p> <p>4) The Court held that the government policy was unreasonable and thus in breach of its constitutional obligations to progressively realise the rights within their available means. In particular, the Court stated that the inflexible nature of the policy failed to make provision for those in need and therefore was in breach of government's constitutional obligations.</p>	<p>6) The government was ordered, without delay, to remove restrictions that prevent access to Nevirapine. Further, they were ordered to make provision for the training of counsellors at public hospitals based outside pilot sites and also to take reasonable measures to extend the testing and counselling facilities at hospitals and clinics throughout the public sector.</p> <p>7) The case was not raised as an equality case nor was it found on that basis. However, the court made some useful comments with respect to poverty. Matters of inequality will be considered as part of the "reasonableness review" to be conducted when determining whether the state is in breach of social and economic rights.</p> <p><i>"In dealing with these questions it must be kept in mind that this case concerns particularly those who cannot afford to pay for medical services. To the extent that government limits the supply of nevirapine to its research sites, it is the poor outside the catchment areas of these sites who will suffer. There is a difference in the positions of those who can afford to pay for services and those who cannot"</i> (Para 70).</p>

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	Case	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		5) A declaratory order was given in which the government was told to make Nevirapine available in all public hospitals and to all patients in these hospitals to whom the drug was prescribed.	
55.	<p><i>The Government of the Republic of South Africa and Others v Grootboom and Others</i></p> <p>2001 (1) SA 46 (CC)</p> <p>4 October 2000</p> <p>Constitutional Court of South Africa</p>	<p>1) The respondents in this case were homeless and lived in very deplorable conditions. They applied to the Cape Town High Court for an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation. In the High Court, the government was ordered to provide the respondents with tents, portable latrines and a regular supply of water as that would constitute the bare minimum. In the present case, the government is appealing the judgment of the High Court.</p> <p>2) Right to adequate housing.</p> <p>3) Constitution of the Republic of South Africa, sections 26 (right to adequate housing) and 28(1)(c) (special protection afforded to children; basic nutrition, shelter, health care).</p> <p>4) The Court recognised that socio-economic rights are justiciable and therefore the State must foster conditions that enable citizens to gain</p>	<p>6) The Court granted a declaratory order requiring the state to progressively realise the right of the respondents having regard to available resources. This includes the obligation to devise, fund, implement and supervise measures to provide relief to those in desperate need. The Human Rights Commission was ordered to monitor and if necessary report on the efforts made by the state to comply with the section 26 obligations in accordance with the judgment.</p> <p>7) The case was not found on the basis of equality or non-discrimination but some useful comments were made by the court in these respects. The Court held that socio-economic rights must be given a contextual interpretation, meaning: i) they are to be considered in their textual setting which requires a consideration of the Bill of Rights as a whole and ii) they must be understood in their social and historical context.</p> <p>It further stated that the realisation of socio-economic rights is key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their potential.</p> <p>The Court applied a “reasonableness review”, in determining whether there had been a breach of economic and social rights. This required a consideration of the housing problems in light of social, economic and historical context. Accordingly, past inequalities must be given due regard.</p>

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	Case	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		<p>access in an equitable manner. Despite the fact that the State does not need go beyond the means available to it, nor is it obliged to realise the right immediately, the measures put in place to progressively realise the right must be reasonable. This requires that they are flexible enough to provide relief for people, such as the respondents, who find themselves in crisis situations. Subsequently, the Court found a violation of the right to adequate housing under section 26, but not of the rights of children separately.</p> <p>5) The Court granted a declaratory order requiring the State to progressively realise the rights of the respondents, having regard to available resources.</p>	<p>Also, the measures taken by government will only be regarded as reasonable if they are balanced and flexible. <i>“Those whose needs are most urgent and whose ability to enjoy all rights is therefore most in peril, must not be ignored by the measures aimed at achieving realisation of the right.”</i> (Para 44)</p> <p>The government has an obligation a) to take reasonable legislative and other measures within its available resources and b) to achieve progressive realisation of the right. In particular, the State must devise and implement a comprehensive and coordinated programme to progressively realise the right of access to adequate housing.</p> <p>The Court found that all the rights in the Bill of Rights including socio-economic rights place both negative and positive obligations on the state i.e. to refrain from infringing the right and to act positively to realise the right. This interpretation of the Bill of Rights is supported by section 7(2) of the Constitution which requires the state <i>“to respect, protect, promote and fulfil the rights in the Bill of Rights”</i> and the courts are constitutionally bound to ensure that they are protected and fulfilled.</p>
56.	<p><i>Soobramoney v Minister of Health (Kwa Zulu Natal)</i> 1998 (1) SA 765 (CC) 27 November 1997 Constitutional Court of South Africa</p>	<p>1) The applicant was a diabetic who suffered from ischaemic heart disease and cerebro-vascular disease. His kidneys failed in 1996 and his condition had become irreversible. He was informed by the State hospital that he did not qualify to be admitted to the dialysis programme due to a shortage of State resources in this regard. The basis of his exclusion from the programme was a State policy which admitted only those patients who could be cured within a short period</p>	<p>2) Health status and, indirectly, poverty.</p> <p>3) The Court was of the opinion that the appellant should not have brought his case under section 27(3) as this section contemplates a situation where there is need for immediate remedial treatment and not an ongoing state of affairs resulting from a deterioration of the applicant’s renal function which is incurable.</p> <p>The Court found the hospital’s standards well within the bounds of reason and fairly applied to Soobramoney, and held that the failure to provide</p>

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		<p>and those with chronic renal failure who are eligible for a kidney transplant. The appellant could not be cured and was not eligible for a transplant because of a heart condition. Mr. Soobramoney brought a constitutional application seeking an order for the hospital to provide him with access to dialysis treatment.</p> <p>2) Right to health.</p> <p>3) The Constitution of the Republic of South Africa, section 27(3) (the right to emergency medical treatment) and section 11 (the right to life).</p> <p>4) The court dismissed the appeal on the basis that the appellant failed to show that the State's failure to provide renal dialysis facilities for all persons suffering from chronic renal failure constitutes a breach of its constitutional obligations under section 27.</p>	<p>treatment to him did not violate the South African Bill of Rights.</p> <p>The Court accepted that rationing of resources is integral to health service delivery in the public sector even though this might support ongoing inequities between the private and public sector. However, the Court implied that there might be grounds for the challenge of executive policies if such policies were unreasonable or if they were not applied fairly and reasonably.</p>

vii) UNITED KINGDOM

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Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Constitution of the World Health Organization</p> <p>European Social Charter</p>	<p>European Convention on Human Rights</p> <p>International Covenant on Civil and Political Rights</p> <p>Convention on the Elimination of all Forms of Discrimination Against Women</p> <p>Convention Against Torture</p> <p>Convention on the Rights of Persons with Disabilities</p> <p>International Convention on the Elimination of all Forms of Racial Discrimination</p> <p>Convention on the Rights of the Child</p> <p>Convention on the Political Rights of Women</p>	<p>The Equality Act 2010 – Part 1 refers to socio-economic inequalities, but is not in force and may never be.</p>	<p>Human Rights Act 1998</p> <p>The Equality Act 2010</p>

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	Case	Summary: 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	Key findings/reasoning: 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
57.	<p>Burnip v Birmingham City Council; Tregove v Walsall MBC</p> <p>[2012] EWCA Civ 629</p> <p>15 May 2012</p> <p>Court of Appeal</p>	<p>1) Disabled appellants B and T needed carers present throughout the night and therefore needed two-bedroom flats. Respondent local authorities quantified their housing benefit by reference to the one-bedroom rate which would apply to able-bodied tenants since the carers did not qualify as “occupiers” under the Housing Benefit (HB) Regulations 2006. Appellant G lived with his wife and three children in a four-bedroom house. Two of the children were disabled and unable to share a bedroom in the way in which able-bodied children could. The respondent local authority provided housing benefit to G by reference to the three-bedroom rate. The issue was whether the assessment of housing benefit payable to certain households containing one or more disabled person amounted to disability discrimination contrary to the European Convention on Human Rights 1950 Article 14 and, if so, whether such different treatment was justified.</p> <p>2) Right to housing/accommodation of an acceptable standard; right to social security.</p> <p>3) Article 14 of the European Convention on Human Rights (specifically noted that domestic legislation, i.e. the Disability Discrimination Act 1995, did not apply); United Nations Convention</p>	<p>1) Disparate adverse impact: “<i>The case for the appellants is not that the statutory criteria amount to indirect discrimination against the disabled. It is that, in one way or another, they have a disparate adverse impact on the disabled or fail to take account of the differences between the disabled and the able-bodied</i>” (Maurice LJ, para.10). NB: Henderson J seems to equate this with “<i>indirect discrimination, or cases where the discrimination lies in the failure to make an exception from a policy or criterion of general application</i>” (Henderson J, para. 28).</p> <p>2) Disability</p> <p>3) The Secretary of State failed to demonstrate that there was objective and reasonable justification for the discriminatory effect. Thus, the issue did not fall within the state’s margin of appreciation. The Court rejected the state’s argumentation because: (1) the situation was distinguishable from cases of immigration control; (2) no question of a general exception from the normal bedroom test for disabled people of all kinds. The exception is sought for only a very limited category of claimants, namely those whose disability is so severe that an extra bedroom is needed; (3) such cases are by their very nature likely to be relatively few in number, easy to recognise, not open to abuse, and unlikely to undergo change or need regular monitoring. The cost and human resource implications of accommodating them should therefore be modest, quite apart from the point that in some cases the effect of refusing the claim could well be to force the claimant into full-time residential care at much greater expense to the public purse; (4) extra assistance i.e. discretionary housing payments falls far short of being an adequate solution; and (5) Parliament had seen fit to change the law (Henderson J, para. 64). Therefore, this is not a fair or proportionate response to discrimination established.</p>

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	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
		<p>on the Rights of Persons with Disabilities (CRPD) relied upon.</p> <p>4) Appeals allowed. The severely disabled, a group recognised as being in need of protection against discrimination, was significantly disadvantaged by the application of ostensibly neutral criteria and a prima facie case of discrimination contrary to Article 14 was established. The Secretary of State had to show that there was at the material time an objective and reasonable justification for the discriminatory effect of the relevant housing benefit criteria. The instant appeals concerned a benefit whose purpose was to help people to meet their basic human need for accommodation of an acceptable standard. Maintenance of the single-bedroom rule was not a fair or proportionate response to the discrimination which had been established in cases of the present type, and the defence of justification therefore failed.</p> <p>5) Appeals allowed (declaration). Rectification of discrimination a matter for Secretary of State.</p>	<p>4) Appellants' properties in the private rented sector as rent allowance funded and administered by the local authority for the area, rather than in the public sector as a matter of social security: <i>"In all three cases, the properties in question are in the private rented sector. Different criteria would have applied in the social rented sector"</i> (Maurice Kay LJ, para. 1). 34).</p> <p>5) Article 14 has been held (at both domestic level and at the European Court of Human Rights (e.g. <i>Thlimmenos v Greece</i> (2001) 31 EHRR 15) to be violated when States treat differently persons in analogous situations without providing an objective and reasonable justification and when States fail to treat differently persons whose situations are significantly different. <i>"This imposes a positive obligation on the State to make provision to cater for the significant difference"</i> (Maurice LJ, paras. 11-15 inclusive).</p> <p>Articles 4, 5(3) and 19 CRPD refer to a positive duty on the State Parties (<i>"shall take all appropriate steps"</i>) to take positive action so that persons with disabilities are afforded <i>"choices equal to others"</i>, coupled with access to facilities and support services they need (see the provision in point 5 above). Not akin to "preferential treatment" (see above, para. 63). However, Henderson J explicitly stated that this is not a requirement of "preferential treatment": <i>"the object of Mr Burnip's claim... is not to give him some form of preferential treatment, but merely to ensure that HB can fulfil its intended function for those who are so severely disabled that they need 24 hour care.... without the benefit of the extra room rate, Mr Burnip would be left in a worse position than an able bodied person living alone: it is only to correct such disparity of treatment that the claim is brought"</i> (Para 63).</p>
58.	<i>Swift v Secretary of State for Justice</i>	1) The case involved an intersection of the right to respect for private and family life and the right to non-discrimination regarding who can recover	<p>2) Marital status/length of cohabiting relationship.</p> <p>3) Any discrimination was objectively justified: to ensure that the scope of</p>

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	<u>Case</u>	<u>Summary:</u> 1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	<u>Key findings/reasoning:</u> 1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
	[2012] EWHC 2000 (QB) 18 July 2012 Queen's Bench Division	<p>damages for the death of a relative. Fatal Accidents Act 1976 section 1(3)(b) provided that a cohabitee had to have lived with a partner for two years or more prior to the partner's death in order to bring a claim for loss of dependency. S wanted to bring a claim against a company which had admitted liability for the death at work of her partner, but could not do so as they were not married and had not-cohabited for two years or more prior to his death. By contrast, their son who was born after the death of her partner was able to claim a remedy as a dependent child. The issue was whether financial dependency was plainly and intimately connected with family life and whether the Fatal Accidents Act discriminated against her on the basis of her status as a cohabitee contrary to Article 14.</p> <p>2) Right to adequate standard of living.</p> <p>3) Articles 8 (right to respect for private and family life) and 14 (non-discrimination) of the European Convention on Human Rights.</p> <p>4) Claim dismissed. (1) The court was not concerned with a decision by the State which interfered with private or family life; the issue was whether the UK was under an obligation to extend the range of persons who could claim for</p>	<p>the Act was limited to such relationships as involved a sufficient degree of permanence or dependence to justify the survivor's right to claim damages. That could not be characterised as irrational or manifestly without reasonable foundation, nor could it be said that the two-year period was disproportionate to that aim. This was a matter of social and economic policy and one where it was appropriate to give special weight to the role of domestic policy-makers and to the wide margin of appreciation permitted in that context.</p> <p>4) Fatal Accidents Act is applicable to both private and public employers.</p> <p>5) A cautious approach was generally adopted towards any claim that Article 8 in particular imposed a positive obligation on a Member State. It would be necessary to show that there was a "direct and immediate link" between the particular measure under challenge and private or family life.</p> <p>7) NB: This case is being appealed.</p>

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		dependency; S had not shown that there was a such a “direct and immediate” link between s. 1(3)(b) and her family or private life; the purpose of s. 1(3)(b) was not to improve, promote, or benefit ongoing family or private life, but to provide certain categories of persons with a right to claim for losses that could be measured in financial terms; the fact that a claim under the Act might have improved the current family’s finances did not of itself bring the case within Article 8; (2) The grounds of S’s complaint under Article 14 was that there was discrimination under the Act on the basis of the length of cohabitation. The mere fact of having lived with someone for a particular length of time did not confer status, nor would it represent a personal characteristic; and (3) Any inherent discrimination in the Act was objectively justified.	
59.	South Buckinghamshire DC v Porter (No. 2) Also known as: South Buckinghamshire DC v Secretary of State for Transport, Local Government and the Regions [2004] UKHL 33	1) P, a Roma traveler, had resided on a site on the green belt with her husband since 1985. The Council had challenged her personal planning permission and wanted her to move to a different location due to reasons of environmental protection. P was 62 years old and had serious health issues. She was afraid of being put into permanent housing, with no alternative site to go to. She claimed that the displacement would imperil her continuing medical treatment and	2) Membership of the travelling community lifestyle 3) The “very special circumstances” outweighed the public interest in preserving the Green Belt (Para 51). The applicant’s status as a Roma traveller was taken into account in the decision. The Court mentioned, but did not consider, Article 8 of the ECHR as private life issues were not invoked.

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	1 July 2004 House of Lords	probably worsen her condition. 2) Rights to adequate standard of living; housing; health. 3) Section 288 of the Town and Country Planning Act 1990; (had P raised issues of her individual home, local ties and friendships, Article 8 ECHR would have been engaged). 4) The decision by an inspector to grant P a personal planning permission was upheld as P's "very special circumstances [...] clearly outweighed" the environmental harm imposed by her residence on the green belt. 5) Declaration restoring original judge's decision in P's favour and costs.	
60.	<i>R. (on the application of Wilson) v Wychavon DC</i> <u>Also known as:</u> <i>Wilson v Wychavon DC</i> [2007] EWCA Civ 52 6 February 2007 Court of Appeal (Civil	1) A Roma traveler, W, and members of her family had acquired land. They then moved caravans onto it and created hardstanding, access roads and a service area without planning permission. The local authority had refused W's application for retrospective planning permission and issued enforcement notices with two stop notices, one requiring construction to cease and the other requiring W to cease using the land for the stationing of residential caravans. The issue was	1) Indirect discrimination. Differential treatment of houses and caravans indirectly discriminated against the travelling community. The provision's "greater impact on "gipsies" and travellers than on the general population means that it is indirectly discriminatory in its effect in relation to a status falling within the scope of article 14", Para 27. 2) Membership of travelling community, including their "way of life and identity" (Moses LJ, Para 100); place of residence (referred to by Secretary of State (Para 28)).

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	Division)	<p>whether section 183(4) of the Town and Country Planning Act 1990 was incompatible with the Article 14 of the ECHR; W argued that an exception for dwelling houses but not for residential caravans discriminated against Roma due to their travelling lifestyle.</p> <p>2) Right to housing; adequate standing of living.</p> <p>3) Articles 8 (right to respect for private and family life) and 14 (non-discrimination), ECHR.</p> <p>4) Appeal dismissed: The Town and Country Planning Act 1990 section 183(4) did indirectly discriminate against Roma travelers, but such discrimination could be objectively justified (Para. 87) by being proportionate to the legitimate aim of protecting the environment and was not therefore incompatible with the ECHR/Human Rights Act 1998.</p>	<p>3) The indirect discrimination could be objectively justified by the legitimate aim of protecting the environment and was not therefore incompatible with the Article 14. Here, the protection of the environment, especially the protection of the public against serious harm to amenity (Para 42), was a legitimate one, even in the context of the special consideration to be given to Roma travellers (Para 43). The fact that a less restrictive solution would have been possible is not an automatic challenge: the “less restrictive alternative” test was not an integral part of the analysis of proportionality under Article 14. The existence of a less restrictive alternative was altogether irrelevant in the context of Article 14: the narrower the discretionary area of judgment or the more intense the degree of scrutiny required. Under the Human Rights Act 1998, the court accorded to Parliament a narrower discretionary area of judgment in relation to discrimination on sex or race than for matters of social or economic policy (“a wide margin of appreciation or discretionary area of judgment is usually allowed in relation to matters of social or economic policy. That encompasses matters of planning policy...” (Para 45) but “the margin or discretionary area is generally much smaller in relation to discrimination on particularly sensitive grounds such as gender or race” (Para 46)). Whilst a stricter approach was called for in cases of direct discrimination, the inclusion of residential caravans within the scope of the general stop notice regime was aimed at protection of the public against environmental harm and did not involve the targeting of travellers (Para 55).</p> <p>5) There was a duty on local planning authorities to act compatibly with Article 8 of the 1998 Act, albeit not as strict as it seems at first sight, but an “argument by Mr George to the effect that article 14 gives rise to a positive obligation to take action to secure equal treatment and that this should lead to the application of a stricter test by the court when considering the proportionality of the measure in question [was unsupported by] any</p>

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			<i>authority.. [and] in my view lacks substance"</i> (Richard LJ, Para 63).
61.	Barnsley MBC v Norton [2011] EWCA Civ 834 21 July 2011 Court of Appeal (Civil Division)	1) The appellants, a family of three, appealed against a possession order granted to a local authority. They had resided in the house as result of the first appellant being employed by the local authority as a caretaker at a school. His employment came to an end. The local authority sought possession of the house. The daughter, S, was disabled and pregnant at the time the possession order was granted. There were two grounds of appeal: the first was that the Council was in breach of its duty under section 49A of the Disability Discrimination Act 1995 (the DDA), and the second was that to make an order for possession was disproportionate having regard to Article 8 of the European Convention on Human Rights and to the Human Rights Act 1998. 2) Right to an adequate standard of living; housing. 3) Section 49A, Disability Discrimination Act 1995; Article 8 ECHR. 4) The Court ruled that there was a breach of section 49A of the Disability Discrimination Act 1995. It concluded that the Council had not had due regard to its Disability Equality Duty when it	2) Disability 3) The possession order was justified given the need to accommodate a new caretaker. 4) The council was entitled to possession as matter of private law; therefore, this is likely to have an impact (and indeed has had an impact in the lower courts) on the possession orders available to private landlords, in respect of disabled tenants (see e.g. Para 44). There is a duty of a public authority under the section 49A to take account of a disabled person's disabilities and this applies when carrying out any function and not only when it was exercising its functions that bore on the rights of a disabled person. Alternative suitable accommodation had to be provided in accordance with the applicable duties under the Housing Act 1996 and the Equality Act 2010. The Court held that (1) When the decision to start proceedings was taken, the local authority did not have any regard to the need to take account of S's disability. Here, S's position could be critically affected by the local authority obtaining possession therefore it was under a duty to have due regard, i.e. that which was appropriate in all the circumstances (Paras 16-17), to the need to take steps to take account of her disability, pursuant to section 49A(1)(d) of the 1995 Act. The local authority was therefore in breach of its duty by failing to address these issues before or during the proceedings (Paras 8, 15 and 31). Once the possession order was made, it was for the local authority to deal with its functions of providing suitable accommodation in accordance with the applicable duties under the Housing Act 1996 and the Equality Act 2010 (Paras 34, 37 and 39).

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		<p>took action to recover possession of the house. Nevertheless, the possession order should not be overturned as the appropriate course was for the Council now to find suitable alternative accommodation for the family bearing in mind their Equality Duty and the need to give due regard to this in any future offer of alternative accommodation. The Court contented that there was no need to examine the claim separately under Article 8 of the ECHR/HRA.</p> <p>5) Appeal dismissed and order for possession made but, as a result of that breach, the local authority should give proper consideration to the factors which were relevant under section 49A(1)(d), especially the need for suitable accommodation to be found for the appellants and S's baby.</p>	
62.	<p><i>R(Watkins-Singh) v Governing Body of Aberdare Girls' High School</i></p> <p>29 July 2008</p> <p>[2008] EWHC 1865 (Admin)</p>	<p>1) The applicant of Punjabi-Welsh decent attended a non-denominational school in Wales. She was wearing a steel bangle known as a Kara on her wrist, a Sikh religious symbol. This issue under consideration was whether a school's uniform policy that prohibited pupils from wearing jewellery could also be used to ban the wearing of a Kara by a pupil and whether the school's decision not to exclude this pupil from this policy was justified. The applicant was</p>	<p>1) Indirect Discrimination.</p> <p>2) Race and religious belief.</p> <p>3) The School tried to assert that this practice was objectively justified as it was trying to promote a school uniform policy, but the Court rejected this argument.</p> <p>5) Under the Race Relations Act 1976 there is a duty on public bodies to consider any problems of race discrimination before taking any policy</p>

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		<p>allowed to attend school wearing her Kara, but was isolated from other pupils and taught separately. She had applied for judicial review of the school's decision.</p> <p>2) Education.</p> <p>3) Section 45(3) of the 2006 Equality Act and Section 1(1A) of the 1976 Race Relations Act, and Section 49(1) of the 2006 Act; Art. 8 ECHR.</p> <p>4) The Court held that there was no doubt that she had suffered a particular disadvantage or detriment, and the school's decision therefore constituted indirect discrimination on grounds of race under the 1976 Act and on grounds of religion under the Equality Act 2006. The school had failed to justify the discriminatory means by striking the correct balance between the negative impact and the advantages of the policy. Emphasis was put on the unobtrusive nature of the Kara and its importance to the applicant a symbol of her faith. The claim under Article 8 of the European Convention on Human Rights was dismissed. This was because there was a conflict of evidence on how much she was affected by the isolation.</p> <p>5) Refused an application by the defendant for permission to appeal.</p>	<p>decisions.</p>

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63.	R(Kaur & Shah) v London Borough of Ealing 29 July 2008 [2008] EWHC 2062 (Admin)	<p>1) Southall Black Sisters, an organisation that provided services to Asian and Afro-Caribbean women particularly in relation to domestic violence received substantial funding from Ealing Council. They were awarded funding for 2007 & 2008. The Council decided in 2007 that it would in future encourage open competition by commissioning services according to agreed criteria. These included that services should be provided to 'all individuals irrespective of gender, sexual orientation, race, faith, age, disability, resident within the Borough of Ealing experiencing domestic violence'. This requirement meant that the Southall Black Sisters would no longer be able to limit their services to Asian and Afro-Caribbean women. They sought a judicial review of this requirement.</p> <p>3) s.35, s.71(1) of the Race Relations Act 1976</p> <p>4) The High Court held that the disputed requirement was contrary to the Race Equality Duty as the Council had failed to assess the impact that its policy would have on ethnic minority women. It ruled that Ealing Council's proposals to move away from funding particular organisations such as Southall Black Sisters towards commissioning services following a competitive bidding exercise was unlawful.</p>	<p>1) Indirect Discrimination</p> <p>2) Gender and race: negative impact on women from ethnic minority backgrounds.</p> <p>5) The Judgement clarified the law on the local authorities' duties under the Race Relations Act (RRA) and the provision of specialist services for Black and Minority Ethnic groups. Section 37 and Section 38 of the Race Relations Act require positive action in the form of eliminating indirect discrimination and promoting equality for victims of indirect discrimination, who may require their special needs to be met.</p> <p>Section 71 of the Race Relations Act imposed a duty on Ealing in carrying out its functions in setting criteria for funding organisations which assist victims of domestic violence, to have "due regard for the need": (a) to eliminate unlawful racial discrimination, and (b) to promote equality of opportunity and good relations between persons of different racial groups."</p>

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		5) The decision was quashed. The council withdrew from the case, agreeing to its decision being repealed, and confirmed that it would continue to fund Southall Black Sisters pending a further fresh decision as to the criteria it would adopt for the commission of services to assist the victims of domestic violence.	
64.	R(Hurley & Moore) v Secretary of State for Business [2012] EWHC 201 (Admin) 17 February 2012	1) The applicants were secondary school pupils wishing to go to university. They sought by way of judicial review to challenge the Secretary of State's decision to allow universities to increase their fees up to £9000 per year. 2) Right to education, 3) Section 24 of the Higher Education Act 2004; the Higher Education (Basic Amount) Regulations 2010; the Higher Education (Higher Amount) Regulations 2010; Article 2 Protocol 2 read with Article 14 ECHR. 4) The Court concluded that although there had been equality impact assessments of the proposals and a partial compliance with the Duty, the Secretary of State had failed to fully carry out his Equality Duties before implementing the 2010 regulations.	1) Indirect Discrimination. 2) Race, gender and disability. 3) The Secretary of State argued that the objective is to achieve sustainable funding of high quality higher education and to secure education that is open to students who have the talent and motivation to succeed. The objective was not to save money and the fact that the objective had to be achieved within a specific economic context did not alter the objective itself. 5) Section 49(1) of the Disability Discrimination Act 1995, places a positive duty for "[e]very public authority in carrying out its functions to have due regard to: (a) the need to eliminate discrimination that is unlawful under this Act; (b) the need to eliminate harassment of disabled people that is related to their disabilities; (c) the need to promote equality of opportunity between disabled persons and other persons. (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating the disabled person more favourably than other persons; (e) the need to promote positive attitudes towards disabled people; and (f) the need to encourage participation by disabled persons in public life."

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		5) Nevertheless the Court refused to quash the regulations as this would not be a proportionate remedy and would cause administrative chaos.	These duties have now been replaced by a singled duty in section 149 of the Equality Act 2010.

viii) UNITED STATES OF AMERICA

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Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
<p>International Covenant on Social, Economic, and Cultural Rights (signed, but not ratified)</p> <p>Constitution of the World Health Organization</p>	<p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Convention on the Elimination of All Forms of Discrimination against Women (signed, but not ratified)</p> <p>Inter-American Convention on the Granting of Political Rights to Women</p> <p>Convention on the Political Rights of Women</p> <p>Convention on the Rights of the Child (signed, but not ratified)</p> <p>Convention on the Rights of Persons with Disabilities (signed, but not ratified)</p> <p>International Covenant on Civil and Political Rights</p> <p>Convention Against Torture</p> <p>American Convention on Human</p>	<p>20 U.S.C. sections 1681-1688 (Title IX of the Education Amendments of 1972)</p>	<p>The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution</p> <p>Civil Rights Act of 1964</p>

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Which international/regional instruments has the state signed/ratified relating to socio-economic rights?	Which international/regional instruments has the state signed/ratified relating to the rights to equality and/or non-discrimination?	Does the state have justiciable economic and social rights in its Constitution/elsewhere?	Does the state have dedicated equality and or non-discrimination laws either within its Constitution or elsewhere?
	Rights (signed, but not ratified)		

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	Case	Summary:	Key findings/reasoning:
		1) The issue under consideration 2) The Social and/or Economic right(s) to which the case related 3) Relevant provision(s) under which the case was brought 4) The decision 5) The remedy	1) Discriminatory conduct/Equality violation 2) Relevant ground(s) of discrimination 3) Justification 4) Application to private actors 5) Positive action 6) Remedies 7) Other
65.	Finch v Commonwealth Health Insurance Connector Authority 459 Mass. 655 (2011) 6 January 2012 Supreme Judicial Court of Massachusetts	1) The issue was whether the exclusion of aliens legally residing in Massachusetts from a public benefits programme, the Commonwealth Care Health Insurance Program, violated the Equal Rights Amendment of the Massachusetts Constitution. Commonwealth Care was a key feature of the State's initiative to help all Massachusetts residents obtain and maintain health insurance coverage. 2) Right to health. 3) Article 106 of the Amendments to the Massachusetts Constitution (Equality under the law) 4) The Court held that classifications based on alienage and/or national origin are suspect and	2) Alienage and national origin. <u>Alienage</u> The Court decided to extend protected class status to legal aliens, stating that <i>"In light of their particularly vulnerable status, it ... remains necessary to exercise heightened vigilance to ensure that the full panoply of constitutional protections are afforded to the Commonwealth's resident aliens"</i> (p. 675). Thus, difference in treatment based on alienage would be subject to the strict scrutiny test, under which the classification would only be allowed to stand if it was necessary for a compelling government interest. The Court recognised that <i>"[i]t is undisputed that [the U.S.] Congress enjoys the authority to discriminate on the basis of alienage"</i> (p. 671). Yet, the Court maintained that <i>"where the State acts on its own authority, it cannot shelter behind the existence of Congress's plenary authority and its actions are subject to strict scrutiny review"</i> (p. 672).

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		<p>therefore subject to strict scrutiny, rather than rational basis, review. Thus, the government has to justify such classifications as being necessary to achieve a compelling government interest.</p> <p>5) The Court remanded the case to the county court for further proceedings in accordance with its judgment about the standard of review that the county court should apply.</p>	<p>The Court added that in its consideration of what standard of review should be applied to classifications based on alienage, it would not take financial considerations into account. It stated that, “<i>while we are acutely aware of the financial difficulties presently facing the Commonwealth, the fiscal consequences of any subsequent judgment on the merits cannot be permitted to intrude on consideration of the case before us</i>” (p. 675).</p> <p><u>National origin</u></p> <p>In addition, the Court addressed the argument that the exclusion of legal aliens from Commonwealth Care coverage discriminated against them on the basis of national origin. Emphasising that alienage and national origin are not synonymous, the Court declared that classifications based on national origin are also subject to strict scrutiny review. National origin is one of the prohibited grounds of discrimination explicitly named in the Equal Rights Amendment.</p>
66.	<p><i>Brown v Board of Education</i> 347 U.S. 483 (1954) (<i>Brown I</i>), 349 U.S. 294 (1955) (<i>Brown II</i>)</p> <p>17 May 1954; 31 May 1955</p> <p>Supreme Court of the United States</p>	<p>1) The issue presented was whether racial segregation of children in public schools violated the equal protection clause under the Fourteenth Amendment of the U.S. Constitution, even in cases where the physical facilities were substantially equal.</p> <p>2) Right to education.</p> <p>3) The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.</p>	<p>1) Segregation of pupils based on race</p> <p>2) Race</p> <p>3) The Court determined that the circumstances surrounding the adoption of the Fourteenth Amendment in 1868 were inconclusive for two reasons. First of all, the general intention of the framers with respect to the substance of equality was unknown. Secondly, given the inferior status of public education in 1868, there was little history of the intended effects of the Fourteenth Amendment on public education specifically.</p> <p>Referring to the legacy of the “separate but equal doctrine” from <i>Plessy v</i></p>

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		<p>4) The Supreme Court overturned the “separate but equal” doctrine announced by the Court in <i>Plessy v Ferguson</i> 163 U.S. 567 (1896). Under that doctrine, equality between the races was said to exist when they were accorded substantially equally facilities, even if they were separate. In the case at hand, the Court held that laws permitting or requiring racial segregation in public schools violated the Equal Protection Clause because separate educational facilities are in fact inherently unequal.</p> <p>5) Remedial considerations were addressed in <i>Brown II</i>. The Court remanded the cases to the District Courts to issue such orders with all deliberate speed as were necessary to admit the parties in the cases to public schools on a non-discriminatory basis.</p>	<p><i>Ferguson</i>, the Court acknowledged findings that black and white schools were in the process of being equalised. However, the Court declared that its decision could not “turn on merely a comparison of ... tangible factors” (p. 492) such as buildings, curricula, and qualifications and salaries of teachers. Instead, it “must consider public education in the light of ... its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws” (p. 492-493).</p> <p>Moreover, the Court examined the psychological effects of segregation in public education upon black children, noting that separation on the basis of race “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system” (p. 494).</p> <p>The Court thus formulated, on the basis of the present importance of education and the detrimental psychological effects of segregation – and not on the basis of the circumstances surrounding the drafting of the Equal Protection Clause – its holding that “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal” (p. 495).</p> <p>5) The Court emphasised the role of education in modern society and the</p>

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			<p>state's obligation to provide it in equal terms, by concluding: that "education is perhaps the most important function of state and local governments ... It is the very foundation of good citizenship. [...] In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms" (p. 493).</p> <p>In <i>Brown II</i>, the Court determined that that "School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles." (p. 299).</p>
67.	<p><u>San Antonio Independent School District v Rodriguez</u></p> <p>411 U.S. 1 (1973)</p> <p>21 March 1973</p> <p>Supreme Court of the United States</p>	<p>1) The issue in this case was whether the apparatus for financing public elementary and secondary schools in Texas violated the Equal Protection Clause of the U.S. Constitution. Nearly half of the revenues used to fund public schools were provided by state aid, which ensured that a minimum basic level of education would be offered in every school. However, the State aid was supplemented in each district by funds that the district generated through taxation of properties. This system created inter-district disparities in educational offerings stemming from the differences in the values of assessable property among districts. It was alleged that this favoured the affluent and discriminated against children in poorer school districts. The case was</p>	<p>1) Indirect discrimination – basing State aid on taxation indirectly discriminated against poorer neighborhoods in terms of the revenue generated.</p> <p>2) Wealth (and race, insofar as it correlates with wealth).</p> <p><u>The Poor as a Suspect Class</u></p> <p>The Supreme Court overturned the decision taken by the lower district court by concluding that "poor" did not constitute a suspect class (due to lack of "definitive description of the classifying facts or delineation of the disfavored class"). It stated that the approach taken by the lower district court "largely ignores the hard threshold questions, including whether it makes a difference for purposes of consideration under the Constitution that the class of disadvantaged 'poor' cannot be identified or defined in customary equal protection terms, and whether the relative - rather than absolute - nature of the asserted deprivation is of significant consequence.</p>

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		<p>brought by parents of Mexican-American students in a poorer urban school district.</p> <p>2) Right to education.</p> <p>3) The Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution.</p> <p>4) The Supreme Court held that children in poorer areas did not constitute a 'suspect class', to which strict judicial scrutiny would be applied. Reviewing constitutional law doctrine, the Court stated that strict scrutiny review is reserved for cases involving laws that operate to the disadvantage of suspect classes or that interfere with a fundamental right, thereby potentially infringing upon the Equal Protection Clause. The Court held that the school-financing system did not disadvantage any suspect class, as it had not been shown to discriminate against any definable class of poor people. Furthermore, it ruled that it did not impermissibly interfere with a fundamental right because, while education is an important service, it is not within the limited category of rights recognised by the U.S. Supreme Court as either explicitly or implicitly guaranteed by the Constitution. The strict scrutiny test was thus set aside and the court instead applied the standard of rational basis review to the facts of the</p>	<p><u>7) Education as a Fundamental Right</u></p> <p>The Court held that although education is one of the most important services performed by the State, it is not within the limited category of rights recognised as guaranteed by the Constitution.</p> <p>It declared that <i>"the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause"</i> (pg. 69). Elaborating upon this point, the Court continued, <i>"Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation." That these may be desirable goals But they are not values to be implemented by judicial intrusion into otherwise legitimate state activities"</i> (p. 77-79).</p> <p>Importantly, the Court added that even if some identifiable quantum of education is arguably entitled to constitutional protection to make meaningful the exercise of other constitutional rights, here there was no showing that the Texas system failed to provide the basic minimal skills necessary for that purpose. Thus, the Court left the door open to claims that the Constitution may protect and require a minimum floor of education.</p>

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		case. Under this less demanding test, the Court held that, although imperfect, the financing system did not violate the Equal Protection Clause as it bore a rational relationship to a legitimate state purpose. Consequently, the Court held that Texas school financing system did not impermissibly interfere with the exercise of a "fundamental" right or liberty.	
68.	Edgewood Independent School District v Kirby 777 S.W. 2d 391 (Tex. 1989) 2 October 1989 Texas Supreme Court	1) The issue addressed in this case was whether the Texas system for financing public education was constitutional under Article VI, section 1 of the Texas Constitution. Texas public schools were funded in part by revenue from local property taxes, which varied dramatically from school district to school district. The wealthiest districts had 700 times more taxable property wealth than the poorest. Due to the nature of the funding system, such disparities in property wealth ultimately resulted in corresponding disparities in the quality of public education available across school districts. 2) Right to education. 3) Article VII, section 1 of the Texas Constitution, which provides, "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the	1) The Texas system for financing education indirectly discriminated against districts with less taxable property wealth. The Court reasoned that the amount of revenue that school districts can raise directly influences the quality of education that they can provide. 2) Wealth 5) The Court clarified that the language of the Constitution did not leave decisions about financing of the public education system exclusively within the legislature's discretion. On the contrary, "the language of article VII, section 1 imposes on the legislature an affirmative duty to establish and provide for the public free schools. This duty [...] is accompanied by standards. By express constitutional mandate, the legislature must make 'suitable' provision for an 'efficient' system for the 'essential' purpose of a 'general diffusion of knowledge.' While these are admittedly not precise terms, they do provide a standard by which this court must, when called upon to do so, measure the constitutionality of the legislature's actions" (p. 394). The Court also placed a considerable weight on the drafting history of Art. VII, Section 1 of the Texas Constitution, concluding that "those who drafted

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		<p><i>Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."</i></p> <p>4) The Court held that the system for financing Texas public schools violated Article VII, section 1 of the Texas Constitution because it was not "efficient," in the sense of being effective, at providing for a "general diffusion of knowledge". The Court declared that efficiency does not allow for funding and resources to be concentrated in property-rich school districts when property-poor school districts cannot generate sufficient funds to meet even minimum standards. Ultimately, children who live in poor districts and children who live in rich districts must be afforded substantially equal opportunity to access educational funds.</p> <p>5) The Court declared that the system for financing public education was unconstitutional, requiring the legislature to create a new funding scheme. However, the Court maintained that although it could make a judgment that the constitutional mandate was not met, it was not its role to instruct the legislature as to how best to fulfill this constitutional mandate.</p>	<p><i>and ratified article VII, section 1 never contemplated the possibility that such gross inequalities could exist within an 'efficient' system ... At the Constitutional Convention of 1875, delegates spoke at length on the importance of education for all the people of this state, rich and poor alike" (p. 395). The present system provides not for a diffusion that is general, but for one that is limited and unbalanced. The resultant inequalities are thus directly contrary to the constitutional vision of efficiency" (p. 396).</i></p>

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69.	<p><u>Campaign for Fiscal Equity v.State of New York</u></p> <p>100 N.Y. 2d 893 (2003)</p> <p>26 June 2003</p> <p>Court of Appeals of New York</p>	<p>1) A challenge was brought claiming that New York State failed to provide New York City public schools with adequate funding to afford their students a “sound basic education,” as guaranteed by the Education Article of the New York State Constitution.</p> <p>2) Right to education.</p> <p>3) Article XI §1 of the New York State Constitution. (“The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated”, the Education Article)</p> <p>4) The Court held that children in New York City were not receiving the constitutionally mandated opportunity for a sound basic education due to inadequate funding. The Court defined “sound basic education” as the opportunity for a meaningful high school education which prepares the students to function productively as civic participants.</p> <p>5) The Court directed the State to make reforms that would ensure that every school in New York City would have adequate resources to provide students with the opportunity for a sound basic education. It also required the State to provide a</p>	<p>6) The Court directed the State to ensure by means of “[r]eforms to the current system of financing school funding and managing schools ... that every school in New York City would have the resources necessary for providing the opportunity for a sound basic education” (p. 930). The Court also held that “the new scheme should ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education” (p. 930). It gave the State a deadline by which to implement the necessary measures and remitted the case to the Supreme Court of New York for further proceedings in accordance with its opinion.</p> <p>7) The Court found that the State had failed to provide the “sound basic education” to the children of New York City that they were guaranteed under the Education Article. However, the Court held that: “the Education Article guarantees not equality but only a sound basic education” (p. 14). In some minority communities, the level of education provided was so low it fell below the “constitutional floor” guaranteed by the Education Article (p. 20). Graduates from the relevant area were at a disadvantage to other students, beyond their school years: “the Education Article requires the opportunity for a sound high school education that should prepare students for higher education, or to compete in the employment market of high school graduates (p. 7). The Court stressed, however, that the Education Article does not require equality of educational resources, but only a sound basic education. The Court’s determination that New York City schoolchildren were not receiving the opportunity for a sound basic education was based on its assessment that first of all, public schools failed to provide adequate teaching because they were unable to attract and retain qualified teachers. Secondly, the schools in question had deficient libraries and computers. Third, large class size was found to have an adverse impact on student performance. The Court also concluded that the plaintiffs had proven the causation</p>

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		mechanism for accountability to make sure that the reforms achieved their stated purpose.	element of their claim by showing that increased funding can provide better teachers, facilities, and instrumentalities of learning, all of which would improve student performance.
70.	<u>Dandridge v Williams</u> 397 U.S. 471 (1970) 6 April 1970 Supreme Court of the United States	1) The issue in this case was whether the \$250 per month ceiling that the state of Maryland placed on grants dispersed under the Aid to Families with Dependent Children Program (AFDC) violated the Equal Protection Clause because the cap was imposed regardless of family size and actual need. Thus, it was alleged to discriminate against larger families. (Below the \$250 per month threshold, families were provided aid in accordance with their actual need). 2) Right to social security. 3) The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. 4) The Court held that the Equal Protection Clause does not endow it with the power to impose on the states its view of what constitutes wise social and economic policy or its view of how the states should distribute limited public welfare funds.	1) Indirect discrimination. The ceiling on welfare grants allegedly discriminated against larger families, reducing the per capita benefits to members of such families. 2) Family size. 3) The Court emphasised its separate role from the legislature and stated that <i>“with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families. For this Court to approve the invalidation of state economic or social regulation as ‘overreaching’ would be far too reminiscent of an era when the Court thought the Fourteenth Amendment gave it power to strike down state laws ‘because they may be unwise, improvident, or out of harmony with a particular school of thought’”</i> (p. 397). Thus, as to the standard of review that it would apply, the Court determined that <i>“[i]n the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some ‘reasonable basis,’ it does not offend the Constitution simply because the classification ‘is not made with mathematical nicety or because in practice it results in some inequality’”</i> (p. 397). Citing <i>Goldberg v Kelly</i> (discussed above), the Court concluded that <i>“The Constitution may impose certain procedural safeguards upon systems of</i>

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			<i>welfare administration ... But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients” (p. 397).</i>
71.	<p><i>Boehm v Superior Court</i> 178 Cal. App. 3d 494 (1986)</p> <p>5 March 1986</p> <p>Court of Appeal of California</p>	<p>1) The issue was whether the county acted arbitrarily and capriciously in reducing general welfare assistance payments (GA) to levels that provided only minimum subsistence needs for food and shelter.</p> <p>2) Right to social security; right to housing; right to food; right to health.</p> <p>3) The Court did not review any constitutional provisions, but instead relied on the Californian Welfare and Institutions Code section 17000, which provides that <i>“Every county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.”</i></p> <p>4) The Court held that the reduced GA benefits did not conform to the mandate in the Welfare and Institutions Code section 17000 and its companion provisions.</p>	<p>3) The Court focused upon the desperate conditions in which GA beneficiaries lived, finding that <i>“GA is a program of last resort for indigent and disabled persons unable to qualify for other kinds of public benefits. GA is often the only means by which they can obtain the basic necessities”</i> (p. 499).</p> <p>The Court acknowledged that under Section 170000 <i>“Counties do ... have discretion to determine eligibility for, the type and amount of, and conditions to be attached to, indigent relief ... Nonetheless, a county’s discretion can be exercised only within fixed boundaries and consistent with the underlying purpose of the statutes which impose the duty”</i> (p. 500).</p> <p>The Court referred to Article 25 25 of the Universal Declaration of Human Rights (right to a standard of living adequate for the health and well-being) when criticising the exclusion of clothing, transportation and medical care from minimum subsistence allowances.</p>

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		5) The Court ordered that the county must provide benefits necessary for basic survival, which at a minimum must include a sufficient allowance for housing (including utilities), food, medical care, and transportation.	
72.	<i>Shelley v Kraemer</i> 334 U.S. 1 (1948) 3 May 1948 Supreme Court of the United States	1) In this case, a black family bought a residential property in Missouri, unaware that a restrictive covenant had been placed on that property by the neighbours in the area. According to the restriction, the property could not be sold or rented out to persons of certain the races. The Supreme Court of Missouri had held that the covenant was effective and that it did not violate any of the petitioner’s rights under the U.S. Constitution. The issue before the Supreme Court thus was whether judicial enforcement of covenants based on race by state courts violates the Equal Protection Clause. 2) Right to housing. 3) The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. 4) The Court reversed the decision of the Supreme Court of Missouri as unconstitutional. 5) The judgment of the Missouri Supreme Court	1) Direct discrimination. 2) Race 3) The Court held that in granting judicial enforcement of the restrictive agreements, the State denied petitioners the equal protection of the law, and that, therefore, the action of the state courts cannot stand. It further noted that freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. 4) The Court delineated the state action requirement, stating that <i>“the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful”</i> (p. 13). However, the Court held that the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment – as was in the case in question.

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		was reversed.	