

The Non-Discrimination Principle in the Protection of Economic and Social Rights —A Contemporary Challenge for the European Convention on Human Rights

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Abstract

The cause of advancing economic and social rights via the European Convention on Human Rights has long benefited from the principle of effective rights, while the use of Article 14 (non-discrimination principle) in this regard seems to have recently come into fashion. Initially of ancillary importance, Article 14 may come to the fore when the fact at issue falls within the scope of certain substantive provisions of the Convention. For instance, in the fields of economic and social rights, State Parties normally enjoy a large margin of appreciation under the Convention. Under Article 14, the Strasbourg Court has the authority to compel State Parties to defend differential treatment on the basis of objective and reasonable grounds, even on issues of economic and social rights. That said, invoking this Article against State Parties may overreach the understood European consensus. In the absence of some minimum common denominators, the Strasbourg judges can give priority to a substantive provision that leaves greater latitude to the defending State. Such pragmatism should be considered a prudent approach to contemporary challenges to the Convention.

Key Words: Non-Discrimination Principle, Justiciability of Economic and Social Rights, Dynamic Interpretation, Effectiveness of Rights, Difference in Treatment