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We have witnessed significant progress in recent years in the implementation of social rights such as the right to education, to health, to housing, or to food. This is encouraged by the Committee on Economic, Social and Cultural Rights which made clear its expectation that the States parties to the Covenant should give effect to this instrument in the domestic legal order:

"the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place" (General Comment No. 9: The domestic application of the Covenant (1998), para. 2).

Help

Though there exists a notable difference in this regard between the International Covenant on Civil and Political Rights, which requires from States that they "develop the possibilities of judicial remedy" (article 2(3)(b)), and the International Covenant on Economic, Social and Cultural Rights, which is silent on this issue, the Committee on Economic, Social and Cultural Rights takes the view that the requirement to ensure access to effective remedies follows from the duty of States to move towards the full realization of the rights recognized in the Covenant Economic, Social and Cultural Rights "by all appropriate means" (article 2(1)).

In other terms, the Committee on Economic, Social and Cultural Rights suggests that a State that would entirely exclude the competence of courts to adjudicate claims relying on the Covenant on Economic, Social and Cultural Rights would not only be seeking to justify a failure to comply with its international obligations by invoking provisions from its domestic legal order -- which obviously cannot be tolerated, as confirmed by article 27 of the Vienna Convention on the Law of Treaties (https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf) (1969) --, but it would also not be acting in the spirit of the Universal Declaration of Human Rights, article 8 of which refers to effective remedies for violations of human rights without making any distinction between different categories of rights.

Yet, many commentators remain skeptic about the ability for domestic courts to give effect to social rights. Three arguments are put forward against the justiciability of social rights:

1. According to the argument of **indeterminacy**, rights such as the right to education, to food, to health or to housing are *not sufficiently well-defined* in order to lend themselves to be adjudicated, and the judge would necessarily act arbitrarily – *making* the law rather than *applying* it – by seeking to provide meaning to those rights. By adjudicating social and economic rights, domestic jurisdictions would be exceeding their powers under a classical understanding of separation of powers: courts should leave it to the Legislature or to the Executive to implement social and economic rights, since they have no legitimacy to make choices of social policy.

*legitimacy* to second-guess choices made by democratically elected assemblies.

3. The argument of **competence**, finally, is that courts are *ill-equipped to deal with complex, society-wide issues*, and the adjudicatory setting is inappropriate for the resolution of problems of social policy: because the enforcement of social rights is not a matter of legal interpretation as much as a matter of social policy, another type of expertise is needed, that of health specialists or urban planners, not that of judges or human rights experts.

These arguments carry a particular weight once we consider the "multipolarity problem": courts or quasi-judicial bodies generally decide on a case-by-case basis, focusing on the interests of the individual litigant, which by definition would make them ill-suited as *fora* to decide on society-wide issues -- such as how to rank priorities in spending between education, health, public housing, or defence, or whether it is more important to save the life of one individual requiring expensive life-saving medical treatment or to free funds for primary healthcare services to reach more people in impoverished areas.

In this sub-section, we examine some cases in which domestic courts have played an active role to protect social rights, and we will assess whether these judgments provide convincing responses to these critiques.

