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In 2009, the UN Committee on Economic, Social and Cultural Rights adopted a General Comment No. 20 on *Non-discrimination in economic, social and cultural rights*, providing an authoritative interpretation of article 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights. Please read this document (/c4x/LouvainX/Louv2.01x/asset/\_Materials\_\_General\_Comment\_n\_20\_Final\_.pdf) carefully and then try to answer the following questions:

## THE ICESCR AND DISCRIMINATION - EXERCISE 1 (1/1 point)

1. The Committee on Economic, Social and Cultural Rights distinguishes, on the one hand, "formal" (*de jure*) from "substantive" (*de facto*) discrimination; and on the other hand, "direct" from "indirect" discrimination. How do these distinctions relate to one another?

- ☐ The two distinctions are unrelated: both "direct" and "indirect" discrimination can be either "formal" or "substantive";
- ☐ Whereas all instances of "direct" discrimination are necessarily also instances of "formal" (*de jure*) discrimination, "indirect" discrimination can be either "formal" or "substantive";
- ☒ Whereas "direct" discrimination can be either "formal" or "substantive", "indirect" discrimination is necessarily "substantive" (*de facto*) discrimination; ✓
- ☐ The two distinctions are interchangeable: "direct" discrimination is "formal" and "indirect" discrimination is "formal".

### EXPLANATION

Though many instances of "direct" discrimination will take the form of explicit references, in legal or policy documents, to prohibited grounds of distinction, some may be the result of informal practices or (conscious or unconscious) stereotyping. On the other hand, the Committee defines indirect discrimination as referring to 'laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination'. Thus, indirect discrimination refers to instances where the law or policy itself does not differentiate on the basis of a prohibited ground, but where the exclusion results from informal practices, whether conscious or unconscious. That being said, don't worry too much if you chose the wrong answer, or if you hesitated on your answer: the terminology here is neither fixed once and for all; nor is it consistent across all human rights bodies.

Check

Hide Answer

## THE ICESCR AND DISCRIMINATION - EXERCISE 2 (1/1 point)

2. General Comment No. 20 refers to positive action measures. Such measures, it states, 'are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing health-care facilities' (para. 9). Is it appropriate to classify measures aiming at reasonable accommodation among positive action measures?

- ☐ Yes, reasonable accommodation measures may be seen as one example of positive action measures; the classification proposed by the Committee on Economic, Social and Cultural Rights is appropriate;
- ☐ Reasonable accommodation seeks to question societal structures / the environment, in order to take account the situation of persons whose specific situation has not been taken into account in how such structures or the environment were built; therefore it is inappropriate to include them as part of positive action measures;
- ☐ Reasonable accommodation measures take into account the specific needs of the individual, rather than those of a general category; therefore it is inappropriate to include them as part of positive action measures;
- ☒ Reasonable accommodation seeks to question societal structures / the environment, in order to take account the situation of persons whose specific situation has not been taken into account in how such structures or the environment were built, *and* to do so on an individual, case-by-case basis; therefore it is inappropriate to include them as part of positive action measures. ✓

Help

## EXPLANATION

Like for the previous question, there is no single right answer here; reasonable persons may disagree. However, classifying reasonable accommodation measures as a sub-category of positive action measures neglects that positive action does not result in questioning the structures / the environment, instead compensating for whichever obstacles they create for individuals. It also fails to acknowledge that reasonable accommodation measures may be adopted to meet the specific needs of individuals -- indeed, they are often highly individualized measures, suited to those needs. This debate is not purely terminological: since the legality of positive action measures (when they are seen as introducing an exception to the norm of formal equality) is often subject to strict conditions, it may be a dangerous strategy to classify reasonable accommodation measures as part of such measures.

Check

Hide Answer





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