

M. San Giorgi ‘The Human Right to Equal Access to Health Care’

The right to equal access to health care is a fundamental principle that is part of the human right to health care. For victims of a violation of the human right to equal access to health care it is important that a judicial or quasi-judicial human rights body can adjudicate their complaints in this regard. Justiciability contributes to the protection and realisation of the right to equal access to health care and further determines the meaning of this right.

The justiciability of the human right to equal access to health care is complex. It is one of the economic, social and cultural rights, and ever since the emergence of these rights, their justiciability has been a contentious issue. Moreover, in practice it is much more difficult for an alleged violation of an economic, social or cultural right to be subject of review by a court of law or a quasi-judicial procedure than it is for a civil or political right. Nevertheless, over the last two decades several developments at international United Nations and regional Council of Europe human rights level have strengthened the justiciability of economic, social and cultural rights, which also has implications for the justiciability of the human right to equal access to health care.

This book analyses the justiciability of the human right to equal access to health care. It examines how cases concerning unequal access to health care would be dealt with by judicial and quasi-judicial human rights bodies and distils the elements that can be expected to play a role in the assessment of such cases.

Firstly, it provides for an extensive analysis of the legal framework of the human right to equal access to health care, its entitlements and corresponding State obligations. Subsequently, it addresses what arguments are brought forward with regard to the justiciability of economic, social and cultural rights in general and how these rights, including the human right to health care, are adjudicated in practice by the various judicial and quasi-judicial human rights bodies. Furthermore, the case law of three human rights bodies – the European Committee of Social Rights, the European Court of Human Rights, and the Human Rights Committee – is examined in detail in order to analyse how these bodies assess cases concerning discrimination and how elements of economic, social and cultural rights are taken into account under the various equality and non-discrimination provisions. Finally, the different criteria and elements that can be expected to play a role in the justiciability of cases concerning the human right to equal access to health care are presented.