

Towering Grenfell: Reflections around Socioeconomic Disadvantage in Antidiscrimination Law

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Abstract

The Grenfell Tower tragedy highlights the need for housing policies to be designed and implemented in a way that prioritises the needs and circumstances of the most disadvantaged groups in society, along both status-based and socioeconomic axes. The question arises whether it is possible and relevant to incorporate socioeconomic disadvantage into antidiscrimination law, and what implications this would have for the field of housing. In this article, I briefly explore the philosophical underpinnings of antidiscrimination law and I look at the key international and European human rights instruments, as well as selected domestic examples, to argue that socioeconomic disadvantage ought to be recognised as a prohibited ground of discrimination in law, ideally alongside a fully operational public sector equality duty regarding socioeconomic inequalities.

Keywords

Grenfell Tower – equality and nondiscrimination – antidiscrimination law – socioeconomic disadvantage – poverty

1. Introduction

On 14 June 2017, a fire engulfed the 24-storey Grenfell Tower block of flats in West London. The fire resulted in 72 deaths, and many more physical and psychological injuries.¹ The victims were from diverse backgrounds, and included children, elderly people, persons with disabilities, and migrants.² Most of the flats in Grenfell Tower were owned by the Royal Borough of Kensington and Chelsea (RBKC) and were managed by the Kensington and Chelsea Tenant Management Organisation, as part of the larger council housing complex of the Lancaster West Estate.³ Consequently, most of the residents were from low and moderate-income working class families.

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¹ The fire resulted in 71 deaths on the night of 14 June 2017 itself, and one of the victims (Pily Burton) died in January 2018. The Grenfell Inquiry has acknowledged her as the 72nd victim.

² See the series of reports and briefing papers published by the Great Britain's Equality and Human Rights Commission as part of their 'Following Grenfell' project, in particular: Equality and Human Rights Commission, *Submissions Following Phase 1 of the Inquiry* (2019).

³ Tenant Management Organisations or TMOs are generally 'small, tenant-led organisations that take on a number of landlord functions from local councils'. However, the Kensington and Chelsea TMO was in practice an arms-length management organisation with strong council involvement. See Anne Power, 'How Tenant Management Organisations have wrongly been associated with Grenfell' (*LSE British Politics and*

Since 2013, Grenfell residents had raised serious concerns about fire safety with the Kensington and Chelsea Tenant Management Organisation.⁴ They had complained about obstructed emergency access areas, firefighting equipment that had gone unchecked for years, electrical power surges, exposed gas pipes, the lack of an evacuation procedure, and the absence of a building-wide fire alarm or sprinkler system.⁵ There were acute shortcomings in terms of accessibility, such as the fact that people with limited mobility had been placed in flats high up in the building and had difficulties escaping.⁶ In the aftermath of the fire, the Government failed to keep to their promise of rehousing all displaced residents locally within three weeks.⁷ Almost two years later, some of the residents have still not been permanently rehoused, or have been offered accommodation that is either inadequate or unsuitable.⁸ The political and managerial decisions prior and subsequent to the fire did not ensure the meaningful participation of those affected.

The fire has had an enormous impact on the human rights of the residents of Grenfell Tower, and of those living in its vicinity. It resulted in multiple potential human rights violations, including of the right to life; the right to be free from torture and cruel, inhuman, or degrading treatment; the right to adequate and safe housing; the right to respect for private and family life; the right to an effective remedy; and the right to equality and nondiscrimination. This article focuses on the latter, in particular from the perspective of socioeconomic discrimination.

The fact that the catastrophe took place in one of the UK's wealthiest areas in terms of its residents is relevant to a meaningful human rights analysis of the tragedy. The rapid spread of the fire was likely enabled by the choice of a cheaper material for the external cladding of Grenfell Tower, arguably the result of a decision to cut costs. In the meantime, the RBKC had a budget surplus of £274m and had offered tax rebates to the borough's well-off residents.⁹ This draws attention to the overall situation of council/social housing in the UK and the profound impact austerity has had on residents of council estates. As one author has put it, 'the fire was fed by the broken housing system; the privatisation of local government services; the drive for deregulation no matter the human cost; the racism that perpetuates inferior infrastructure and safety standards for people of colour;

Policy Blog, 6 September 2017) <<https://blogs.lse.ac.uk/politicsandpolicy/the-truth-about-tmos>> accessed 13 September 2019.

⁴ This has been amply documented by the Grenfell Tower Enquiry. See, amongst others, Grenfell Tower Enquiry, 'Witness Statement Of Mr Shahid Ahmed, Core Participant' (9 May 2018) <<https://assets.grenfelltowerinquiry.org.uk/documents/IWS%20of%20Shahid%20Ahmed%20of%20flat%20156%2C%20Floor%2018%20IWS00000388.pdf>> accessed 13 September 2019.

⁵ See Gordon MacLeod, 'The Grenfell Tower Atrocity: Exposing Urban Worlds of Inequality, Injustice, and an Impaired Democracy' (2018) 22 *City* 460, 468.

⁶ Equality and Human Rights Commission, *Following Grenfell: The Right to Adequate and Safe Housing* (2018) 8.

⁷ Greg Heffer, 'Theresa May Pledges to Rehouse Grenfell Tower Fire Victims in Three Weeks' (*Sky News*, 17 June 2017) <<https://news.sky.com/story/theresa-may-pledges-to-rehouse-grenfell-tower-fire-victims-in-three-weeks-10917886>> accessed 24 July 2019.

⁸ Adam Forrest, 'Grenfell Tower: Almost 100 Families Still Without Own Home This Christmas, 18 months after fire' (*Independent*, 23 December 2018) <<https://www.independent.co.uk/news/uk/home-news/grenfell-tower-fire-families-housing-christmas-kensington-chelsea-council-theresa-may-a8696941.html>> accessed 24 July 2019; Jen Mills, 'Grenfell Victims Still Living in Temporary Accommodation Two Years Later' (*Metro*, 9 April 2019) <<https://metro.co.uk/2019/04/09/grenfell-victims-still-living-temporary-accommodation-two-years-later-9141649/>> accessed 24 July 2019; Victoria Derbyshire and Sean Clare, 'Grenfell Family Placed on Council House Waiting List' (*BBC*, 17 April 2019) <<https://www.bbc.com/news/uk-england-london-47951285>> accessed 24 July 2019.

⁹ Rajeev Syal and Harrison Jones, 'Kensington and Chelsea Council Has £274m in Reserves' (*The Guardian*, 19 June 2017) <<https://www.theguardian.com/uk-news/2017/jun/19/kensington-chelsea-council-has-274m-in-reserves-grenfell-tower-budget-surplus>> accessed 24 July 2019.

and the erasure of the voices and interests of working class and poor people from the concerns of the state'.¹⁰ Other authors have highlighted the marked racial dimensions of neoliberal urban governance and the dehumanising character of housing policy in England.¹¹

The Grenfell Tower tragedy highlights the need for the state to consider, when designing and implementing housing policies, the needs and circumstances of the most vulnerable groups in society—including socioeconomically disadvantaged groups. Without discounting the clear discriminatory impact – on racialised groups, persons with disabilities, women, children, the elderly, and migrants – of many of the political and managerial decisions made before and after the Grenfell Tower fire, I build here on the observation that council estates in the UK have been residualised and framed within the political discourse as sites for the poorest and neediest people.¹² In so doing, council housing residents have been stigmatised as undeserving in the public discourse, which, in turn, is used to justify cost-cutting decisions and the persistence of housing situations which fall short of international and European human rights standards.

This raises important questions about the role of socioeconomic disadvantage in relation to the right to equality and nondiscrimination. In particular, it prompts a reflection on the current position of socioeconomic disadvantage within antidiscrimination norms, and the fact that 'poorness' may function as a category on the basis of which the state can discriminate in the implementation of housing policies and in making housing-related decisions.

Taking this into account, I briefly look at the philosophical rationale for recognising socioeconomic discrimination in antidiscrimination law. I then consider how socioeconomic criteria are positioned within the antidiscrimination clauses which are embedded in the key international and European human rights law instruments, as well as in two selected domestic legal frameworks: the Canadian province of Quebec and France. Finally, I return to the United Kingdom and the field of housing, arguing that several lessons can be learnt from the previous considerations, and that socioeconomic disadvantage ought to be recognised within antidiscrimination norms as a prohibited ground, in order to address the full ramifications of housing inequalities, beyond a socioeconomic public sector equality duty.

2. A Philosophical Rationale for Incorporating Socioeconomic Disadvantage into Antidiscrimination Law

Antidiscrimination norms have not traditionally been directly concerned with socioeconomic disadvantage.¹³ Originally, antidiscrimination norms were focused on the

¹⁰ David J Madden, 'Editorial: A Catastrophic Event' (2017) 21 *City* 1, 3.

¹¹ See Ida Danewid, 'The Fire This Time: Grenfell, Racial Capitalism and the Urbanisation of Empire' (2019) *European Journal of International Relations* <<https://doi.org/10.1177/1354066119858388>> accessed 24 July 2019; Jessie Hohmann, 'Resisting Dehumanising Housing Policy: The Case for a Right to Housing in England' (2017) 4 *Queen Mary Human Rights Law Review* <<https://www.qmul.ac.uk/law/humanrights/media/humanrights/news/hrlr/2018/Jessie-Hohmann-FINAL.pdf>> accessed 13 September 2019.

¹² See Lynn Hancock and Gerry Mooney, "'Welfare Ghettos" and the "Broken Society": Territorial Stigmatization in the Contemporary UK' (2013) 30 *Housing, Theory and Society* 46; Mary Robertson, 'The Great British Housing Crisis' (2016) 41 *Capital & Class* 195; Jessie Hohmann, 'Resisting Dehumanising Housing Policy: The Case for a Right to Housing in England' (2017) 4 *Queen Mary Human Rights Law Review*.

¹³ See generally Sandra Fredman, 'Positive Duties and Socio-Economic Disadvantage: Bringing Disadvantage onto the Equality Agenda' (2010) 3 *European Human Rights Law Review* 290; Sandra Fredman, 'The Potential and Limits of an Equal Rights Paradigm in Addressing Poverty' (2011) 22 *Stellenbosch Law Review* 566.

specific prejudice and stigma attached to racialised populations, particularly Black individuals and groups. These norms then evolved to cover other 'status-based' grounds such as gender and disability, and were later extended to include additional grounds such as age, religion or belief, and sexual orientation.¹⁴ Although many of these groups have been historically disadvantaged from a socioeconomic perspective, not infrequently as a consequence of the prejudice and stigma attached to status-based characteristics, the goal of antidiscrimination provisions was not to directly address this socioeconomic disadvantage.

However, the overlap between status-based disadvantaged groups and socioeconomically disadvantaged groups is significant.¹⁵ Moreover, some groups may experience intersectional discrimination on account of status-based characteristics and socioeconomic disadvantage, in such a way that these two dimensions interact with each other to create a greater disadvantage than would occur if they were taken in isolation.¹⁶ I will argue that discrimination on the basis of socioeconomic disadvantage should be fully recognised and incorporated into antidiscrimination norms, in order to account for the distinct dimensions of inequality that would otherwise be left uncovered by the protection provided by these norms.

At this point in the argument, it is important to consider why certain characteristics are considered to be prohibited grounds covered within the scope of antidiscrimination law whilst others are not. The reasoning as to what the background principle is to decide whether a potential criterion deserves inclusion in antidiscrimination norms is key to justify the claim that socioeconomic disadvantage ought to be included.¹⁷ Unfortunately, that question does not have a clear-cut answer, and this has long been the subject of debate amongst antidiscrimination law scholars.¹⁸ Although a complete examination of the merits of all potential responses cannot be adequately developed here, some considerations can be made by looking at the most frequent answers to the question.

There are several possible explanations for why it is morally wrong to treat someone differently on the basis of some particular characteristics but not other characteristics.¹⁹

¹⁴ See, for an overview, Aileen McColgan, *Discrimination, Equality and the Law* (Hart Publishing 2014) ch 2; Dagmar Schiek, Lisa Waddington and Mark Bell (eds), *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law* (Hart Publishing 2007) ch 1; Sandra Fredman, *Discrimination Law* (2nd ed, Oxford University Press 2011) ch 2; Michael Connolly, *Discrimination Law* (2nd ed, Sweet & Maxwell 2011) ch 3; Laura Carlson, *Comparative Discrimination Law: Historical and Theoretical Frameworks* (Brill 2017) 67–81.

¹⁵ See, for instance, Equinet (European Network of Equality Bodies), *Addressing Poverty and Discrimination: Two Sides of the One Coin* (2010).

¹⁶ See Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1989 University of Chicago Legal Forum 139; Beth Goldblatt, 'Intersectionality in International Anti-Discrimination Law: Addressing Poverty in Its Complexity' (2015) 21 Australian Journal of Human Rights 47; Shreya Atrey, 'The Intersectional Case of Poverty in Discrimination Law' (2018) 18 Human Rights Law Review 411.

¹⁷ Richard Arneson, 'Discrimination, Disparate Impact, and Theories of Justice' in Deborah Hellman and Sophia Moreau (eds), *Philosophical Foundations of Discrimination Law* (Oxford University Press 2013) 102.

¹⁸ See Deborah Hellman and Sophia Moreau (eds), *Philosophical Foundations of Discrimination Law* (Oxford University Press 2013); Tarunabh Khaitan, *A Theory of Discrimination Law* (Oxford University Press 2015); Hugh Collins and Tarunabh Khaitan (eds), *Foundations of Indirect Discrimination Law* (Hart Publishing 2018).

¹⁹ See Patrick S Shin, 'Is There a Unitary Concept of Discrimination?' in Deborah Hellman and Sophia Moreau (eds), *Philosophical Foundations of Discrimination Law* (Oxford University Press 2013) 170; Lawrence Blum, 'Racial and Other Asymmetries: A Problem for the Protected Categories Framework for Anti-Discrimination Thought' in Deborah Hellman and Sophia Moreau (eds), *Philosophical Foundations of Discrimination Law* (Oxford University Press 2013) 188; Benjamin Eidelson, 'Treating People as Individuals' in Deborah Hellman and Sophia Moreau (eds), *Philosophical Foundations of Discrimination Law* (Oxford University Press 2013) 203.

These characteristics can be determined by looking at whether they ground structural inequalities in the distribution of certain important social goods, such as housing, health care, or education.²⁰ They can be determined on the basis of whether they generate misrecognition for particular personal, identity, or cultural traits.²¹ They may also be selected considering whether they generate a lack of effective social participation or political representation of certain individual and groups.²² Consequently, the chosen protected characteristics may be established, amongst other rationales, on the basis of maldistribution, misrecognition, and lack of social participation or political representation. In general terms, protected characteristics have historically been (and still are) used to exclude, demean, stigmatise, and subordinate.²³

Socioeconomic disadvantage responds to the aforementioned rationales. Socioeconomic status has historically been (and still is) used to unfairly differentiate in the allocation of essential goods, including housing, by both public and private actors. In many spheres, socioeconomically disadvantaged groups suffer persistent inequalities in the distribution of important social goods. Although being poor is not a personal, identity, or cultural trait, it can function as such when 'poorness' is constructed as a category, and people belonging to—or perceived to belong to—that category are ascribed a series of negative traits; that is, they are stigmatised.²⁴ The political interests of socioeconomically disadvantaged individuals and groups tend to be less well represented than those of higher-income groups, and their effective social participation tends to be more limited on account of stigmatisation and other factors like longer working hours or care responsibilities.²⁵ Moreover, class inequalities ground categorical inequalities, since those from privileged classes have been able to lock in their advantages across generations.²⁶

Some may object to the recognition of socioeconomic discrimination in relation to economic and social rights, based on the fact that, as a general rule, the protection afforded by these rights should usually benefit those who are more disadvantaged in socioeconomic terms first. For instance, it could be said as a matter of principle that the right to adequate housing will, when adequately secured, more immediately assist a poor family that encounters difficulties to find a stable home than a well-off family in a stable housing situation. However, implementation experiences of economic and social rights in certain countries, even when these are constitutionally guaranteed, reveal how this does not always hold true. Economic and social rights can be utilised to secure the entitlements of 'insiders' to the detriment of 'outsiders'.²⁷ For instance, some experiences

²⁰ See Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation' in Axel Honneth and Nancy Fraser (eds), *Redistribution or Recognition?: A Political-Philosophical Exchange* (Verso 2003); Philippe Van Parijs, 'Discrimination et justice distributive' in Julie Ringelheim, Ginette Herman and Andrea Rea (eds), *Politiques antidiscriminatoires* (De Boeck 2015); John E Roemer, *Theories of Distributive Justice* (Harvard University Press 1998).

²¹ See Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 1990); Elizabeth Anderson, *The Imperative of Integration* (Princeton University Press 2010).

²² See John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Harvard University Press 1980); Nancy Fraser, 'Distorted Beyond All Recognition: A Rejoinder to Axel Honneth' in Axel Honneth and Nancy Fraser (eds), *Redistribution or Recognition?: A Political-Philosophical Exchange* (Verso 2003); TH Marshall, *Citizen and Social Class* (Cambridge University Press 1950); Pierre Rosanvallon, *La société des égaux* (Seuil 2011).

²³ Blum (n 19) 193–194.

²⁴ See Iyiola Solanke, *Discrimination as Stigma: A Theory of Anti-Discrimination Law* (Hart Publishing 2017).

²⁵ See TM Scanlon, *Why Does Inequality Matter?* (Oxford University Press 2018) ch 6.

²⁶ Anderson (n 21) 7.

²⁷ This has occurred in the framework of economic and social rights litigation in countries like Brazil, South Africa or Indonesia. See further Octavio Luiz Motta Ferraz, 'Harming the Poor Through Social Rights Litigation: Lessons from Brazil' (2011) 89 *Texas Law Review* 1643; Daniel M Brinks and Varun Gauri, 'The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights' (2014) 12

of economic and social rights litigation show how it may reinforce the ‘middle-class capture of public services’, diverting resources away from the structural reforms needed to make public services equitable for lower-income groups.²⁸

Substantive public policies that reinforce the idea of social goods as rights rather than commodities will therefore remain necessary in reducing implementation shortcomings and equalising the level of enjoyment of these rights for all. In other words, antidiscrimination norms will not suffice to combat socioeconomic discrimination in the absence of a strong-willed commitment towards the realisation of economic and social rights in line with international standards, which requires states to devote sufficient public resources and to put effective policies and measures in place.

Nevertheless, I argue that socioeconomic discrimination has a strong added value where economic and social rights have not been fully secured in local contexts.²⁹ In addition, although its importance may decrease as economic and social rights become more fully realised, socioeconomic discrimination would still play a role in addressing discrimination in the allocation of above-minimum social goods, should these be allocated in a way that neglects socioeconomically disadvantaged groups. The difficulties inherent in defining what the ‘social minimum’ entails may admittedly be a hurdle that is hard to overcome.³⁰

Overall, socioeconomic disadvantage functions as a relevant category to understand the causes and the extent of persistent inequalities in the context of economic and social rights implementation. Socioeconomic discrimination also allows us to holistically address situations of intersectional discrimination on account of both status-based and socioeconomic factors, which, absent this lens of analysis, would be only partially dealt with by antidiscrimination legal frameworks. Socioeconomic discrimination additionally encompasses a distinct dimension which other grounds fail to address: the construction of ‘poorness’ as a status and the ‘otherisation’ of poor people as less deserving of worthiness and respect, and the discriminatory conduct that may take place on this basis.

In the context of tragedies such as the Grenfell Tower fire, a strong conceptualisation and the legal recognition of socioeconomic discrimination could lead to a clearer recognition of the many overlapping dimensions of the human rights violations evidenced in its aftermath, particularly with regard to the ‘class’ component that remains, for the most part, sidelined by current equality and nondiscrimination frameworks. It would also help us to focus on the extent to which these violations arise from the marginalisation and otherisation of disadvantaged socioeconomic groups living in council housing estates, which become residualised and tangential to state action in the field of housing.

To summarise, I argue that antidiscrimination law has a significant role to play with regard to socioeconomic disadvantage. By ensuring that people are not discriminated against on this basis, it draws attention to the gaps in the realisation of economic and social rights, the structural inequalities at the source of those gaps, the potential dynamics of intersectionality, and the stigma placed on certain individuals and groups because of their categorisation as ‘poor’. In the field of housing, antidiscrimination norms, if properly constructed, could help forestall and reverse housing policies which structurally disadvantage the poorest segments of the population, in particular policies that residualise council housing and stigmatise residents as generally undeserving.

Perspectives on Politics 375; Malcolm Langford, ‘Critiques of Human Rights’ (2018) 14 Annual Review of Law and Social Science 69.

²⁸ Florian Hoffmann, ‘The Future of Social and Economic Rights’ in Nehal Bhuta (ed), *The Futures of Human Rights* (Oxford University Press forthcoming).

²⁹ See also Tamas Kadar, *An Analysis of the Introduction of Socio-Economic Status as a Discrimination Ground* (Equality & Rights Alliance 2016).

³⁰ See Colm O’Cinneide, ‘Giving Legal Substance to the Social Minimum’ in Toomas Kotkas, Ingrid Leijten and Frans Pennings (eds), *Specifying and Securing a Social Minimum in the Battle Against Poverty* (Hart forthcoming).

3. Socioeconomic Disadvantage as a Prohibited Ground of Discrimination: International, European and Domestic Approaches

Several key international and European human rights instruments already contain prohibited grounds in their antidiscrimination provisions that relate in some way to socioeconomic disadvantage. At the Council of Europe level, the European Convention on Human Rights (ECHR) prohibits in Article 14 discrimination in the enjoyment of the rights and freedoms set forth in the Convention 'on any ground such as . . . national or social origin, . . . property, birth or other status'. The European Convention generally protects the right to home and to private and family life in its Article 8, which has been interpreted as encompassing some dimensions of the right to housing.³¹

The European Social Charter, which focuses on economic, social, and cultural rights, similarly contains prohibitions against discrimination. The original 1961 European Social Charter (ESC) mentions in its Preamble that 'the enjoyment of social rights should be secured without discrimination on grounds of . . . social origin'. The 1996 revised European Social Charter (RESC) contains a more targeted antidiscrimination provision in Article E, banning discrimination 'on any ground such as . . . national extraction or social origin, . . . birth or other status' on the enjoyment of the rights set forth in the Charter.

Both of these instruments protect the right to housing. Whereas Article 31 RESC enshrines this right directly, Article 16 ESC, which addresses the social, legal, and economic protection of the family, has been interpreted as offering a similar standard of protection in certain respects, such as the notion of adequate housing or the protection against forced evictions.³²

At the international level, the International Covenant on Economic, Social and Cultural Rights (ICESCR) similarly prohibits, in Article 2.2, discrimination 'of any kind as to . . . national or social origin, property, birth or other status' in the exercise of the rights enunciated in the Covenant. The ICESCR also protects the right to housing through the right to an adequate standard of living contained in Article 11.1.³³

There is certainly a relationship between social origin, property, and birth on the one hand, and socioeconomic disadvantage on the other. In many life contexts, social origin, property, and birth will signal or predict whether an individual has a vulnerable position in society from a socioeconomic perspective. However, socioeconomic disadvantage extends beyond those grounds and is more flexible and encompassing, as a closer examination of these instruments will reveal. At the same time, whilst most of the surveyed human rights instruments include a reference to 'any ground' or 'other status' in their antidiscrimination clauses, the question of whether socioeconomic disadvantage can be subsumed under this category needs further clarification.

I will look next at how three selected international and European human rights instruments (ECHR, RESC, ICESCR) position themselves in this regard (A), and then consider how the Quebec and French antidiscrimination legal frameworks have incorporated socioeconomic discrimination into domestic law (B).

A. Key International and European Human Rights Instruments

³¹ See European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence* (2019) 73–79.

³² See *European Roma Rights Centre (ERRC) v Bulgaria* (Case no 31/2005) Merits, 18 October 2006 (ECSR).

³³ See also UN Committee on Economic, Social and Cultural Rights 'General Comment No 4: The Right to Adequate Housing (Art 11(1) of the Covenant)' (13 December 1991) UN Doc E/1992/23.

Starting with the European Convention on Human Rights, its antidiscrimination clause (Article 14 ECHR) has been interpreted as covering a number of situations which are not explicitly mentioned in the list of grounds.³⁴ Discrimination is generally prohibited on ‘any ground’, and the open-ended enumeration concludes with a reference to ‘other status’, thus allowing for conceptual expansion. The case law of the European Court of Human Rights (ECtHR) highlights that, although only differences in treatment based on an identifiable characteristic or status are capable of amounting to discrimination within the meaning of Article 14, the list of grounds contained in the article is illustrative and not exhaustive.³⁵

The term ‘other status’ has generally been given a wide meaning, and its interpretation has not been limited to characteristics which are personal, in the sense that they are innate or inherent.³⁶ For instance, fatherhood, marital status, and membership of a trade union have all been interpreted as coming within the scope of this ‘other status’.³⁷ Although, as mentioned above, the enumeration contained in Article 14 contains social origin, property, and birth, there do not appear to be any cases decided by the ECtHR concerning discrimination on the grounds of social origin—perhaps because applicants are reluctant to argue cases on this basis given that the ground has never been interpreted by the Court in the first place. Cases concerning discrimination on the grounds of birth and property have, for the most part, addressed hereditary matters, divisions of real estate, and taxation disputes.³⁸

The ECtHR therefore seems more comfortable about making findings of discrimination based on well-established grounds, rather than developing the social origin ground or creating a specific socioeconomic discrimination category.³⁹ Nevertheless, its interpretation of Article 14 reinforces the idea that antidiscrimination provisions can extend beyond more traditional grounds to cover other dimensions which, although not explicitly mentioned in the text, respond to similar concerns and operate in a comparable manner.

We can briefly consider the case of *Garib*,⁴⁰ which concerned a Dutch policy requiring housing permits to take up residence in certain ‘hotspot’ areas—in practice, areas with a high concentration of people on low incomes, often foreign-born or from immigrant families. These permits were denied to short-term residents and to low-income families, in particular those who were unemployed and lived on benefits.⁴¹ Whilst the majority of

³⁴ Article 14 ECHR states that: ‘The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

³⁵ See, amongst others, *Carson and Others v UK* App no 42184/05 (ECtHR, 16 March 2010) para 61. See further European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Non-Discrimination Law: 2018 Edition* (2018) ch 5.

³⁶ See, amongst others, *Clift v UK* App no 7205/07 (ECtHR, 13 July 2010) paras 55–63.

³⁷ See, for instance, *Weller v Hungary* App no 44399/05 (ECtHR, 31 March 2009); *Petrov v Bulgaria* App no 15197/02 (ECtHR, 22 May 2008); *Danilenkov and Others v Russia* App no 67336/01 (ECtHR, 30 July 2009).

³⁸ See, for instance, *Camp and Bourimi v Netherlands* App no 28369/95 (ECtHR, 3 October 2000); *Fabris v France* App no 16574/08 (ECtHR, 7 February 2013); *Chassagnou and Others v France* App nos 25088/94, 28331/95, 28443/95 (ECtHR, 29 April 1999); *Mazurek v France* App no 34406/97 (ECtHR, 1 February 2000).

³⁹ See further Laurens Lavrysen, ‘Strengthening the Protection of Human Rights of Persons Living in Poverty under the ECHR’ (2015) 33 *Netherlands Quarterly of Human Rights* 293.

⁴⁰ *Garib v Netherlands* App no 43494/09 (ECtHR, 6 November 2017).

⁴¹ See the Chamber judgment *Garib v Netherlands* App no 43494/09 (ECtHR, 23 February 2016), in particular the Joint Dissenting Opinion of Judges López Guerra and Keller. See further Wouter van Gent, Cody Hochstenbach and Justus Uitermark, ‘Exclusion as Urban Policy: The Dutch “Act on Extraordinary Measures for Urban Problems” [2017] *Urban Studies* 1; Michel Vols, ‘Screening and Excluding People with Low Income and Nuisance Neighbours from Housing: Human Rights Proof?’ in Julian Sidoli, Michel Vols

the Grand Chamber decided not to make a finding of discrimination in this case, the dissenting opinion of Judge Pinto De Albuquerque (who was joined by Judge Vehabović) argued that this policy resulted in direct discrimination on the basis of socioeconomic disadvantage, and indirect discrimination on the basis of gender and racial or ethnic origin.⁴² In the case of the applicant, who was a single mother, both layers of discrimination compounded her disadvantage, rendering her situation especially precarious.⁴³

In light of this discussion, it is worth considering whether the conduct of the UK pre and post-Grenfell, both in failing to secure the conditions required by the right to adequate housing, and in failing to guarantee the safety of Grenfell Tower residents, could be found as constitutive of socioeconomic discrimination, given the residualisation of council housing and the disadvantaged situation most of its residents were in—in socioeconomic terms, but also intersectionally with status-based grounds. However, the position of the ECtHR is still conservative in this regard, and the possibility of finding socioeconomic discrimination in this or similar cases remains quite distant in that particular forum, as the law currently stands. As we will see now, the two other instruments considered are more straightforward in their understanding of socioeconomic disadvantage and its potential recognition as a prohibited ground of discrimination.

The RESC contains a nondiscrimination clause in Article E, which similarly includes references to ‘any ground’ and to ‘other status’.⁴⁴ Although the UK has not ratified the revised Charter, the European Committee of Social Rights (ECSR) has interpreted the original Charter, which is binding on the UK, to include a similar requirement through the nondiscrimination guarantee set out in its Preamble.⁴⁵ These antidiscrimination provisions are to be interpreted broadly.⁴⁶

A recent case before the ECSR, *FIDH v Ireland*,⁴⁷ illustrates the way in which potential discrimination on the basis of socioeconomic disadvantage would operate within the framework of the ESC. This case concerned the lack of adequacy, habitability, and suitability of local authority housing in several council housing estates in Ireland. The complainant organisation argued that the sale of social housing stock during the past decades had led to a residualisation of this housing type, which increasingly accommodates socioeconomically disadvantaged individuals and families. Individuals living in local authority housing experience levels of unemployment, dependency on social welfare, and poverty significantly higher than the national average.⁴⁸ It was submitted, amongst other claims, that local authority housing residents had been discriminated against on the grounds of social origin, health, or other status.

The ECSR ruled that:

and Marvin Noah Frank Kiehl (eds), *Regulating the City: Contemporary Urban Housing Law* (Eleven International Publishing 2017).

⁴² *Garib v Netherlands* (n 40), Dissenting Opinion of Judge Pinto De Albuquerque joined by Judge Vehabović.

⁴³ *ibid* paras 34–39.

⁴⁴ Article E RESC states that: ‘The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status’.

⁴⁵ See, amongst others, *General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v Greece* (Case no 66/2011) Merits, 23 May 2012 (ECSR).

⁴⁶ See further (n 35) ch 5.

⁴⁷ *International Federation for Human Rights (FIDH) v Ireland* (Case no 110/2014) Merits, 23 October 2017 (ECSR).

⁴⁸ *ibid* paras 34–35.

[It could not] in principle exclude that certain individuals or groups are, in the present case, specially hampered or prevented from enjoying the right to family housing of an adequate standard on the grounds of their socio-economic or health status, or other personal conditions. This could concern, for example, families living in, or at risk of, poverty, who cannot avoid being allocated local authority housing, or persons with disabilities.⁴⁹

However, in the case at hand, the ECSR deemed that these allegations had not been sufficiently proven, stating that more data or evidence would be needed in terms of the specific grounds of discrimination, the discriminated groups, and the comparator groups.⁵⁰ This decision seems to confirm that the ECSR is ready, at least in principle, to accept that certain policies may discriminate against socioeconomically disadvantaged individuals and groups, so long as this discrimination is sufficiently demonstrated.

The ECSR has made similar decisions in a number of other collective complaints regarding discrimination on the grounds of ‘socio-economic status’, ‘socio-economic origin’, or ‘poverty and social exclusion’. It is not entirely clear whether these grounds are regarded as equivalent or interchangeable with each other or with social origin. In one case, the ECSR similarly accepted the possibility of discrimination on the basis of socioeconomic status in theory, but found that in the particular case there was no specific evidence supporting the allegations of socioeconomic discrimination.⁵¹ In two other cases, it considered this ground in the framework of overlapping or multiple discrimination, looking at the combined effect of ‘health status, territorial location and socio-economic status’.⁵² Finally, the ECSR has also found instances of discrimination on the basis of poverty and social exclusion besides violations of the substantive right to protection against poverty and social exclusion incorporated in the Charter, but has not elaborated much on the circumstances warranting this separate finding of discrimination.⁵³

Turning back to Grenfell, the parallels with the *FIDH v Ireland* case are striking. As in Ireland (and many European countries), the UK’s council housing system increasingly accommodates socioeconomically disadvantaged individuals and families who experience concerning levels of poverty. The ECSR seems open, as a matter of principle, to making a finding on the basis of socioeconomic discrimination, provided there is sufficient evidence. In addition, this socioeconomic discrimination can be established in the framework of overlapping or multiple discrimination, and can be linked to a violation of the substantive right to protection against poverty and social exclusion. If we were to imagine a case brought against the UK before this body—which is currently not possible—,⁵⁴ it would be difficult to ascertain whether it could be proven beyond the high evidentiary threshold required by the ECSR that the conduct of the UK, insofar as it has failed to secure the right to housing of Grenfell Tower residents and to ensure their

⁴⁹ *ibid* para 124.

⁵⁰ *ibid* para 125.

⁵¹ *Mental Disability advocacy Center (MDAC) v Belgium* (Case no 109/2014) Merits, 16 October 2017 (ECSR).

⁵² *International Planned Parenthood Federation - European Network (IPPF EN) v Italy* (Case no 87/2012) Merits, 10 September 2013 (ECSR); *Confederazione Generale Italiana del Lavoro (CGIL) v Italy* (Case no 91/2013) Merits, 12 October 2015 (ECSR).

⁵³ *International Movement ATD Fourth World v France* (Case no 33/2006) Merits, 5 December 2007 (ECSR). In yet another case, the Committee found that ‘a denial of the right to social assistance . . . will inevitably constitute a denial of the fundamental right of persons belonging to socially disadvantaged groups to equality of respect and esteem’, considering that the claim of socioeconomic discrimination could be subsumed under the wider violation of the right to social assistance, with a dissenting opinion arguing otherwise. *European Roma Rights Centre (ERRC) v Bulgaria* (Case no 48/2008) Merits, 18 February 2009 (ECSR) para 45.

⁵⁴ The United Kingdom has not signed or ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

safety, constitutes discrimination on the basis of socioeconomic disadvantage. The ECSR should develop its interpretation of this ground with the occasion of future complaints, clarifying the evidence required to make such a finding.

Moving from the European to the international level, important guidance has been provided by the UN Committee on Economic, Social and Cultural Rights (CESCR) regarding how to interpret the right to equality and nondiscrimination enshrined in the ICESCR.⁵⁵ In its General Comment No. 20, the CESCR elaborates on the meaning of each of the cited grounds, as well as the term 'other status'.⁵⁶

According to the CESCR, social origin refers to a person's inherited social status. This notion is linked with property and descent-based discrimination. Property, in turn, is a broad concept, and includes real property (e.g. land ownership or tenure) and personal property (e.g. intellectual property, goods, income), or the lack thereof.⁵⁷ In this sense, property is understood as a symmetrical notion, encompassing both property owners and the underpropertied.⁵⁸ Birth refers more specifically to parentage, descent, adoption, caste, and analogous systems of inherited status.⁵⁹

The CESCR interprets the term 'other status', placed at the end of the list of grounds contained in Article 2.2 ICESCR, in a flexible manner, as capturing 'other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds'.⁶⁰ After making a reference to intersectionality, it considers embedded in this notion grounds like place of residence and health status, but also 'economic and social situation'.

Looking specifically at economic and social situation, General Comment No. 20 affirms that 'individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping'.⁶¹ This interpretation reflects a conceptualisation of socioeconomic disadvantage that ties into the broader discussion about the construction of poverty as a status, and how it can operate as a distinct form of discrimination beyond social origin, property, and birth. However, this has not yet been developed by the CESCR in its decisions regarding the framework of individual communications.

Whilst the possibility of bringing a case against the UK before this body remains closed for now,⁶² such a broad interpretation would favour legal arguments linking state action surrounding the Grenfell Tower tragedy to the specific needs of socioeconomically disadvantaged groups and the multidimensional effects of poverty more broadly, as well as the role that stigmatisation and negative attitudes may have played regarding certain decisions and measures taken prior to and following the fire. The UK should take

⁵⁵ Article 2(2) ICESCR states that: 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

⁵⁶ UN Committee on Economic, Social and Cultural Rights 'General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights (Art 2(2) of the Covenant)' (2 July 2009) UN Doc E/C.12/GC/20. See also UN Human Rights Committee, 'CCPR General Comment No 18: Non-discrimination' (10 November 1989).

⁵⁷ UN Committee on Economic, Social and Cultural Rights (n 56) para 24–25.

⁵⁸ See Marc L Roark, 'Under-Propertied Persons' (2017) 28 Cornell Journal of Law and Public Policy.

⁵⁹ UN Committee on Economic, Social and Cultural Rights (n 56) para 26.

⁶⁰ *ibid* para 27.

⁶¹ *ibid* para 35. See also UN Committee on Economic, Social and Cultural Rights, 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights' (10 May 2001) UN Doc E/C.12/2001/10 para 11.

⁶² The United Kingdom has not signed or ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which provides for a system of individual communications.

seriously its international human rights obligations and incorporate this broad view into its domestic framework. As the current UN Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Leilani Farha, puts it: 'if failing to uphold human rights was, at least in part, the cause of the Grenfell Tower disaster, then surely upholding internationally recognised human rights is the way forward . . . it is governments that are responsible to low-income and marginalised populations'.⁶³

To summarise, the different bodies in charge of interpreting the human rights instruments considered (ECHR, RESC, ICESCR) take divergent approaches with regard to the possibility of recognising socioeconomic disadvantage as a prohibited ground of discrimination. The European Court of Human Rights seems more reluctant to adopt this approach, favouring an interpretation of 'any ground' and 'other status' strictly linked to well-established discrimination grounds, and is wary to consider social disadvantage in this regard despite some trends to the contrary in dissenting opinions. On the other hand, the European Committee of Social Rights and the Committee on Economic, Social and Cultural Rights both seem to defend a more encompassing interpretation of this notion. The latter has developed a very broad interpretation of socioeconomic disadvantage in its General Comments, but this is yet to be rendered more concrete in the framework of individual communications. For its part, the European Committee of Social Rights has more openly acknowledged this possibility in relation to collective complaints. However, doubts still remain as to how this ground is to be interpreted in particular contexts, and what the evidentiary threshold is so that claimants are able to effectively rely on it.

B. Selected Domestic Implementations: Quebec and France

Socioeconomic discrimination features in a number of domestic antidiscrimination legal frameworks, both in Europe and elsewhere.⁶⁴ To further explore how this ground has been given content, and to have a better understanding of how it can be implemented in practice, I look here at the antidiscrimination legal framework of the Canadian province of Quebec, and the more recent addition of a socioeconomic disadvantage ground in France.

In Quebec, the Quebec Charter of Human Rights and Freedoms includes 'social condition' as one of the prohibited grounds of discrimination.⁶⁵ Even though there is no precise statutory definition of this term, the Quebec Human Rights Commission has defined it as: 'referring to a rank, a social position, or a class attributed to someone mainly on the basis of their level of income, their occupation, and their education'.⁶⁶

The Quebec judiciary, for its part, has ruled that:

The definition of "social condition" contains an objective component. A person's standing in society is often determined by his or her occupation,

⁶³ Leilani Farha, 'Grenfell Tower is a Terrible Betrayal of Human Rights' (*The Guardian*, 21 June 2017) <<https://www.theguardian.com/housing-network/2017/jun/21/grenfell-tower-terrible-betrayal--human-rights-uk-government>> accessed 24 July 2019.

⁶⁴ This ground, under various formulations, is nominally present in the antidiscrimination norms of about half of European Union Member States, certain states in Australia, and in South Africa; but it has yielded overall little case law. See European Network of Legal Experts in Gender Equality and Non-Discrimination, *A Comparative Analysis of Non-Discrimination Law in Europe: 2018* (2018); Margaret Thornton, 'Social Status: The Last Bastion of Discrimination' (2018) 2018 *Anti-Discrimination Law Review* 5; Shreya Atrey, 'The Intersectional Case of Poverty in Discrimination Law' (2018) 18 *Human Rights Law Review* 411.

⁶⁵ Charter of Human Rights and Freedoms, CQLR c C-12, s 10.

⁶⁶ Commission des droits de la personne et des droits de la jeunesse du Québec, *Lignes directrices sur la condition sociale* (Cat 2.120.8.4, 1994) 6 (author's translation).

income or education level, or family background. It also has a subjective component, associated with the perceptions that are drawn from these various objective points of reference.⁶⁷

The case law dealing with the application of this ground shows its conceptual breadth. For instance, unemployment, receipt of social assistance, and type of residential tenure have all been found to come within the scope of social condition.⁶⁸ In the field of housing, social condition has been used to make findings of discrimination when landlords have refused to rent out premises to social assistance recipients based on assumptions about their ability to pay.⁶⁹

Social condition is understood as the situation of persons who cannot reasonably be expected to meet their needs with own resources.⁷⁰ This means that the ground is asymmetrical: it applies to individuals who are disadvantaged because of their socioeconomic position, but not to those who derive an advantage from it. Notably, the Quebec judiciary has been reluctant to find that a professional occupation characterised by a high level of income could be relied upon to claim discrimination on the basis of social condition, emphasising that the purpose of this ground is to protect vulnerable groups in society who cannot easily escape their situation.⁷¹

The way in which social condition is interpreted in the Quebec antidiscrimination legal framework thus encompasses the circumstances surrounding a person's birth and upbringing, while acknowledging, at the same time, the possibility of misfortune at a later stage in life. This is a prime example of how to render the functioning of socioeconomic disadvantage as a prohibited ground more concrete and workable for judicial review, whilst maintaining its flexibility in adapting to different circumstances that may be at the source of this type of disadvantage.

In particular, this understanding of socioeconomic disadvantage offers a powerful lens through which to evaluate Grenfell-type situations, since it puts the accent on the social construction of stigma and on negative assumptions about certain disadvantaged social groups. The double objective and subjective components embedded in this ground allow us to better articulate from a legal perspective how certain situations (e.g. living in council housing) may attract judgements of undeservedness that permeate decisions taken by private individuals and by public authorities. In so doing, the importance of socioeconomic disadvantage when examining state action conducive to human rights violations such as those evidenced by the Grenfell Tower fire comes to the forefront.

In France, the antidiscrimination legal framework currently recognises more than twenty prohibited grounds of discrimination, including 'place of residence', 'family situation', and 'customs'.⁷² Discrimination is, notably, also prohibited on the basis of the 'particular vulnerability resulting from an individual's economic situation, be it presumed

⁶⁷ *Québec (Comm. des droits de la personne) c Gauthier* [1993] 19 CHRR D/312 [English summary] (Quebec Tribunal des droits de la personne).

⁶⁸ See further Wayne MacKay and Natasha Kim, *Adding Social Condition to the Canadian Human Rights Act* (Canadian Human Rights Commission 2009) 21–27.

⁶⁹ See, amongst others, *Leroux et CDPQ c J.M. Brouillette Inc.* [1994] JTDPQ No 16 (Quebec Tribunal des droits de la personne); *Reeves et Québec (CDPDJ) c Fondation Abbé Charles-Émile Gadbois* [2001] JTDPQ No 13 (Quebec Tribunal des droits de la personne); *Lavigne et Québec (CDPDJ) c Latreille* [2000] JTDPQ No 12 (Quebec Tribunal des droits de la personne); *Commission des droits de la personne et des droits de la jeunesse c Normandin* [2011] QCTDP N. 6 (Quebec Tribunal des droits de la personne).

⁷⁰ See further Diane Roman, 'La discrimination fondée sur la condition sociale, une catégorie manquante du droit français' [2013] *Recueil Dalloz* 1911, 1914.

⁷¹ MacKay and Kim (n 68) 25.

⁷² See *loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*.

or known'.⁷³ This criterion was introduced in 2016, following an extended parliamentary discussion on whether discrimination on the grounds of social precarity should be barred by law and on what terms. The public debate arose in 2013 after the NGO ATD Quart Monde reported that a family living in poverty had been expelled from the Parisian Musée d'Orsay while accompanied by a volunteer, as security guards claimed that their body odour was uncomfortable for other visitors.⁷⁴

Later that year, the National Human Rights Consultative Commission delivered an opinion supporting the inclusion of this ground in legislation.⁷⁵ It stated that:

Certain persons are victims of a form of discrimination whereby, at the same time, responsibility for the situation they are in is attributed to them, they are blamed for their past of deprivation and exclusion, their voice is discredited, their behaviour and actions are disparaged for the single reason that they are individuals without a recognised status or approved representation. . . . This social and political discrimination creates feelings of shame, guilt, and distress for those suffering it, caused by the reality of not being considered as equals to other human beings in their own society.⁷⁶

Considering that discrimination against people living in social precarity can have the effect of aggravating their situation and worsening their social exclusion, and making at the same time a reference to the intersectional discrimination many of them are likely to suffer, the Commission concluded that the French legal framework to combat exclusion would greatly benefit from the addition of such a ground.

Since then, the socioeconomic disadvantage ground has been used by the French Ombudsman, for instance, to find that the policy of refusing the public school enrolment of children living in a hostel was discriminatory on the basis of the particular vulnerability stemming from the economic situation of their families, alongside their origin and place of residence.⁷⁷ In the case of a municipal byelaw that prohibited loitering in certain areas, the Ombudsman considered that the real aim of this norm was to prevent associations from distributing food to migrants on humanitarian grounds, finding discrimination on the basis of their particular economic vulnerability and their nationality.⁷⁸

The added value of socioeconomic discrimination becomes here more evident with regard to both the construction of 'poorness' as a category and the intersection of socioeconomic disadvantage with status-based grounds. In these cases, the 'particular vulnerability' individuals experienced as a result of their socioeconomic situation created a specific form of discrimination that went beyond what antidiscrimination norms would have been capable of addressing had this ground been absent from the legislation.

⁷³ The French original reads: 'la particulière vulnérabilité résultant de sa situation économique, apparente ou connue de son auteur'. See further Ioannis Rodopoulos, 'L'absence de la précarité sociale parmi les motifs de discrimination reconnus par le droit français : un frein normatif à l'effectivité de la lutte contre les discriminations ?' (2016) 9 *La Revue des droits de l'homme*; Roman (n 70) (author's translation).

⁷⁴ See Alexandra Michot, 'Une famille défavorisée expulsée du Musée d'Orsay' (*Le Figaro*, 29 January 2013) <<http://www.lefigaro.fr/actualite-france/2013/01/29/01016-20130129ARTFIG00323-une-famille-defavorisee-expulsee-du-musee-d-orsay.php>> accessed 24 July 2019.

⁷⁵ Commission nationale consultative des droits de l'homme, *Avis sur les discriminations fondées sur la précarité sociale* (2013).

⁷⁶ *Ibid*, para 2 (author's translation); See also ATD Quart Monde, *Discrimination à raison de la pauvreté. Plaidoyer pour une approche européenne* (2017).

⁷⁷ *Décision* 2017-091 du 27 mars 2017 relative au refus d'inscription en classe de maternelle d'enfants résidant en hôtel social, constitutif d'une discrimination fondée sur le lieu de résidence, la situation de particulière vulnérabilité économique et l'origine [2017] (France Défenseur des droits).

⁷⁸ *Décision* 2017-119 du 16 mars 2017 relative à un arrêté portant interdiction des occupations abusives, prolongées et répétées de plusieurs lieux pris par un maire [2017] (France Défenseur des droits).

Applying this to Grenfell, the French experience shows how a socioeconomic disadvantage ground, potentially coupled with status-based grounds, can be used to challenge state action and policies, as well as decisions taken by public authorities discriminating against socioeconomically disadvantaged individuals. A particularly interesting feature of this system is how this disadvantage may be 'presumed or known', which explicitly links to prejudice and stigma. In the case of the UK and Grenfell, one could wonder whether this ground, if recognised legislatively, could have been similarly used to challenge, for example, the decision to choose a cheaper material for the cladding of Grenfell Tower without sufficiently accounting for the fire hazards involved, or the multiple defects that were discovered in Grenfell Tower in terms of safety and housing adequacy.

All in all, it must be acknowledged that the field of housing presents additional difficulties, including the identification of a suitable comparator and the acceptability of potential resource-based objective justification defences by states. In this light, the examples of Quebec and France represent suggestions as to how to move forward, by interpreting this ground broadly, whilst also rendering it sufficiently concrete so that it can be mobilised to combat specific instances of discrimination, and to challenge public policies and decisions made by public authorities.

4. Socioeconomic Disadvantage in the British Antidiscrimination Legal Framework: Public Sector Equality Duties and Beyond

Having examined the position of socioeconomic disadvantage within antidiscrimination law, both from a philosophical perspective and within the context of key international and European human rights instruments and two selected domestic legal orders, I return now to the United Kingdom and the field of housing. The Grenfell Tower tragedy draws attention to the need to be mindful of the interrelation between status-based and socioeconomic disadvantage. This, in turn, highlights that the design and implementation of housing policies must be done in a way that is respectful of the needs and situation of disadvantaged groups, both along status-based and socioeconomic axes.

In Great Britain, the Equality Act 2010 prohibits discrimination on the basis of a closed list of grounds.⁷⁹ According to Section 4, these are: 'age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation'. Socioeconomic disadvantage does not feature in this list, nor do the terms 'any ground' or 'other status'. As such, the inclusion of this ground at the same level it is placed in the international and European instruments and domestic frameworks previously considered would only be possible, in principle, through legislative reform.⁸⁰

Clearly, the debate as to whether the inclusion of this ground is the best course of action is not an easy one. For some authors, assimilating this ground into traditional identity-based grounds can lead to disappointment, since, for this system to function, protected characteristics must have definitional and categorical stability, favouring instead a context-based or a social inclusion approach.⁸¹ Others argue that, while antidiscrimination law cannot resolve issues of socioeconomic inequality per se, prohibiting socioeconomic discrimination as such has a powerful symbolic effect.⁸² In my view, as mentioned above, the inclusion of this ground focusses attention upon shortcomings in the realisation of economic and social rights, structural inequalities,

⁷⁹ This Act does not apply in Northern Ireland, which has its own antidiscrimination legislation.

⁸⁰ Kate Malleson, 'Equality Law and the Protected Characteristics' (2018) 81 *The Modern Law Review* 598, 615

⁸¹ *ibid.* See also Hugh Collins, 'Discrimination, Equality and Social Inclusion' (2003) 66 *The Modern Law Review* 16.

⁸² Thornton (n 64).

potential intersectionality dynamics, and the construction of 'poorness' as a stigmatising category.

The Equality Act notably contains, in Section 149, a public sector equality duty whereby public authorities must, in the exercise of their functions, 'have due regard to the need to' eliminate discrimination, harassment, and victimisation; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not; and foster good relations. At the same time, the Act foresees in Section 1 a public sector equality duty regarding socioeconomic inequalities, whereby public authorities ought, when making decisions of a strategic nature about how to exercise their functions, to 'have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage'. However, this duty is not in force in England or Wales at the time of writing, and it is applicable in Scotland only since April 2018.⁸³

The objective of this socioeconomic duty is to constrain public bodies and private bodies exercising public functions, so that:

When making key strategic decisions affecting spending and public services, they should take account of the impact those decisions may have on narrowing the gaps in outcomes experienced by different socio-economic groups.

To do this, they should examine the evidence they hold on the inequalities relevant to the decision or issue, and the role of socio-economic factors in driving these inequalities.

Where the evidence suggests that taking a particular decision or course of action would reduce outcome gaps, they should give appropriate weight to the desirability of taking that course of action, and balance this against other policy objectives and available resources.⁸⁴

Public sector equality duties are procedural rather than substantive duties. They are considered 'an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation'.⁸⁵ The concept of 'due regard' is central to understanding how these equality duties operate in practice, and a significant amount of case law in the framework of judicial review proceedings with regard to the status-based public sector equality duty has contributed to defining this concept.⁸⁶ More specifically, six principles (the so-called 'Brown Principles') have been set out by the courts to render the scope of public sector equality duties more concrete and to clarify their limits. These principles can be summarised as: completeness, timeliness and conscientiousness, substantiveness and rigour, nondelegation, continuity, and record keeping as a good practice.⁸⁷

⁸³ See Scottish Government, *The Fairer Scotland Duty: Interim Guidance for Public Bodies* (2018); Equality and Human Rights Commission, *Socio-Economic Requirements* (2018).

⁸⁴ See Government Equalities Office, *The Equality Bill: Duty to Reduce Socio-Economic Inequalities. A Guide* (2010) 17.

⁸⁵ *Moore and Coates v Secretary of State for Communities and Local Government* [2015] EWHC 44 (Admin) para 130.

⁸⁶ See further Aileen McColgan, 'Litigating the Public Sector Equality Duty: The Story So Far' (2015) 35 *Oxford Journal of Legal Studies* 453; Sandra Fredman, 'The Public Sector Equality Duty' (2011) 40 *Industrial Law Journal* 405.

⁸⁷ *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) paras 90–96.

Overall, it has become clear that the duty to have due regard to the identified needs does not entail an obligation in terms of results.⁸⁸ Although this duty constrains public action to a certain extent, the weight to be given to the countervailing factors is a matter only for the public authority concerned.⁸⁹ Moreover, the duty does not confer on individuals a private right of action.⁹⁰ Nonetheless, through the development of an obligation to have due regard, the public sector equality duty underlines the fact that the results of a particular policy or practice might affect different social groups differently, enhancing transparency and accountability in the elaboration and implementation of public policies.⁹¹

Absent the incorporation of socioeconomic disadvantage as a prohibited ground of discrimination, however, the genuine consideration of the situation and needs of underprivileged groups may be substituted by standardised impact assessments in the framework of the socioeconomic public sector equality duty. Public sector equality duties must be consistently coupled with a decommodifying approach towards social goods and with an understanding of social rights in line with international and European standards, in order to preclude their perverse use.⁹²

Bearing this in mind, the Grenfell Tower tragedy prompts us to rethink the role of socioeconomic disadvantage within antidiscrimination norms, particularly in relation to the design and implementation of housing policies. The analysis developed in this article has sought to argue that socioeconomic disadvantage should be fully recognised and incorporated into antidiscrimination norms. It is possible to conceptualise socioeconomic disadvantage in a way that is broad and flexible on the one hand, so that it encompasses the diverse circumstances at the source of housing inequalities, and precise and tangible on the other, so that it can be used to effectively challenge public policies or decisions taken by public authorities which discriminate against socioeconomically disadvantaged individuals and groups.

Starting from the recognition that there is a philosophical rationale for incorporating socioeconomic disadvantage into antidiscrimination norms, the different international and European human rights instruments surveyed, and the two domestic frameworks considered, all give us directions as to how a socioeconomic discrimination ground could be more specifically set up in order to be effective. Looking at the Quebec framework, it is important to interpret this ground broadly, recognising both its objective and subjective components. From the French system I would point to the recognition of the role of prejudice and stigma and the experience of challenges to decisions taken by public authorities on this basis. The work of the European Committee of Social Rights and the arguments contained in certain dissenting opinions of the European Court of Human Rights have shown how this ground can be effectively used to question public policies that neglect the needs of socioeconomically disadvantaged groups, although meeting the evidentiary threshold remains difficult. From the Committee on Economic, Social and Cultural Rights we can underline the explicit links made to multidimensional poverty and to intersectionality, and to negative stereotyping. Finally, it must be acknowledged, once again, that the provision of adequate social housing is a complex, polycentric field, which relays the difficulty to allocate scarce resources and to prioritise competing social and policy concerns.

Whereas a public sector equality duty concerning socioeconomic disadvantage is welcome—and strides should be made to bring it into force in England and Wales, and

⁸⁸ *ibid* para 81.

⁸⁹ *R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141 para 31.

⁹⁰ See Malleon (n 80) 612–613.

⁹¹ See, for instance, *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2062.

⁹² See UN Human Rights Council 'Report of the Special Rapporteur on extreme poverty and human rights' (2019) UN Doc A/HRC/41/39/Add.1. See also Just Fair, *Tackling Socio-Economic Inequalities Locally: Good Practices in the Implementation of the Socio-Economic Duty by Local Authorities in England* (2018).

to legislate for its inclusion in Northern Ireland—I argue that it ought to be accompanied by legislative reform that includes socioeconomic disadvantage as a prohibited discrimination ground. Only by combining these two complementary approaches, whilst maintaining a strong political commitment to the decommodification of important social goods like housing, will we have the appropriate legal tools to holistically address the complex phenomena of socioeconomic disadvantage in relation to the right to housing. This is especially important in the context of the nonrealisation of economic, social, and cultural rights; in the context of intersectional discrimination caused by both status-based disadvantage and socioeconomic disadvantage; and in contexts where poorness is constructed as a status and where the poor are structurally marginalised and stigmatised on this basis.

For Grenfell, the existence of such a ground could have given greater attention to the ‘class’ or socioeconomic dimensions of certain decisions. For instance, the nefarious impact of cost-cutting decisions on socioeconomically disadvantaged groups could have been more clearly questioned in connection with the effective realisation of the right to adequate and safe housing. The contradictions inherent in the design and implementation of public housing policies resulting in the stigmatisation and marginalisation of council estate residents whilst these individuals and families cannot adequately secure this right in the private market would be made more evident.

The Grenfell Tower fire tragedy evidenced manifold human right violations, not only as a consequence of the decisions taken prior to the fire, such as the many complaints of residents that went unheard and were never acted upon, but also in its aftermath, as evidenced by the poor implementation of rehousing measures and support for victims. I submit that a socioeconomic ground would allow antidiscrimination norms to properly account for the distinct ‘class’ dimensions of Grenfell, creating a stronger legal framework where these type of considerations are pushed to feature more prominently in decision-making and where these policies and decisions can be reviewed by judges on the basis of socioeconomic discrimination, beyond a public sector equality duty regarding socioeconomic inequalities.

5. Conclusion

Antidiscrimination norms have not traditionally been concerned with socioeconomic disadvantage in a direct manner. Looking at the philosophical rationale for determining why some characteristics are recognised as discrimination grounds whereas others are not, the three more frequent criteria defended by scholars appear to be maldistribution, misrecognition, and the lack of social participation or political representation. Socioeconomic disadvantage responds to all three rationales, operating as a relevant category to understand the causes of persistent inequalities, especially in the context of failing to realise economic and social rights; situations of intersectional discrimination on account of both status-based and socioeconomic disadvantage; and contexts where poor people are stigmatised as less deserving of worthiness and respect.

Key international and European human rights instruments have different approaches to the question of whether socioeconomic discrimination may be subsumed under their respective antidiscrimination provisions. Whereas the European Court of Human Rights favours a more strict interpretation and is more comfortable making findings of discrimination on the basis of well-established grounds, both the European Committee of Social Rights and the Committee on Economic, Social and Cultural Rights seem to have a more positive stance towards the recognition of a socioeconomic ground. Moreover, several domestic legal orders have explicitly incorporated socioeconomic disadvantage amongst the prohibited grounds of discrimination by law. These experiences show that this ground can be interpreted in a flexible manner and at the

same time be mobilised in particular cases in order to challenge public policies or decisions taken by public authorities.

In the UK, the Equality Act 2010 does not recognise socioeconomic disadvantage as a prohibited ground of discrimination. The Act foresees the possibility of a public sector equality duty regarding socioeconomic disadvantage, which is however only in force in Scotland at the time of writing. This legal device is useful to advance socioeconomic equality, but it ought to be coupled with the recognition of a socioeconomic disadvantage ground in order for antidiscrimination norms to address the full ramifications of housing discrimination and inequality.

The Grenfell Tower fire and the multiple human rights violations that ensued show the horrific consequences of some of the decisions taken both before and after the tragedy. At the same time, Grenfell casts a light on public housing policies in the United Kingdom and the ways in which these policies may lead to the marginalisation of council estate residents and the residualisation of this housing modality. The potential incorporation of a prohibited discrimination ground relating to socioeconomic disadvantage may help recast these decisions and policies more clearly as discriminatory, shifting the focus towards the needs and circumstances of socioeconomically disadvantaged groups, and allow for the possibility of a judicial review of policies and decisions on this basis—beyond a public sector equality duty requiring public authorities to consider these dimensions proactively in their decision-making.