

SERVICES TO CITIZENS AND SOCIAL RIGHTS

INTRODUCTION

This seminar aims to examine in depth the approach of the Supreme Courts of several European states to so-called 'social rights'. By this expression, we identify that category of rights whose implementation requires the legislator to take action, introducing and regulating benefits in favour of the citizens who are entitled to them; at the same time, those citizens are identified as having an enforceable claim against the State or more generally against the public authorities with regard to those benefits. These are therefore "claims to benefits", which for this reason differ from the more traditional (and consolidated in Western systems) rights "of freedom".

Precisely because of this peculiarity, it cannot be taken for granted that the rights in question are always recognised and protected as fundamental rights. Moreover, they traditionally pertain to sectors (the protection of health, work, education, the right to housing, etc.) that do not fall within the direct competence of the European Union, and in which there is therefore no need for harmonisation between the laws of the various countries, in which therefore it is possible that the recognition and protection of these rights takes place in very different forms.

Another peculiarity of social rights is that their realisation entails a burden on public finances. This is why in recent years, due to both the structural economic crises and those linked to contingent situations (such as, for example, the Covid-19 pandemic), the jurisprudence of the various States has often had to address the issue of the relationship between regulatory interventions that have become necessary to contain public spending and the need to ensure the effectiveness of these rights. In particular, especially in the countries hardest hit by the crises, the question has arisen as to whether it is possible to identify a limit to the possible incision of social rights for reasons of financial balance, and thus a 'minimum essential core' of services pertaining to these rights that must in any case be guaranteed to citizens.

In developing the topics of the seminar, it was therefore considered necessary to verify not only the breadth and type of protection techniques that the Courts of the various States (and primarily the administrative ones) have at their disposal to ensure the effectiveness of social rights, but also the way in which these are recognised and guaranteed by the various legal systems and jurisprudence. If it were possible to conclude that the 'essential core' of social benefits to be ensured in each case is transversally homogeneous despite the multiformity of normative and jurisprudential options in the various countries, social rights could be placed with greater certainty among the fundamental rights that contribute to defining a modern notion of European citizenship even beyond what is strictly imposed by Union law.

To pursue the aforementioned objective, it was also decided to assign particular importance to the analysis of case law, reserving to it a special part of the questionnaire with a view to carrying out the last part of the seminar in the form of a workshop, and therefore through a richer and freer comparison between colleagues of the various Supreme Courts on the specific cases in which administrative judges were confronted with social rights and their protection.



PART I

SOCIAL RIGHTS: THE GUARANTEES OFFERED BY NATIONAL LAW AND THEIR IMPLEMENTATION IN TIME OF 'CRISIS'

1) In your country, which regulatory sources discipline the main social rights?

- x Constitution
- x Ordinary law
- Other

(tick more than one box if necessary)

Please explain

The Italian Constitution guarantees the main social rights, such as the right to health (art. 32), the right to work (art. 4), the right to education (art. 34) and aid to families (art. 31). Other rights, concerning more specific services, are recognized by ordinary law.

Bulgaria

The higher national social law refers as to the Bulgarian Constitution. The Constitution defines variety of social rights of the citizens, but not only:

1. Family

According to art. 14, the family, motherhood and children must have the protection of the state and society. In that respect, the Constitution in art. 46 describes the matrimony as a free union between a man and a woman and the spouses have equal rights and obligations in matrimony and the family. The form of a marriage, the conditions and procedure for its conclusion and termination, and all private and material relations between the spouses are established in Ordinary law.

2. Labour

Article 16 of the Constitution guarantees and protects the right of work, also art. 48 defines the main aspects of that right. The text states that citizens must have the right to work and the state is obliged to provide conditions for the exercising of this right. The state shall create conditions conducive to the exercising of the right to work by the physically or mentally disabled. Everyone has to be free to choose an occupation and place of work. No one should be compelled to do forced labour.

3. Social security and welfare aid



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The right is defined in art. 51 of the Constitution, according to which the citizens must have the right to social security and welfare aid. The state must provide social security for the temporarily unemployed in accordance with conditions and procedures established by law. The aged without relatives and unable to support themselves, as well as disable people and socially weak people must receive special protection from the state and society.

4. Health

Article 52 contains the substantive principles of the right of health. It means that citizens must have the right to medical insurance guaranteeing them affordable medical care, and free medical care in accordance with the conditions and procedures established by law. Citizens' medical care must be financed from the state budget, by employers, through private and collective health-insurance schemes, and from other sources in accordance with conditions and procedures established by the law.

In addition, art. 55 states that citizens must have the right to a healthy and favourable environment.

5. Education

The Constitution includes another social right – the ability to have education. Article 53 states that everyone must have the right to education and school attendance up to the age of 16 shall be compulsory.

Other rights, such as the rights of people with disabilities, pension rights, rights of social assistance and etc. are established in Ordinary laws and codes.

2) What social benefits are provided by public administrations according to the provisions of your legal system?

- x Subsidies and aid to indigent and needy people
- x Facilities for the pursuit of employment
- x Health benefits
- x Social Housing
- x Assistance for disabled and disadvantaged people
- x Economic aid and facilities for families and birth rate

(tick more than one box if necessary)

Please explain

The Italian healthcare system is based on the principle of free healthcare for all, with special attention to the less well-off. Similarly, the law ensures that the unemployed receive aid and benefits to support themselves and, where possible, to get a job. Forms of aid (e.g., in the form of tax exemptions) are also provided for large and poor families, as well as incentives for capable and deserving persons in a state of poverty to access higher education. Finally, through the social housing system it is possible to secure housing for those who could not afford it.



Bulgaria

The Bulgarian healthcare system is also based on the principle of free medical care, with a special attention to the quality of health services. In Bulgaria the unemployment benefit system allows the unemployed people to receive an unemployment benefit and a guaranteed debt payment in the event of an employer's insolvency. The administrative employment authorities provide information about vacancies, mediation between jobseekers and employers. People who are at risk of poverty and people with disabilities, receive monthly benefit, one-off benefit, rent allowance, heating allowance or do not pay taxes. Bulgarian social system offers services and supports people with disabilities and elderly people with: home-based services, Assistant/Personal assistant, domestic social patronage, public canteens. With the social housing system, the country aims to help young families and young professionals.

3) Have new social rights emerged in your country, other than those traditionally recognised by the Constitutions and laws in force (such as the right to access the Internet, water and other common goods)? And if so, how?

- x Yes, as a result of regulatory action
- x Yes, thanks to the application of general principles and clauses
- Yes, thanks to the interpretation of the case-law
- Yes, thanks to the negotiation carried out by trade unions and private associations.
- There has been no recognition of new rights

(Tick more than one box if necessary)

Please explain

As regards the right to the web, with the 2017 amendments to the Digital Administration Code (Legislative Decree No. 82/2005), rules were introduced to guarantee the so-called Digital Citizenship Charter (Chapter I, Section II, Articles 3-9), comprising the rights that citizens and businesses have vis-à-vis the public administration, and in accordance with the provisions of the European Digital Agenda (ADE) and the Italian Digital Agenda (ADI), initiatives were planned to overcome the digital divide in Italy and to guarantee access to the Internet for all. Moreover, on the subject of the so-called 'common goods', the Court of Cassation since 2011 has identified this notion from the traditional notion of 'public goods', with reference to tangible goods (e.g. certain natural sites of particular value) and intangible goods (e.g. the web space) of which the enjoyment of each individual must be ensured, insofar as they entail a utility that cannot be determined in patrimonial terms but is of 'existential' importance.

Bulgaria



A very specific social right, which derives from the right of access to information (based on the EU law-art. 15(3) TFEU, art. 10 of the European Convention on Human Rights and art.41 from the Constitution of the Republic of Bulgaria), is the right in art. 4 of the Bulgarian Electronic Communications Act (Promulgated, SG No. 41/2007, last amended and supplemented, SG No. 20/2021). The above-mentioned article protects the access to Internet, because one of the aims of the Act is to promote the interests of citizens by ensuring all citizens access to universal service and to support the interests of specific social groups, and in particular people with disabilities, elderly people and people with special social needs.

4) Can budgetary constraints and measures of containment of public expenditure limit the effectiveness of social rights?

- Yes.
- No.
- x Yes, but only in some areas.

Please explain

The experience of the Italian legislation on the containment of public expenditure, following the introduction in the Constitution of the obligation to balanced budgets due to European commitments, shows that it has been preferred to intervene selectively to safeguard certain social rights considered more worthy of protection rather than operating with a system of indiscriminate cuts.

Bulgaria

Following the state monetary legislation, Bulgaria has lower expenditure on unemployment benefits, public spending is used for job creation measures and labour market. Bulgaria has high number of labour programmes, which have small budgets and few participants.

5) In your country does there exist, even in specific sectors, an '*intangible nucleus*' of social rights that cannot be sacrificed even to cope with a contingent financial situation?

- x Yes.
- No

6) If the previous question has been answered in positively, how has the identification of the '*essential nucleus*' of social rights which cannot be sacrificed been carried out?

- x At the constitutional level



- By ordinary law
- By regulatory rules
- By case-law
- Other

(tick more than one box if necessary)

Please explain

Since the 1980s, the Constitutional Court has based on the second paragraph of Article 3 of the Constitution the need to ensure a minimum level of effectiveness of social rights. This obliges the State to undertake all necessary actions to achieve the effective implementation of the principle of equality. More recently, a provision has been inserted in the Constitution (Article 117, par.2) letter m,) which reserves to State law the competence of setting minimum levels of benefits relating to civil and social rights to be ensured throughout Italy. The case law also transposed this approach in assessing the legitimacy and adequacy of administrative measures affecting social rights.

Bulgaria

According to the Preamble of the Constitution, Bulgaria is a law - governed and social state. In many judgments (Decision 9/14.07.2020, Decision 13/2003; Decision 8/2012; Decision 10/2012; Decision 2/2006; Decision10/2012) the Constitutional court interprets the social function of the state in the aspect of the protection of the essential social rights for the national legal system. The national law provides opportunities, based on the principles of effectiveness and equality, social services and benefits to be received from the citizens in due time. In that regard the national case law takes into account the ECJ's case-law. The administrative acts or measures, which affect the social security rights in Bulgaria, can be appealed directly before the administrative court, according to the art.120 (2) of the Constitution and the Administrative code.

7) How does the scarcity of available financial resources affect the effectiveness of social rights in your country?

- Social rights must be guaranteed in any case, regardless of budgetary requirements.
- The budgetary requirements always prevail over social rights.
- A balance between the opposing requirements is to be carried out.

In the latter case, explain who is competent to perform the balancing:

In the presence of legal provisions limiting social rights or in any case affecting them, the balancing of the opposing requirements falls to the Constitutional Court, when called upon to assess the constitutionality of the provisions in question. If, on the other hand, the limitations derive from specific acts or measures, the



competent court (ordinary or administrative, depending on the sector involved or the type of act) will decide on the individual case.

Bulgaria

Social rights, which are affected by the administrative authorities or other bodies, are protected by the Constitutional court, ordinary courts and the administrative courts. According to art.117 of the Code of social insurance (title amend. - SG 67/03) the chief of the corresponding territorial division of the National Social Security Institute has the right to take a decision, when the appeal is against the decision of the lower administrative authorities, in cases of: incorrect determining or payment of cash benefits and orders: for refusal or incorrect determining or change and for termination of the pensions, the additions and the compensations thereof; changing and termination of the unemployment benefit; for collecting the sums of the audit acts for deficit and etc. The final decision of the chief can be a subject of a legal dispute before the administrative court.

8) Have special social benefits been introduced in your country in order to cope with the short and medium-term emergencies of recent years (pandemic, energy crisis, banking and financial crisis)?

- Yes.
 No

If yes, please indicate the main measures introduced:

Business aid, tax exemptions, special fund for workers at companies in crisis.

Bulgaria

Business aid, state aid, special fund for workers at companies in insolvency .

9) If the previous question is answered positively, please specify whether the measures introduced have also provided for derogations from the ordinary division of competencies among the administrative judge and the other judges

The special support measures introduced in Italy to deal with the emergencies of recent years have not been accompanied by special rules that have altered the ordinary division of jurisdiction between ordinary and administrative courts in the areas concerned.



Bulgaria

The mentioned above measures do not derogate the competence among the administrative courts and ordinary courts and their jurisdiction. Article 130 (1) of the Administrative procedure code states that the administrative court shall decide by itself whether the case shall be subject to consideration by it or by another body out of the courts' system. Also, each administrative court shall decide by itself whether the brought before it case is within its jurisdiction. If the court finds that the case is not within its jurisdiction, it shall send it to the proper court.

10) Which subjects can be involved in the provision of social benefits?

- x Public subjects
- x Private subjects included in the public system
- x Private subjects on a voluntary basis
- Other

(tick more than one box if necessary)

Please explain

The Italian healthcare service is not only focused on the activities directly carried out by public structures, but also on those carried out by private entities, which on the basis of an accreditation and authorisation mechanism, as well as special service contracts, are allowed to perform public health functions. After the introduction in 2001 into the Italian Constitution of the principle of so-called *horizontal subsidiarity* (Article 118), it is increasingly recognised the role of associations and private bodies to ensure benefits relating to social rights, without prejudice to the centrality of public intervention in this field.

Bulgaria

The Bulgarian citizens' medical care is financed from the state budget, by employers, through private and collective health-insurance schemes, and from other sources in accordance with conditions and procedures established by law. In that respect, the health services are provided by the state legal entities and private legal entities. The Ministry of Health is responsible for national health policy and the overall organisation and functioning of the health system. Health care benefits depend on health insurance, but those which do not depend on insurance are linked to the urgency of the required medical intervention or



the need for illness prevention. The public authorities and special institutions support elderly people and people with disabilities, also private bodies are entitled to ensure benefits relating to social rights. The Personal Assistance Act regulates the terms and conditions for the provision and use of personal assistance in the Republic of Bulgaria.

11) Do non-state territorial levels of government have administrative and regulatory powers in this area?

- x Yes
- Not

12) If the previous question is answered positively, do non-state territorial levels of government have the power to admit, exclude or condition access to social benefits?

- Yes
- No
- x Yes, but only in some areas.

Please explain

Except for a few matters reserved to the State (immigration, social security), most of the matters relating to social rights are attributed by the Constitution to the shared legislation of the State and Regions. Therefore, they have broad regulatory powers, in accordance with the general principles laid down by State law. On the other hand, administrative functions — including those relating to the recognition of specific benefits — are assigned to Municipalities, Provinces or Regions, depending on the extent of the needs to be met and in accordance with the principle of *vertical subsidiarity* (Article 119 of the Constitution).

Bulgaria

The Ordinary law gives rights to the municipalities to provide social benefits in some specific areas. For example, the municipality offers a rental of municipal housing. That means that single persons with permanent disability and single parents of a child with permanent disability have the right to use benefit rely on the municipal housing for accommodation purposes.

13) Is it possible in your legal system for non-EU citizens to benefit from social rights related benefits? And if so, under which conditions?

- Yes





- No.
 Yes in some areas

Please explain

The Italian national healthcare service guarantees everyone, including irregular non-EU citizens, the right to first-aid care. Regularly resident non-EU citizens have full access to healthcare, on a par with Italian citizens and, in general, to all social rights such as education, social assistance and social services (e.g. maternity allowance, family allowance, birth allowance, etc.). They also may benefit from a social pension if they have been resident for more than 10 years. The Constitutional Court, when recently addressing the issues of the possible extension to non-EU citizens of certain social benefits (citizenship income, birth allowance), has affirmed the existence of a principle of equal treatment, stemming not only from national law but also from EU and international rules (e.g., Article 14 ECHR and Article 34 CFEU), which can be legitimately rejected only under specific conditions justifying a derogation.

Bulgaria

According to art.26 (2) of the Constitution non-EU citizens who residing in the Republic of Bulgaria shall be vested with all rights and obligations proceeding from this Constitution, except those rights and obligations for which Bulgarian citizenship is required by this Constitution or by another law. The principle of equal treatment obligates the state to give access to non-EU citizens to the healthcare system and social security system of the Republic of Bulgaria. The exceptions must be based on the terms and conditions of the law.



PART II

JUDICIAL PROTECTION OF SOCIAL RIGHTS

1) In your country, which court has jurisdiction on disputes concerning social rights?

- x Administrative Judge
- x Civil Judge
- Other

Please explain

Apart from certain matters reserved to civil courts (e.g., those relating to social security), the administrative court usually has jurisdiction on all cases of disputes concerning administrative measures affecting social rights. Indeed, the former position of the Cassation, initially elaborated with regard to the right to health and according to which the jurisdiction on matters concerning fundamental rights shall fall under the competence of the ordinary judge since those rights were not compressible by the public authority, has now been abandoned.

Bulgaria

In Bulgaria the jurisdiction on cases such as: state public insurance for general disease, labour accident, professional disease, motherhood, unemployment, old age and death, supplementary social insurance - supplementary compulsory pension insurance for old age and death, supplementary voluntary pension insurance through funds for supplementary voluntary pension insurance for old age, disability and death or through funds for supplementary voluntary pension insurance under professional schemes for old age, supplementary voluntary insurance for unemployment and/or professional qualification, social assistance, family allowances and benefits, health care, incapacity, pensions, falls under the administrative court.

When the dispute concerns the fundamental rights, the competent court is again the administrative court. The ordinary civil court deals with labor matters and with specific civil cases, when the infringed person seeks for compensations.

2) Do disputes concerning social rights in the following areas fall within the jurisdiction of the administrative court of your country?

- x Social security
- x Education



- x Health
- x Social assistance
- x Protection of motherhood
- Job protection and vocational training

If the answer is in the negative for some of the above areas, please indicate which court has jurisdiction to hear disputes relating to these rights (civil court, labour court, etc.)

In matters of social security, jurisdiction in Italy lies with the ordinary judge and, specifically, the labour judge. In pension matters, disputes relating to the quantification and payment of pensions lie with the Court of Auditors, without prejudice to the jurisdiction of the civil or administrative courts (depending on the sector of employment) for those relating to the determination of the basis of remuneration on which the pension should be calculated.

Bulgaria

The jurisdiction of the court depends on the employment (public or private). The disputes relating to the social security matters, pensions, temporary loss of capacity to work; disability; motherhood; unemployment; old age, are under the jurisdiction of the administrative courts. The civil court is concerned, if the dispute, for example, is related to unpaid salary and the employment is private.

- 3) Does the administrative judge in your country have jurisdiction on the lawfulness of the administrative acts through which the public administrations or other public entities organise and regulate the provision of social services?

- x Yes
- No

Please explain

In the areas in which lies its jurisdiction, the administrative judge in Italy may, as a rule, assess the lawfulness of both acts of organisation of social services and acts and procedures for the recognition of benefits relating to social rights. These are indeed administrative acts, which can be challenged through the ordinary action for annulment provided for in the code of administrative trial.

Bulgaria

In Bulgaria the judicial administrative proceedings begin at request of the interested person or the prosecutor. The administrative acts, concerning the social rights, may be contested before the



court regarding their lawfulness. Some special claims are to proclaim null and void judgments and determinations given by the administrative courts in the field of social security matters. These acts are ordinary administrative acts, general administrative acts and normative administrative acts. The last-mentioned acts are administrative acts of the secondary legislation which contains administrative legal terms.

- 4) In particular, does the administrative court deal with administrative and/or procedures for the awarding or recognition of subsidies, aids, benefits and other services relating to social rights?
- Yes
 - No
 - x Yes, but only in some areas

If no, please indicate which court is competent to hear the above-mentioned disputes (civil court, labour court, etc.)

In the field of social security, as already mentioned in Italy, the labour court has jurisdiction to hear any disputes relating to the recognition of benefits, including those relating to procedural aspects.

Bulgaria

All legal disputes, concerning services and benefits, relating to social rights, except labour matters, are resolved before the administrative court.

- 5) Does the administrative judge assess only the regularity of the procedures or can it also verify whether the individual is entitled to receive the benefit unjustly denied?
- It is only responsible for the regularity of administrative procedures.
 - x It has the power to ascertain the entitlement of the individual to obtain a social benefit.

Please explain, possibly providing specific information on the different areas of social rights and on the techniques of protection used

As a general rule, the administrative judge may order the public administration to award the successful applicant the advantage which he has been unlawfully denied, provided that the administration does not yet have discretionary power in that regard. This may happen, for example, in the field of health protection, when the ruling finds that the local health authority have denied to the applicant, including



through unlawful administrative acts, services which he was entitled to receive as they were falling within the essential levels guaranteed by the State rules.

Bulgaria

Concerning Bulgarian Administrative procedure code, when the matter has been left on the assessment of the administrative body, after declaring the invalidity or cancelling the administrative act, the court shall decide the case on its merits. Out of these cases, as well as when the act is invalid because of incompetence or its character does not allow the decision of the matter on its merits, the court shall send the file to the respective competent administrative body with obligatory instructions for the interpretation and the application of the law. With the instructions the administrative court may (depends on the case) order the public administration to award the successful applicant the advantage which he has been unlawfully denied. At unlawful refusal to be issued a document, the court shall oblige the administrative body to issue it, without giving instructions on its contents. At refusal by an incompetent body to issue an administrative act, the court shall declare invalid the refusal and shall send the case as a file to the respective competent body.

- 6) What kind of remedy can the administrative judge put in place for the protection of social rights?
- Annulment of organizational acts or specific acts limiting social rights
 - Damage compensation
 - Condemn to a specific performance through the recognition or attribution of the benefit/right required.
 - Other

(tick more than one box if necessary)

Please explain, if necessary, by providing specific information on the different areas of social rights and the protection techniques specifically used

In the Italian administrative process, in addition to the annulment of unlawful administrative measures, the Court can always order the administration to pay compensation for the damage, preferably through a specific performance (and therefore, if there is no residual discretionary power, through the direct recognition of the benefit unfairly denied) and, in a subsidiary way, for equivalent. The provisions of the Legislative Decree No 198/2009 can also be applied in the field of social rights. The Decree introduced, with the aim of pursuing a greater efficiency for the Public administration, a form of *class action* to remedy, for instance, violations of time limits, failures to adopt mandatory administrative acts, failures.



to ensure adequate levels of performance. If the action is upheld, the Court shall order the Public administration or concessionaire to remedy the infringement within a reasonable period (Article 4).

Bulgaria

According to Bulgarian administrative judicial procedure, when the administration infringed the social rights of a person, also when the administrative court annulled the administrative act, the respective person has the right to seek for damage compensations and to claim against the public authorities with regards to social benefits. These general rules legally protect the people from ungrounded actions and inactions of the public bodies and the administration. It is specific, that the claim for damages is admissible after the cancellation of the administrative act by the respective order. When the damages have been caused by an invalid or withdrawn administrative act, the unlawfulness of the act must be established by the court, before which the claim on indemnity has been lodged.

- 7) In relation to the protection of social rights, are there any accelerated or simplified procedures or, in any case, special procedures?
- Yes
 - No
 - x Yes, but only in some sectors

Please explain

In the field of social rights and security, it applies the special labour procedure, which is simplified and accelerated compared to the ordinary civil procedures. In areas falling within the jurisdiction of the administrative judge, there are not foreseen simplified or accelerated procedures.

Bulgaria

The Administrative procedure code applies for all social cases, except labour cases, for which Civil procedure code is applicable. Within the jurisdiction the administrative court and in a very specific cases, shall oblige the administrative body or the official, who is undertaking the groundless actions, to submit immediately data for the ground of the undertaken actions. Immediately after finishing the check on the ground of the data collected from it and the evidence submitted by the parties, the court shall pronounce with an order. The order shall be executed immediately by the police bodies.



8) Are there in your country any provisions for ADR (Alternative Dispute Resolution) in the field of social rights (also through the intervention of an institutional third figure such as a the “Social Rights Guarantor”)? In particular, is mediation possible?

- Yes
- No
- Yes, but only in some sectors

Indicate the sectors concerned and models of ADRs (Alternative Dispute Resolution)

In Italy, alternative forms of dispute resolution are foreseen only in a few areas of social rights. This is, for instance, the case of family protection and assistance (e.g. assisted negotiation introduced by Legislative Decree No 132/2014). Compulsory mediation has been introduced in Italy, for the moment, only in relation to civil litigation. Almost none of the subjects for which it is foreseen can be related to social rights (perhaps, only indirectly, that of disputes regarding medical and professional liability). More recently, in the context of the emergency measures linked to the COVID-19 pandemic, there has been introduced a compulsory form of mediation for cases of contractual defaults to which the measures taken to contain the contagion have contributed (Article 3 of Legislative Decree No 6/2020), with the aim of supporting companies insolvent as a result of those measures.

9) In the light of your experience, what are the main problems that the administrative judge encounters in giving effective protection to social rights?

- Excessive discretion of the competent public bodies
- Unwillingness to comply with judicial decisions
- Inadequacy of the instruments of protection made available by the legal system
- Scarcity of available economic resources
- Low awareness of social rights in the community
- Other

(tick more than one box if necessary)

Please explain

In addition to the traditional resistance of the Italian public administrations in executing the decisions of the administrative judge, the litigation on social rights must constantly be measured with the limitedness of available resources and the existence of measures to contain expenditure, so as to call the administrative judge (or the constitutional one, as the case may be) to a non-simple balancing work. Moreover, with the exception of the public health sector, State law is still largely lagging behind in setting the essential minimum levels required by Article 117 par. 2, letter m, of the Constitution.



Bulgaria

Bulgarian ordinary social law gives an excessive discretion of the competent public bodies, when they deal with social matters. When the administrative court declares the invalidity of the administrative act or annuls it, has not right to regulate the infringed social right. The court must send the administrative file to the respective competent administrative body with obligatory instructions for the interpretation and the application of the law. A question may arise, whether the state fulfills enough its positive obligations towards citizens in the area of social law.

PART III

PRACTICAL CASES

- 1) Illustrate a practical case, which has occurred in your legal system, in which the administrative judge has considered an act or measure affecting social rights to be unlawful because it involves an infringement of the 'essential core' of those rights which cannot be restricted for any reasons (maximum 10 lines).

Practical case №1

The case concerns a discrimination against a woman as a single mother caring for her minor children whose father was unknown. In this case the applicant, the mother, applied for a family allowance for families of children who had only one living parent. The Administrative authorities refused to pay the allowance, because they found that she had not submitted any evidence to show that her children had been recognised by their father and that he had died. Likewise, she had not produced a certificate attesting that the children were their father's statutory heirs or a family-status certificate showing that she was not married. The applicant brought judicial review proceedings. She argued that the administration's refusal to grant her the allowance was unlawful, as it was contrary to art. 6 § 2 of the Bulgarian Constitution, which prohibited discrimination on the basis, among other things, of origin.

The applicant referred to Article 16 of the revised European Social Charter, art. 23 of the International Covenant on Civil and Political Rights and art. 9 of the International Covenant on Economic, Social and Cultural Rights. The administrative court established that the applicant's family status corresponded to that of "unmarried individuals" and that she cared for her two minor children alone. The court went on to observe that the law did not differentiate between children living in families and children in families where the parents were not married. It was unacceptable to place children whose parents were not married or did not live together, or whose fathers had not recognised them, in a less favourable position than that of children growing up in families that



matched the legal definition above. The district administrative court went on to find that the refusal by the administrative body to grant the allowance in question to the applicant was contrary to Article 3 § 1 of the 1989 UN Convention on the Rights of the Child. The refusal was not in the best interest of the children, and that interest had to be the central consideration in the decision-making process of any institution, be it a private or a public one.

Accordingly, if the legislation stated that the State provided assistance to the children of a parent whose husband or wife had died, it was reasonable to conclude that this also applied to children with only one parent, irrespective of whether the other parent had died or the children had not been recognised by their father. The law had envisaged that the allowance was due to families with children who had only one living parent, irrespective of the income of the family. Consequently, the granting of that family allowance had to be extended to all children who were being raised by only one parent. As a result of the absence of their second parent by virtue of being unknown, those children were in an identical situation to children one of whose parents had died. The court stated that the authorities were obliged to grant her the allowance towards providing care for her children as their only living parent.

- 2) Illustrate a practical case, which occurred in your legal system, in which a benefit or service related to social rights, recognised by law in favour of the citizens of your country, has been considered by the court extensible also to foreigners (both EU and extra EU citizens), or in which the court has considered the condition of “territorial anchorage” required for foreigners unreasonable or not proportionate (max 10 lines).

Practical case №2

Concerning the facts of the case, the applicant applied for the grant of an old-age pension before the Bulgarian state authorities, declaring that she had worked in Bulgaria from 18 January 1957 until 31 May 1996 and that she had not been insured since 4 June 1996. Following an application for an old-age pension, which she made in 2011 to the competent Austrian social security body, the Bulgarian social security institute received forms E 001/AT and E 205/AT. Those forms indicated that she had been affiliated, under the Austrian Federal Law on Social Insurance, to the social security scheme for self-employed persons from a periods of time. During those periods, the lady had been working as a farmer in Austria.

That application was rejected from the local authorities of the State security institute. The Director of that Institute took the view that the certificate drawn up by her did not relate only to the discontinuance of her social insurance in Bulgaria since, under Article 84a of the Council Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, the lady was required to inform the Bulgarian social security body of any affiliation in another Member State. According to the lady, the fact that she was affiliated in Austria at the time when she applied for a pension in Bulgaria is irrelevant, since that affiliation related to a social security scheme of another Member State of European Union.



It was apparent from the file before the court, that the periods of insurance, completed by the lady in Austria, were sufficient to offset those during which she was not insured under Bulgarian law. Given that, the aggregation of her's periods of insurance in Bulgaria and Austria under Article 45 of Regulation No 1408/71 was sufficient to ensure that she was entitled to an old-age pension under Bulgarian legislation. The administrative court also stated that the national authorities were not entitled to require her to purchase a period of insurance under Article 9(3) of the transitional and final provisions of the Social security code.

- 3) Illustrate a practical case, which occurred in your legal system, in which the administrative court considered that it could directly recognise the applicant (in terms of assessment or conviction) the aid, the benefit or the service unlawfully refused by the public administration (maximum 10 lines).

Practical case №3

The present case is about the breach of a health contract, because of the unlawful behaviour of the public health authorities in Bulgaria.

The current Bulgarian health contract law (art. 45a of the Health Insurance Act) states that all contracts between legal bodies, which offer medical care and the state health authorities, are administrative contracts. According to the health contract between the Hospital X and the National health insurance fund, the first contractual party was obliged to offer hospital medical care for diagnostics and treatment of the disease to its patients and the main contractual obligation of the National health insurance fund was to pay the medical services, mentioned in art. 45 of the Health Insurance Act.

Because the legal dispute between the contractual parties was about the violation of the right of the Hospital to receive the payment from the National health insurance fund, the Hospital X brought an action before the district administrative court. The evidences, which were presented before the court, proved the legal position of the Hospital, which stated that the medical treatment of the patient D. was fully completed.

The claim for payment was successfully proved before the administrative court and the court decided that the other contractor was solely responsible for its unlawful behaviour and considered financial remedies to the Hospital X.

