

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
- x Other

(tick more than one box if necessary)

Please explain

The Croatian Constitution defines the Republic of Croatia as social state (art.1) and guarantees the main social rights, such as the right to health (art. 59), the right to work (art. 55), the right to education (art. 66) etc. Other rights, concerning more specific services, are recognized by ordinary law and bylaws.

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 to disabled and disadvantaged people
- x Economic aid and facilities for families and birth rate

(tick more than one box if necessary)

Please explain

For example, the law ensures that the unemployed receive aid and benefits to support themselves and, where possible, to get a job. Forms of aid are also provided for large and poor families. It is possible to secure housing for those who could not afford it.

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?



- Yes, as a result of regulatory action
- 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

The right to a free meal in primary schools for all school children. This model was introduced after the initiative of professors from the Faculty of Law in Zagreb who warned about the necessity for all children to have a free meal at school.

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

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

Please explain

Budgetary constraints and measures of containment of public expenditure can limit the effectiveness of social rights but substantive minimum of needs must be protected, but above that the legislator has wide margin of appreciation.

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?

- 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?

- At the constitutional level
- By ordinary law



- By regulatory rules
- By case-law
- Other

(tick more than one box if necessary)

Please explain

The identification of the 'essential nucleus' of social rights which cannot be sacrificed is not strictly defined in judicial practice.

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.

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, assistance to pensioners in order to cope with rising prices of energy.

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 have not been accompanied by special rules that have altered the ordinary division of jurisdiction between ordinary and administrative courts in the areas concerned.

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 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.

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

Municipalities and counties have administrative and regulatory powers, including those related to the recognition of (some) social rights which includes the power to recognize the right, exclude the right and determine the conditions for exercising the right.

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.
- x Yes, in some areas



Please explain

For example, Law on Compulsory Health Insurance and Health Care of Foreigners in the Republic of Croatia guarantees everyone, including non-EU citizens the right to emergency medical assistance.

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

Apart from certain matters reserved to civil courts (e.g. labour disputes), the administrative court usually has jurisdiction on all cases of disputes concerning administrative measures affecting social rights.

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 job protection, jurisdiction lies with the labour judge, but the administrative court has jurisdiction on cases concerning job protection in civil servants' disputes.

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 Croatia 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.

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
 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.)

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.
 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.

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 Croatian administrative process, in addition to the annulment of unlawful administrative measures, the Court can decide the case on merits and order the administration to pay compensation for the damage.

- 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

Disputes before the labour court have accelerated procedure.

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

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

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

(tick more than one box if necessary)

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).

The identification of the 'essential core' of social rights is not strictly defined in judicial practice. So, the court will assess the lawfulness of the restriction of social right from the aspect of proportionality. If the court finds that the restriction is such that questions the purpose of the right itself, it will consider that act or measure to be unlawful.

- 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).

n/a

- 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).

The claimant requested for recognition of the right to the status of caregiver for his mother. His request was rejected. The claimant's appeal against the first-instance decision was also rejected with the explanation that the right to recognize the status of a caregiver can only be recognized to persons who are explicitly prescribed by law (parents, spouse or life partner). The Article 63 of Social Welfare Act foresees the possibility of recognizing the status of caregiver, not only for a child with developmental difficulties, but also for a person with a disability (who can be of legal age and even start a marriage). Therefore, the court concludes, by a meaningful interpretation of the aforementioned legal provision, that the claimant should be recognized as the right to caregiver status as a child of a disabled person, who lives with her in a family union. Court considers that it would be contrary to the purpose of the aforementioned provision as well as illogical if the status of caregiver can be recognized for the parent or a spouse of a person with a disability, but that this status cannot also be recognized for the child of a person with a disability who lives with her in a family community and takes care of her every day. The circumstance that when dealing with an adult with a disability, the spouse or child of that person will be able to provide the necessary care rather than the parent (or spouse of that person's parents) due to their age alone.

