

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?

- Constitution
- Ordinary law
- Other

(tick more than one box if necessary)

Please explain

The Constitution of the Republic of Cyprus safeguards rights of a social character, such as the right to work, trade and have a profit making business (Article 25). Article 21 guarantees the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of one's interests. Article 20 protects the right to education; both in receiving it and providing it and Article 9 enshrines the right to dignified living and social security.

Other social rights, such as healthcare for all, the minimum guaranteed wage, maternity related rights, social benefits etc, are governed by statute law.

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

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

(tick more than one box if necessary)

Please explain

The national General Healthcare System of Cyprus (ΓεΣΥ) is an anthropocentric healthcare system which provides universal coverage to the whole population of



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Cyprus (citizens and their dependents, citizens of an EU Member-State residing in the areas controlled by the Republic of Cyprus and their dependants, third-country nationals residing in the areas controlled by the Republic of Cyprus who hold a permanent residence permit and their dependants, persons who hold a refugee status residing in the areas controlled by the Republic of Cyprus and their family members, and persons admitted into the system due to special circumstances).

Moreover, the Minimum Guaranteed Wage Law of 2014 (L.109(I)/2014) provides for a social benefit to eligible applicants whose emoluments and financial means are less than their basic and special needs.

A non-exhaustive list of other benefits to eligible applicants, includes: (a) unemployment benefit (an unemployed person must first seek employment by registering with the Employment Service and then apply for unemployment benefit), (b) social pension (in addition, there is statutory and professional pension), (c) special fund payment to an employee due to employer's insolvency, (d) maternity and paternity benefit, (e) benefit to families with more than 4 children, (f) single parent benefit, (g) aid for childbirth, (h) aid for burial, (i) disability aid, (j) disability pension, (k) permanent social care, (l) orphanhood aid, (m) rent benefit, (n) heating aid for remote houses and houses situated in mountainous areas (main habitual house), (o) housing and financial aid to Cypriot refugees displaced during the 1974 war.

A lot of the aforementioned benefits fall under the wing of the Deputy Ministry of Social Welfare. Others fall under the wing of the Ministry of Labour and Social Insurance or of the Ministry of Interior.

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



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New social benefits/subsidies have emerged due to the technologies of today, such as subsidising faster internet for all. The Deputy Ministry of Research, Innovation and Digital Policy has already initiated the upgrade of the connectivity infrastructure by deploying 5G networks (part of Cyprus' Recovery and Resilience Plan 2021-2026). The Deputy Ministry aims to bridge divides and ensure an inclusive digital transformation by providing adequate access to communication infrastructures for all citizens. Specifically, it aims at ensuring 5G and fibre coverage for 100% of the population living in organised communities, including the deployment of 5G along the main terrestrial corridors, and enabling universal and affordable access to Gigabit connectivity in all urban and rural areas, including 5G and Gigabit connectivity, in line with the EU's 2025 5G and Gigabit connectivity objectives.

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

Some social rights enjoy constitutional protection (high level of protection), such as the right to education, employment and dignified living. Article 33 of the Constitution provides that the fundamental rights and liberties guaranteed by the Constitution shall not be subjected to any other limitations or restrictions than those provided in the Constitution. Meanwhile, Article 35 provides that all state powers must ensure the effective applications of all fundamental rights enshrined in the Constitution.

Other social rights are protected by International Covenants, ratified by the Republic of Cyprus with augmented force, such as the International Covenant on Economic, Social and Cultural Rights (Law 14/1969), the European Convention for the Protection of Human Rights and Fundamental Freedoms together with the Additional Protocol (Law 39/1962), the European Social Charter (Law 64/1967) and the Revised European Social Charter of 1996 (Law 27(III)/2000). The latter complements at pan-European level the safeguards contained in the European Convention on Human Rights, which specifically refers to civil and political rights.



Other social rights are protected by statute law which need to be in conformity with the provisions of the Constitution.

Managing the affairs of public finances, especially in periods of economic crisis, might include legislative measures for particular groups of citizens. Any austerity measures must not infringe any of the provisions of the Constitution (i.e. the Articles that enshrine the fundamental human and social rights, the principle of proportionality and the doctrine of separation of state powers) and International Covenants ratified by the Republic. Also, the interference must serve the public interest and must not jeopardise the citizens' dignified living (a fundamental human right under the Constitution of the Republic).

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 austerity measures of 2012 economic crisis brought about the enactment of a number of statutory restrictions some of which challenged the institutional acknowledgment and protection of social rights. One such example was the pay cuts imposed on civil servants' income by virtue of Law 112(I)/2011 (as subsequently amended by Law 113(I)/2011). The pay cuts were an exigency contribution of up to 3.5%. In ***Charalambous and others v. Republic of Cyprus, Joined cases no. 1480/2011 and others, 11.6.2014 (Full Bench (majority judgment))*** the applicants were civil servants who challenged the said pay cuts. The



main grounds for annulment were the alleged infringements of Article 28 of the Constitution (principle of equality), Article 26 of the Constitution (tax equality), the principle of proportionality and the right of property (Article 23 of the Constitution and Article 1 of the First Additional Protocol of the European Convention). In as far as the argument in relation to Art. 23, the Supreme Court in ruling against the applicants (majority judgment) held that the right to property does not extend to the level of one's wage. The question at issue was whether a small pay cut of 1.5%-3.5%, in the form of an exigency measure, led to passiveness or to a substantive restriction of the right. It was held that the relatively small pay cut did not affect the core of the right on wages, which remained intact and by no means passive to the degree that it would be considered a deprivation beyond the scope of Article's 23 legally permitted grounds.

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 case of **Charalambous and others** mentioned above, the applicants/appellants also argued that Article 28 of the Constitution (principle of equality), Article 26 of the Constitution (tax equality) and the principle of proportionality was infringed. Their main argument was that the strain on public finances was not distributed amongst all categories of workers in the labour force but was placed upon salary-earners and primarily upon civil servants. The Supreme Court in its majority judgment ruled that there was no infringement of the principle of equality. The Supreme Court pointed out that one of the main areas of concern in relation to public finances was the State pay-roll and reference was made to the wide discretion of the State in managing the affairs of public finances, especially during periods of economic crisis, including the enactment of legislative measures for particular groups of citizens, under the condition that the interference serves the public interest and does not jeopardise citizens' dignified living. Therefore, the Supreme Court after taking into account the amount of the scaled contribution and the exigency nature of the measure, ruled that there was no breach of the principles of equality and proportionality. On the contrary, it was held that, after taking into account the severe dangers to the economy and its potential collapse as well as the breakdown to the foundations of the social web, the sacrifice imposed on the salary-earners, did not exceed the expected limits and



a fair balance was struck between the aimed public interest and the aggrieved persons' individual rights.

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:

During the pandemic and especially during its acute phase, special Schemes of Support were put in place for affected industries and their employees, such as the tourist industry.

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

No such derogation from the ordinary division of competencies was made.

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

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

(tick more than one box if necessary)

Please explain

The provision of social benefits falls under the wing of the Deputy Ministry of Social Welfare or the Ministry of Labour and Social Insurance or of the Ministry of Interior.

In as far as the national General Health System of Cyprus is concerned, providers of healthcare are public structures as well as private ones, which based on accreditation and authorisation mechanism and special service contracts, are allowed to perform public health functions. In addition, during the pandemic doctors and nurses of the private sector were called upon by an Order of the Ministry of Health to offer their healthcare services (requisition). Therefore, all



doctors and nurses registered in the equivalent Vocational Registries were under the instructions of the Ministry of Health.

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

- Yes
 No

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
 Yes, but only in some areas.

Please explain

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 national General Healthcare System of Cyprus provides universal coverage to the whole population of Cyprus, that is to citizens and their dependents, citizens of an EU Member-State residing in the areas controlled by the Republic of Cyprus and their dependants, third-country nationals residing in the areas controlled by the Republic of Cyprus who hold a permanent residence permit and their dependants, persons who hold a refugee status residing in the areas controlled by the Republic of Cyprus and their family members and persons admitted into the system due to special circumstances.

In fact, third-country nationals who are holders of a permanent residence permit and reside in the areas controlled by the Republic of Cyprus, enjoy equal treatment with the citizens of the Republic in as far as the following areas is concerned (section 18IZ(1) of the Aliens and Immigration Law, Cap. 105): (a) work and vocational activity unless legislation provides for the said profession/activity to be restricted to Cypriot nationals or EU nationals, (b) education and professional



training including scholarships subject to language proficiency, (c) recognition of vocational degrees, diplomas and certificates in accordance with the laws in place, (d) benefits deriving from social insurance, social welfare and social protection, (e) tax advantages, (f) access to goods and services including housing schemes, (g) freedom of association with others, including the right to form and to join trade unions for the protection of one's interests. In addition, they have equal access to the national General Healthcare System just like Cypriot nationals.

Similarly, third country nationals who hold a refugee status, enjoy equal treatment with the citizens of the Republic in as far as the following areas is concerned (section 21(1) of the Refugees Law of 2000, L.6(I)/2000): (a) access to the general educational system and to vocational training programmes, (b) full access of all minors to all levels of education, (c) recognition of titles, degrees and certificates in accordance with the laws in place, (d) access to medical/health care, (e) freedom of association with others, including the right to form and to join trade unions for the protection of one's interests.

Also, the Minimum Guaranteed Wage (L.109(I)/2014) can be claimed by a third country national who holds a permanent residence permit or a refugee status.

Other benefits relate to one's social insurance contributions (excluding benefits like the social pension).



PART II

JUDICIAL PROTECTION OF SOCIAL RIGHTS

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

- Administrative Judge
- Civil Judge
- Other

Please explain

Annulment of an administrative decision which concerns social rights (e.g. rejection of a social pension or disability benefit application): A recourse for judicial review will be lodged before the **Administrative Court** under Article 146 of the Constitution.

Labour law jurisdiction: The competent court is the **Industrial Disputes Tribunal** (Court of a specialised jurisdiction) which has jurisdiction to hear applications by employees for unfair dismissal, redundancies, equal treatment of men and women in the work force and in vocational training (L. 205(I)/2002) etc. It is composed of one (1) President, who is a Judicial Officer, and two (2) lay members representing the employers and the employees.

Family law jurisdiction: The competent court is the **Family Court** (Court of a specialised jurisdiction).

Criminal liability as a result of statutory provisions (e.g. for harassment or sexual harassment in the work place): **District Courts** (ordinary common law judge).

Damages (e.g., due to an occupational accident or for unfair dismissal): **District Courts** (ordinary common law judge).

Damages arising as a result of an annulled administrative decision: District Courts (ordinary common law judge). Under Article 146.6 of the Constitution an aggrieved person who has suffered damages on account of an annulled decision (there must be a direct nexus between the two), may seek compensation or another remedy and recover just and equitable damages to be assessed by a Civil Court or



to be granted such other equitable remedy as the Civil Court is empowered to grant. The voidance alone or the renunciation of an omission does not confer a right to damages per se. The right to compensation arises whenever, despite the restoration of the status quo ante, there is a residue of damage. By virtue of settled precedent law, the right to damages arises if the claim is not satisfied by the authority responsible for the annulled decision.

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

- Social security
- Education
- Health
- Social assistance
- 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.)

The competent Court for adjudicating on employment/labour disputes for dismissal and redundancies (Dismissal Law of 1967 (L. 24/1967), is the Industrial Disputes Tribunal (in as far as damages is concerned, they may be claimed before the District Court). Similarly, under the provisions of the Protection of Motherhood Law of 1997 (L. 100(I)/1997) and the Protection of Fatherhood Law of 2017 (L. 117(I)/2017)) the Industrial Disputes Tribunal is the competent court unless the challenged decision emanates from the exercise of powers in the public domain. If it does, then the act, decision or omission of a public authority is amenable to judicial review before the Administrative Court under Article 146 of the Constitution.

The test to determine whether an act or decision is justiciable under Article 146 revolves around the primary object of the act or decision. If the decision is primarily aimed at promoting a public purpose, it falls in the domain of public law (and not of private law).

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?

- Yes
- No

Please explain



An affirmative response was given under the condition of the following:
In its sphere of jurisdiction, the Administrative Court can only review individual administrative acts challenged by an applicant who has an existing and direct legitimate interest in the matter. Unlike individual acts, general ones, i.e. regulations, by-laws or policy decisions of administrative authorities are not susceptible to judicial review because of their legislative and general content, respectively. They contain rules or policy decisions of a general nature to be applied to existing and future cases. However, their legality can be tested when the competent court reviews the legality of an individual act, decision or omission. A decision based on an ultra vires regulation, for example, will be annulled by the court.

In addition, the administrative judge when reviewing the lawfulness of an individual administrative decision will also review the lawfulness of the decision-making process which is safeguarded by the **General Principles of Administrative Law, Law of 1999**. The statute safeguards decision-making by the provision of rules. It incorporates the principles of fairness, competence, proper administration-bona fide and proportionality, legality, representation, natural justice- impartiality and right to be heard, equality and the right to judicial review.

Also, the Administrative Court's jurisdiction does not extend:

- to issues of technical nature or issues that require specialised knowledge (e.g. a pension fund's actuarial valuation) nor
 - does it substitute or reduce the discretionary powers of the administration. The Court examines solely, whether the public authority has exercised its discretionary powers, within lawful limits.
- 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

The role of the Administrative Court is limited to testing the legality and not the correctness of the decisions from the point of view of the judiciary. The Court will not substitute itself for the decision maker nor will it amend the decision that has been challenged before it.

The jurisdiction is a 'revisional' one; the competent court acting under Article 146 of the Constitution has no power to annul the decision because it takes a different view of the merits of the decision. So long as the public authority acts within the parameters of the law, in furtherance of its purposes and according to the principles of good administration, the authority trusted with the power to determine a given matter is the sole arbiter of its decisions. Any choice between alternative course rests entirely with it. The Court will only intervene if, after taking into account all the facts of the case, it concludes that the findings of the public authority are not reasonably sustainable, or they are the result of an error of fact or law or are in excess of its discretionary powers or has acted ultra vires or in an illegal manner.

Also, the Administrative Court's jurisdiction does not extend to issues of technical nature or issues that require specialised knowledge. For example, when examining an application for a disability pension, the competent public authority will refer the applicant to an Independent Medical Board to assess the applicant's medical situation and ability to work. If the applicant's application is rejected and he or she proceeds in lodging a recourse for judicial review before the Administrative Court, the Court's jurisdiction does not extend to reviewing the findings of the Independent Medical Board.

- 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 addition to the annulment of an act or decision (in whole or in part) of public administration, the Administrative Court has the power to renunciate an omission, i.e. declare that an omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed (Article 146.4. of the Constitution).

Moreover, the Administrative Court may grant an interim order for stay of execution to suspend the enforcement/effects of the administrative act or decision after the recourse has been lodged before the Administrative Court. The same applies to the Supreme Court (stay of execution to suspend the enforcement of the appealed first instance judgment).

Damages suffered on account of an annulled decision, may be sought by an aggrieved person before a Civil Court. An aggrieved person may seek compensation or another remedy and recover just and equitable damages to be assessed by the Civil Court or to be granted such other equitable remedy as the Civil Court is empowered to grant.

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

Please explain

Proceedings before the Industrial Dispute Tribunal are less complex than those before the Civil and Administrative Courts. Also, they take less time to be concluded.

- 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 the social rights field, ADR in the form of mediation and on the basis of the parties' voluntary participation, is available in family disputes in accordance with the Mediation in Family Disputes Law of 2019, L. 62(I)/2019. By virtue of the statute's provisions mediation is available both before and after judicial proceedings are instituted. In the latter case, if, at any stage of the proceedings prior to issuing its final decision, the Family Court is of the opinion that the family dispute has the potential of being resolved through mediation, the court shall call the parties before it and inform them accordingly. In addition, mediation is also available after the Family Court has issued its final decision and a dispute has arisen in relation to the execution of the Family Court's order.

Other sectors that do not relate to social rights:

(a) Judicial proceedings:

ADR in the form of arbitration is available in civil litigation. In addition to ADR, the new Civil Procedure Rules (CPR) which are expected to come into force on 10th of July 2023, make pre-action conduct (pre-action protocols) a compulsory stage to civil litigation.

(b) Extrajudicial proceedings (out-of-court redress mechanism):

ADR in the form of mediation is available in civil and commercial disputes on a voluntary basis (Directive 2008/52/EC).

ADR in the form of reconciliation is widely available for consumers and traders concerning contractual obligations within the spirit of Directive 2013/11/EU.

Also, ADR in the form of arbitration is widely available for civil, commercial and consumer disputes under the condition that the parties' contractual relationship is governed by an arbitration clause.

The above extrajudicial proceedings can be carried out, for example, by the Cyprus Centre for Alternative Dispute Resolution which is an authorised entity under the Alternative Consumer Dispute Resolution Law of 2017, L. 85(I)/2017.

- 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

This is particularly true during periods of economic crisis. Since there is a wide State discretion in managing the affairs of public finances which may even include the enactment of legislative measures for particular groups of citizens in order to contain public expenditure, the Court will always have to assess whether the interference exceeds the expected limits as well as whether a fair balance was been struck between the aimed public interest (i.e. collapse of the economy and social web) and the aggrieved persons' individual rights (i.e. one's right to dignified living - Article 9 of the Constitution, right to equality- Article 28 of the Constitution etc).

In addition, legislative measures that provide for social benefits are in essence a balance between the State's financial resources and its ability to grant social benefits under its social policy framework. This system cannot be altered by the courts when acting in their revisional/judicial review jurisdiction in a manner that increases the burden on the State to provide for benefits (doctrine of separation of state powers) (***Dias United Publishing Co. Ltd v. Republic (1996) 3 C.L.R. 550, Vroundou v. Republic, Revisional Appeal 3830, 3.3.2006, Kaoulas v. Republic, Judicial Review Recourse 409/2007, 18.3.2011***).

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).

In the settled case of ***Melpo Gregoriou v. Municipality of Nicosia (no.1) (1991) 4 C.L.R., 3005*** the Court held that any form of direct or indirect unequal treatment between men and women in respect of wages, professional position etc (unless the circumstances and conditions are not the same), breached the constitutionally protected right of equality (Article 28 of the Constitution). The Court reiterated that



by accepting an administrative decision, freely and willingly, the applicant loses his or her legitimate interest in pursuing the challenged decision unless fundamental rights are affected. The right to equal treatment between the two genders is fundamental and inalienable and may not be relinquished even from the person affected. The Court held that the prohibition against direct or indirect wage differentiations and differentiations relating to one's position in the work place, on the basis of gender, is protected by the Constitution in absolute terms.

- 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).

In the case of **Alipanai a.o. v. Republic, Judicial Review no.108/2017, 16.3.2022**, the applicants were a university student and her father. Both were of Iranian citizenship. The entire family of the applicants had received a refugee status. The applicants had applied for a state student benefit. The application was rejected because the second applicant (university student) and her family were not Cypriot citizens nor citizens of an EU member state. A judicial review recourse was lodged before the Administrative Court challenging the legality of the said decision. The Court in rejecting the recourse reiterated that there is undoubtedly a right to education for every person. This right is protected by a plexus of legal instruments and can be enjoyed not only by the citizens of the State or of an EU member state but also by recognised refugees, asylum seekers and even by irregular third country immigrants. However, the object of L. 203(I)/2015 which allows for a state student benefit to be granted to eligible applicants is distinct from the general right to education.

- 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).

Since the Administrative Court's jurisdiction is limited to testing the legality and not the correctness of the administrative decisions, the Court will not substitute itself for the decision maker nor will it amend the challenged decision by directly acknowledging that the applicant is entitled to the benefit he or she was rejected for.





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The jurisdiction is a 'revisional' one; the competent court acting under Article 146 of the Constitution has no power to annul the decision because it takes a different view of the merits of the decision. So long as the public authority acts within the parameters of the law, in furtherance of its purposes and according to the principles of good administration, the authority trusted with the power to determine a given matter is the sole arbiter of its decisions. Any choice between alternative course rests entirely with it.



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