

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 main social rights are guaranteed in the Charter of Fundamental Rights and Freedoms, which is an integral part of the Czech constitutional regulatory level. In its Fourth Title (Economic, social, and cultural rights), the Charter guarantees the right to fair remuneration for work and to satisfactory working conditions (Art. 28), rights of women, adolescents, and disadvantaged persons to increased protection of their health, special working conditions and special protection in labour relations (Art. 29), right to adequate material security in old age and in the event of incapacity for work [Art. 30(1)], the right of persons in material need of assistance essential for securing their primary living condition [Art. 30(2)], right to protection of health and free healthcare under public insurance (Art. 31), protection of family (Art. 32), and right to education (Art. 33). Those mentioned above, as well as other social rights, are regulated in more detail at the statutory level. Finally, binding international treaties which the Parliament has agreed to ratify are, of course, also an important part of the legal order. In the context of social rights, these include the Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant on Economic, Social and Cultural Rights.

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)



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Please explain:

Persons in material need are entitled to aid under Act on Aid in Material Need (No. 111/2006 Coll.) - living allowance, housing supplement, or immediate emergency assistance - or under Act on State Social Support (No. 117/1995 Coll.) - housing benefits. Unemployed persons are entitled to unemployment or retraining benefits under Employment Act (No. 435/2004 Coll.). Health benefits are generally provided based on public health insurance under Act on Public Health Insurance (No. 48/1997 Coll.). Assistance to disabled and disadvantaged people is guaranteed through Disability Benefits Act (No. 329/2011 Coll.), disability pensions based on public pension insurance under Act on Pension Insurance (No. 155/1995 Coll.), as well as care allowances and social services under Act on Social Services (No. 108/2006 Coll.). The State supports parents and families through child benefits, childbirth allowance, and parental allowance under Act on State Social Support, as well as benefits based on Act on Sickness Insurance (No. 187/2006 Coll.), such as maternity and paternity allowance, compensatory allowance in pregnancy and maternity, etc. The State, however, does not provide social housing - it only provides the aforementioned housing supplements and benefits. Municipalities may set their policies and use their own budget to secure housing for their citizens who cannot afford it.

However, the whole system is complex - there are various tax exemptions for the benefit groups listed above, exemptions from the obligation to pay public insurance contributions, etc.

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:

No new social rights have emerged in the Czech Republic. The Charter of Fundamental Rights and Freedoms has been amended only twice, and neither of the amendments directly or indirectly concerned social rights. Lately, there have been some political attempts to enshrine the right to water or the right to pay in cash in the Charter; however, they have not yet gained more comprehensive support. Neither have new social rights emerged thanks to the application of general principles and clauses nor thanks to the interpretation of the case law.



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 public expenditure containment may limit social rights' effectiveness. However, general principles such as the protection of acquired rights, prohibition of retroactivity and discrimination (as well as other core principles of the rule of law) must be respected. Given the fact that Art. 41(1) of the Charter of Fundamental Rights and Freedoms provides that social rights may be claimed only within the scope of the laws implementing them, such constraints and measures of containment must be implemented on the statutory level, thus limiting the effectiveness of social rights (which are implemented on the same level).

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:

Even though the aforementioned Art. 41(1) of the Charter of Fundamental Rights and Freedoms provides that social rights may be claimed only within the scope of the laws implementing them, the Constitutional Court ruled that the legislature may not go as far as to interfere with the essential content of social rights (e. g. ruling of 20 May 2008, No. Pl. ÚS 1/08). According to the Constitutional Court, this conclusion follows from Art. 4(4) of the Charter, which provides that "[t]he application of the provisions on the limits of fundamental rights and freedoms must respect their essence and meaning. Such limitations may not be abused for purposes other than those for which they were established." The Constitutional Court then came up with the so-called "rationality test", which is used for constitutional review of regulations limiting social rights. This test has four steps:

- (1) The definition of the essence and meaning of a social right, i.e., the essential content.
- (2) An assessment of whether the law affects the very existence of the social right or its actual realisation (essential content). If it does not affect the essential content of the social right, then:
- (3) An assessment of whether the statutory provision pursues a legitimate aim; that is, whether it is an arbitrary and fundamental reduction in the overall standard of fundamental rights. And finally:
- (4) Consider whether the means the law employs to achieve the aim is reasonable (rational), though not necessarily the best, most appropriate, most effective, or wisest.

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:

The division into three branches of the government itself (which includes a legislature, an executive, and a judiciary branch) is set up to perform the balancing between the scarcity of available financial resources and the effectiveness of social rights. Financial policy is made in cooperation between the government (the executive branch), which sets up the national budget, and parliament (the legislature branch), which passes the laws. As mentioned above, the Constitutional Court may be the guardian overseeing observance of the balance, when called upon to assess the constitutionality of the provisions in question.



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:

Several measures were introduced during the pandemic. For example, business aid (various subsidy schemes, compensation of costs), a special fund for workers at companies in crisis, compensation bonuses for the self-employed, and work agreements outside employment relationships (a work performance agreement and a work activity agreement) or various tax exemptions. Parents of children who could not attend school due to a quarantine order could also apply for a so-called crisis care allowance (financial compensation). People in need could also apply for urgent emergency aid (monetary compensation for necessary expenses).

Some measures were also introduced during the energy crisis, such as increased housing benefits, capped energy prices, or subsidy schemes for entrepreneurs. In the context of the mass reception of the Ukrainian refugees, various measures have also been introduced, such as humanitarian aid for Ukrainians in need of necessary expenses, contributions to solidarity households that have provided free accommodation to foreigners with temporary protection, or funded Czech language courses.

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 measures introduced during the pandemic or energy crisis in the Czech Republic have not provided any derogations from the ordinary division of competencies between administrative and civil court judges. However, it has provided derogations from competencies within the system of administrative justice. The Act on Emergency Measures in the Event of the COVID-19 Disease Epidemic and on Amendments to Certain Related Acts (No. 94/2021 Coll.) introduced the special jurisdiction of the Supreme Administrative Court to rule on applications for annulment of pandemic measures issued by the Ministry of Health. In other cases, the regional courts remained competent.

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 State generally guarantees social administration in the Czech Republic. But at the same time, private subjects, either as part of the public system or on a voluntary basis, provide social benefits in specific areas. However, even the private subjects on a voluntary basis are subject to state control, and they often depend on obtaining operating subsidies from the State.

For example the State, regions or municipalities may be founders of healthcare facilities, as well as other private subjects registered in the national register of health service providers. Private subjects on a voluntary basis can be also involved in social aid services. That includes, for example, public benefit purpose entities or ecclesiastical legal entities registered as social service providers.

The Czech healthcare insurance system is based on the principle of compulsory redistributive payment based on income, the principle of the obligation to be insured and the principle of free choice of health insurance company. These companies are independent entities separate from the State managing health insurance funds.

Apart from the State, several different subjects may be involved in the Czech pension system. Part of the system – pension savings – is based on voluntary participation and provided by the commercial banking sector but supported by the State in the form of tax exemptions or state contributions. Another part is the supplementary pension insurance which is provided by pension companies whose management is controlled by the Czech National Bank. In conclusion, each of them has an important role in the whole system.

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:

As mentioned above, school establishments or healthcare facilities can be divided according to their founder. Regions and municipalities create conditions for meeting the needs of housing, protection, and development of health or education.

Under the Act on Pre-school, Primary, Secondary, Tertiary Professional and Other Education [(Education Act), No. 561/2004 Coll.], regions and municipalities establish and administrate schools and school facilities as



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school legal entities or contributory organizations within the scope of their autonomous competence. Each school established by a municipality is assigned a particular area (school district) for which the pre-school or primary school becomes "the catchment school". Resident pupils in that area are then always entitled to priority admission to that school until the "capacity" is reached. Regions are then obliged to ensure conditions for secondary and tertiary professional education, education of children, pupils, and students with special educational needs, as well as language, basic art, and non-formal learning and for the performance of institutional education.

Regions and municipalities also establish and administrate healthcare facilities within the scope of their autonomous competence. The healthcare facilities established by municipalities and regions may take the form of contributory organizations, the form of public benefit corporations, or as commercial corporations (with a limited liability company or joint-stock company). They may establish hospitals, treatment centres, or nurseries. In addition, regions have a special obligation to establish a medical rescue service under the Act on Medical Rescue Service (No. 374/2011 Coll.).

The regional or municipal authorities with extended powers also state administration in the social services field according to Art. 5(2) of the Act on Social Services. The regional authority decides, for example, on registering a social service provider. Municipalities or regions also identify the need for providing social services in their territory, ensure the availability of information, and may draw up plans for developing social services.

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, but only in some areas

Please explain:

Apart from the conditions that Czech citizens must meet, non-EU citizens may benefit from social rights-related benefits under special conditions laid down in individual laws (see the answer to question 2 above). Most commonly, these conditions include duration of stay or type of residence permit (such as asylum or subsidiarity protection). Foreigners without permanent residence may also be entitled to benefits according to bilateral international treaties. Special conditions are set out for the participation in the sickness insurance, such as performance of work in the territory of the Czech Republic in an employment relationship (not applicable to self-employed persons); the scope of employment is determined by a minimum number of days (at least 15 days) and a minimum amount of agreed income. Immediate emergency assistance may be granted even to persons who are illegally residing in the Czech Republic.

Non-EU citizens may be granted benefits such as mobility allowance, special aid, aid in material distress (housing benefit or immediate emergency assistance), child benefit, housing allowance, childbirth allowance,





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parental allowance, funeral allowance, or old-age pension. In addition, since participation in sickness insurance is compulsory if particular conditions are met, non-EU citizens may also be granted benefits such as sickness benefits, nursing allowance, and compensatory allowance in pregnancy or maternity.



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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:

In general, administrative courts have jurisdiction in all disputes concerning administrative measures affecting social rights. On the other hand, civil courts have jurisdiction in cases of labour law under the Labour Code (No. 262/2006 Coll.) or disputes relating to collective bargaining. However, there is an exception because administrative courts are competent in matters of employees of the public sector, specifically under the Act on the Civil Service (No. 234/2014 Coll.) and members of the security forces under the Act on the Service of Members of the Security Forces (No. 361/2003 Coll.).

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.):

All the areas fall within the general jurisdiction of the administrative courts, especially in matters of the provision of social benefits.

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:

As mentioned above, administrative courts review the lawfulness of decisions of the public administration affecting social rights within their jurisdiction. According to Art. 4 of the Code of Administrative Justice (No. 150/2002 Coll.), they decide on actions against decisions taken in the sphere of public administration by executive authorities, autonomous units of a local administrative authority, as well as by natural persons, legal entities or other authorities entrusted with decision-making on rights and obligations in the sphere of public administration. Administrative courts may revoke administrative acts as unlawful or for procedural faults or to declare them null and void.

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 Czech administrative justice is ruled by the principle of cassation. Administrative courts cannot decide on the merits of a case instead of administrative authorities. Instead, they review their decisions and may revoke them as unlawful or declare them null and void. In these cases, the court returns the case to the authority for further proceedings with a binding legal opinion (which may provide the authority with no discretion concerning whether or not an individual is entitled to obtain a social benefit - administrative courts thus have the power to ascertain the entitlement, even though they may not directly grant the benefit). Otherwise, it dismisses the action. However, the court is not limited to the facts found by the administration; it may repeat taking some of the evidence or bring new evidence. The only limitation is that the state of facts and law is generally fixed when the administrative decision is made. There are a few exceptions to the principle of cassation. For example, the administrative courts have the power to reduce or waive a penalty for an administrative offence (moderation) within limits provided by the law if the amount is manifestly disproportionate.



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:

There is no specific remedy that administrative judges may put in place to protect social rights. The administrative court may revoke the decision as unlawful or declare it null and void and return the case to the administrative authority for further proceedings. However, as mentioned above, the administrative court returns the case to the authority with a binding legal opinion (provided in the reasoning of its judgment, not in the statement). Thus, it may also *de facto* condemn the authority to a specific performance (e.g., to grant a benefit) through the recognition or attribution of the benefit (by leaving the administrative authority with no discretion but to grant it). On the other hand, the Code of Administrative Justice does not regulate compensatory action. It is a civil action procedure regulated by the Act on Liability for Damage Caused in the Exercise of Public Authority by Decision or Improper Official Action (No. 82/1998 Coll.). Generally, the claim for damages can be filed on the grounds of an unlawful decision or misadministration.

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:

In areas falling within the jurisdiction of administrative courts, there are no foreseen simplified or accelerated procedures.

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 Czech Republic, alternative forms of dispute resolution are foreseen only in a few areas of social rights, and none of them is within administrative courts' jurisdiction. If expedient and appropriate for the case, the civil judge [Art. 100(2) of the Code of Civil Procedure] may order the parties to meet with a mediator. The judge may also draw attention to the first meeting with the mediator during the preparatory proceedings [Art. 114a (2)(b) of the Code of Civil Procedure]. But the judge can only order the first meeting. Thus, the mediation process ends if the parties decide not to continue mediation, even after a single meeting. The use of the first mediation meeting is not limited by the area in which it can be used. However, in practice, it is most often used in family matters or employment disputes.

Another example of the ADR is in the Act on Collective Bargaining (No. 2/1991 Coll.). In collective disputes that arise when a collective agreement is concluded between employers and trade unions, the parties are obliged to resolve the dispute in the first instance before a special mediator (facilitator). They are entitled to choose him. Otherwise, the Ministry of Labour and Social Affairs will appoint one from the list of special mediators.

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:

The main problem possibly is the low awareness in society due to the complexity and lack of clarity of the whole social administration system. This concerns organisational aspects (several different administrative authorities decide on granting different benefits), procedural aspects as well as material aspects (tens of different benefits to which citizens are entitled under various conditions they need to meet and documents they need to provide).

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 administrative judges have repeatedly considered whether a particular act or measure affects the 'essential core' of various social rights. However, the answer has rarely been positive. One such recent example is a judgement of the Supreme Administrative Court of 18 August 2021, No. 1 Ao 3/2021-52, concerning an emergency measure of the Ministry of Health that closed home schools (an alternative to standard education) during the Covid-19 pandemic. The Court annulled the measure because it was based, without further justification, on the fact that home schools fall under the category of schools and educational institutions. According to the Court, the absurdity of the measure was illustrated by the fact that even a single pupil can attend a home school, yet this was considered a more epidemiologically dangerous activity (therefore prohibited) than the attendance of hundreds of children at other schools. The Court thus concluded that the measure already "touches the very core (essential content) of the right to education, which cannot be restricted without further restriction."

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).

The Czech Republic has no relevant case-law on this matter. However, similar (yet distinct) cases occurred in the Czech legal system between 2003 and 2014. The issue at hand was whether former Slovakian nationals and Slovakian and Czech nationals permanently living in the Czech Republic but with a place of occupation in Slovakia in the past (during the duration of the Czechoslovak Republic) were entitled to receive compensatory allowance between Czech old-age pension and Slovakian old-age pension, i.e., whether the performance of occupation in Slovakia during the Czechoslovak Republic could have been recognised as a contributable occupation to social security in Czechia. The judgement of the Supreme Administrative Court of 25 August 2011, No. 3 Ads 130/2008-204, includes preliminary question referred to the CJEU (judgment of 22 June 2011, *Landtová*, No. C-399/09). Nevertheless, this decision was overruled by the ruling of the Czech Constitutional Court of 31 January 2012, No. Pl. US 5/12, where the Court declared that the relationship between Slovakia and Czechia is so specific (due to former Czechoslovakia) that it falls out of the scope of EU law and occupation that had taken place in Slovakia during the common State must be viewed as contributing to social security in the Czech Republic.

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).





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As mentioned above, the administrative court is not entitled to directly recognise the aid, benefit, or service which the public administration unlawfully refused. Therefore, there is no case-law in this matter.



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