

SERVICES TO CITIZENS AND SOCIAL RIGHTS

Answers by the Supreme Court of Estonia

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 Republic of Estonia¹ guarantees the right to health (§ 28), the right to work (§ 29), the right to education (§ 37) and aid to families (§ 27 ja § 28). The Estonian Constitution does not specifically mention a right to housing, but it can be derived from § 28 (2) – Estonian citizens have the right to assistance from the state in the case of old age, incapacity for work, loss of a provider or need. Other rights, concerning specific services, are recognized by ordinary 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

¹ Available in English: <https://www.riigiteataja.ee/en/eli/530122020003/consolide>.



Estonia has a solidary health insurance system. All the medically insured people in Estonia are entitled to the same quality health care, regardless of whether or not they pay the health insurance tax (e.g. students, pregnant persons, pensioners do not pay insurance tax).

If someone is registered as unemployed, they are entitled to apply for unemployment insurance benefit or unemployment allowance and take part in getting work support services as needed.

Insured persons have the right to allowances for temporary incapacity for work (e.g. sickness benefit, carer's allowance).

The family allowances paid on a monthly basis include child allowance and allowance for a family with many children (at least three), also single parent's child allowance and foster care allowance. Single family allowances include childbirth and adoption allowances. Estonia also has a rather flexible parental benefit system. All expectant mothers are entitled to a maternity benefit and fathers to a paternity benefit. Fathers now also have the right to use the shared parental benefit from the time the child reaches 31 days of age. It is up to the parents to decide who will receive the benefit, and it may be switched between them. The shared parental benefit is generally 475 days.

Benefits and services for disabled people include social benefits and services, rehabilitation services and special care services. Estonia also provides a working ability allowance.

Local governments offer social housing (e.g. a subsidised apartment or a place at a social housing unit) and also pay subsistence benefit which is an aid granted by the government to people in need.

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

N/A

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

According to the case law of the Supreme Court, the right to assistance from the state in the case of need (Estonian Constitution § 28 (2)) may not be encroached upon so far that the state does not offer minimum means for living. However, the legislator has a wide margin of appreciation in determining what is 'need' and how the minimum means for living are provided. This appreciation may i.a. be based upon social policy considerations, but also the economic situation in the country as well as the public sector budget.²

As for practical examples, one of the objects of widespread criticism is that the effectiveness of the right to health is limited in Estonia due to budgetary constraints (long queues for treatment, limited choice of (scientifically proven) treatment financed by the state). Estonia has also by now eliminated almost all special pensions (for police officers, prosecutors, judges etc) which were mostly established in the early 2000s.

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 Supreme Court has stated that the right to assistance from the state in the case of need (Estonian Constitution § 28 (2)) has been violated if the state does not offer minimum means for living. The Supreme Court added that this kind of encroachment on § 28 cannot be justified.³

² Judgment of the Constitutional Review Chamber of the Supreme Court of Estonia, 05.05.2020, no. 5-20-1/15, pp 19–20, available in Estonian: <https://rikos.rik.ee/?asjaNr=5-20-1/15>.

³ *Ibid.*, pp 18–19.



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 effectiveness of social rights is usually limited by legislation of general application. When called upon to assess the constitutionality of the provisions in question, the competent court to perform the balancing is the Supreme Court and its Constitutional Review Chamber. Administrative (or general) courts of any instance may initiate constitutional review proceedings by transmitting the relevant judgment or ruling to the Supreme Court. If the constitutionality of a general act is not in question, the competent court to check the legality of the balancing performed by the relevant authority is 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, temporary subsidy (income support for people in employment), energy price support measures.

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

There have been no changes in the ordinary division of competences between courts. The disputes concerning the social benefits mentioned in the previous answer fall within the jurisdiction of the administrative court.

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

Overall, the provision of social benefits is organised by the state or local government. There are some areas (e.g., health care, assessment of working ability or disability, care homes), where private subjects are included in the public system.

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

- 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
- Yes, but only in some areas.

Please explain

The provision of social services, social benefits, and other assistance is organised by the local government (city or rural municipality) of the person's place of residence entered in the population register. Emergency social assistance, which provides the person with at least food, clothing, temporary accommodation, and other basic necessities, is provided by the local government in whose administrative territory the person is when the assistance is needed. Local authorities shall establish the procedure for provision of social welfare assistance which shall contain at least the description and financing of social services and benefits and the conditions and procedure for application for social services and benefits (Social Welfare Act⁴ § 14 (1)).

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

Ambulance services as emergency assistance services in Estonia are provided free of charge to all persons, including foreigners. Permanent residents of Estonia and persons living in Estonia on the basis of a temporary residence permit or right of permanent residence for whom social tax is paid or who pay social tax on their

⁴ Available in English: <https://www.riigiteataja.ee/en/eli/519012023005/consolide>.





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behalf have the right to health insurance. The persons entitled to social services are permanent residents of Estonia, foreign nationals living in Estonia on a legal basis and refugees staying in Estonia.



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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

Matters related to social security, both benefits and services, are under the jurisdiction of administrative courts. So are disputes concerning civil service. However, labour disputes are solved in civil courts.

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.)

Cases related to the protection of motherhood and job protection are within the jurisdiction of administrative courts, if the dispute concerns civil service, but in civil courts, if they are general labour disputes. Health insurance and social assistance are public law matters and thus within the jurisdiction of administrative courts, but disputes between medical service providers and patients fall within the jurisdiction of civil courts. Disputes concerning public schools and higher education institutions are also within the jurisdiction of administrative courts.

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 any other administrative acts, such acts may be disputed in administrative court by persons whose rights are infringed by said acts. The appropriate action is an action for annulment.



- 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.)

N/A

- 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

It depends on rules regarding the specific benefit. If the administration has no discretion in the matter, the administrative judge has the power to obligate the administration to grant the benefit. But if the administration has a discretionary power, the judge may not do more than annul the disputed decision and obligate the administration to make a new decision, in the making of which the court's directions must be followed.

- 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

Applicants may demand the following in administrative courts:

- 1) the full or partial annulment of the administrative act (annulment action);*
- 2) the issue or an administrative act or the taking of an administrative measure (mandatory action);*
- 3) a prohibition to issue certain administrative act or take a certain administrative measure (prohibition action);*



4) compensation for harm caused in a public law relationship (compensation action);
5) elimination of unlawful consequences of an administrative act or measure (reparation action);
6) a declaration of nullity of an administrative act, a declaration of unlawfulness of an administrative act or measure, or a declaration ascertaining other facts of material importance in a public law relationship (declaratory action).⁵

Almost all of these claims could theoretically be appropriate in matters concerning social rights. However, the most common claims are annulment actions and mandatory actions (often jointly: annulment of a negative act along with requesting a new, positive decision).

- 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

N/A

- 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)

No provisions for ADR exist in the field of social rights that fall within the jurisdiction of administrative courts. ADR exists only for labour disputes (not civil service) that otherwise belong in civil courts. For such disputes, there is a Labour Dispute Committee, an extrajudicial authority within the Labour Inspectorate.⁶ The Committee may conduct conciliation proceedings (§§ 33–36 of the Labour Dispute Resolution Act) as well as make decisions on claims (§ 54 of the Act). If the parties disagree with the decision of the labour dispute committee, they may have recourse to court for the hearing of the same labour dispute matter (§ 58 (1) of the Act).

- 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

⁵ § 37 (1) of the Code of Administrative Court Procedure, available in English:

<https://www.riigiteataja.ee/en/eli/519052022001/consolide>.

⁶ § 4 (1) of the Labour Dispute Resolution Act, available in English:

<https://www.riigiteataja.ee/en/eli/502122020006/consolide>.



- 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 general, the administrative judge in Estonia does not encounter the above mentioned problems in giving effective protection to social rights. One of the issues cropping up in several areas of social rights (e.g. pensions, assessment of disability) has been that the administration sometimes changes its practice to the detriment of subjects, and the reasons are not always communicated well. However, if the earlier practice was in fact unlawful, there is usually nothing the administrative judge can do. Also, in some specific areas (e.g. benefits for disabled children), the general legislation is not of good quality and compatible with modern everyday life.

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).

A person unsuccessfully applied for subsistence allowance. It would have been possible to grant support if the applicant's income had been lower than the established subsistence limit of 150 euros. After the foreseen deductions, the applicant's income remained 11,5 euros higher than the limit. The applicant turned to the administrative court, who found that the law does not allow to deduct expenses for prescription drugs, thus excluded the granting of subsistence allowance to the applicant and thus violated the applicant's right to aid in case of deprivation and his human dignity, arising from § 28 (2) of the Constitution. The Constitutional Review Chamber of the Supreme Court explained that the right to assistance from the state in the case of need may not be encroached upon so far that the state does not offer minimum means for living. However, in the current case, there was no failure to provide assistance, therefore no violation of the right. The applicant's need for assistance had been adequately met by the social protection system.⁷

⁷ Judgment of the Constitutional Review Chamber of the Supreme Court of Estonia, 05.05.2020, no. 5-20-1/15.



- 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).

A foreigner with unspecified nationality (born in Uzbekistan) repeatedly submitted an application for international protection in Estonia, but with no success. This person repeatedly left Estonia for other EU member states, which sent the foreigner back to Estonia. The foreigner did not have legal basis for the stay and a precept to leave was issued, but the state was unable to expel the foreigner. If the foreigner does not have a legal basis for the stay, he or she does not have the rights established in social law (except the right to receive emergency aid). The Supreme Court stated that if the expulsion is impossible, it is indispensable for the observance of the human dignity principle that this limitation concerning social rights cannot be applicable indefinitely. The Supreme Court added that therefore, in short, it must be possible to reach a situation where either the application of the previously described limitation must be waived or the status of the person must be changed.⁸

- 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 applicant was on sick leave and received sickness benefit from the Health Insurance Fund for that period (about two weeks). The Health Insurance Fund later decided to reclaim the sickness benefit, as it found that the applicant received a temporary subsidy (income support for people in employment to cope with the pandemic) from the Unemployment Insurance Fund, and therefore there was no basis for the respondent to pay temporary subsidy for the same period. The Supreme Court found that, according to the law, compensation is paid for the time when the employee was able to work. The period underlying the payment of temporary subsidy and sickness benefit cannot overlap. So, in essence, the Supreme Court found that the applicant was entitled to both benefits.⁹

⁸ Ruling of the Administrative Law Chamber of the Supreme Court of Estonia, 19.04.2021, no. 3-20-1607/34, available in Estonian: <https://www.riigikohus.ee/lahendid?asjaNr=3-20-1607/34>.

⁹ Judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 11.01.2023, no. 3-21-997/23, available in Estonian: <https://www.riigikohus.ee/lahendid?asjaNr=3-21-997/23>.

