

## 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 Finland guarantees the main social rights i.e. educational rights (section 16), the right to work and the freedom to engage in commercial activity (section 18), the right to social security (section 19). Specific rules regarding these rights are laid down in 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
  
- 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

According to section 19 of the Constitution those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. Everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider. The public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population. Moreover, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.



All of the above-mentioned benefits are guaranteed in the Constitution, and detailed rules are found in ordinary law, such as the Act on Social Assistance, the Health Care Act and the Act on Disability Services.

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

It is enshrined in the Constitution (section 20), that everyone has a responsibility for the environment. By the same token, public authorities are obliged to endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

Where it comes to digital services, one could perhaps not speak of a social right in the same meaning as e.g. the right to healthcare, but the Act on the Provision of Digital Services (transposing directive 2017/2102) regulates the provision of digital services with the aim of ensuring equal access to safe and accessible digital services of high quality.

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

As mentioned above, the right to social security is guaranteed in the Constitution. Detailed regulations concerning various aspects of social rights (health care, social assistance etc.) are found in ordinary law. Within ordinary law – and the constitutional limits-- adjustments based on budgetary constraints can be made when it comes e.g. to the monetary level and applicability of various subsidies, such as parental subsidies, unemployment benefits, housing subsidies etc.



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 Constitution (section 19, see above question 2) guarantees the right to social security, which forms the *'essential nucleus'* of social rights. The practical content of the Constitution-based social rights is found in regulations of ordinary law.

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:

Within the leeway provided by the Constitution, the legislator can choose how to allocate available financial resources. The adequacy of an individual administrative measure vis à vis the Constitutional guarantee to social security can ultimately be considered by a court (Insurance Court/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:

There have been a number of measures introduced to alleviate the pandemic-related financial losses suffered by businesses and individuals such as performing artists etc. Most recently, the government has introduced subsidies for businesses and households to help counter the negative effects of rising energy costs.

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 special rules to alter competencies have been introduced.

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

Social benefits can be provided by both public and, on a contractual basis, by private subjects. Provisions on the conditions for the procurement of services from private subjects are found in the Act on the Organisation of Healthcare and Social Services. When producing public services, private subjects are obligated to ensure the lawfulness and quality of services. Functions that entail the exercise of significant public authority (such as the taking into custody and placement of a child and involuntary psychiatric treatment) can, however, only be carried out by public subjects.

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

- Yes
- Not

The organisation and provision of healthcare and social services is the responsibility of the 21 self-governing wellbeing services counties (the responsibility for organising these services was transferred from municipalities to wellbeing services counties on 1 January 2023). The wellbeing services counties have administrative powers in this area.



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 self-governing wellbeing services counties have the power to decide on the organisation of services, however the conditions for the provision of healthcare and social services are laid down in national legislation and apply in equal measure to all counties.

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

Emergency healthcare is accorded to all regardless of residential status. Regular non-EU residents are entitled to full social security rights on par with citizens.



## 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

The Insurance Court is competent in most matters concerning benefits, excluding social assistance, which is the jurisdiction of administrative courts. Matter concerning the social services, education, disability services and healthcare are within the competence of the administrative courts. Certain labour related matters fall within the competency of the Labour Court (and in the last instance, the Supreme Court).

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 Insurance Court, in certain labour related matters the Labour Court.

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

Appeals concerning decisions on the organisation of healthcare and social services according to the Act on the Organisation of Healthcare and Social Services are within the jurisdiction of the administrative courts.



- 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.)

When it comes to most benefits, pensions etc. the Insurance Court has jurisdiction. Certain social rights, however, such as social assistance, disability services etc. are within the jurisdiction of administrative courts.

- 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 administrative judge can assess if an individual is entitled to receive a certain benefit and can award the successful applicant the advantage if the advantage has been unlawfully denied. The administrative judge, however, cannot exercise discretionary power when it comes to the appropriateness of a specific benefit.

- 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

The organisation and provision of healthcare and social services are largely within the competency and discretion of the self-governing wellbeing counties. The administrative judge can decide to annul an unlawful administrative measure, and can, in an individual case award a benefit that has unlawfully been denied. However, when it comes to the organisation and provision of social services,





the judge cannot exercise discretionary powers, which are the sole competence of the self-governing wellbeing counties.

- 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 the case of many social benefits, the appeals procedure is as follows: claim for a revised decision – appeals board – Insurance Court, which is the first and last court instance.

Many issues concerning social rights that are within the jurisdiction of the administrative courts (social assistance, disability services, educational rights etc.) are also preceded by a mandatory claim for revised decision before a decision can be appealed to the administrative court. The processing of an appeal at the administrative court itself is not subject to accelerated or simplified 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)

- 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



We cannot easily identify problems that the administrative judge would encounter in giving effective protection to social rights.

### 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).

Case KHO 2019:7 (ECLI:FI:KHO:2019:7) concerned the right to basic education and more specifically free school travel (i.e. transportation from home to school in the morning and vice versa in the afternoon). The pupil concerned attended basic education in a class for severely disabled children and was entitled to free school transportation. The Supreme Administrative Court (SAC) found that the right to free transportation also covered transportation in situations where the child, based on a decision made by the school principal, had to be removed from class and sent home mid school day due to the child's violent or disruptive behaviour. The SAC based its decision on the Constitution of Finland, the Act on Basic Education, and the Non-discrimination Act. ....

- 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 case KHO 2019:62 (ECLI:FI:KHO:2019:62) the question revolved around A's right to receive social assistance based on the Act on Social Assistance. A's request for international protection had been rejected and he was no longer entitled to social assistance based on the Act on the Reception of Persons Applying for International Protection and the Identification of and Assistance to Victims of Trafficking in Human Beings. The SAC found that A was entitled to receive indispensable subsistence as per section 19 of the Constitution of Finland, but that it was not unlawful to reject A's application for basic social assistance, considering that he had had the possibility to apply for preventive social assistance from the municipal authorities, which would have covered his essential support

- 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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Case KHO 2002:21 involved a matter where a municipality was, as a matter of administrative litigation, ordered to cover the costs of by-pass surgery, which the appellant concerned had acquired from a private health care provider, after the municipality had neglected its lawful responsibility to arrange for the said surgery for the appellant.

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