

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 rights and state objectives falling within the narrower concept of social rights appear in the Hungarian constitution, in several provisions of the Fundamental Law of Hungary (henceforth: "the Fundamental Law"). The Fundamental Law guarantees the right to social security, the right to physical and mental health, the right to housing, and the legal, economic, and social protection of the family. The essential contents of these rights are regulated by Acts of Parliament, while the implementing rules are set out in Decrees.

1) **The right to social security (Article XIX)** is declared as a state objective in the Fundamental Law: Hungary strives to provide social security for all its citizens. The legislation lays down the grounds (maternity, sickness, disability, invalidity, widowhood, orphanhood, and involuntary unemployment) on which every Hungarian citizen is entitled to statutory benefits. The conditions for "entitlement to a state pension" declared in the Fundamental Law are also specified in an Act of Parliament.

2) Statutory regulation relating to the **right to physical and mental health (Article XX)** enshrined in the Fundamental Law covers the entire health administration (including compulsory health insurance, the development of the health care system, the safe and economical supply of medicines and medical aids, the general rules on the distribution of medicines, and the rules on the beneficiaries of social security benefits and the coverage of those benefits). The Constitutional Court has interpreted the right to physical and mental health not as a subjective right but as a constitutional obligation, stressing that this right aims at creating an economic and legal environment that ensures the most favourable conditions for a healthy lifestyle for citizens.

3) The state shall ensure the conditions **for decent housing (Article XXII)** primarily by creating an appropriate legal environment, but also by building up the institutional system. In this context, the statutory regulation



on the fixing of the repayment rate for foreign currency loans and on the forced sale of residential property, as well as various subsidies for housing construction can be mentioned.

4) In the context of **the legal, economic, and social protection of the family (Article L)**, the Fundamental Law declares that Hungary supports childbearing. The Act on Support for Families also lays down instruments to encourage childbearing, defining the family as a fundamental unit of society and affirming that one of the most important tasks of the State is to improve the security of family life and the conditions for having children. Child-rearing is also supported by the state through other legislation: the Act on Compulsory Health Insurance Benefits, among others, establishes a childcare allowance for infants, and the Act on the Protection of Children aims to support families with children through various cash and in-kind benefits. The regulation is related to the Fundamental Law provision declaring that in establishing the size of contributions to public burdens, regard must be had to the costs of bringing up children. Family support measures based on the authorisation given in the Act on Family Support include baby expecting allowance, housing allowances, and family home-creating allowance.

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 elements of the Hungarian social security system are the following: social insurance, employment policy, the family support scheme, and the social assistance scheme.

1) **Social insurance** has two branches: health insurance and pension insurance. *Health insurance* benefits are designed to preserve, restore, and maintain the health of the insured person, to compensate for loss of earnings, and to provide benefits for those who are permanently or definitively incapable of working. The aim of the *pension insurance* scheme is to provide cash benefits to help elderly persons and their dependants to live. Pension insurance benefits include retirement benefits in own right (old-age pension) and survivors' benefits (widow's pension, orphan's pension, parental pension, accidental death benefits). It is a Hungarian characteristic that there is no separate accident insurance branch: therefore, accident benefits are included in the two existing branches, namely accident benefits (accident medical service, accident sickness benefit,



accident pension) are included in the health insurance branch whereas accident survivors' benefits are included in the pension insurance branch. Accident insurance provides protection and a livelihood in the event of a work accident which temporarily or permanently makes it impossible to earn a living, either as a result of an accident, or an occupational disease.

2) The State seeks to alleviate the disturbance caused by the unemployment of individuals being capable to work by establishing an **employment policy**. A jobseeker is entitled to a jobseeker's allowance, a pre-retirement jobseeker's allowance, and reimbursement of expenses. The public employment service provides services free of charge to help people search for a job, find and keep a job, find workforce, and provides assistance in establishing or maintaining an employment relationship.

3) The state supports persons actively involved in the reproduction of society and their children by providing family support benefits under the **family support scheme** and contributes to the increased expenditure of the family.

4) The basic elements of the **social care system** are *social assistance* and *social services*. The law provides for the provision of social benefits in cash and in kind, as well as personal care services. Personal care services include basic social services and specialised services. Basic social services help people in need of social care to maintain independent living in their own homes and surroundings and to solve problems that arise from their health, mental health, or other causes. When, because of their age, health or social situation, elderly persons can no longer be cared for under the basic service scheme, they must be provided with specialised care appropriate to their condition and situation, including residential care. Both basic services and specialised care provide services for the elderly, disabled persons, psychiatric and addiction patients, and homeless persons.

In this context, mention can be made about the subsidies provided for disabled persons, which are intended to alleviate social disadvantages resulting from a severely disabled condition and are provided irrespective of the income of the severely disabled person.

In addition to the benefits provided under the social security system, the Hungarian State also assists its citizens in other ways. The various family support measures (including family tax benefits such as the family personal income tax allowance, the first-marriage allowance, the allowance for mothers with four or more children, the home creating allowance and the baby expecting allowance) are designed to support citizens. In addition to supporting families, these measures also aim to increase the number of births.

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

According to the Fundamental Law, Hungary shall endeavour to ensure access to public services for all (Article XXII). Access to public services (water, sewerage, energy, telecommunications, etc.) as a state endeavour means primarily the construction and development of the necessary infrastructure (e.g. water utility network) on the entire territory of Hungary. In this area no fundamental right is involved and, in particular, no provision of public services free of charge, without restriction to anyone is required. However, some public services may have aspects that relate to a fundamental right or to objective institutional protection (e.g. the right of access to drinking water is an objective institutional protection aspect of the right to health).

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

The burden-bearing capacity of the budget is a constraint on spending, but it must not result in the emptying out of the content of a given social right or state objective. It follows from the State's duty of institutional protection that the benefits provided for in the Fundamental Law must be guaranteed and are indeed guaranteed by the State. The State places particular emphasis on promoting employment and supporting families.

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

As the Constitutional Court has stated in several of its decisions, the inviolable essence (“inviolable nucleus”) of fundamental rights is human dignity, which is an absolute right. This inviolable nucleus cannot be restricted. What can be restricted is that part of a fundamental right or a state objective which falls outside the inviolable nucleus. Fundamental rights normally can be restricted, but the necessity of the restriction is to be assessed under the so-called fundamental-rights test (necessity-proportionality) in case of a fundamental right, or under the so-called public interest test, in case of a state objective. However, the essential content of a fundamental right guaranteed by the Fundamental Law must not be restricted.

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 level of benefits provided under the various social security systems always depends on the economic performance of the given state, as these benefits are usually provided from public resources, through redistributive mechanisms. The Fundamental Law stipulates that Hungary shall enforce the principle of balanced, transparent, and sustainable fiscal management. The right to benefits cannot be overridden by budgetary constraints, but the legislator can modify the eligibility criteria within the constitutional framework.

According to the Constitutional Court, it can – in general – be stated that the legislature may – in a changing economic environment and in the light of the state's economic capacity at the given time – modify or even abolish certain benefits of the social security system, such measures not being in themselves contrary to the Fundamental Law. The Fundamental Law (Article XIX) lists in detail the grounds based on which a given person is entitled to assistance, and the state must provide some form of benefit in that scope. In the case of *ex gratia* benefits, the legislator has a wider discretion, not only to determine what kind of benefit to provide, but also whether to provide such a benefit at all, and if so, to which category of persons, to what extent, and in what form.



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:

With a view to alleviating the negative economic impact of the coronavirus pandemic, a range of measures have been put in place, focusing on job protection, job creation, protection of priority sectors and help with financing for businesses. The introduction of a credit moratorium protected household and corporate sector players who became vulnerable to the economic downturn. In the framework of the sectoral wage support programme, wage subsidies were provided to firms in difficulty. Exemption from employment-related public charges, favourable tax and contribution rules were introduced. Other measures that have been most helpful to the most deprived persons include the extension of the payment of certain benefits that expired in the emergency period, e.g. childcare allowance and childcare support allowance, a price freeze on certain foodstuffs and the introduction of a subsidy for household utilities.

The measures introduced to deal with the energy crisis focus on the benefits provided under the energy subsidy scheme. So-called reduced-price gas and electricity consumption is provided up to the average household consumption, and large families are entitled to additional natural gas price reductions. This also includes subsidies for the electricity consumption of medical devices used by certain consumers.

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

Competence rules have not changed in relation to crisis management.

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



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The Social Care Act defines which social services are compulsory for the state and which are compulsory for local authorities. In addition, churches and NGOs may provide services on a voluntary basis. The state is responsible for running the social security, employment policy and family support systems.

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

In addition to the services local authorities must provide under the Social Care Act, local authorities may assume the provision of additional services from their own budget. To assess an applicant's entitlement to a social service, the authority may request the applicant to declare or prove the family's financial and income situation. Unless otherwise provided by the law, the municipal council of the given settlement shall lay down in a Decree the detailed rules concerning the content and submission of the declarations and certificates needed for cash and in-kind benefits falling within its competence. The municipal council of the settlement may, in the manner and under the conditions laid down in its Decree, determine cash benefits with regard to the need of children and young adults. The local government having jurisdiction over the child's place of residence, or the head of the educational institution may grant a meal allowance to a child based on the child's individual need.

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

A non-EU citizen's entitlement to benefits depends on his or her legal status in Hungary (for example, as a student, a worker, or a retired person). Non-EU citizens working in Hungary become insured persons entitled to all benefits available under the social security system. In this context, it may be noted that there are countries with which Hungary has concluded social security agreements, but entitlement to benefits depends on the material scope of the bilateral treaties.





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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

According to the Act on Administrative Court Procedure (No. I of 2017), the decisions of the administrative organs of the Hungarian social security system can be challenged in administrative lawsuits. The subject matter of an administrative lawsuit is the examination of the legality of an administrative act done by an administrative body governed by administrative law, with the aim of changing the legal situation of the person concerned. In disputes concerning the so-called social rights, high courts having an Administrative Department act at first instance, whereas appealable first instance orders and certain judgments are determined by the Budapest Regional Court of Appeal as appellate court. Review as extraordinary legal remedy can be sought before the Curia.

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.)

Social disputes involving all the above-mentioned subject-matters can be brought before an administrative court. It is important to note, however, that both labour law and social law contain provisions for the protection of maternity. Under the social security system, for example, a mother is entitled to an infant care allowance for the birth of a child during maternity leave, provided that the conditions for entitlement to a cash health insurance benefit are met, and to a childcare allowance thereafter. Disputes relating to such benefits are determined by administrative courts. As regards maternity protection, labour law also pays due regard to the specific needs of vulnerable groups of workers. Employers may not terminate employment by notice, *inter alia*, during pregnancy, maternity leave, paid leave for childcare, treatment related to human reproductive procedures, and, from 1 January 2023, paternity leave and parental leave. The Labour Court



has jurisdiction to hear cases relating to the enforcement of labour law claims relating to the protection of maternity fall in labour court competence.

- 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

The administrative judge may examine and assess how the state/local government body responsible for the organisation of social services complies with its obligations. In this context, it may examine the legality of the specific (individual) decisions and procedures relating to the award of the various benefits and subsidies.

The Curia (its Local Government Judicial Panel) is also entitled to examine (in the framework of a norm control procedure) whether the local government has adopted local normative regulations relating to the organisation of social services and whether the adopted local government decree is in conformity with other legislation.

- 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



Based on the plaintiff's claims, the administrative judge may examine the legality of the procedures and the eligibility criteria of the procedures applied in the various areas of social rights. Whether the court has the right to change or only to quash a decision in case of non-compliance with the legislation, depends on the sectoral laws (e.g. in administrative court proceedings reviewing administrative authority decisions having rejected a claim for certain types of benefits for which entitlement is to be determined in the light of the plaintiff's health condition, the judge may appoint a forensic medical expert). If the administrative body has rejected an application for a benefit based on the expert opinion of the expert committee of the rehabilitation body, the administrative judge may establish entitlement to the benefit based on the opinion of the appointed forensic medical expert.)

- 6) What kind of remedy can the administrative judge put in place for the protection of social rights?
- Annulment of organizational acts or specific acts limiting social rights
 - Damage compensation
 - Condemn to a specific performance through the recognition or attribution of the benefit/right required.
 - Other

(tick more than one box if necessary)

Please explain, if necessary by providing specific information on the different areas of social rights and the protection techniques specifically used

In the field of social law, the first instance administrative court may give a ruling either rejecting or upholding the claim; in the latter case it may alter, annul, or quash the decision of the administrative body and, if necessary, remit the case to the administrative body. A ruling upholding the claim means a decision awarding the claimed social benefit. If, based on statutory authorisation, the judge alters the decision, he may award the claimed social benefit. The legality of the first instance court decision is examined by the Curia in extraordinary remedy proceedings.

- 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 this context, the institution of immediate legal protection regulated in the CP and the provisional measures provided for in the Social Code can be mentioned as special procedures.



In this context, the legal institution of immediate legal protection regulated in the Act on Administrative Court Procedure, and provisional measure regulated in the Social Care Act can be mentioned as special procedures.

The purpose of immediate legal protection is to provide, irrespective of the court's decision on the merits, preliminary legal protection in cases where, during the period up to the judgment, the administrative activities or the situation created by those activities would result in a situation which is irreversible or disproportionately burdensome for one of the parties. In the framework of immediate legal protection, suspension, the lifting of suspension, interim measures, or preliminary evidence taking may be sought.

The specific procedural rules of judicial protection available in the social sector, namely interim measures are set out in the Social Care Act. They relate to the use of social services. They reflect the fact that administrative legal disputes relating to social benefits are specific in that they affect the subsistence of the plaintiffs who, therefore, are much more vulnerable than plaintiffs normally are in legal disputes. Consequently, the passage of time also plays a more important role in the effectiveness of legal protection.

The Act on Administrative Court Procedure defines interim measures as a means of immediate legal protection which, however, does not render the relevant rules of the Social Care Act superfluous. The Act on Administrative Court Procedure only creates the framework, whereas the possible content of the provisional measure is determined in the Social Care Act.

In an administrative lawsuit challenging the decision of a body exercising social care competence the court may, at the request of a party, order, in particular, the following measures as provisional measures: (a) payment of a normative social benefit in cash, (b) provision of a social benefit in kind, (c) referral to a social institution providing personal care.

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)

According to the Act on Mediation (No. LV of 2002), mediation is a specific conciliatory, conflict management, dispute resolution procedure, which precedes a lawsuit, facilitates the conclusion of a dispute or judicial or administrative proceedings, and is aimed at facilitating the creation of a written agreement between the parties to a dispute – based on mutual agreement of the parties involved in the dispute, with the involvement of a third party – which includes the resolution of the dispute. It rarely occurs in administrative litigation.



- 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)

In ensuring the effective protection of social rights, administrative judges identify changing legal environment, and in consequence thereof, changing eligibility criteria, as the main problems in the adjudication of administrative disputes. (The recent changes in legislation have been mainly due to the pandemics and the crisis situation caused by the energy crisis, as mentioned above.) It may be noted that cases concerning the award of disability allowances are brought at first instance in a large number and get before the Curia in the framework of extraordinary remedy proceedings.

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).

By its decision, the respondent authority rejected the claims for a provisional widow's pension filed by the plaintiff, who was divorced from her husband, the acquirer of the right to pension, but who continued to live together with his ex-husband as a civil partner. The first instance court dismissed the plaintiff's action. It stated that though the plaintiff had continued to live with her ex-husband, the acquirer of the right to pension, as a civil partner, their cohabitation before the death of the acquirer of the right to pension had not been uninterrupted. The Curia found that the relationship between the parties was specific due to the health condition and quasi-institutionalisation of the plaintiff's ex-husband and civil partner, but this did not preclude the classification of the lasting emotional and economic community relationship that had existed between them under the civil partnership. Based on the correct interpretation of the legal provisions invoked in the respondent's decision, the plaintiff's entitlement to a provisional widow's pension could not be excluded on the sole ground that the seriously ill acquirer of the right had left the shared residence and had been placed for the last one and a half year of his life with his child, who – in contrast to the plaintiff – had



been able to and had undertaken to care for the plaintiff's ex-husband and civil partner, thus fulfilling the child's duty of care to his/her parent in need, as required under Article XVI(4) of the Fundamental Law. The Curia found that it would be contrary to Article XV(1) of the Fundamental Law to make a distinction between widows being unable to care for their seriously ill spouse/partner on the basis of the fact that – due to the state of health of the spouse/partner – care and treatment for him/her has been provided in a health institution or in the home of a family member, with the assistance of the family. For these reasons, the Curia quashed the court's judgment with effect extending to the social security decision and remitted the case to the respondent. (Kfv.VII.37.764/2019)

- 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).

According to the facts of the case under review, the plaintiff, a Hungarian citizen, received a Hungarian old-age pension. The plaintiff's deceased husband was a Ukrainian citizen, and until his death he received old-age pension only in Ukraine, not in Hungary. The plaintiff claimed a widow's pension after her deceased spouse, stating that she had been living with her spouse at their address in Hungary until the date of her husband's death. The respondent authority rejected the plaintiff's claim. It stated that the deceased husband had been settled in Ukraine, had received pension benefits there, had not notified the Ukrainian authorities of his intention to move to Hungary until his death, had not renounced his Ukrainian pension, and had not applied for an old-age pension in Hungary. The first instance court quashed the respondent's decision with effect extending to the first instance decision and remitted the case to the respondent. The first instance court stated that the submitted documents in themselves did not prove, but together with the testimonies did prove the plaintiff's claim, namely that they had lived together in Hungary continuously until the death of her husband; they had returned to Ukraine only before the death of the deceased. In its petition for review, the respondent argued that the plaintiff could not be entitled to a widow's pension by right of her late husband because the deceased husband did not die as an old-age pensioner and had not acquired any length of service. In this connection, the respondent relied on the provisions of Act No. LXXX of 1997 on the Right to Social Security Benefits and Private Pensions and on the Coverage of the Benefits. The respondent argued that a widow's pension right could only be derived from a deceased spouse having had a right to pension. The fact that the deceased spouse had not acquired a right to pension broke the chain set up by the legislation, therefore the plaintiff could not derive a right to a widow's pension from her deceased husband who had failed to acquire a right to pension. The Curia upheld the first instance court judgment by stating that the first instance court could not examine whether the deceased spouse was or was not to be regarded as acquirer of the right to pension since, in the absence of a motion to that effect by the respondent, the first instance court did not address this issue, consequently it could not base its judgment on that issue. And the fact that the applicant's spouse did not indicate Hungary as his place of residence was not in itself, in the light of the other documentary evidence and available testimonies, sufficient to conclude that the plaintiff and his late spouse had been living separately for more than one year before the spouse's death. (Kfv. VII.45.024/2021/6.)



- 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 plaintiff applied for a disability allowance, but his application was rejected by the competent administrative body because the rehabilitation expert committee was of the opinion that the plaintiff did not have a severe musculoskeletal disability. The plaintiff filed an action against the administrative body's decision, claiming that the expert opinion did not correspond to his genuine state of health. At the plaintiff's request, the court ordered a forensic medical expert to take evidence, and the appointed medical expert stated in his expert opinion that the plaintiff was severely disabled due to his state of health. Based on the expert opinion obtained in the court proceedings, the court found that the administrative body's decision was unlawful on account of the different classification, and that the plaintiff's application for disability allowance was wrongly rejected, in consequence of that classification. The court quashed the administrative body's decision and remitted the case to the administrative body by giving the instruction that the opinion of the expert appointed in the proceedings – according to which the plaintiff had severe musculoskeletal disability – was to be taken into consideration in the resumed proceedings. (Miskolc Regional Court K.701.619/2020/20.)

