

## 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

#### Please explain:

Social rights are protected in a limited manner under the Irish Constitution. For example, the Irish Constitution expressly protects and recognises the right to free primary education (Article 42) and the right to property (see Article 40.3.2./Article 43). Further Article 40.3.1 of the Irish Constitution provides:

“... the State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the **personal rights** of the citizen” [emphasis added].

The term "personal rights", as interpreted by the courts, has led to the recognition and vindication of many rights not expressly provided for in the text of the Irish Constitution. These “unenumerated rights” include the right to fair procedure, the right to earn a livelihood, the right to bodily integrity, and the right to equal treatment, among others.

Article 45 of the Irish Constitution (Directives of Social Policy) also specifically lays out guiding principles for the State in promoting the welfare of people in the socio-economic field, including a guarantee to “safeguard the economic interests of the weaker sections of the community”. However, the principles in Article 45 are not enforceable before the courts:

“... the application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and **shall not be cognisable by any Court** under any of the provisions of this Constitution” [emphasis added].

However, the Irish courts have provided that while the article itself is not justiciable, it can have regard to its provisions in interpreting another right (see *Murtagh Properties v. Cleary* [1972] I.R. 330 regarding the right to earn a livelihood without discrimination of sex).



Other rights, concerning more specific services, are recognised by ordinary law. For example, while there is no right to housing as such in Irish law, there are certain specific substantive and procedural rights in relation to housing, such as legislation in relation to (1) social housing (the Housing Acts 1966-2014 and related Regulations); (2) homelessness (the Housing Act 1988); or (3) private housing and rented accommodation, among others.

Another example is education. As mentioned above, the right to education in Ireland is enshrined in Article 42 of the Irish Constitution. However, there is also a statutory right to education laid out in the Education Act 1998. Section 12 of the Education Act 1998 refers to the annual funding of schools, thereby ensuring the provision of free education in the State. Furthermore, the Equal Status Acts 2000–18 prohibit discrimination in relation to the provision of services, property, and other opportunities to which the public generally has access, such as education. The substantive prohibited grounds include gender, marital status, family status, sexual orientation, age, religion, disability, race and membership of the Traveller Community. Further, section 7 of the Equal Status Act 2000 provides for an “educational establishment”, which recognised that primary and post primary schools shall not discriminate in relation to the admission of a student inter alia (which was intended to address systemic discrimination against minority groups in education).

## 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

### Please explain:

The social welfare system in Ireland is divided into three main types of payments. These are:

- *Social insurance payments*: Social insurance payments are given to people who satisfy specific social insurance contribution conditions ([PRSI conditions](#)), in addition to the necessary circumstantial conditions. These conditions vary, depending on the payment a person may apply for. Payments based on the persons social insurance



contributions include [Jobseeker's Benefit](#), [Illness Benefit](#), [Maternity Benefit](#), [Invalidity Pension](#), [Carer's Benefit](#) and [State Pension \(Contributory\)](#).

- *Means-tested payments:* Means-tested payments are designed for people who do not have enough PRSI contributions to qualify for the equivalent social insurance-based payments. An example would be a person who becomes unemployed and applies for Jobseeker's Benefit but fails to qualify because he or she does not have enough social insurance contributions. He or she can apply for [Jobseeker's Allowance](#) instead, which is the means-tested equivalent payment.
- *Universal payments:* Universal payments are paid regardless of a person's income or social insurance record. They are dependent on the claimant satisfying specific personal circumstances. An example is [Child Benefit](#). A person must simply have a child dependant living with them as defined in the social welfare legislation.

**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

**Please explain:**

Regarding the right to access the internet, Irish citizens are entitled to good quality electronic communications, including basic internet access, under the [Universal Service Directive](#). This Directive was brought into Irish law by the [European Communities \(Electronic Communications Networks and Services\) \(Universal Service and Users' Rights\) Regulations 2011](#). Under the Regulation, there should be at least one internet provider who can provide basic internet service. The Government's [National Broadband Plan](#) will make broadband available nationally over the period 2020 to 2027.



Note: the question of whether the right to freedom of expression can be curtailed in certain circumstances and whether this extends to a denial of access to the internet has been considered by the courts in a variety of situations.<sup>1</sup>

**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 experience of the Irish legislation on the containment of public expenditure shows that it has been preferred to intervene selectively to safeguard certain social rights considered more worthy of protection rather than operating with a system of indiscriminate budgetary constraints.

**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

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<sup>1</sup> See [Case C-360/10 Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA \(SABAM\) v. Netlog NV](#) (ECLI:EU:C:2012:85); [Ahmet Yildirim v. Turkey](#) (App. No 3111/10) (dealing with the wholesale blocking of an online facility); or [Re A \(Capacity: Social Media and Internet Use: Best Interests\) \[2019\] EWCOP 2](#), where the English Court of Protection considered whether a 21-year-old gay man with learning disabilities, who was living in independent, supported living, should be denied access to the internet.



- By case-law
- Other

**Please explain:**

There are certain social rights that call for significant governmental intervention and public expenditure in order to implement the State's constitutional obligations. Certain rights call for considerable direct public expenditure, such as on providing educational services, adequate health care, housing, and social security and social welfare benefits for those in need of them.

The best of example of this is education. As mentioned above, Article 42 of the Irish Constitution provides for "Education". In particular Article 42.4 deals with education by guaranteeing free primary education to all and stating an intention to support private education:

**"... the State shall provide for free primary education** and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation" [emphasis added].

This guarantee complements the State's authority to require that all children be given a certain minimum education. The phrase "the State shall provide for free primary education..." is a constitutional clause that calls for extensive public expenditure on a social service – the provision of whatever facilities communities need so that their children can obtain primary education. See the Education (Welfare) Act 2000, which sets the educational standard for school attendance.

In addition, the right to education in Ireland (as enshrined under the Irish Constitution) has been elaborated on by the Supreme Court in a number of seminal cases, including *Crowley v. Ireland* [1980] I.R. 102; *T.D. v. Minister for Education* [2001] IESC 01, [2001] 4 I.R. 259; and *Sinnott v. Minister for Education* [2001] IESC 63, [2001] 2 I.R. 545.

**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 Minister for Public Expenditure (Department of Public Expenditure and Reform) is responsible for balancing financial resources.

Note: The Irish courts have argued that judicial enforceability of economic-social rights may have cost implications for the Exchequer or interfere with the separation of powers doctrine. This argument was used by the Supreme Court in *T.D. v. Minister for Education* [2001] IESC 01, [2001] 4 I.R. 259 in dismissing an application brought by an individual with special needs, who had sought to establish that the State had failed to ensure his right to education. It was held that the formation of social and economic policy lies strictly within the remit of the elected Government, and it was not for the courts to decide on the scope of the right.

Similarly, in *Sinnott v. Minister for Education* [2001] IESC 63, [2001] 2 I.R. 545, the Supreme Court held that there was no constitutional obligation on the State to provide free primary education to an adult for as long as he or she is able to benefit from that education. Keane C.J., (former Chief Justice) stated that the Supreme Court could not find in favour of Mr Sinnott as this would “involve the judicial arm usurping the function of the Oireachtas and the executive in the proper distribution of the resources available to the State”.

However, as regards any serious and continuing disruption to the economy and the financial system and any serious threat to the stability of certain credit institutions in the State and the financial system generally (see for example, [Credit Institutions \(Stabilisation\) Act 2010](#)), the courts have held

“It follows in the view of the Court that the provisions of the Act must, so far as concerned interference with contractual and property rights of members of the public, , be construed strictly and applied conservatively while at the same time ensuring that the competence given to this Court is discharged within the terms and conditions of the Act so as to ensure that its preservative and safeguarding objectives are achieved.”<sup>2</sup>

**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

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<sup>2</sup> *Aurelius Capital Master v Minister for Finance* [2011] IEHC 267; see also, *Dowling v. Minister for Finance* [2018] IECA 300, [2020] 2 I.R. 273





No

**If yes, please indicate the main measures introduced:**

In response to the covid-19 pandemic, the Irish Government developed a range of policy measures designed to mitigate the immediate economic and social impacts of the pandemic and at the same time provide a foundation for economic recovery. These actions included social welfare measures to protect employment, to ensure people had adequate incomes, and to ensure that people who displayed symptoms of the virus could self-isolate and did not have to go to work (Temporary Wage Subsidy Scheme (“TWSS”), Pandemic Unemployment Payment (“PUP”), Enhanced Illness Benefit (“EIB”)). Other actions supportive of social welfare were taken concerning childcare, health and housing.

**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 special support measures introduced in Ireland to deal with the emergencies of recent years have not been accompanied by special rules that have altered the ordinary division of jurisdiction between ordinary and administrative courts in the areas concerned.

**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

**Please explain:**

The Irish healthcare service is not only focused on the activities directly carried out by the public sector, but also on those carried out by the private sector, which on the basis of an accreditation and authorisation mechanism, as well as special service contracts, are allowed to perform public health functions. For example, in response to the covid-19 pandemic, the Irish government reached an agreement with private hospitals to access their capacity for a period of time to alleviate pressure on the public system. The agreement cost the government over €300 million ([Special Committee on Covid-19 Response](#)) paid to private hospital owners.



Another example is providing housing for migrants/refugees. Currently, the Irish State has more than 700 hotel contracts to house a refugee. Further, several current and former nursing homes were given contracts to provide shelter for refugees. There is also a heavy reliance on the community and voluntary sector to provide support such as coordination of accommodation, teaching English, supporting family placements etc.

**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?**

N/A

**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**

Health Care:

In Ireland, every “ordinarily resident” in Ireland and [certain visitors to Ireland](#) are entitled to a range of public health services either free of charge or at a reduced cost. Anybody can attend a general practitioner (“GP”) (the doctor who provides health care services to patients in his/her surgery or in the person’s home). Generally, patients pay for this service themselves unless they have a Medical Card or GP Visit Card. If someone is living in Ireland and intends to be living here for approximately one year then they are considered to be “ordinarily resident” and can access state-subsidised health services and apply for a medical card. This is “means-tested”, so it is based on income levels. EEA nationals visiting Ireland



temporarily (if they have a European Health Insurance Card) or living here are entitled to access free emergency health services.

Non-EEA nationals visiting Ireland are not entitled to avail of free or subsidised public health services except in emergencies. In general, if they use health services, they must pay the full economic cost of those services. Non-EEA students are required to have private medical insurance that covers the cost of access to public health services.

#### Access to Third Level Education:

Access to education depends on the persons nationality, immigration status in the country, how long they have been in the country and if they have studied at Third Level education before. For more detailed information go to: <https://susi.ie/nationality-criteria/>

#### Access To Social Welfare Means-Tested Payments:

Social welfare payments termed “assistance” payments are primarily designed for people who do not have enough social insurance (“PRSI”) contributions, which are gained through regular employment, to qualify for the equivalent social insurance-based “benefit” payments. Regardless of nationality, in order to be eligible for social assistance payments, the person would need to satisfy the Habitual Residence Condition (“HRC”). For more information go to: [www.welfare.ie](http://www.welfare.ie)

Some of the key payments that the HRC affects are Jobseekers Allowance, Supplementary Welfare Allowance and Child Benefit. Under EU law there are some exceptions for EEA workers (someone who has made social insurance contributions in Ireland):

- EEA workers in Ireland are exempt from satisfying habitual residence for certain assistance payments and Family Benefits and are usually seen as satisfying the HRC;
- Non-EEA nationals, who have previously worked in another EEA State, and are currently employed or self-employed in Ireland, do not have to satisfy the HRC for Family Benefit payments as long as:
  - They are legal residents (hold a current Certificate of Registration – GNIB card)
  - They are lawfully employed based on their immigration status
  - They are subject to Irish PRSI
  - Their dependents currently reside within Ireland OR within another EEA State.



Persons holding EEA worker status in Ireland can be granted Supplementary Welfare Allowance without satisfying the HRC (even if the work is only part-time). HRC is a provision of Social Welfare Law. It is not a criterion for access to social housing, homeless or health services.

### Social Housing Supports & Homeless Services:

There are provisions of EU Law that can confer a right to equal treatment for EEA citizens and their family members with Irish nationals for eligibility for Social Housing Support. Any economically active EEA citizen (or one who retains that status) and their spouse/civil partner and dependent family members have a right to equal treatment under EU Regulation 492/11 and EU Directive 2004/38. Among others with potential rights to equal treatment are the caregivers looking after their child or children who are the children of an EU citizen retaining worker status under EU law, where those children are pursuing their education (including some adult dependent children) in Ireland, under the European Court of Justice Teixeira judgement.

Other EEA citizens and their family members who have a permanent right to reside in Ireland under Directive 2004/38 are also afforded equal treatment and are potentially eligible to access Social Housing Supports.



## 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 order to contextualise the responses of the Supreme Court of Ireland to the below questions, it is necessary to provide some background information in relation to the jurisdiction of the Supreme Court of Ireland. The Supreme Court is the court of final appeal in all matters of law and also the final arbiter of constitutional issues. The Constitution of Ireland provides for the establishment of three “Superior Courts” of Ireland, each with competence in all areas of law, including civil law, criminal law, administrative law and constitutional issues. Pursuant to Article 34.4.1 of the Irish Constitution, the Court of Appeal has appellate jurisdiction from all decisions of the High Court. Article 34.5 of the Irish Constitution provides for an appeal from a decision of the Supreme Court if the Supreme Court is satisfied that matter of “general public importance” or it is “necessary in the interests of justice” that there be an appeal. The Constitution also provides for a direct appeal from the High Court to the Supreme Court in exceptional circumstances.

Administrative proceedings in the Irish courts are based on a procedure of judicial review whereby a party may challenge the validity of an administrative act of a public body. There are no specialised administrative courts in Ireland. The High Court, which considers judicial review proceedings at first instance, the Court of Appeal and the Supreme Court are courts of general jurisdiction.

Generally, the decision to award or restrict a social right fall within the remit of the executive arm of government and, owing to the separation of powers, the judicial protection of social rights results primarily out of an individual application to judicially review the decisions of a public administrative body. Judicial Review is a mechanism by which an application can be made to the High Court to challenge the decision-making processes of administrative bodies and lower 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

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:**

In Ireland, according to [Article 34.3 of the Irish Constitution](#), the High Court has the power to determine all matters and questions of law or fact. This includes questions as to the validity of any law involving administrative acts through which the public administrations or other public entities organise and regulate the provision of social services, having regard to the provisions of the Irish Constitution.

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.):**

In Ireland, owing to the separation of powers, the courts do not interfere with the policies and procedures adopted by public authorities, unless a challenge by way of



judicial review is brought to the High Court with a claim that the policies or procedures adopted are contrary to legislation or the Irish Constitution.

**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:**

In Ireland, the courts are only responsible for the regularity of administrative procedures, and only when a claim is brought under an application for judicial review. In a judicial review, generally the court is not concerned with the merits of the decision but rather with the lawfulness of the decision-making process. This includes reviewing how the decision was made and the fairness of it, as opposed to whether the individual is entitled to the social benefit or not.

**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

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

In Ireland, the court can cancel the original decision to restrict a social right to an individual by granting an order of Certiorari and ask that the public authority re-examine the aggrieved person's application for a social right, but it cannot condemn to a specific performance through the recognition or attribution of the benefit/right required.



Likewise, the court can deem an organisational act or specific acts limiting social rights as unconstitutional but cannot annul such acts.

The court can award damages if it believes that this is a suitable remedy.

**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:**

There are no accelerated or simplified procedures or special procedures in place for the protection of social rights. The process of judicial review applies a consistent procedure for all applications for a review of an administrative decision, depending on the type of review sought.

The two main types of judicial review are:

- Conventional judicial review: Procedure governing conventional judicial review is set out in [Order 84 of the Rules of the Superior Courts](#).
- Statutory judicial review: Some legislation sets out rules about how statutory reviews of decisions made under the legislation should be governed, but none of these apply in the area of social rights. Statutory schemes apply to such areas as asylum, pollution control, planning and the takeover of companies.

**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 Ireland, ADRs are generally available in the field of civil (family) and commercial (consumer protection) law and not in the field of social rights.

In the area of family law, solicitors are required to discuss with their clients the possibility of engaging in mediation as an alternative to litigation. Legislative provision for voluntary mediation has also been made to assist with a range of disputes between employers and employees, landlord and tenant disputes, personal injuries disputes and in the area of social inclusion. Judges sitting in the commercial division of the High Court possess the power to direct parties to consider mediation, and commercial contracts frequently provide that the parties must first attempt to mediate their disputes, prior to issuing court or arbitral proceedings.

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

**Please explain:**

In Ireland, owing to the separation of powers, the excessive discretion of the competent public bodies is a difficulty in giving effective protection of social rights. As explained previously, the decision to award or restrict a social benefit to an individual falls within the competence of the public authority and only the decision-making process can be reviewed by the court.

### PART III

#### PRACTICAL CASES

- 1) **Illustrate a practical case, which has occurred in your legal system, in which the administrative judge has considered an act or measure affecting social rights to be unlawful because it involves an infringement of the 'essential core' of those rights which cannot be restricted for any reasons (maximum 10 lines).**

In *N.H.V v. Minister for Justice and Equality and Ors* [2017] IESC 35, [2018] 1 I.R. 246, the Supreme Court considered that section 9(4) of the Refugee Act 1996 which restricted the right to employment for asylum seekers in the period before the final determination of his asylum claim was contrary to the right to work under the Irish Constitution.

The Supreme Court held that the nature of the right to work in the Irish Constitution is not a right to employment, but a freedom to seek work, which includes the negative obligation not to prevent the person from seeking or obtaining employment, at least without substantial justification. Whilst linked to the economy and society, this freedom is part of the human personality.

- 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 *N.H.V v. Minister for Justice and Equality and Ors* [2017] IESC 35, [2018] 1 I.R. 246, the Supreme Court held that "the obligation to hold persons equal before the law 'as human persons' means that non-citizens may rely on the constitutional rights, where those rights and questions are ones which relate to their status as human persons, but that differentiation may legitimately be made under Article 40.1 having regard to the differences between citizens and non-citizens, if such differentiation is justified by that difference in status."



- 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).**

In *N.H.V v. Minister for Justice and Equality and Ors* [2017] IESC 35, [2018] 1 I.R. 246, despite the point raised been a moot point as the appellant had, prior to the case being heard, received refugee status and could therefore seek employment, the Supreme Court decided to hear the case on appeal from the Court of Appeal as this was in substance a constitutional challenge raising important matters of law that would need to be determined at some stage in addressing the exact nature of the right to work.

