

SERVICES TO CITIZENS AND SOCIAL RIGHTS

INTRODUCTION

This seminar aims to examine in depth the approach of the Supreme Courts of several European states to so-called 'social rights'. By this expression, we identify that category of rights whose implementation requires the legislator to take action, introducing and regulating benefits in favour of the citizens who are entitled to them; at the same time, those citizens are identified as having an enforceable claim against the State or more generally against the public authorities with regard to those benefits. These are therefore "claims to benefits", which for this reason differ from the more traditional (and consolidated in Western systems) rights "of freedom".

Precisely because of this peculiarity, it cannot be taken for granted that the rights in question are always recognised and protected as fundamental rights. Moreover, they traditionally pertain to sectors (the protection of health, work, education, the right to housing, etc.) that do not fall within the direct competence of the European Union, and in which there is therefore no need for harmonisation between the laws of the various countries, in which therefore it is possible that the recognition and protection of these rights takes place in very different forms.

Another peculiarity of social rights is that their realisation entails a burden on public finances. This is why in recent years, due to both the structural economic crises and those linked to contingent situations (such as, for example, the Covid-19 pandemic), the jurisprudence of the various States has often had to address the issue of the relationship between regulatory interventions that have become necessary to contain public spending and the need to ensure the effectiveness of these rights. In particular, especially in the countries hardest hit by the crises, the question has arisen as to whether it is possible to identify a limit to the possible incision of social rights for reasons of financial balance, and thus a 'minimum essential core' of services pertaining to these rights that must in any case be guaranteed to citizens.

In developing the topics of the seminar, it was therefore considered necessary to verify not only the breadth and type of protection techniques that the Courts of the various States (and primarily the administrative ones) have at their disposal to ensure the effectiveness of social rights, but also the way in which these are recognised and guaranteed by the various legal systems and jurisprudence. If it were possible to conclude that the 'essential core' of social benefits to be ensured in each case is transversally homogeneous despite the multiformity of normative and jurisprudential options in the various countries, social rights could be placed with greater certainty among the fundamental rights that contribute to defining a modern notion of European citizenship even beyond what is strictly imposed by Union law.

To pursue the aforementioned objective, it was also decided to assign particular importance to the analysis of case law, reserving to it a special part of the questionnaire with a view to carrying out the last part of the seminar in the form of a workshop, and therefore through a richer and freer comparison between colleagues of the various Supreme Courts on the specific cases in which administrative judges were confronted with social rights and their protection.



PART I

SOCIAL RIGHTS: THE GUARANTEES OFFERED BY NATIONAL LAW AND THEIR IMPLEMENTATION IN TIME OF 'CRISIS'

1) In your country, which regulatory sources discipline the main social rights?

- Constitution
- Ordinary law
- Other

(tick more than one box if necessary)

Please explain

The main social rights in the Latvian legal system are regulated by the Constitution (e.g. the right to social security in old age, for work disability, for unemployment, protection of human health, right to education, right to employment). In turn, more specific and detailed social rights are regulated by law.

2) What social benefits are provided by public administrations according to the provisions of your legal system?

- Subsidies and aid to indigent and needy people
- Facilities for the pursuit of employment
- Health benefits
- Social Housing
- Assistance to disabled and disadvantaged people
- Economic aid and facilities for families and birth rate

(tick more than one box if necessary)

Please explain

The benefits system in Latvia provides various types of support to individuals and families in need. Here are some of the benefits available in Latvia.

State social insurance benefits guarantee a certain substitute of income when the person has lost the earned income - in case of unemployment, sickness, maternity as well as job injury or an occupational disease, in the case of the loss of a provider and in other cases. Amount of social insurance benefits is individual and depends on former social contributions made by beneficiary.

Also are provided state social benefits that includes a wide range of benefits for families and individuals, including childcare benefits, housing benefits, guaranteed minimum income benefits and social assistance for low-income individuals or families.



The amount of benefits provided varies depending on the individual's circumstances and the type of benefit being received. In general, the benefits system in Latvia aims to provide support to those who need it most, and to ensure that everyone has access to the basic necessities such as healthcare, housing, and education.

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

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 Preamble of the Latvian Constitution enshrines the principle of Latvia as a socially responsible state, which seeks to implement social justice as widely as possible in legislation, public administration and justice. The legislator must respect the Constitution and its values, which guide and regulate socio-economic processes. The legislator must create a legal framework that is aimed at the sustainable development of the state.

Of course, the state's ability to establish an effective and functioning social security system depends on the financial capacity of the state and the overall economic situation. The principle of socially responsible state does not prevent the state from reviewing the scope of social security, i.e. the state may limit the payment of benefits if it is outweighed by the interests of society and the right of other people to financial support provided by the state. However, the state must in all circumstances be able to guarantee at least the minimum of person's social rights, which cannot be derogated from by reference to a lack of financial resources.

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

In the case-law of the Constitutional Court, the principle of socially responsible state is assessed in the context of human dignity, emphasising that the legislator has a duty to establish a social security system aimed at protecting human dignity as the highest value of a democratic state, equalising social inequality and developing the sustainability of the state.

As already indicated in the answer to the previous question, the Constitutional Court recognised that the State in all circumstances must be able to ensure a minimum amount of person's social rights. Meanwhile, the Constitutional Court concluded that minimum social payments to persons should not be determined arbitrarily ("how much the state can afford"), but they should be determined with the aim of guaranteeing the possibility of satisfying basic needs in an amount that complies with the principle of human dignity.

It follows from the above that, the Latvian legal system does not define „essential nucleus” of any particular social rights, however regardless of the budgetary constraints, the State must in any case ensure a minimum of social rights in accordance with the principle of human dignity.

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:

As aforementioned, the legislator is not prevented from reviewing the scope of social security in the light of constitutional values if it is outweighed by the public interest and the right of other people to financial support provided by the State. However, regardless of the possibilities of the state budget, the state must in any case ensure a minimum of social rights in accordance with the principle of human dignity.



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:

Yes, Latvia has implemented several social benefits in response to the COVID-19 pandemic and the energy crisis in 2022.

In response to the COVID-19 pandemic, Latvia has implemented various measures to support citizens and businesses, including:

- Wage subsidies to companies that have experienced a decrease in revenue due to the pandemic. This has helped companies retain employees and avoid layoffs.
- Unemployment benefits – the amount and duration of unemployment benefits to support those who have lost their jobs due to the pandemic has been increased.
- Support for self-employed individuals who have experienced a decrease in revenue due to the pandemic.
- Rent subsidies to households that have experienced a decrease in income due to the pandemic.
- Support for families with children, including one-time payments and increased child benefits.

In response to the energy crisis in 2022, Latvia has implemented:

- Energy subsidies to households that have experienced an increase in energy prices due to the crisis.
- Support for businesses that have been affected by the energy crisis, including tax breaks and financial assistance.
- Additional social benefits to vulnerable groups, including low-income households and the elderly, to help them cope with the effects of the crisis.

9) If the previous question is answered positively, please specify whether the measures introduced have also provided for derogations from the ordinary division of competencies among the administrative judge and the other judges

The measures introduced do not derogate from the ordinary division of competencies among the administrative judge and the other judges.

10) Which subjects can be involved in the provision of social benefits?

- Public subjects
 Private subjects included in the public system
 Private subjects on a voluntary basis
 Other

(tick more than one box if necessary)



Please explain

The state is responsible for ensuring the social protection system in Latvia, and therefore public entities are responsible in providing social benefits. Public entities that are involved in providing social benefits in Latvia include:

- The Ministry of Welfare is responsible for developing and implementing social policy in Latvia, and provides support for families, children, and people with disabilities.
- The State Social Insurance Agency is responsible for the administration of various social insurance programs, including state pensions, social security benefits, and disability benefits.
- Municipalities in Latvia are responsible for providing social assistance to their residents, including financial assistance, housing support, and other forms of social aid.

In some cases, private entities are also indirectly involved in the provision of social services, where the state or municipality provides special discounts or conditions to certain groups of people for services provided by private entities, such as discounts on public transport operated by a semi-private company.

Private entities also can be involved in the provision of social services on a voluntary basis. For example, non-governmental organizations in Latvia often provide social assistance to vulnerable groups, including the elderly, people with disabilities, and children.

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

- Yes
 Not

12) If the previous question is answered positively, do non-state territorial levels of government have the power to admit, exclude or condition access to social benefits?

- Yes
 No
 Yes, but only in some areas.

Please explain

The state has the primary responsibility for ensuring social security in Latvia, however non-state territorial levels of government - local governments - have administrative and regulatory powers to implement and regulate social benefits at the local level.

Under Latvian law, local governments are responsible for organizing and implementing a wide range of social services, including social assistance, social care, and social rehabilitation, as well as the provision of housing and other forms of support for vulnerable groups.

Local governments also have the authority to adopt local regulations and guidelines to govern the provision of social benefits within their territories, subject to the overall framework set by national legislation. This includes setting eligibility criteria for social benefits, determining the level and duration of assistance, and monitoring compliance with relevant laws and regulations.



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

Access to social assistance and healthcare depends on a person's status in Latvia. According to Latvian laws persons who have the right to state social allowances are:

- Latvian citizens,
- foreigners to whom a personal number has been allocated, except persons with temporary residence permits.

The permanent residence permit grants the same scope of social assistance that the state and local governments provide for citizens. Foreigners with temporary residence permits have limited access to social assistance and have no access to the state-guaranteed social services, as well as legal and social aid, for example, social assistance and rehabilitation, financial allowances for low-income persons.

Third-country nationals who legally work in Latvia may receive benefits related to social insurance contributions, however cannot receive other benefits that are paid to Latvian citizens regardless of their social insurance contributions. 6 types of benefits are available to a person legally employed in Latvia:

- sickness benefits
- maternity and paternity benefits
- parental allowance
- burial allowance
- benefits for persons with disabilities
- remuneration for the treatment and rehabilitation expenditures in connection with accidents at work or occupational disease

The social benefits provided by the local government are determined by each municipal council, so the amount and procedure for receiving social assistance may differ in different local governments. In addition, local governments provide social services on the basis of assessment of the individual needs and resources of the person carried out by social work experts.



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

Disputes concerning social rights in Latvia are generally heard by administrative courts that shall exercise control over an activity of the executive power which relates to the lawfulness and validity of a specific public law relation (an administrative act or the actual actions of an institution), and also establishes the public legal obligations or rights of a person, including cases related to social benefits, social assistance, pensions, and other social rights.

In certain cases, the Constitutional Court of the Republic of Latvia, which has jurisdiction to examine cases concerning the conformity of laws and other normative acts with the Constitution, also examines questions relating to social rights enshrined in the Constitution.

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.)

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 court have jurisdiction to review the lawfulness of administrative act which is issued by public administrations or other public entities to organise and regulate the provision of social services with regard to an individually indicated person(s).

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

Yes, the administrative court in Latvia can verify whether an individual is entitled to receive a social benefit that has been unjustly denied. In the course of its review, the administrative court can examine whether the individual meets the eligibility criteria for the benefit in question and whether the decision to deny the benefit was based on an error of law or a procedural error.

If the administrative court determines that the individual was unjustly denied the benefit, it shall assign the authority to issue a relevant decision. In the judgment the court shall specify the content of the decision and the term for its issue if the authority is not anymore required to carry out considerations of usefulness. In this case the court judgment shall replace the decision until it is issued by the authority. The authority is not anymore required to carry out considerations of usefulness if it is:

- a mandatory decision (if an applicable legal provision prescribes that a decision of specific content is to be issued);
- a decision of free content (if an applicable legal provision prescribes that a decision is to be issued but does not determine specific content thereof) but the court has already carried out all the necessary considerations and has come to the conclusion that only a decision of one specific content may be correct.

If the authority is still required to carry out considerations of usefulness, the court shall specify in the judgment that the authority shall issue the decision within a specific term. In the issuing of the decision, the facts determined in the judgment and the legal assessment thereof are mandatory for the authority.

A person also has the right to claim compensation if losses or damage has been caused by the unjust denial.



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

Court cases concerning the protection of social rights are subject to general remedies. These remedies may include:

- If a court finds an application for setting aside or invalidation of an administrative act as founded, it shall set aside the relevant administrative act in full or in part or declare it invalid. Where necessary, a court shall assign an institution to issue a new administrative act that replaces the administrative act which has been set aside or declared invalid.
- If a court finds an application for the issue of an administrative act to be founded, it shall assign the institution to issue a relevant administrative act (more on this in the answer to question 5).
- If a court finds an application requesting an actual action from an institution to be founded, it shall render a judgment on the obligation of an institution to carry out specific actions and specify the term for the carrying out thereof.
- If a court acknowledges the right of the applicant to compensation, it shall direct in the judgment that compensation be paid to the applicant and shall specify the amount thereof.
- If the court finds an application for a finding of a procedural violation committed in the procedure for issuing an administrative act to be justified, it shall give a judgment in which it is recognised that the relevant procedural violation or violations that have caused a significant violation of a person's specific rights or legal interests have been committed in the process of issuing the administrative act.

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

Administrative courts do not have any simplified or other special procedures for examining cases of social rights. Such cases are normally examined in accordance with the general procedure.



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)

Alternative dispute resolution mechanisms such as mediation and arbitration generally exist in the Latvian legal system. However, they are mainly used in civil and commercial disputes and are not typical of administrative proceedings, including social law disputes.

The Administrative Procedure Law provides for the possibility of concluding a settlement between the parties to a dispute. Such settlement is possible during the administrative proceedings in an institution – in examining a submission on the contestation of an administrative act, an institution shall, prior to taking a decision, consider a possibility to enter into a settlement (administrative contract) (*Section 80.¹*). In some cases, a judge may also initiate a settlement – if a court (judge) believes that a settlement is possible in a case, the court (judge) may explain the possibilities of entering into a settlement (administrative contract) to participants to the proceedings, and also make recommendations for the conditions of a settlement (*Section 107.¹*).

Individuals also may apply with a complaint or request to the Ombudsman who acts to protect the rights and legal interests of a person in situations when State and municipal authorities have breached the human rights defined by the Constitution and international human rights' documents, also in the field of social rights. The Ombudsman investigates complaints and reports on human rights violations and maladministration by state institutions and make recommendations for corrective action. The Ombudsman can also bring legal action in court if necessary. The Ombudsman also reveals imperfections in regulations and application thereof connected with adherence to human rights and works to eliminate such imperfections.

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



Latvia is rather not facing problems such as excessive discretion of the competent public bodies or unwillingness to comply with judicial decisions. There is also no indication of low awareness of social rights in the community.

One of the factors affecting the effectiveness of social rights in Latvia is lack of available economic resources. The state's ability to establish an effective and functioning social security system depends on the financial capacity of the state and the overall economic situation. However, as it was already mentioned, the state must in all circumstances be able to guarantee a person's social rights to a minimum, which cannot be derogated from by reference to a lack of financial resources.

In some cases, there are also problems with regulatory gaps that may affect the quality or effectiveness of the provision of social rights. If regulation is not systemic in a matter, this leads to fragmented or incomprehensible regulation that can affect the effective use of it.

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).

Although in a slightly different perspective, some recent administrative court cases assessing the issue of the minimum amount of the state pension are noteworthy. The persons argued that the minimum pension provided for by law did not cover even their basic needs (the amount of the statutory minimum state pension was then less than €100 a month).

The Supreme Administrative Court sent an application to the Constitutional Court on conformity of the relevant norms with article 109 of the Constitution, which provides that everyone has the right to social security in old age.

The Constitutional Court, recognising the norm as unconstitutional, concluded that a person who receives a state pension in a minimum amount must be able to provide everything necessary to guarantee basic survival, as well as be able to provide himself with the status of a full-fledged member of society. The minimum amount of the state pension laid down in the norms does not ensure that every recipient of a minimum pension can live a life which is compatible with human dignity.

Taking into account the judgment of the Constitutional Court, the Administrative Court noted that the amount of the state pension should be assessed in conjunction with other measures of the social security system available to the applicant. If, considered together, they do not ensure the satisfaction of the person's basic needs, the Administrative Court must decide on the amount of the minimum state pension to be paid to the person.

- 2) Illustrate a practical case, which occurred in your legal system, in which a benefit or service related to social rights, recognised by law in favour of the citizens of your country, has been considered by



the court extensible also to foreigners (both EU and extra EU citizens), or in which the court has considered the condition of “territorial anchorage” required for foreigners unreasonable or not proportionate (max 10 lines).

The applicant, a Gambian national, was refused family state allowance in Latvia as a person who, after reaching the age of majority, continues education until the age of 20. According to the law, such an allowance can be granted only to persons permanently residing in the territory of Latvia, whereas the applicant has only a temporary residence permit in Latvia.

The Supreme Administrative Court found that the applicant had illegally entered Latvia when he was a minor. As the applicant had no parents, he had been established guardianship in Latvia and had started his school studies. On reaching the age of majority, the applicant was not deported but was issued with a temporary residence permit on the basis of his studies in a Latvian educational institution.

The Supreme Administrative Court concluded that the circumstances in which the applicant had entered and stayed in Latvia were atypical. The legislator had not taken such possible circumstances into account when adopting the legislation. The state has so far supported the applicant's stay in Latvia, and the applicant continues his education in Latvia in a legal manner. It is therefore only fair that the state, when deciding whether to grant the applicant a family state allowance, should act in the same way as it does in respect of other permanently resident children who continue their education after reaching the age of majority. Denying the applicant's right to a family state allowance would not ensure social justice and is contrary to the principle of a socially responsible state.

- 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 assessing whether an institution has unjustifiably refused or wrongly imposed a social payment, benefit or service on a person, the administrative court is competent to examine whether, in a particular case, the preconditions for granting the benefit claimed by the person can be established. If such conditions are established, the court shall order the institution to take the appropriate administrative act.

For example, in a certain case, the administrative court found that the period of work from 1 March 2000 to 31 March 2000 had been wrongly excluded from the calculation of the applicant's state pension. Thus, the court ordered the institution to issue an administrative act in which the state pension would be recalculated, including that particular period.

In another case, the court found that the applicant had been wrongly determined with a disability group 3 with loss of ability to work in the amount of 25-59%, and after assessing all the circumstances, the court concluded that the applicant should be determined with a disability group 2 with loss of ability to work in the amount of 60%-79%. The Court thus ordered the institution to issue the relevant administrative act.

