

## 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?

- x Constitution
- x Ordinary law
- Other

(tick more than one box if necessary)

Please explain

The Constitution of the Republic of Lithuania enshrines the fundamental social human rights and establishes the specific provisions underlying the whole social security system in Lithuania, i.e. the state is obligated to create and maintain such a social security system that would ensure the security of a person in the cases laid down in the Constitution. The constitutional provisions at issue include: (i) Article 39 of the Constitution stipulates that the State shall take care of families that raise and bring up children at home, and shall render them support according to the procedure established by law. The law shall provide to working mothers a paid leave before and after childbirth as well as favourable working conditions and other concessions; (ii) According to Article 41 of the Constitution education shall be compulsory for persons under the age of 16. Education at state and municipal schools of general education, vocational schools, and schools of further education shall be free of charge; (iii) Article 48 of the Constitution states that each human being may freely choose a job or business, has the right to have proper, safe and healthy conditions at work and shall have the right to social security in the event of unemployment; (iv) Article 49 of the Constitution reads that each working human being has the right to rest and leisure as well as to an annual paid leave; (v) Article 52 of the Constitution secures the right of citizens to receive old-age and disability pensions as well as social assistance in the event of unemployment, sickness, widowhood, loss of the breadwinner and in other cases provided for by laws; (vi) Article 53 of the Constitution establishes the obligation of the State to take care of people's health and guarantees medical aid and services for the human being in the event of sickness; (vii) Article 146 of the Constitution reads that the State shall take care of and provide for the servicemen who lost their health during the military service as well as for the families of servicemen who lost their lives or died during the military service. The State shall also provide for citizens who lost their health while defending the State as well as for the families of the citizens who lost their lives or died in defence of the State.

Procedural aspects of the implementation of the rights enshrined in the Constitution, as well as specific rights and services, are regulated by ordinary law.



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

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

(tick more than one box if necessary)

Please explain

The Lithuanian social security system embraces a large number of guarantees, ensured through the schemes of social insurance, social assistance and additional state payments.

Social insurance includes all measures, taken by the state or private institutions in order to facilitate the burden of certain risk factors or needs, falling on domestic households and persons, if this protection has not been determined by inter-personal or personal transactions. Risk factors or needs that may be subject to social security include being sick and health care, disability, old age, widowhood, family and children, unemployment; housing and other unattributed social seclusion.

Social assistance is part of the social security system ensuring that each person (family) who does not have sufficient funds for subsistence and cannot obtain such funds on their own or from other sources receives the necessary support, as well as that, in the cases provided for by law, support is available to persons (families) who suffer additional expenses due to family circumstances. For this purpose, families and children are paid social benefits and are provided with social guarantees as well as reliefs. The social assistance system in Lithuania may be characterised as consisting of two principal parts: (i) benefits paid irrespective of a person's (family's) property and income, with the larger share consisting of benefits to children; (ii) support provided for low-income persons (families), as, for example, social benefits and compensations. The Lithuanian social assistance consists of cash social assistance (cash social assistance for poor residents (social benefit, compensations for heating costs or drinking and hot water), child benefit, social support for pupils, etc.) and social services, i.e. support in various non-monetary forms and care payments in order to restore person's ability to take care of oneself and integrate into the society (at-home care, catering, hot food delivery, provision of essential items, care home for the elderly and the disabled, etc.).

Under the Law on Support for the Acquisition or Rental of Housing of the Republic of Lithuania, support for social housing rental shall be provided, inter alia, pursuant to the principle of social justice. Persons and families receive support for social housing rental on the basis of an assessment of their property, income received and other factors relevant to the social situation of the person and the family. Support for housing acquisition shall be provided by: 1) granting subsidies to recipients of housing loans partially reimbursed by the state to cover part of the housing loan; 2) reimbursing part of housing leasing. Support for housing rental shall be provided by: 1) letting social housing; 2) reimbursing part of housing rental.



Under the provisions of the Law on Support for the Acquisition or Rental of Housing of the Republic of Lithuania, adopted on 7th May 2020, municipalities must ensure that the waiting period for social housing shall not exceed 5 years from 1st January 2024, and 3 years from 1st January 2026. For persons and families who are not granted social housing within the set period of time, municipalities will have to ensure from their budget funds a compensation for actual rent of a dwelling rented from natural or legal persons (except municipalities' property). The compensation will be paid for up to 14 square meters of useful floor area per person. The family will not receive rent compensation in case they have expressed specific requirements when applying for social housing, which may take some time; for example, the family is applying for housing in a specific location of the municipality or on a specific floor of a house.

In addition, it should be noted that in Lithuania health care services are provided free of charge for all individuals who pay compulsory health insurance contributions themselves, or are covered on their behalf by the State, enterprises, institutions, organisations, etc.

Lithuanian Employment Service provides labour market services that are defined in Law on Employment of the Republic of Lithuania and imply active labour market policy measures and employment promotion programs established by this law.

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?

- x 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

The Law on Drinking Water of the Republic of Lithuania establishes the right of individuals to consume healthy and clean drinking water and get information about its safety and quality. According to the law, municipalities must organise the supply of drinking water and removal of wastewater. The public supply of drinkable water must ensure a continuous supply of that water.

The Law on Ambient Air Protection establish the rights of persons to clean air, the duties to protect ambient air against pollution relating to human activities and reduce the damage caused by it to human health and the environment; establish the measures restricting pollution of ambient air and minimizing its adverse effects on human health and the environment; regulate public relations in the fields of ambient air protection



and quality management; lays down priorities on the basis of which the system for ambient air protection should be built.

4) Can budgetary constraints and measures of containment of public expenditure limit the effectiveness of social rights?

- Yes.
- No.
- x Yes, but only in some areas.

Please explain

The case-law of the Constitutional Court interprets civil and social rights as indivisible, equal in importance and safeguarded by the Constitution. Social rights are different from other rights, as their implementation is highly dependent on the economic potential of the state, although national financial resources are also necessary for the exercise of other rights. Social rights may be exercised to a certain degree; interference with these, as well as other rights, is based on the principles of proportionality, the balance of rights and the possibilities of society to guarantee these rights to individuals.

When an economic situation shows the indications of recession, some social guarantees have to be revised, their regulation has to be corrected or measures have to be taken to reduce the granted social benefits. The economic downturn in 2008 compelled the legislator to deal with important issues in the area of social security.

After 2009, when austerity measures were first applied, the Constitutional Court was extensively and consistently developing its constitutional doctrine, which had been started to be formulated as early as in 2002–2007, concerning the austerity measures applied by the state amid the times of crises.

The Constitutional Court recognised, in principle, that the state was in the position (was under necessity) to take measures to contain the crisis under the existing circumstances, i.e. the critical economic and financial situation in the country, inter alia, to reduce social benefits and work remuneration. On the other hand, in the proceedings concerning remuneration cuts in the public sector, the Constitutional Court also invoked such principles of the constitutional doctrine as the temporary application of austerity measures, the principle of proportionality, the principles of social solidarity and non-discrimination, as well as the principle of the discretion of the legislator. The underlying position of the Constitutional Court is that all the aboveresferred principles should be applied in an integrated manner; none of them may override another principle or deny the person access to any of the rights protected under the Constitution.

In the context of pensions cut, the Constitutional Court has treated a pension as the right to property and has followed the view that pensions, like any other social benefits, may be reduced only when there is an extraordinary situation in the state such as, for example, an economic crisis. When assessing the compliance of the Provisional Law on Recalculation and Payment of Social Payments (2009) with the Constitution, the Constitutional Court expressed a position that, in an extreme situation, when an economic downturn makes it impossible to accumulate the amount of the funds necessary to pay old-age pensions, the legislator must,



while reducing old-age pensions, provide for a mechanism of just compensation for the incurred losses to the persons to whom such pensions were awarded and paid, whereby, after the said extreme situation recedes, the state would be obliged to compensate these persons for the incurred losses in a fair manner and within a reasonable time.

The Constitutional Court in the rulings of 6 February 2012 has noted that the constitutional imperatives of a state under the rule of law, justice, proportionality, equality of rights, as well as social solidarity *inter alia* mean that the burden of the economic and financial crisis should be evenly and proportionately shared among the entire society. The Constitutional Court has also noted that the social orientation of the state implies the discretion of the legislator, in an extremely difficult economic and financial situation in the state, leading to the necessity to reduce social payments temporarily, to assess the resources of the state and society, material and financial possibilities and other significant circumstances and establish the exceptions applicable to specific groups of socially most sensitive persons who need special social assistance, i.e. to establish that for these groups of persons social payments are not reduced or are reduced to a smaller extent in order to ensure decent living conditions; however, this should be done in line with the Constitution and the constitutional principle of the equal rights of persons.

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?

- x 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?

- x At the constitutional level
- By ordinary law
- By regulatory rules
- x By case-law
- Other

(tick more than one box if necessary)

Please explain

From the jurisprudence of the Constitutional Court, we can identify certain elements of the '*essential nucleus*' of social rights, e.g. securing minimal socially acceptable needs, the living conditions compatible with human dignity. Under the Constitution, it is not allowed to establish any such legal regulation whereby the pension becomes reduced to an amount, where the person receiving the pension would not be secured the minimal socially acceptable needs and the living conditions compatible with human dignity; the pension which secures



only minimal socially acceptable needs and the living conditions compatible with human dignity to the person who receives the pension, may not be reduced at all (Constitutional Court decision of 20 April 2010).

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:

When the legislator has to deal with important issues in the field of social security in the light of the country's economic situation, the legislator must obey the provisions of the Constitution of the Republic of Lithuania, the content of which is, where necessary, interpreted by the Constitutional Court, when it is deciding on the relevant disputes concerning the constitutionality of the adopted legal acts (please also see the answer to question 4).

If the limitations derive from specific acts or measures of particular state or municipal institution, the competent court will decide on the individual case.

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:

To alleviate the impact of the Covid-19 crisis the Government has been put in place several measures in the social security and business sector, e.g. allowances to social enterprises and self-employed individuals; the social protection programme for art creators; extension of the deferral period for payments of residential loans for those who have lost their jobs; emergency tax loans, with deferred taxes or paying them by instalments under an agreed schedule, with no interest applied; the suspension of the recovery of tax arrears on the basis of reasonableness criteria; the possibility to defer the payment of the personal income tax; reallocation of the EU investment funds for the areas of health, employment and business.

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 Lithuania to deal with the Covid-19 crisis 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?

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

(tick more than one box if necessary)

Please explain

The organisation and governance of the health care system in Lithuania are typical of many European countries. The Ministry of Health (MoH) and the National Health Insurance Fund (NHIF) are the main central institutions, with local administrations playing an important role in service delivery. The MoH supported by a handful of specialised agencies formulates health policy and regulations. Insurance coverage is provided to the population by the NHIF. In order to obtain coverage, the active population must contribute to the NHIF. The economically inactive, including children and students, pensioners and the unemployed are automatically covered. The NHIF purchases all personal health services, and contracts with public and private providers on equal terms. The municipalities of Lithuania own a large share of the primary care centres, particularly the polyclinics, and small-to-medium sized hospitals. They are also responsible delivering public health activities. Service delivery continues to be dominated by a large and mostly public hospitals sector but outpatient service delivery is increasingly mixed. Private providers play an increasing role in the rapidly-developing day care and day surgery segment as well as in diagnostic and interventional imaging services. Primary care is provided in either municipality-owned facilities or typically smaller private practices.

According to the Law on Social Services, the management, granting and providing social services shall be based on co-operation and mutual assistance between a person, family, community, the organisations defending the interests and rights of social groups of people, social services establishments, municipal and state institutions. Social services can be provided by public or private providers. Persons have free choice to choose services provider. According to this Law, local municipalities ensure provision of social services to residents of its territory by planning and organising social services and controls the quality of social services of common interest and social attendance.

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

- x 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
- x Yes, but only in some areas.

Please explain

According to Article 120 of the Constitution of the Republic of Lithuania municipalities shall act freely and independently within their competence defined by the Constitution and laws. According to the Law on Local Self-Government in the following areas relating to social rights the administrative and regulatory powers are assigned to the municipalities: ensuring of learning according to the programmes of compulsory education of children under 16 years of age who live on the territory of a municipality; organisation and coordination of the provision of educational assistance to a pupil, teacher, family, school, the implementation of minimal child care arrangements; organization of pre-school education, non-formal education of children and adults, organisation of occupation of children and youth; participation in the protection of the rights of the child, ensuring of the organisation of preventive assistance for the child and the family, coordination of services provided by social, educational, healthcare establishments as well as by other establishments; planning and provision of social services, founding, maintaining of social services establishments and cooperation with non-governmental organizations; calculation and payment of social benefits and compensations, except the social allowance and compensations set out in the Law of the Republic of Lithuania on Cash Social Assistance to Poor Residents; provision of conditions for social integration of the disabled residing within the territory of a municipality; ensuring of provision of social care to individuals with a severe disability; setting-up of a social housing stock and its repairs, social housing rent; participation in solving issues relating to employment of residents, acquiring of qualification and re-qualifying, organisation of public and seasonal works; primary personal and public health care (founding, reorganization, liquidation and maintaining of establishments); organization of the secondary health care in the cases and according to the procedure laid down by law; organization of supply of heat and drinking water, and wastewater treatment.

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.
- x Yes in some areas

Please explain

Article 29 of the Constitution stipulates that all people shall be equal before the law, the court, and other State institutions and officers. A person may not have his rights restricted in any way, or be granted any



privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions.

In many cases condition for receiving benefits from social rights is permanent or temporary resident status in Lithuania.

All foreigners who legally reside in the Republic of Lithuania are entitled to receive emergency medical assistance. All citizens and foreigners of the Republic of Lithuania permanently residing in Lithuania, as well as persons who are legally employed and temporarily residing in Lithuania must pay monthly health insurance contributions, and in case of an insured event have the right to receive personal health care services paid for from the budget of the fund. The individuals not covered with the compulsory health insurance (CHI) are required to pay for health care services themselves.

The groups of the individuals covered by CHI in Lithuania: citizens of the Republic of Lithuania and foreigners permanently residing in the Republic of Lithuania; foreigners holding a temporary residence permit in the Republic of Lithuania (except for persons to whom the Law on Health Insurance of the Republic of Lithuania must apply in accordance with the regulations of the European Union social security systems), who work in the Republic of Lithuania or have worked in the Republic for at least 6 months and are registered in Lithuania; persons temporarily residing in the Republic of Lithuania, who receive any type of pension in accordance with international agreements of the Republic of Lithuania; unaccompanied minor foreigners; foreigners who have been granted subsidiary protection in the Republic of Lithuania; persons to whom, in accordance with the regulations of the European Union for the coordination of social security systems, the Law on Health Insurance of the Republic of Lithuania must be applied; displaced persons. For residents who belong to socially sensitive groups, these contributions are paid by the state (e. g. displaced persons, unaccompanied minor foreigners, foreigners who have been granted subsidiary protection in the Republic of Lithuania (except for employed persons who are obliged to pay CHI contributions)).

All workers in the Republic of Lithuania, i. e. Lithuanian nationals and non-nationals alike are insured under state social insurance. In the Republic of Lithuania these rights are guaranteed equally to all workers covered by state social insurance in the Republic of Lithuania.

In accordance with the Law on State Social Insurance Pensions, third-country nationals who have come to work in a position that requires high professional qualifications, who have arrived on other grounds, but have a residence permit and are allowed to work, as well as persons who are insured under the compulsory social security scheme, have equal rights to receive the state social security pensions.

The Law of the Republic of Lithuania on Child Benefits stipulates that the system of child benefits covers all persons who permanently reside in the Republic of Lithuania, also foreigners granted asylum or temporary protection in the Republic of Lithuania.

In accordance with the Law on Education, all foreigners who legally reside in the country and hold a temporary or permanent residence permit have a right to study and to acquire education and qualification. The state guarantees elementary, basic, and secondary education, as well as access to higher education or vocational education programs leading to the first qualification.

In accordance with the Law on Social Services, all foreigners who hold temporary or permanent residence permit have the right to social services. However, monetary social support (social benefits (unemployment benefit, support for a pregnant woman, who is not entitled to maternity allowance (under the Law on Sickness and Maternity Social Security), supplementary compensation of the costs of permanent upkeep (assistance) or permanent care, the occupational disability rehabilitation allowance, the single payment for settling, monetary social assistance, social assistance pension); compensation of the costs of heating,





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drinking water and hot water costs) is only available to foreigners who have a permanent residence permit and to foreigners who have been granted asylum or temporary protection in the Republic of Lithuania.



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## PART II

### JUDICIAL PROTECTION OF SOCIAL RIGHTS

1) In your country, which court has jurisdiction on disputes concerning social rights?

- x Administrative Judge
- x Civil Judge
- Other

Please explain

As a general rule, the administrative court usually has jurisdiction on all cases of disputes concerning administrative measures affecting social rights. However, it is important to identify the parties to the dispute and the nature of the dispute itself. For example, if the dispute, by its nature, is primarily related to the (im)proper performance of a public service (but not its administration), it shall be considered a civil (non-administrative) legal relationship, which must be examined in a court of general jurisdiction (civil court).

2) Do disputes concerning social rights in the following areas fall within the jurisdiction of the administrative court of your country?

- x Social security
- x Education
- x Health
- x Social assistance
- x Protection of motherhood
- x 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.)

In some of the above-mentioned areas (education, health, etc.) the assignability of disputes to administrative courts or courts of general jurisdiction (civil courts) depends on the nature of the dispute itself.

Relations related to the provision of health care are regulated not only by special public legal acts, but also by civil law. Therefore, in each specific case, it is necessary to determine whether the dispute falls within the competence of the administrative courts. As a rule, disputes related to the provision of health care services (including compensation for damage caused to the patient by inappropriate provision of health care services) are heard in a court of general jurisdiction.

As it concerns other areas, i.e., education, it is important to identify the parties to the dispute and the nature of the dispute itself. For example, if the dispute, by its nature, is primarily related to the (im)proper performance of a public service (but not its administration), it shall be considered a civil



(non-administrative) legal relationship, which must be examined in a court of general jurisdiction. For example, relationships arising from learning (also vocational training) contracts are by their very nature civil legal relationships.

In matters of job protection, administrative courts deal with disputes related to unemployment insurance benefits.

- 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

Administrative courts decide cases regarding the lawfulness of administrative acts and actions (inaction) adopted by public administration entities, as well as the delay of these entities in performing actions assigned to their competence. This means that, as a general rule, the lawfulness of the administrative acts through which the public administrations or other public entities organise and regulate the provision of social services falls within the competence of administrative courts. This includes cases where public authorities take measures to regulate, to supervise, to grant authorisation to provide public services regarding respective social right or establish entities for providing such services.

- 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.)

As far as it falls within their competence, administrative courts deal with disputes relating to the recognition of benefits, including aspects relating to procedural aspects. Administrative courts are competent to rule on the matters related to the financial social assistance for elderly, residents with low-income and other support matters, such as for purchasing or renting housing, except cases concerning the content of the (possible) civil lease agreement.



- 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

Administrative courts can resolve the dispute in different ways: cancel the disputed legal act (or its part) or oblige the public administration entity that adopted it to eliminate the violation committed, or to fulfil another court order; resolve the dispute in another way established by law; order compensation for damage caused by illegal actions of public administration entities.

This means that administrative courts have the power to ascertain the entitlement of the individual to obtain a social benefit. Administrative court can annul the disputed legal act that unlawfully denied some social benefit and oblige the public administration entity that adopted it to provide that social benefit to the individual.

For example, in the case of non-payment of the state pension, the administrative court annulled the administrative act refusing to pay the part of the pension and the applicant was awarded with the part of the pension that was illegally not paid (administrative case No. A<sup>552</sup>-519/2013).

- 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

Administrative courts can put in place different kind of remedy for the protection of social rights (please, also see the answers above and the answer to question 5). Usually, it depends on what specific defence the applicant is seeking, i.e., requiring a public body to take a certain administrative action, to annul specific acts, etc.

Administrative courts check the legality of decisions made by public administration entities, i.e., whether the institutions acted within the limits of their competence at the time of making the decision, whether the decisions were legal, whether they had a reason to refuse to perform the actions, etc. However, it



should be noted that the court, while administering justice, does not and, in principle, cannot take over the functions of public administration and resolve the issue which, according to its competence, belongs to the public administration institution (for example, calculating a pension, etc.). Several case law exceptions to this rule are specified in the Part III, question 3.

- 7) In relation to the protection of social rights, are there any accelerated or simplified procedures or, in any case, special procedures?
- Yes
  - No
  - x Yes, but only in some sectors

Please explain

In areas falling within the jurisdiction of the administrative courts, certain rules related to the court case priority listing and exemption from court fees are in place.

- 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?
- x Yes
  - No
  - Yes, but only in some sectors

Indicate the sectors concerned and models of ADRs (Alternative Dispute Resolution)

The main alternative dispute resolution methods are: settlement agreement, mediation and preliminary extrajudicial investigation of disputes.

Settlement agreement and mediation are not limited to a certain area of disputes. At any stage of the process, the parties to the dispute can end the case with a settlement agreement, if it can be concluded taking into account the nature of the dispute. As it concerns mediation, when a dispute is already in court, the dispute may be referred to judicial mediation. Mediation can be concluded with a settlement agreement after it is approved in court.

Before applying to the administrative court, individual legal acts adopted by public administration entities as well as their acts/omission or delay of actions may be and in the cases established by law must be contested by applying to the institution for preliminary extrajudicial investigation of disputes. For example, for disputes regarding the implementation of mandatory health insurance, there is a mandatory preliminary extrajudicial examination of disputes. A pre-trial procedure is also



provided for resolving disputes regarding the compensation of damages caused to patients (as already mentioned, these disputes are heard in courts of general jurisdiction (civil courts)). Some other examples of mandatory pre-trial proceedings could be disputes regarding decisions made by the Disability and Work Capability Office or disputes regarding the refusal to grant sickness benefits.

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
- x Other

(tick more than one box if necessary)

Please explain

First of all, administrative courts evaluate only the legality of the action (inaction) of public administration entities or the adopted administrative act. According to the Law on Administrative Proceedings, the court shall not offer assessment of the disputed legal acts and acts (omission) from the point of view of political or economic expediency and shall only establish whether or not there has been in a particular case a violation of a law or any other legal act, whether or not the entity of public administration has acted within the limits of its competence, also whether or not the legal act or action (omission) complies with the objectives and tasks for the purpose whereof the institution has been set up and vested with powers. Nevertheless, the litigation on social rights must in fact constantly be measured with the limitedness of available economic resources. Therefore, striking the right balance between competing values is one of the main challenges for administrative judges in giving effective protection to social rights.

### PART III

#### PRACTICAL CASES

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

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In administrative case No. A-3146-261/2020, the Supreme Administrative Court of Lithuania stated that maintenance payments to a child from the Child Maintenance Fund cannot be terminated on the grounds that the child has gone to live abroad. The court emphasized the constitutional imperative of prioritizing the interests of the child, which presupposes, *inter alia*, the state's duty to ensure that the child's interests are taken into account first when establishing legal regulation and that there are no public interest reasons for disregarding them.

Another example is related to the right of a female volunteer soldier to receive maternity benefits, which was denied because she did not acquire 12 months of sickness and maternity social insurance due to her voluntary military service in Afghanistan. The Court stated that the purpose set by the law – to encourage better social security for pregnant women and women who have recently given birth – would be clearly violated if the right to maternity benefits during pregnancy and maternity leave was not granted to working women only because they were called up to perform military volunteer duties during the period of their work (administrative case No A-2563-502/2015).

- 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).

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There is no such case-law to our knowledge.

- 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 administrative case No A-1410-822/2015, the dispute arose regarding the part of the maternity benefit, which was not paid to the applicant due to the application of the provisions of law, later recognized as illegal by the Constitutional Court. It was established that in order to ensure a real and effective defence of the violated rights of a person, the consequences caused to the applicant due to the application of the provisions of the law that contradicted the Constitution, when recalculating and paying her maternity benefit, must be completely eliminated – the unpaid part of the maternity benefit must be awarded. The Supreme Administrative Court of Lithuania annulled the illegal decisions and ordered the competent authority to pay the applicant a specific amount of unpaid maternity benefit. Disputes regarding the awarding of unpaid state pensions for soldiers and officers were resolved in a very similar way (e.g., administrative case No A<sup>552</sup>-519/2013).

