

## 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 Dutch Constitution guarantees a number of social rights, such as the right to work (art. 19), the right to social security (art. 20), the right to keep the country habitable and to protect and improve the environment (art. 21), the right to health (art. 22) and the right to education (art. 23). Other rights, concerning more specific services, are recognized 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

**People who are unemployed have a right to a minimum allowance (in Dutch referred to as 'uitkering'). Also, indigent people can get subsidies (allowances) for the costs of their health care insurance ('zorgtoeslag'), rent ('huurtoeslag') and day care for their children ('kinderopvangtoeslag') and the general care for children ('kinderbijslag' and 'kindgebonden budget'). In addition, there are several smaller (regional or local) subsidies to help indigent people in different areas (sport lessons for kids, compensation for incidental high expenses, cultural events, museums, memberships etc). Furthermore, there are subsidies for the education and development for people who are unemployed or wish to change jobs (e.g. 'STAP-budget'). Basic health care is free for all in the Netherlands. Yet, for people who live or work in the Netherlands a health care insurance that covers the basic care is mandatory. People can voluntarily insure additional costs (e.g. dentist, physiotherapy etc.). Social housing is accessible for people with a low income,**

although the availability is relatively low and the waiting lists are therefore long. Disabled and disadvantaged people can claim different additional allowances (e.g. allowance for those no longer work because of a handicap or disease (WIA-uitkering), subsidies for adjustments to the home for disabled people, etc).

Many other (smaller) subsidies or interventions exist alongside the ones mentioned above. Amongst those interventions are those done by municipalities ('bijzondere bijstand') and non-governmental organisations such as the Red Cross, food banks or the Salvation Army. These organisations often get part of their budgets from (local) government.

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

**Quite recently a public debate has arisen on the right to a liveable and healthy environment. This debate is ongoing and can lead to the emergence of a new social right. At the moment most scholars would agree that this is not yet the case.**

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

**During the past decades the Dutch social security system was trimmed down in an effort to economize on public expenditure. Nowadays there is some debate about what should be reimbursed from the basic health insurance package. Should very expensive treatments always be reimbursed, even if the effectiveness of a certain treatment for a certain patient is questionable. You could say that in that case the effectiveness of the right to healthcare could be reduced for people who need rare, extremely expensive treatments. The arguments are not only of a financial nature, but have a strong ethical element too (concerning the quality of life).**

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

**Not applicable.**

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:

**There is no automatic precedence between the two and therefore a balance has to be found. Finding such a balance is primarily up to the legislator and not to the courts. If a concrete case nevertheless will be presented to a judge he/she will be reluctant to review (for not willing to sit 'in the chair of the legislator'). If judicial review does take place social fundamental rights in international treaties will be taken into account.**

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:

**During the pandemic several financial and fiscal instruments were set in place by the national government:**

**a) the implementation of a temporary scheme allowing companies to apply for help in paying their labour costs, b) additional income support for independent contractors, c) relaxed rules with respect to the payment of taxes and reduced fines, d) easy recourse to the Guarantee Corporate Financing scheme (GO scheme) for companies that had difficulty obtaining bank loans and bank guarantees, d) interest-rate deduction on microcredit for small companies (Qredits), e) temporary guarantees for companies active in agriculture and horticulture, and f) extra compensation schemes for badly impacted sectors (restaurants, hotels, travel companies etc).**

**In response to the current increase of prices due to the war in Ukraine, the Dutch government has taken measures to compensate households for the increase of prices of energy and fuel. The government has, for example, lowered the VAT on gas, electricity and the taxes on petrol, diesel and LPG. These measures were laid down in a parliamentary act (Wet aanvullende fiscale koopkrachtmaatregelen 2022). In addition, all Dutch households received a financial compensation for the increase of their electricity bills in the months of November and December of 2022. This measure was provided for in a ministerial regulation (Regeling van de Minister voor Klimaat en Energie, Tijdelijke overbruggingsregeling tegemoetkoming energieprijzen kleinverbruikers 2022). Moreover, low income families receive a compensation of 1300,- euros in 2022 and 2023 to help them pay their energy bills (parliamentary act, Wijziging van de Participatiewet in verband met het eenmalig categoriaal verstrekken van een energietoeslag aan huishoudens met een laag inkomen).**

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

**No, the division of competencies did not change.**

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 Tax and Customs Administration (Belastingdienst), which is part of the Ministry of Finance, provides contributions for certain groups of people that have healthcare insurance, a rented house or children at a day care centre. These contributions are called benefits (toeslagen). Over half of the Dutch population (8.9 out of 17.5 mln people) receive one or more of those benefits.**

On a local government level municipalities must ensure that people can continue to live at home for as long as possible. The municipality provides (financial and other) support at home through the Social Support Act (Wet maatschappelijke ondersteuning 2015).

Private subjects included in the public system are health insurance providers and pension funds, but also for instance hospitals or retirement homes that form legal entities of their own. There are many other private subjects (and their civil society organisations) that assist with the provision of social benefits on a temporary and/or voluntary basis. Some of them receive a public subsidy as part of their budget.

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 limited areas.

Please explain

Examples include municipalities in the context of decentralization in the social domain. However, the autonomy for municipalities is considerably limited. The money comes from the national government and the conditions that one must meet to be eligible also. Municipalities are responsible for applying for and providing the required support. So they do have a 'power to admit', but that power is limited.

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

Foreign employees that reside legally in the Netherlands are eligible for Dutch social insurance. For example, they receive child benefit care and a benefit if they become unemployed. They have the same rights to other social rights (education, social services etc). First-aid care is available for everyone. The principle of equal treatment, stemming not only from national law but also from EU and international rules (e.g. Article 14 ECHR and Article 34 CFEU) is dominant in this field. Only under specific conditions justifying a derogation can it be put aside.

## 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 the Netherlands, the civil judge has jurisdiction on disputes in the field of employment and labour law. The Dutch Supreme Court is the highest court to rule on cases in this field. The administrative courts have jurisdiction on disputes in other matters concerning social rights. In this respect it is important to note that in the Netherlands there are four highest administrative courts. Each of them has its own specific competence to review certain matters concerning social rights.**

**The general highest administrative Court is the Administrative Jurisdiction Division of the Council of State. The Administrative Jurisdiction Division has competence to review the lawfulness of administrative orders, unless a specialised administrative court has been designated. There are three specialised administrative courts: the Trade and Industry Appeals Tribunal; the Central Council of Appeals and the Tax Division of the Supreme Court, which is the highest administrative court in tax law (Chapter 4, Bevoegdheidsregeling bestuursrechtspraak and article 28 of the General Tax Act). Most of the disputes that concern social rights are dealt with by the Central Council of Appeals. These are the two highest administrative courts in the area of social security matters and cases concerning civil servants.**

**Certain matters concerning social rights fall within the jurisdiction of the Judicial Division of the Council of State. For instance, the Judicial Division is the competent court in disputes concerning decisions taken by universities and institutions in higher education, as well as in cases concerning child care allowance benefits. Apart from certain matters reserved to civil courts (e.g. those relating to social security), the administrative court usually has jurisdiction on all cases of disputes concerning administrative measures affecting social rights. Indeed, the former position of the Cassation, initially elaborated with regard to the right to health and according to which the jurisdiction on matters concerning fundamental rights shall fall under the competence of the ordinary judge since those rights were not compressible by the public authority, has now been abandoned.**

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.)

**In the Netherlands, disputes concerning social security, education, health and social assistance generally fall within the jurisdiction of the administrative courts. Matters in these areas are mostly dealt with by the Central Council of Appeals (which is one of the highest administrative courts, see above under question 1 of part II). Nonetheless, the Judicial Division of the Council of State reviews certain decisions in the field of education and health (see also the answer under question 1, part II).**

**Civil courts have jurisdiction to hear disputes that concern the protection of motherhood – for instance disputes on the compensation during maternity leave (see the ruling of the Dutch Supreme Court, 6 November 2020, ECLI:NL:HR:2020:1748) – as well disputes in the areas of 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, not directly**

Please explain

**In the Netherlands, as a general rule, the administrative judge has jurisdiction to directly review individualised decisions taken by Dutch administrative authorities. However, the general administrative law acts/generally binding regulations as well as policy rules (non-legally binding rules of a general scope) are excluded from the possibility of direct review by Dutch administrative courts. Nonetheless, administrative courts do have the competence to indirectly review generally binding rules and policy rules when assessing the lawfulness of an individualised decision ('exceptieve toetsing'). This indirect judicial review can, for example, lead to a judgment of the administrative court which states that the general rule on which an individual decision was based is not binding, since it is contrary to general principles of law, general principles of good administration and/or higher law.**

**This means that the administrative judge has jurisdiction to directly review individualised decisions based on generally binding administrative law acts that regulate the provision of social services in the fields of law described above under questions 1 and 2. However, Dutch administrative courts are not competent to directly review these acts; these generally binding administrative acts may only be susceptible for indirect judicial review.**

**Finally, it needs to be noted that Article 120 of the Dutch Constitution prohibits all courts to review the constitutionality of Acts of Parliament (primary legislation). Acts of Parliament can only be appealed on the grounds that they are contrary to directly binding international law. Nevertheless pursuant to Articles 93 and 94 of the Constitution, international treaties on fundamental social rights can have direct effect under Dutch law. In practice, the consequences of the aforementioned constitutional review prohibition are therefore limited.**



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 already mentioned above under question 1 and 2 of Part II, the administrative courts are competent to hear disputes on the awarding of benefits relating to social rights, with the exception of employment and labour law which is subject to judicial review by Dutch civil courts. Dutch civil courts also have jurisdiction to hear disputes relating to procedural aspects in such cases concerning employment and labour law.**

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 the Netherlands, administrative courts are competent to assess the regularity of the procedures. Under certain conditions administrative courts also have the power to ascertain that the individual is entitled to receive the benefit unjustly denied. These conditions entail, inter alia, that the administrative authority does not have discretionary powers as to the decision whether the benefit can be granted. In other words, the law must be clear that in the case at hand the administrative authority has no other choice than to grant the benefit to the individual. To this end, it is also necessary that the administrative authority has sufficient information to decide whether or not the benefit has to be granted and hence whether the individual is entitled to receive the benefit unjustly denied.**

6) What kind of remedy can the administrative judge put in place for the protection of social rights?

**Annulment of organizational acts or specific acts limiting social rights**

**Damage compensation**

**Condemn to a specific performance through the recognition or attribution of the benefit/right required.**

Other

(tick more than one box if necessary)

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

**In the Netherlands, the administrative judge has the power to annul the individual decision that is based on the organizational act or the specific act limiting social rights. Under certain conditions, it can condemn the administrative authority to a specific performance through the recognition or attribution of the benefit/right required. This is explained below.**

**The Dutch General Administrative Law Act (GALA) provides that the (administrative) Court shall annul all or parts of the disputed order if the judge rules the appeal well-founded (Article 8:72 GALA). If the Court annuls the challenged act, it can direct the administrative authority to issue a new order or to perform another act in accordance with the instructions given by the administrative court (Article 8:72(4)(a) GALA). This provision can also be applied in the field of social rights.**

**In addition to that, the GALA grants administrative courts the authority to deliver a decision which takes the place of the decision that administrative authority should have taken. Article 8:72(3)(b) of the GALA states that if the district court rules that the appeal against the challenged administrative act is well-founded, it may determine that its judgment shall take the place of the annulled order or the annulled part thereof. As a general rule, this instrument (which is referred to as 'zelf in de zaak voorzien') can only be used if, from a legal perspective, there is only one outcome possible after the annulment of the contested decision. This means that in the case at hand there is no other option that to attribute the benefit or right required. Thus, as a general rule the Court may order the attribution of the benefit required, provided that the administrative authority does not have discretionary powers and that the Court has sufficient information to do so (see also above question 5 of part II). The aim of this remedy is to promote final dispute resolution and greater efficiency for the judiciary and public administration.**

**An example is provided by the ruling of the Judicial Division of the Council of State of 19 February 2020 (ECLI:NL:RVS:2020:531). In this case the Council of State annuls the contested decision that concerns the recovery of the total amount of child care benefits granted. In its ruling the Council of State determines the amount of the benefit to be granted to the applicant.**

**Finally, it also is possible for the administrative Court to order the administration to pay compensation for the damage. However, to this end, strict conditions need to be met, as the applicant needs to demonstrate that the (e.g. psychological) damage suffered is a direct consequence of the unlawful measure taken by the administration. In practice, it rarely occurs that compensation is granted; more often is the administration required to pay the benefit unjustly denied.**

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

The Dutch General Administrative Law Act provides for general accelerated or and simplified procedures that are applicable to all administrative law proceedings, including those that concern the protection of social rights and that fall within the jurisdiction of administrative courts (see above question 1 of part II). These general proceedings include the simplified procedure laid down in Article 8:54 GALA, which provides that the court may close the inquiry – without the parties having been incited to appear in court – if continuation thereof is not necessary because the court manifestly lacks jurisdiction or if the appeal is manifestly inadmissible, unfounded or well-founded. The GALA also provides for a procedure by which a provisional remedy can be granted where speed is of essence because of the interests involved (Article 8:81 GALA). This procedure largely follows the rules of proceedings on the merits with the (main) exception that shorter trial deadlines apply. The GALA does not provide for accelerated or simplified procedures that only apply in proceedings that concern the protection of social rights.

For urgent cases, Dutch civil procedure law also provides for summary proceedings in which the judge may order preliminary relief measures. Summary proceedings also apply to urgent cases that concern the protection of social rights and that lie within the jurisdiction of civil courts (labour and employment law cases).

- 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)

**Dutch legislation does not contain specific provisions for ADR/mediation in the field of social rights or administrative law in general (mediation is only specifically provided for as an option for ADR in article 818 (2) of the civil of code procedure, in divorce procedures) . That doesn't mean that ADR/mediation does not take place in the field of social rights or administrative law in general. Both governing bodies and administrative judges regularly suggest parties to try to work out their conflict between themselves, if necessary with the help of a mediator. This mediation is, however, on a voluntary basis. If parties agree to an attempts to solve their conflict (with the help of a mediator), the administrative or judicial procedure is suspended. If, however, parties do not come to an agreement, then the administrivia or judicial case is reopened and can eventually lead to a judgment. Based on article 33a of the Legal Aid Act individuals can (if all the criteria are met) receive subsidised legal aid for mediation. Government policy is aimed at stimulating this efficient and effective instrument further in future.**

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

**Over the last years, the main difficulties the administrative judge encounters in granting effective judicial protection are related to legislative acts providing for strict 'black or white rules', that do not leave room for a balancing act when it comes to the question whether benefits unduly granted need to be recovered. Restrictive provisions concerning the granting and recovery of social benefits reflect a certain strict political climate which was mainly concerned with the prevention of fraud. Problems related to harsh legislative rules have manifested most clearly in the numerous cases concerning the recovery of child care benefits, which eventually resulted in the infamous 'childcare benefits scandal' (Toeslagenaffaire). The (strict) application of the strict legislative rules in individual cases led to the recovery of benefits that were granted over many years, resulting in disproportionate high amounts to be paid for by the individuals (who came from low to very low income groups to begin with).**

**The Administrative Jurisdiction Division (AJD) of the Council of State in 2021 organised a program of self-reflection (as did the lower courts) that concluded three things:**

- The AJD must be more critical of the correctness and completeness of the information provided by government agencies. If the relationship between the parties to the proceedings is unbalanced, as very often in childcare benefit cases, the court must offer citizens a helping hand, including by actively investigating the relevant facts.**
- The reflection program has shown how important room for internal debate is, especially if the outcome in an individual case is not convincing and feels unjust. But dialogue with the outside world is also important in order to identify bottlenecks in legislation and implementation. That is why the AJD has entered into (renewed) cooperation with the courts, the Ombudsman and legal scholars. More use will also be made of advice ('conclusions') from independent State Councils Advocate General. In 2021, two additional ones were appointed.**
- Legal practice cannot function without jurisprudence, but on the other hand it must always leave room for a just outcome in an individual case. If the application of a law turns out to be too strict, the judge must use its judicial instruments to see whether this harshness can be removed or limited. If a previously chosen approach is no longer fair due to a change in circumstances, the judge must reassess and adjust the jurisprudence if necessary.**

**The child care benefits scandal eventually resulted in a more prominent role for the principle of proportionality in the case law of Dutch Courts, starting with the rulings concerning the recovery of**



childcare benefits handed down by the AJD. Actively applying the principle of proportionality allowed the Courts to assess, in essence, whether the amount that was recovered could be considered reasonable in light of the circumstances of the individual case. Recently, this principle of proportionality has also been included in the legislative rules that regulate the recovery of child care benefits (Article 13b and Article 26 of the *Algemene wet inkomensafhankelijke regelingen*).

Despite the more prominent role for the principle of proportionality to assess the lawfulness of the recovery of (child care) benefits, a problem still remains that the legislation regulating the granting and recovery of (child care) benefits is considered highly complex.

### 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 2014 a group of asylum seekers had exhausted all legal remedies and had to leave the Netherlands. They were living on the street and/or stayed in churches in Amsterdam. They were completely dependent on the help of third parties. The municipality of Amsterdam had rejected requests for shelter under the Social Support Act (Wmo). The municipality did this because they were illegals, could not be regarded as particularly vulnerable and were not in a completely hopeless situation. Because the ruling of the Amsterdam District Court did not change their situation, the asylum seekers lodged an appeal with the Central Appeals Tribunal. In its judgment (ECLI:NL:CRVB:2014:4178) the court ruled that the municipality must offer them night shelter, a shower, breakfast and an evening meal. In doing so, the court took into account the inhumane conditions of those living on the street and made a reference to the European Social Charter.**

- 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 choice of the Netherlands to exclude some own nationals from student grants (for studying abroad) came before the Court in Luxembourg (C-359/13, Martens, ECLI:EU:C:2015:118). The case was about a Dutch national living in Belgium that was refused a student grant in the Netherlands (for a study in Curaçao). In addition to the right to free traffic, the question was whether the 3-out-6 rule (one had to reside in the Netherlands 3 of the 6 years prior to the application) expressed the 'sufficient degree of integration' that may be expected from such students . The Court declared the 3-out-6 rule in violation of art. 20 and 21 TFEU. The residence condition did not take other factors into account, such as the nationality of the student, the place where she went to school, her family, language skills or the existence of other social and economic ties. Mrs. Martens was sufficiently integrated: she was Dutch, spoke the language, had family and friends and returned to the Netherlands for work after her education.**

- 3) Illustrate a practical case, which occurred in your legal system, in which the administrative court considered that it could directly recognise the applicant (in terms of assessment or conviction) the aid, the benefit or the service unlawfully refused by the public administration (maximum 10 lines).



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The GALA provides that administrative courts have the authority to deliver a decision which takes the place of the decision that administrative authority should have taken, provided that certain conditions are met (Article 8:72(3)(b) GALA, see under question 6, part II). This instrument promotes a final dispute resolution, and is also applied in cases that concern the protection of social rights. This is illustrated by the following case. In 2013, a mother received advance payments for childcare expenses for an amount of over €25.000. The administrative authority ordered her to repay the *full* amount, on the ground that she had not demonstrated that she used the full amount for child care expenses. Instead, she only *partly* paid the childcare benefit on time. The ADJ (ECLI:NL:RVS:2020:531) annuls the contested decision that concerns the recovery of the total amount of child care benefits and determines the amount of the benefit to be granted (€11.007) .