

Answers to questionnaire: Poland

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 Constitution of Poland guarantees the main social rights: the right to social security whenever the citizen is incapacitated for work by reason of sickness or invalidism as well as having attained retirement age (art. 67.1), the right of citizen, who is involuntarily without work and has no other means of support, to social security (art. 67.2); the right to health protection (art. 68), right to education (art. 70), right of families, finding themselves in difficult material and social circumstances - particularly those with many children or of a single parent to special assistance from public authorities (art. 70.1); right of mother, before and after birth, to special assistance from public authorities (art. 71.2);

The constitutional regulation of social rights imposes on State / public authorities number of obligations in this area: 1) obligation to pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention (art. 65.); 2) obligation to ensure to citizens, irrespective of their material situation, equal access to health care services, financed from public funds (art. 68.2); 3) obligation to ensure special health care to children, pregnant women, handicapped people and persons of advanced age (art. 68.3); 4) obligation to combat epidemic illnesses and prevent the negative health consequences of degradation of the environment (art. 68.4); 5) obligation to provide aid to disabled persons to ensure their subsistence, adaptation to work and social communication (art. 69); 6) obligation to ensure universal and equal access to education for citizens and to establish and support systems for individual financial and organizational assistance to pupils and students (art. 70.4); 7) the obligation of taking into account in social and economic policy the good of the family (art. 71.1).

The Constitution guarantees also freedom of work (freedom to choose place of work – art. 65.1) and the right to safe and hygienic conditions of work (art. 66.1).

It must be emphasised that in case of all constitutionally guaranteed rights and freedoms, including social rights and freedoms, they can be limited only by the legislator in form of the statute (act of parliament) and with respect to the principle of proportionality (art. 31.3) and the principle of equal treatment (art. 32).



Due to the specific nature of social rights, constitutional provisions have vested the ordinary legislator with a power to specify the scope of these rights by ordinary laws.

Other specific social rights are regulated in ordinary laws at the sub-constitutional level.

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

As regards the Polish healthcare system it is based on common health insurance. The mandatory healthcare contribution which amounts to 9% of salary is made to the National Health Fund (the only state institution managing the healthcare system in Poland) through the Social Insurance Institution. A portion of healthcare contributions is financed from taxes: the state budget or special purpose funds make healthcare contributions among others for: students, farmers and their family members as a part of the Agricultural Social Insurance Fund (KRUS), employment agencies - for the unemployed, social welfare centers - for non-working persons, not registered in employment offices, meeting the income criterion, the state budget - for the clergy. Some healthcare procedures under the universal public health care system, including highly specialized services are funded directly by the state budget (e.g. Emergency Medical Services).

As regards the right to social security, the Social Insurance Institution is responsible for establishment of old-age pensions, disability pensions, survivors' pensions, sickness allowances, maternity allowances, care allowances, compensatory allowances, rehabilitation allowances, funeral grants and pays out these benefits.

In case of unemployed persons the local labour offices, which are a part of public employment services, provide assistance to the unemployed or jobseekers in finding appropriate occupation and pay out unemployment benefits and acquire and manage funds for combating unemployment and for activities on the local labour market.

The so called social assistance constitutes an institution of the state social policy aimed at supporting persons and families in overcoming difficult life situations with which they are not able to cope by using own possibilities and rights. Social assistance consists in particular of granting and issuing benefits, but the right to financial benefits can be granted only to persons and families whose income does not exceed the income criteria based on the social intervention threshold.



Within social policy there are also other social benefits, e.g. "Family 500+" programme – systemic support for families - a benefit of PLN 500 (ca. 105 Euro) per month for every child up to the age of 18, without additional conditions; the programme "Good Start" providing PLN 300 (ca 64 Euro) of single support for all students starting a school year up to the age of 20 (or 24 in case of a disabled child) (families receive the benefit irrespectively of the income).

The disabled persons and their carers receive support from the State Fund for Rehabilitation of Disable People – the State provides a specific and direct financial assistance in the form of e.g. pensions, benefits, allowances or social and health insurance contributions.

The social housing in Poland includes rental dwellings and social rental dwellings owned by municipalities, dwellings with regulated rents provided by non-profit housing associations (called TBS) and dwellings provided by state-owned companies or the state treasury for their employees. Cooperative dwellings with tenement title to use cooperative apartment (as opposite to owner-occupied title) are also considered as social housing. All "protected dwellings", i.e. dwellings for disabled persons and other groups with special needs or shelters for the homeless constitute social housing as well. In 2016 the Council of Ministers adopted the National Housing Programme that aims to enhance access to housing for people with incomes that do not allow them to buy or rent housing on commercial terms, the possibility to satisfy basic housing needs of persons threatened by social exclusion, due to low incomes or a particularly difficult situation and to improve living conditions for the society, the technical condition of housing resources and enhancing energy efficiency.

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

On one hand the social rights recognised by the Constitutions and laws in force are still predominant and may be judicially enforceable. On the other hand in the public discourse lately such new "rights" appear like the right to breathe clean air (right to clean air) although the Polish Constitution does not mention such right as a subject to constitutional protection. However the Constitution contains a number of provisions concerning the environment - for example, program norms that determine the tasks of public authorities



such as preventing the negative health consequences of degradation of the environment, or the norms that contains the right to be informed about the quality of the environment and its protection. In its recent case-law the Supreme Court of Poland in its resolution of 28 May 2021 ruled that the right to live in a clean environment, enabling one to breathe air that meets quality standards, is not a personal good subject to protection under the Civil Code although the Court on the other hand stated that the effects of environmental pollution can be combated by invoking goods such as the right to health, freedom or privacy.

As regards the right to the web, Such a concept is something new in the Polish legal order. Such a notion is not a normative concept and no Polish legal act uses a definition of such a notion. However, this does not mean that the problems of including access to the web as a human right can be ignored. The legal scholarship an case-law takes the view that the catalogue of human rights and freedoms includes not only explicitly formulated norms, but also rights that can be interpreted from those norms (see judgment of the Polish Constitutional Tribunal of 14 March 2006, Case No. SK 45/04, Z.U. 2006 /2A/15).

Probably the access to drinking water as a fundamental human right will be one of the new social rights sensu largo when the Polish legislator will implement the new EU Directive 2020/2184 of 16 December 2020 on the quality of water intended for human consumption.

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

Taking into account that one of the constitutional values that must be taken into account is on one hand the principle of balance of the public financial sector and on the other hand the minimum standard - essence of the constitutional rights (i.e. social rights) protected under the principle of proportionality, the experience of Polish legislation in the area of social rights and the case-law of the Constitutional Tribunal leads to the conclusion that it has been preferred to intervene selectively to safeguard social rights rather than operating with a system of indiscriminate general cuts.

In this context it is also worth mentioning the judgment of the Constitutional Tribunal of 8 May 2000 (case no. SK 22/99), in which the Tribunal interpreted the obligation imposed on the State in the Constitution of the Republic of Poland to implement social rights by way of appropriate legal regulations as "an order to realise through statutory regulations the content of constitutional law in such a way, so that on the one hand it takes into account the existing needs, on the other hand, the possibilities of their meeting. The limits of these possibilities are determined by other protected constitutional values, such as, for example, the



budgetary balance, which may to some extent remain in opposition to statutory solutions aimed at maximisation of social guarantees".

5) In your country does there exist, even in specific sectors, an '*intangible nucleus*' of social rights that cannot be sacrificed even to cope with a contingent financial situation?

- Yes.
- No

6) If the previous question has been answered in positively, how has the identification of the '*essential nucleus*' of social rights which cannot be sacrificed been carried out?

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

(tick more than one box if necessary)

Please explain

As indicated above in the area of constitutionally guaranteed social rights and their implementation in ordinary legislation first of all the principle of proportionality must be observed. Besides in the said area the number of obligations have been imposed on ordinary legislator and public authorities. The administrative courts competent to control the legality of administrative measures affecting social rights take into account also the question of their proportionality and if the legal provision to the extent that it served as a legal basis for administrative measure under review, meets the constitutional standards.

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:

If the ordinary legislator limits social rights the Constitutional Tribunal is competent to assess the constitutionality of limitation and balance the conflicting constitutional values e.g. the principle of balance of the public financial sector or the principle of the protection of acquired rights and legitimate expectations.



If the limitations derive from specific acts or measures, the competent court (ordinary or administrative, depending on the area of social rights involved or the type of act) will decide on the individual case. If the court has doubts regarding the constitutionality of the act that is legal basis for administrative act or measure under review, it may refer a question of law to the Constitutional Tribunal if the answer to such question of law will determine an issue currently before such court.

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:

In Poland in order to cope with the short and medium-term emergencies of pandemic some legal instruments have been introduced by the number of legislation called Anti-crisis shields COVID-19: subsidization of interest on bank loans granted to companies affected by the COVID-19 pandemic, model of simplified restructuring procedures; measures preventing hostile takeovers of Polish companies; advantageous changes in the rules of subsidization of salaries by the Guaranteed Employee Benefits Fund; exemption from taxes; deductions; non-repayable grants for micro and small entrepreneurs; subsidies to employees' salaries; co-financing of part of the wage costs of employees; exemption from social security contributions for certain period of time.

In order to reduce the adverse effects of inflation, caused i.a. by the outbreak of war in the Ukraine and energy crisis, the Polish legislator passed special laws – so called Anti-Inflation Shields 1.0 and 2.0 amending the laws regarding CIT and VAT taxes. The introduced solutions included: inflation allowance for households, waiver of excise duty on electricity, reducing VAT on electricity from 23% to 5%, reduction of VAT on natural gas from 23% to 8% and from 8% to 0%, lowering fuel prices by reducing excise duty as far as possible and VAT on fuel from 23% to 8%, reduction of VAT on system heat (provided by district heating networks) from 23% to 8% and later from 8% to 5% , reduction of VAT on basic foodstuffs to 0%, 0% VAT on fertilisers. Also special gas tariffs have been introduced for households that are part of multi-unit cooperative and housing community buildings, as well as hospitals, schools, kindergartens, nurseries and cultural institutions.

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



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

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

(tick more than one box if necessary)

Please explain

The healthcare service in Poland is not only focused on the activities directly carried out by public structures, but also on those carried out by private entities, which on the basis of an accreditation and authorisation mechanism and special service contracts with National Health Fund, are allowed to perform public health functions.

It should be noted that healthcare services performed by private entities can be either payable of free of charge for patients. In the latter case the payer is the National Health Fund, based on the an agreement concerning the provision of health care services (i.e. contracts), concluded pursuant to the same terms and conditions as in the case of public entities.

When it comes to the implementation of relevant legislation regarding social assistance, the territorial government and local self-government administration bodies cooperate in performing activities in this area with social organisations, the Roman Catholic Church and other churches, religious organisations, foundations, associations, employers, as well as natural and legal persons.

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

- Yes
- Not

The non-state territorial levels of government have only administrative powers in this area.

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 non-state territorial levels of government provide the access to social benefits only within the scope, limits, conditions set out and prescribed by ordinary laws. As regards e.g. the social assistance the implementation of relevant legal provisions, depending on the tasks provided for by the law, is divided between public bodies of the territorial government administration and local self-government (municipalities, districts).

For example the municipality and the district, which are obliged under the provisions of the law to carry out social assistance tasks, cannot refuse to assist a person in need, despite the existing obligation of natural persons or legal entities to meet his or her vital needs. This obligation applies also to the entities to which local authorities have delegated the implementation of tasks in the area of social assistance.

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

Persons entitled to receive social assistance are also foreigners who have their place of residence and stay in Poland, *inter alia*: on the basis of a permanent residence permit, on the basis of a residence permit for a long-term resident of the European Union, in connection with obtaining a refugee status or subsidiary protection in the Republic of Poland. Foreigners can use social assistance benefits only after completing the procedure of legalisation of stay, i.e. obtaining a refugee status or subsidiary protection.

Foreigners who obtained a refugee status or subsidiary protection in Poland can make use of assistance provided for up to 12 months as part of the so-called individual integration programme (IPI) aimed at supporting the process of their integration. The assistance is granted in the form of cash benefits to cover the costs of living, in particular, costs of food, clothing, footwear, personal hygiene products and housing charges, and to cover the costs related to learning Polish. Other forms are: temporary allowance granted in particular because of long-term illness, disability, unemployment, the possibility of maintaining or acquiring rights to benefits from other social security systems; optional earmarked allowance granted to meet a necessary living need, which may be, in particular, covering the part or all of the costs of purchasing, for example, food, medicines and treatment, fuel, clothing, necessary household items, minor renovations and repairs in the flat, as well as the costs of funeral.

Eligible foreigners may also make use of various forms of non-cash social assistance, including social work, specialist counselling, crisis intervention, shelter, meal, care services provided at the place of residence or in support centres, dwelling protected, stay and services in a social assistance house.

As regards the access to healthcare for asylum seekers it is guaranteed in law under the same conditions as for Polish nationals who have health insurance. Health care for asylum seekers is publicly funded. If an asylum seeker is deprived of material reception conditions or they are limited, they are still entitled to health care.





As regards the foreigners that are employed, they are subject (like Polish citizens) to compulsory health insurance. This means that a contribution to the National Health Fund is paid from their salary each month (usually done by the employer). After proper registration with the National Health Fund, the health benefits to which the insured person is entitled may also be used by members of their immediate family (spouses and children, grandparents and parents remaining in the same household with the insured person), if they are not insured on a different basis.

Certain groups of foreigners can benefit from free emergency assistance. This applies to holders of the Card of the Pole (the Card of the Pole a document confirms the foreigner's belonging to the Polish nation pursuant to the Act of 7 September 2007 on the Card of the Pole), as well as citizens of Albania, Bosnia and Herzegovina, Montenegro, the Russian Federation, the Republic of Macedonia, Serbia and Tunisia, legally residing in Poland (thanks to bilateral agreements, the cost of their treatment is covered by the Ministry of Health).

The foreigners – non-EU citizens have the right to apply for social benefits resulting from above mentioned „Good Start” Programme and 500+ Programme on one hand on the basis of bilateral agreements on social security signed between the Republic of Poland and other countries (including Canada, the US, Australia, Moldova, South Korea or Ukraine) or on the other hand if: 1) they have obtained a residence permit for the purpose of highly qualified employment; 2) they have access to the Polish labour market (except for third-country nationals whose work permit is valid for less than 6 months, who have been granted a residence permit for the purpose of studies or who can perform work on the basis of a visa); 3) they have obtained a temporary residence permit for the purpose of work under the intra-corporate transfer.

Following the outbreak of war in Ukraine caused by Russia's aggression, the Polish legislator passed special law - Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this country.

This special law does not apply to Ukrainian citizens - persons with permanent residence in Poland, long-term resident's residence permit, temporary residence permit, refugee status, subsidiary protection, residence permit for humanitarian reasons and tolerated stay permit.



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

A category of social rights entails a broad scope of various sub-categories remaining under the jurisdiction of common (civil, family and labour sections) as well as administrative courts. These are competent when a decision concerning social rights (e.g. subsidies from social benefits for disabled people or health benefits for them) is undertaken by a public administration authority. Then administrative courts are competent to control their legality. The final result of the adjudication process is a judgment in which an administrative court finds a decision lawful, dismissing a complaint, or unlawful, quashing it. If a dispute is focused not on control, but on merits-oriented adjudication, then common courts are competent.

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.)

As it was answered in the first question, administrative courts are competent in all mentioned spheres, but only partially, if a dispute is focused on the control over an act (administrative decision) issued by a public administration body.

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

An administrative judge in Poland is competent in assessing the lawfulness of administrative acts addressed to individuals and concerning an organisation and regulation of the provisions of social 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.)

If granting or recognition of benefits has a form of an administrative act (mainly a decision), then an administrative court is competent to prove their lawfulness. If a procedure is focused on a final case resolution, then common (civil or labour) courts are competent. The administrative courts are in general competent to rule in a social aid cases whereas labour courts are competent to rule in pensions or social insurance cases.

- 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

The control of lawfulness performed by administrative courts in Poland encompasses not only procedural standards but substantive law, too. If a social benefit is unjustly denied, an administrative court quashes a decision and a dispute is reversed to public administration (then public administration is bounded by the legal assessment of a dispute presented in a written justification of an administrative court). Only in extraordinary circumstances, if the state of the art is entirely clear and the circumstances of a dispute support a final resolution, an administrative court may oblige a public authority to issue a decision with a defined content.

- 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

The basic form of reaction to the unlawfulness of a decision issued by a public administration body is quashing (annulling) it. An administrative court cannot award compensation to individuals. Another option, used only in extraordinary situations, is to oblige a public administration body to issue a decision with concrete content or to issue a judgment that replaces a decision. Those possibilities are applied rarely and only in those disputes when the state of the art is clear and the circumstances of a dispute support a final resolution.

- 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 Act on proceedings before administrative courts does not perceive any simplified or special procedures for disputes in the area of social rights. It does not exclude such provisions in statutes devoted exclusively to those rights. These kinds of provisions may concern terms to exercise rights (e.g. to initiate court proceedings) or exclusion of some remedies (action for reopening the 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)



The Act on the procedure before administrative courts offers a possibility for mediation in every dispute arising in the court-administrative proceedings. Nevertheless, this kind of amicable form is used rarely. In practice, it is not applied in the field of social rights.

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

Unwillingness to comply with judicial decisions in a system focused on cassation adjudication seems to be the most challenging factor reducing the effectiveness of judicial control. For that reason, the competencies to adjudicate in merits have been to some extent broadened. Another constraint connected with social rights is the danger of their misuse by individuals. In those kinds of disputes, claimants are usually exempted from costs and can exercise their procedural rights without any consequences. Administrative judges are obliged to examine carefully each of them, investing in those activities time that could be devoted to other disputes where court protection is more desirable.

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).

.....

Judgment of the Voivodship (Regional) Administrative Court in Gdańsk of 7 February 2019 (Case No.III SA/Gd 889/16)

The administrative authorities refused to grant the applicant an upbringing benefit for the first child because the income criterion provided for in Article 5(3) of the State Aid for Child Support Act was exceeded by PLN



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7.82 (1,66 Euro). The court stated that a slight exceeding of the income criterion, arbitrarily and rigidly set by the legislator, prevents the family from acquiring the right to State aid aimed at covering a very significant part of the child-rearing expenses. That provision must therefore be interpreted as meaning that exceeding the income criterion set out therein by an amount which - from the point of view of the costs of bringing up a child - has no economic significance whatsoever - does not preclude the granting of child benefit for the first child under that provision. Indeed, the refusal to grant an upbringing benefit in such a case would be in flagrant contradiction both with the purpose of the Act and with the principles of social justice realised by the Republic of Poland, in accordance with Article 2 of the Polish Constitution.

- 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).

.....

Judgment of the Voivodship (Regional) Administrative Court in Łódź of 12 February 2020 (Case No. II SA/Łd 978/19)

The administrative authorities refused to grant upbringing benefit to the applicant, an Indian national with long-term EU resident status, on the grounds that she did not meet the conditions under Article 1(2) of the State Aid for Child Support Act. The court found that although in this provision foreigners with the status of long-term residents of the EU were not explicitly indicated as entitled to receive an upbringing benefit, it should be recognised that as foreigners with such status are entitled by law to work on the territory of the Republic of Poland, they may receive upbringing benefits similarly to foreigners with a residence card with the annotation 'access to the labour market' - listed in Article 1(2)(d) of the State Aid for Child Support Act as entitled to this benefit.

- 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).

.....

Judgment of the Supreme Administrative Court of 20 May 2020 (Case No. I OSK 2375/19)

According to Article 17(5)(1)(a) of the Family Benefits Act, a care benefit is not payable if the person providing care has an established entitlement to an old-age pension. The administrative authorities refused to grant the applicant attendance allowance because she received an old-age pension. The court held that a person who meets the conditions for the more favourable attendance allowance and wishes to receive it, and who is receiving an old-age pension, should be able to choose between the two benefits by giving up the other allowance. She can implement the choice by submitting a request to the pension authority to suspend her pension rights. Suspension of this right eliminates





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the negative prerequisite of Article 17, paragraph 5, item. 1(a) of the Family Benefits Act, in the form of having the right to an old age pension. The essence of the limitation of the pensioner's entitlement to attendance allowance must be interpreted as relating not to the entitlement to the pension itself, but to its realisation in the form of a benefit payment. Since the suspension of the entitlement to an old-age pension has the effect of suspending its payment, it must be considered that this eliminates the negative condition for the acquisition of the entitlement to attendance allowance.



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