

## SERVICES TO CITIZENS AND SOCIAL RIGHTS

### INTRODUCTION

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

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

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

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

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



## PART I

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

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

- Constitution
- Ordinary law
- Other

(tick more than one box if necessary)

Please explain

The main social rights are enshrined in the Constitution as fundamental rights, namely: the right to education (Art. 32), access to culture (Art. 33), the right to a healthy environment (Art. 35), work and social protection (Art. 41), the right to strike (Art. 43), a decent standard of living (Art. 47(1)), the right to social security (Art. 47(2)), protection of persons with disabilities (Art. 50).

Other social rights in various fields are also regulated in the Civil Code, the Labour Code and special laws.

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

In the Romanian legal system, social assistance benefits are a form of supplementing or substituting individual/family income obtained from work in order to ensure a minimum standard of living, as well as a form of support to promote social inclusion and increase the quality of life of certain categories of persons whose social rights are provided for by law. The main types of social assistance benefits are: *a) social assistance benefits to prevent and combat poverty and the risk of social exclusion; b) child and family support benefits for the birth, education and maintenance of children; c) social assistance benefits to support persons with special needs.*



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

In 2022, as a measure of respect for the right to education, the right of individuals to be provided, under reasonable conditions, with access to at least one functional internet service, via a fixed-point connection, under the conditions laid down in Law No 175/2022, was recognised.

The adoption of this normative act was aimed at simplifying the relationship between the State and the citizen, in terms of the interaction with public administration institutions through faster access to information. The law also requires all public institutions and authorities to ensure, within three years from the date of entry into force of the law, that all buildings owned or managed by them and whose main purpose is the provision of public services are connected to the Internet at data transfer speeds and other quality conditions adapted to specific needs.

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

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

Please explain

The effectiveness of fundamental social rights, as laid down in the Constitution, cannot, in principle, be affected by a public policy of budgetary expenditure.

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

According to the constitutional principle set out in Article 53, the exercise of certain rights or freedoms may be restricted only by law and only if it is necessary in certain situations, namely: **the protection of national security, public order, health or morals, the rights and freedoms of citizens; the conduct of criminal investigations; the prevention of the consequences of a natural disaster, a disaster or a particularly serious disaster.** The restriction may be ordered only if it is necessary in a democratic society and must be proportionate to the situation which has given rise to it, applied in a non-discriminatory manner and without prejudice to the existence of a right or freedom. Consequently, the social rights enshrined in the Constitution may be restricted only under the conditions mentioned.

7) How does the scarcity of available financial resources affect the effectiveness of social rights in your country?

- Social rights must be guaranteed in any case, regardless of budgetary requirements.
- The budgetary requirements always prevail over social rights.
- A balance between the opposing requirements is to be carried out.

In the latter case, explain who is competent to perform the balancing:

The government adopts fiscal-budgetary measures to ensure the sustainability of public expenditure in line with the objectives set out in the government programme approved by Parliament.

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 order to combat the effects of the epidemiological situation caused by the spread of the SARS-CoV-2 Coronavirus, special social benefits have been introduced consisting in the granting of days off to parents to supervise their children during the temporary closure of educational establishments, i.e. an



allowance for each day off of 75% of the salary corresponding to one working day, granted during the temporary closure of the establishments (Government Emergency Ordinance No 30/2020).

In order to combat the energy crisis, a price cap on electricity and natural gas for final consumers was introduced for the period from 1 January 2023 to 31 March 2025 (Government Emergency Ordinance No 119/2022).

- 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

There were no derogations from the usual division of powers between the administrative judge and the other judges.

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

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

(tick more than one box if necessary)

Please explain

According to Law No 292/2011, social benefits are provided by the state, represented by central and local public administration authorities, and by civil society, made up of people associated in various forms on the basis of common interests and who devote their time, knowledge and experience to promote and defend their rights and interests; the forms of association may mainly be associations and foundations, trade unions and employers' organisations, cultural and religious organisations and informal community groups.

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

- Yes  
 Not

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

- Yes  
 No  
 Yes, but only in some areas.





Please explain

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

In the Romanian legal system, non-EU citizens can benefit from social rights according to Ordinance no. 44/2004 of 29 January 2004 on the social integration of foreigners who have acquired international protection or a right of residence in Romania, as well as citizens of the Member States of the European Union, the European Economic Area and citizens of the Swiss Confederation, Law no. 122/2006 on asylum in Romania.

Thus, foreigners who have acquired international protection in Romania benefit from the following rights: the right to a job, the right to housing, the right to health care and social assistance, social insurance, the right to education, as well as by carrying out specific activities of cultural accommodation, counselling and learning the Romanian language, gathered in integration programmes.



## 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

The jurisdiction of the courts is determined by the nature of the social rights. For example, disputes concerning rights relating to work and social protection, strikes, social security, etc. fall within the jurisdiction of the labour court, while disputes relating to the protection of the disabled, the right to education, access to culture, etc. fall within the jurisdiction of the administrative litigation court.

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.)

Disputes concerning social security, social assistance, maternity protection, employment protection and vocational training rights are settled by the labour court.

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

According to the Administrative Litigation Law no. 554/2004, any person who considers himself aggrieved in a right or a legitimate interest by a public authority, by an administrative act or by the failure to resolve within the legal deadline a request for annulment of the act, recognition of the alleged



right or legitimate interest and compensation for the damage that has been caused may refer the matter to the competent administrative court.

- 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.)

Depending on the specifics of the social right in dispute, the civil or labour court has jurisdiction.

- 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

According to the relevant legal provisions, the administrative court examines the legality of the proceedings and may also decide on the recognition of the right claimed in the application. The procedure for the settlement of cases is provided for by the special law, namely Law No 554/2004, and is supplemented by the procedural rules of ordinary law.

The labour and social security court has jurisdiction for labour and social security rights, in accordance with a specific procedure which is supplemented by the ordinary procedure.

- 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 order to protect the social rights over which it has jurisdiction, the administrative court may, as appropriate, annul the administrative act in whole or in part, oblige the public authority to issue an administrative act, issue another document or carry out a specific administrative operation. If the claimant has so requested, the court will also decide on compensation for material and non-material damage if the claim is granted.

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

In labour and social protection matters, cases are dealt with as a matter of urgency by the labour court. The time limits for the hearing may not exceed 15 days, and the procedure for summoning the parties is deemed to have been duly completed if it is carried out at least 24 hours before the deadline for the hearing. At the same time, the burden of proof in labour disputes lies with the employer, who is obliged to submit evidence in his defence by the first day of the hearing.

8) Are there in your country any provisions for ADR (Alternative Dispute Resolution) in the field of social rights (also through the intervention of an institutional third figure such as a the “Social Rights Guarantor”)? In particular, is mediation possible?

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

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

In Romania, an alternative dispute resolution entity (ADR entity) is a structure that provides for the resolution of a dispute through an ADR procedure and can operate exclusively within the National Authority for Consumer Protection, a central public authority or an autonomous administrative authority with responsibilities in the field of consumer protection.

The Ministry of Economy is designated by law to act as the competent authority in the field of alternative dispute resolution.

The ADR entities are:

(a) the National Authority for Consumer Protection

The Alternative Dispute Resolution Directorate of the National Authority for Consumer Protection has the competence to settle national and cross-border disputes arising from sales contracts or service contracts concluded with a trader operating in Romania, in the sectors of activity in which the National Authority for Consumer Protection is competent.



b) The Alternative Dispute Resolution Entity in the Non-Banking Financial Sector - ADR-FIN is a structure created within the Financial Supervisory Authority with the aim of allowing consumers to have free access to an alternative dispute resolution mechanism in the non-banking financial sector (insurance-reinsurance, capital market, private pension system).

Mediation was introduced by Law No 192/2006 and is a means of settling disputes amicably, with the help of a specialised third party as mediator, under conditions of neutrality, impartiality, confidentiality and with the free consent of the parties.

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

Excessive caseload resulting from the total number of cases registered with the courts is also a problem for the administrative judge.

### 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).

The High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, by decision no. 1591 of 21 March 2019, rejecting the appeal lodged by the Municipality of A., found that the *failure to provide public transport for persons with locomotor disabilities in all means of public transport constitutes direct discrimination, since a separation is created on the basis of disability, which has the effect of restricting the exercise, on equal terms, of the right to benefit from the services offered in the field of public transport. This omission on the part of the local public authority does not ensure that the rights laid down by law are granted and denies that category of persons access to the services provided by the public transport companies.*

The passive compartment of Municipality A. was also retained, in relation to its obligations, as the authority of the local public administration with regard to measures for the accessibility of public



transport, partially fulfilling its legal obligations, behavior that produced effects that unjustifiably disadvantaged people with locomotor disabilities.

- 2) Illustrate a practical case, which occurred in your legal system, in which a benefit or service related to social rights, recognised by law in favour of the citizens of your country, has been considered by the court extensible also to foreigners (both EU and extra EU citizens), or in which the court has considered the condition of “territorial anchorage” required for foreigners unreasonable or not proportionate (max 10 lines).

In Romania, foreigners who acquire international protection under the law also benefit from the social rights granted to Romanian citizens.

Therefore, a court hearing a claim concerning social rights will deal with the case in accordance with the same legal provisions applicable to Romanian citizens.

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- 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).

*The plaintiff A. requested the court to order the defendants to include in the list of international non-proprietary names of medicinal products available to insured persons on prescription the medicinal product B. for therapeutic indication C. By decision No 3606 of 17 June 2022, the High Court of Cassation and Justice, Administrative and Tax Litigation Chamber, admitted the appeal brought by the plaintiff A. and ordered the National Agency for Medicines and Medical Devices to initiate, ex officio, the procedure for the assessment of medical technologies with a view to including medicinal product B in the list of international non-proprietary names corresponding to the medicinal products available to insured persons on the basis of a medical prescription for therapeutic prohibition, holding that "the plaintiff suffers from a serious condition, so that the action of the defendant authorities must ensure the effective and concrete nature of the rights provided for by Art. 34 of the Romanian Constitution (Right to protection of health), Art. 22 of the same Act (Right to life, as well as the right to physical and mental integrity of the person) interpreted according to the conventional standard in the light of Art. 2 and Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms according to Art. 20 para. (1) of the Romanian Constitution. The fact that an assessment procedure was carried out which resulted in non-inclusion in the List cannot constitute an adequate fulfilment of the authorities' obligations to ensure the effective and concrete character of the aforementioned rights."*

