

## 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'

#### ANSWERS GIVEN BY THE ADMINISTRATIVE COURT OF THE REPUBLIC OF SERBIA

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 the Republic of Serbia (Official Gazette Nos. 98/2006, 16/2022), among other rights, prescribes social rights as follows: special protection of the family, mother and single parent, health care, social protection, right to education, pension insurance and others.**

**The following laws are in force in the field of social insurance: the Law on Health Insurance, the Law on Health Care, the Law on Pension and Disability Insurance, the Law on Employment and Unemployment Insurance, the Law on Employment of Foreigners, the Law on Contributions for Mandatory Health Insurance, the Law on the Conditions for Sending Employees to Temporary Work Abroad and their Protection.**

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 field of a health care, the law regulates the health care system in the Republic of Serbia, social care for the health of the population, general interest in health protection. A citizen, as well as a foreign citizen and a stateless person who is permanently settled or temporarily resides in the Republic of Serbia, has the right to health care, in accordance with the law.**

**The following laws are in force in the field of social insurance:**

**The Law on Health Insurance; The Law on Health Care; The Law on Pension and Disability Insurance; The Law on Employment and Unemployment Insurance; The Law on Employment of Foreigners; The Law on Contributions for Mandatory Health Insurance, The Law on Conditions for Sending Employees to Temporary Work Abroad and Their Protection, and The Law on Professional Rehabilitation and Employment of Persons with Disabilities, Law on Social Housing (also, National Strategy for Social Housing).**

**The Law on Financial Support for Families with Children, which regulates the improvement of conditions for fulfilling the basic needs of children, harmonizing work and parenting, special incentives and support for parents to achieve the desired number of children, improvement of the financial situation of families with children, families with children with developmental disabilities and disabilities and family with children without parental care.**

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



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**The Government of the Republic of Serbia adopted the Strategy for the Development of Digital Skills for the period from 2020 to 2024, which represents the Government's National Strategic Program that comprehensively regulates the development of digital skills of the population with the aim of using the potential of modern information and communication technologies in the direction of raising the quality of life for all citizens, higher employment, work efficiency and economic growth of society. This strategic framework, together with the Information Security Development Strategy in the Republic of Serbia, for the period from 2017 to 2020, contributes to increasing the access of citizens and businesses to information and communication technologies, the openness and availability of the Internet, and the creation of an information society through the development of e-business and e-government, e-commerce, e-justice, e-health and digital education, as well as by including all citizens in the information society, especially citizens who belong to sensitive social groups, while ensuring an appropriate response to the needs of the labor market in terms of having appropriate digital skills, as and with constant concern for all aspects of security, privacy threats and technological addiction.**

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 financing of mandatory pension and disability insurance, which is regulated by the Law on Pension and Disability Insurance, is based on the so-called Bismarck's system of generational solidarity, one of the main features of which is that pension beneficiaries are not paid funds that they themselves have paid in the form of contributions for mandatory pension and disability insurance, but their pensions are paid from contributions paid by the current working generation of insured persons.**

**Therefore, the right to a pension is not realized in the amount determined by the amount of one's own total contributions paid during the insurance period, but in benefits based on the realized right from the pension insurance of a single legal character and their amount, according to the formula prescribed by law, directly depends on the growth or decline of the economy, gross social product of the country at a given time and other objective circumstances, such as the ratio of the number of pension benefits, demographic trends, etc.**



In order to preserve the financial sustainability of the pension system in the Republic of Serbia, the sustainability of the Budget of the Republic of Serbia and the macroeconomic stability of the country, the Republic of Serbia enacted the Law on Temporary Regulation of the Payment of Pensions (Official Gazette of the RS, No. 116/14), which was in force in the period from 2014 to 2018 - (in the same period, due to the preservation of the country's economic stability, the Law on Reduction of Net Income in the Public Sector was applied).

Namely, the acquired right to a pension cannot be revoked or withheld, but the amount of the benefit can be changed, because giving to a beneficiary from the social security system cannot be interpreted as giving a pension in a certain amount, and therefore a possible reduction in the amount of the benefit does not mean, at the same time, a reduction in the achieved level of rights (ECtHR Case Law, *Neil and others v. Great Britain*, no. 56721/00, *Domalewski v. Poland*, no. 34610/97, *Janković v. Croatia*, no. 43440/98)

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

**There is a guarantee amount of social benefits.**

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

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

(tick more than one box if necessary)

Please explain

**In the area of social rights, the law prescribes the guaranteed amount of social benefits.**



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:

See answer 4.

**With regard to legal provisions that limit social rights or in any case affect them, the Constitutional Court makes a balance of conflicting demands, when it is called upon to assess the constitutionality of the aforementioned provisions. If, on the other hand, restrictions arise from specific acts or measures, the Administrative Court decides on an individual case.**

8) Have special social benefits been introduced in your country in order to cope with the short and medium-term emergencies of recent years (pandemic, energy crisis, banking and financial crisis)?

- Yes.**
- No

If yes, please indicate the main measures introduced:

**In order to reduce the negative effects caused by the COVID-19 pandemic, the Government of the Republic of Serbia introduced the special social benefits:**

- **fiscal benefits and direct grants to business entities in the private sector and financial assistance to citizens in order to mitigate the economic consequences;**
- **payment of a single financial aid to all citizens of the Republic of Serbia;**
- **determination of the Program of direct benefits from the budget of the Republic of Serbia to business entities in the private sector in order to mitigate the economic consequences;**
- **financial support Program to sports organization in difficult economic conditions;**
- **state aid for research, development and improvement of products and infrastructure necessary for to fight against infectious diseases;**
- **financial support to agriculture producers;**
- **financial assistance to agricultural farms;**
- **financial support to agricultural holdings through easier access to the use of loans in difficult economic conditions;**



- **on the procedure and method to postpone the payment of owed taxes and contributions in order to mitigate the economic consequences;**
- **and many others.**

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

**Support and assistance measures, which were mentioned in the answer to the previous question, did not affect the change ordinary division of jurisdiction between the courts.**

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 health care system of the Republic of Serbia consists of health care institutions, higher education institutions that perform accredited study programs for acquiring appropriate knowledge and skills for performing work in the field of health care, and other legal entities for which a special law stipulates that they also perform health care activities, private practice, health workers and healthcare associates, as well as the organization of healthcare financing.**

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.**

**The Province and local self-government have the authority to recognize or exclude or condition the social benefits in areas that are regulated by their general acts and paid from their own budget (for example, the Decision on conditions and criteria for exercising the right to grant single assistance to individuals and families in a state of social need from the area of the local self-government funding from the local self-government budget.**

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

**The Law on Health Care regulates the health care system in the Republic of Serbia, social care for the health of the population, general interest in health care. A foreign citizen and a person without citizenship who is permanently settled or temporarily resides in the Republic of Serbia have the right to health care, in accordance with the law.**

**Beneficiaries of social protection are citizens of the Republic of Serbia. Beneficiaries of social protection can be foreign citizens and stateless persons, in accordance with the law and international agreements.**





## 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 Administrative Court has jurisdiction to decide on the legality of the final administrative act affecting social rights in the administrative dispute.**

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**

**The jurisdiction of the Administrative Court includes, among others, disputes related to the following social rights: rights from pension insurance, health care, health insurance, contributions for mandatory health insurance, social protection and social care for the family, veterans' protection, rights from veterans' protection, health, social and veterans protection, health care and health insurance, employment rights of persons with disabilities, unemployment rights.**

If the answer is in the negative for some of the above areas, please indicate which court has jurisdiction to hear disputes relating to these rights (civil court, labour court, etc.)

3) Does the administrative judge in your country have jurisdiction on the lawfulness of the administrative acts through which the public administrations or other public entities organise and regulate the provision of social services?

- Yes
- No



Please explain

See answer 2.

- 4) In particular, does the administrative court deal with administrative and/or procedures for the awarding or recognition of subsidies, aids, benefits and other services relating to social rights?
- Yes
  - No
  - Yes, but only in some areas**

If no, please indicate which court is competent to hear the above-mentioned disputes (civil court, labour court, etc.)

- 5) Does the administrative judge assess only the regularity of the procedures or can it also verify whether the individual is entitled to receive the benefit unjustly denied?
- It is only responsible for the regularity of administrative procedures.
  - It has the power to ascertain the entitlement of the individual to obtain a social benefit.**

Please explain, possibly providing specific information on the different areas of social rights and on the techniques of protection used

**According to the Law on Administrative Disputes the Court assesses the legality of the administrative act in relation to the regularity of the procedure as well as in relation to the application of the substantive law.**

**When it finds that the contested administrative decision should be annulled, the court will resolve the administrative matter with a judgment, if the nature of the matter allows it and if the established factual situation provides a reliable basis for it. Such judgment replaces the annulled act in all respects (dispute of full jurisdiction). A full jurisdiction dispute is excluded when the subject of an administrative dispute is an administrative act adopted on a discretionary basis.**

- 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

See answer 5.

**If the established factual situation provides a reliable basis for this, otherwise it will direct the plaintiff to pursue his lawsuit in civil proceedings before the competent court.**

- 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

- 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

**In the Republic of Serbia, the Law on Mediation in the Resolution of Disputes (Official Gazette of the RS No. 55/2014) was adopted, according to which mediation is possible in administrative matters, disputes in the field of environmental protection, in consumer disputes, as well as in all other disputed relationships, in for which mediation corresponds to the nature of disputed relationships and can help in their resolution.**



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)

### 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).

**One of the legal conditions for exercising the right is the same permanent residence of the parent and the child. The state body rejected the plaintiff's request for the exercising of the right to child allowance for the reason that the child does not live with his parents but lives in another place due to regular schooling. According to the court's opinion, the fact that the child lives outside the place of permanent residence of the parent for regular schooling does not mean that they have different permanent residence, therefore according to the decision of the Court the parent of a child, who is attending regular schooling outside the parent's place of permanent residence is entitled to child allowance for that child.**



- 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 decision of the Court annulled the decision of the administrative authority that rejected the request of the plaintiff (foreigner) for material social security on the grounds that he/she was not the a citizen of the Republic of Serbia, because the legal requirements for exercising this right is residence, not citizenship. (The National Charter on Human Minority Rights and Civil Liberties).**

- 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).

**One of the legal conditions for exercising the right to child allowance is that the applicant or a member of his/her family is not owner of that immovable property/apartment, except for suitable housing, which corresponds to the needs of the individual or the family.**

**The public authority rejected the request stated that the applicant indeed owns immovable property which is not in his ownership, but in ownership of another person. The decision of the court annulled the decision of the public authority, because according to the court's opinion, in the process of exercising the right to child allowance, teh possession of immovable property means ownership, and not housing (temporary residence) in the building, which is owned by another person.**

