

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 Slovak Constitution guarantees the main social rights, such as the right to choose an occupation and to conduct a business (art. 35), the right to just and satisfactory working conditions (art. 36), right to protection of health (art. 40) and right to education (art. 42). 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?

- 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

The Slovak healthcare system is based on the principle of free healthcare for all. Similarly, the law ensures that the unemployed receive aid and benefits to support themselves and, where possible, to get a job. Forms of aid are also provided for large and poor families, as well as incentives for capable and deserving persons in a state of poverty to access higher education. Finally, through the social housing system it is possible to secure housing for those who could not afford it.



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

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 economic condition of the country and the income of the population may be reflected in the amount of certain social benefits which is governed by the legislation (see point 5).

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

The intangible nucleus of social rights is created by the very fact that these social rights are enshrined in the Constitution and regulated in detail by laws. Pursuant to article 51 par. 1 of the Slovak Constitution, all the so-called second-generation rights may in principle be claimed only within the limits set by legislation. The Slovak Constitution leaves the Legislator a wider margin of discretion (compared to fundamental human rights and freedoms) to define the nature and scope of the constitutionally enshrined economic, social and cultural rights. The economic condition of the country and the income of the population may thus be reflected in the amount of certain social benefits which is governed by the legislation.



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

See point 5.

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.

The economic condition of the country and the income of the population may be reflected in the amount of certain social benefits which is governed by the legislation.

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

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:

Business aid, tax exemptions, pandemic nursing allowance provided to insured persons (e.g. parents) who have cared for a sick or healthy child/certain category of persons during COVID-19 pandemic crisis (e.g. in case of closure of schools or social services facilities).



- 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 Slovakia 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 Slovak healthcare service 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, as well as special service contracts, are allowed to perform public health functions. Furthermore, private subjects may be providers of social services under the conditions set out in the Social Services Act.

- 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



In Slovakia, by the adoption of Act No. 416/2001 Coll. there has been a competence decentralisation, i.e. certain competencies have been transferred from the state administration bodies to local and regional self-governments.

Some of those competencies have been so transferred in the field 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.
- Yes in some areas

Please explain

Social security in Slovakia has three basic forms (Pillars), e.i. I. social insurance; II. state social support, and III. social assistance.

The entitlement of foreigners to support under these forms of social security depends on many different circumstances and factors, as well as on the assessment of his/her individual situation (type of residence, period of payment of contributions to the social security system, amount of payments, etc.).

In general, social benefits provided to foreigners under the state social support system (Pillar II) and social assistance system (Pillar III) may be considered as a more easily accessible type of support compared to benefits provided under the social insurance system (Pillar I).

The social insurance system (e.i. sickness benefits, maternity benefits, pension insurance benefits, unemployment insurance benefits, etc.) requires payments of contributions to the state while the entitlement to benefits under the state social support system (Pillar II) (e.i. child care or parental allowance) is not depended on the participation in the social insurance legal relations or on the income status of the beneficiaries; the principle of equal social security for all applies.

Finally, the social assistance system (Pillar III) is income-based, providing benefits to those in real need given their social and economic situation (e.g. persons may apply for assistance in material need in case they find themselves in a situation where their income and the income of persons considered jointly with their income such as spouse, children, or parents living in common household do not reach the subsistence minimum level and they are not able to ensure or increase their income on their own). For the purposes of ensuring basic living conditions and needs, a foreign national has the same status as citizens of the Slovak Republic.



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

Judicial review of decisions of administrative authorities is ensured by administrative courts. Civil courts have jurisdiction only over certain disputes concerning social rights (e.g. disputes between an employee and employer over claims deriving from labour-law).

Disputes concerning collective negotiations may be resolved by an arbitrator. Arbitrator is not considered as an administrative authority, therefore decisions of arbitrator are not subject to review in administrative court proceedings.

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 between an employee and employer over claims deriving from labour-law are subject to civil proceedings

Decisions on termination of service of certain professions (such as policemen, soldiers, officers of Prison and Court Guard Service, officers of National Security Authority, officers of Slovak Information Service and customs officers) are subject to review by court in administrative court proceedings.

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

Every individual administrative act (e.i. a decision issued by a public administrative body on the specific merits and binding only upon a specific party) may be subject to review before administrative courts. Normative acts (containing general binding rules) are not reviewed in administrative court proceedings except for certain municipal ordinance and ordinance of higher territorial unit.

The municipality may determine by ordinances what social services it will operate and consequently establish the reimbursement for them.

- 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

In administrative court proceedings the court is not bound by the pleas in law and the court may, even of its own motion, supplement the evidence taken by the public authority. Thus, a higher degree of judicial protection is ensured in social matters.

- 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

Annulment of decision of administrative authority is the remedy that can the administrative judge put in place for the protection of social rights. Damage compensation may be claimed in separate civil proceedings. Administrative judges don't review administrative decision that cannot be characterised as decisions on the rights, legally protected interests or obligations of natural persons and legal entities, in particular decisions and measures of an organizational nature.

- 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 Slovakia, there is no accelerated, simplified or special procedures in relation to protection of social rights. However, a higher degree of judicial protection is ensured in social matters while the court is not bound by the pleas in law (see point 5). This aspect is subsequently taken into account when assessing the adequacy of the length of proceedings in the case-law of the Constitutional Court of the Slovak Republic.

- 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)

Disputes concerning collective negotiations may be resolved by an arbitrator. Arbitrator is not considered as an administrative authority, therefore decisions of arbitrator are not subject to review in administrative court proceedings.

- 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

In addition to the above, administrative courts encounter problems due to complicated legislation, frequent amendments and problematic temporal application of legal provisions. A frequent problem is also insufficient reasoning of decisions by public administrative bodies and subsequent impossibility of review.

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).

There is no "essential core" of social rights identified in the legislation or in the case-law of the Slovak courts.

- 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).

Such case has not occurred in Slovak legal system. Once they fulfill the conditions, foreigners can receive various benefits such as child allowance, parental allowance, maternity benefit, assistance in material need etc. (see point 13, Part I).

- 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 cassation principle applies in Slovak administrative justice. The administrative court does not impose obligations on public administration authorities; it may only annul contested decisions or confirm them (dismiss an administrative action). The binding legal opinion of administrative court ensures that the administrative authority decides the matter in accordance with the interpretation taken.



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