

## 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 Spanish Constitution shrouns the central social rights, such as the right to health (art. 43), the right and the duty to work (art. 35), the right to education (art. 27), the protection of families (art. 39) social security (art. 41), access to housing (art. 47). Those rights are developed through statutory law. Other rights concerning more specific services are directly 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 Spanish healthcare system is based on the principle of free healthcare for all, with special attention to the less well-off. Similarly, the law ensures that the unemployed receive aid and benefits to support themselves and, where possible, to get a job. Forms of aid (e.g. in the form of tax exemptions) 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

In Spain, article 81 of Organic Law 3/2018, December 5, on the Protection of Personal Data and digital rights guarantees universal, affordable, quality, and non-discriminatory access for the entire population. Likewise, the rights that have to do with care by the public authorities for families and dependent persons are being deepened by legislation. In this vein, the so-called Family Law, which is expected to be passed any time soon, comes, according to the government, to remedy historical deficiencies that were occurring in our country in terms of reconciliation and care and guarantees protection to all families with measures such as the extension of care permits and benefits for families, the extension to more families from the shelter that until now was reserved for large ones or the equalization of the rights of de facto couples to those of married couples. Additionally, the budgetary effort to care for the most deprived has increased. A strategy has been developed to improve the residence model to be as similar as possible to a natural home.

Regarding case law, both the Constitutional Court and the Supreme Court have provided valuable elements, through various resolutions, for the proper interpretation and application of social rights.

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

Experience has shown that decisions on allocating limited resources can affect social rights to a greater or lesser extent, depending on the political priorities established at each moment.



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

The guarantee of an essential social rights core is not the Spanish system's general rule. However, the basic profiles are indeed outlined in some constitutional cases, which have also been recognized in case law. This is the case of the right to education, for which the Constitution establishes compulsory primary education. Regarding justice, it creates mandatory free legal aid for those who lack the resources to litigate (art. 119). Or the maintenance of a public social security system, which also appears in the Constitution, although the different benefits and their extension are relegated to statutory law and, therefore, to an allocation of resources that is political and does not have a minimum core guarantee at the constitutional level.

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:

In general, the executive and the legislative branches enjoy wide margins of manoeuvre to allocate budgetary resources. However, it ultimately corresponds to the courts and the constitutional court to rule on the specific legality and constitutionality of each decision. In practice, executive and legislative decisions seek reasonable balances within the framework of the constitution, although the nuances ultimately depend on different political sensibilities.



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 and economic measures to support recovery, efforts to deal with situations of social and economic vulnerability, measures to protect employment, measures to facilitate reduced mobility, measures to strengthen health services, housing, and transport measures to address the social vulnerability, support measures for the third sector, actions in the field of education among 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

The special support measures introduced in Spain to deal with the emergencies of recent years have not been accompanied by special rules that have altered the ordinary division of jurisdiction.

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 Spanish legal system admits, with some limitations and requirements, different modes of provision of public services and benefits, depending ultimately on the choice of one or the other in legislative and executive decisions.



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

The Constitution establishes a model for distributing competencies by subject matter between the State and the Autonomous Communities. In this model, there are exclusive competencies of the State, shared competencies between the State and the Autonomous Communities, and exclusive competencies of the latter. The model also has elements of flexibility in such a way that the State can delegate matters of state competence to the autonomous communities through different formulas. In practice, the regions nowadays have multiple relevant competencies related to social rights, the extent of which may vary depending on the specific matter in question. Moreover, the contribution of autonomous communities to the provision of goods and services deriving from social rights is not only at the legislative level but also at the executive or administrative level, as is the case with municipal administrations.

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

According to statutory law, resident foreigners are entitled to Social Security benefits and services under the same conditions as Spaniards. Resident foreigners shall be entitled to general, primary, and specific social services and benefits under the same conditions as Spaniards. In any case, foreigners can access essential social services and benefits regardless of their administrative situation.



## 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

Apart from some issues reserved for civil courts or even other courts with more specific competencies (e.g., child protection), administrative courts usually have jurisdiction over most disputes concerning measures affecting social rights. Nevertheless, conflicts on social security benefits typically correspond to the so-called Social Courts (labour and social security courts), with some exceptions like those related to public servants.

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 previously said, Social Courts are generally competent for social security benefits in Spain.

2) 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

Within the areas that fall within the competence of the administrative courts, it is indeed up to the administrative courts to control the acts of the administration through which the goods and services that grant such rights are provided.



- 3) 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.)

In the field of Social Security, as mentioned above, in Spain, the Social Security Court is competent to hear disputes concerning the recognition of benefits, with the sole exception of those corresponding to certain civil servants.

- 4) 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

As a general rule, the administrative judge may order the public administration to award the successful applicant the advantage he has been unlawfully denied.

- 5) 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 Spanish law, the administrative judge can, on the one hand, review administrative acts related to social rights and consequently condemn the administration to perform a specific performance or conduct if that is the case according to the law. Likewise, and following the principle of administrative responsibility, the judge can condemn the administration to compensate damages if the legal requirements are met.





- 6) 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 the field of social security, it applies the Social Courts procedure, which is simplified and accelerated compared to most of the ordinary civil or administrative proceedings. In areas falling within the jurisdiction of the administrative judge, there is the so-called abbreviated administrative procedure, which is used to deal with matters relating to personnel in the service of the Public Administration, foreigners, and the rejection of requests for political asylum, sports discipline matters relating to doping, as well as all those whose amount does not exceed 30,000 euros.

Thus, proceedings concerning social rights are possible within the framework of the above mentioned matters.

- 7) 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)

ADR proceedings only exist in private law and, as far as social rights are concerned, only in those areas which deal with certain aspects of family protection, taking into account that the capacity to dispose of the parties does not extend to those aspects considered as mandatory law.

- 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)



Although it is the determined will of the legislator and the Public Administrations of Spain to promote social rights effectively, budgetary limitations sometimes act as a brake on the full operation of the rules and agreements that recognize these rights.

### 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 so-called social rights referred to in Chapter III of Title I of the Spanish Constitution of 1978 must guide positive legislation, judicial practice and the actions of the public authorities; but they may only be invoked before the ordinary jurisdiction in accordance with the provisions of the laws that develop them (art. 53.3º). These rights are not protected by the guarantee of an obligatory preservation of their "essential content", as is the case with the fundamental rights and public freedoms contemplated in chapter II of the same Title, of which the Constitution states that "Only by law, which in any case must respect their essential content, may the exercise of such rights and freedoms be regulated" (art. 53.1)

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- 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).

After noting that foreigners are holders of the right to adequate judicial protection under the same conditions as Spaniards, the Constitutional Court declared unconstitutional article 2 of Law 1/1996, of January 10, on free legal assistance, which contemplated a limitation of the right concerning foreigners who are not residents of our country (STC 95/2003, May 22).

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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).





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As indicated above, in our system, the administrative courts can grant a social rights benefit if it considers that the administration has unduly denied it. It can happen with a pension, the right to obtain an educational allowance, a disability allowance, or any other established benefit.

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