

Social Rights in the Central and Eastern European Constitutionalism

Social rights, such as the right to an adequate standard of living, the right to social security, the right to health or the right to education are guaranteed to individuals by constitutions and international human rights conventions. They constitute one of the lively discussed issues of constitutional and human rights law scholarship. A particularly controversial issue is the possibility of judicial enforcement of social rights by constitutional courts. The activity of constitutional courts in this field is criticised by pointing out that it is the competence of democratically elected parliaments to create social policy. Thus, constitutional courts, lacking the democratic legitimacy derived from elections, should not interfere in this competence. Nevertheless, constitutional courts all over the world, determined by the content of the constitutions defining their role, with more or less extensity address the issue of social rights in their jurisprudence, applying different concepts and methods to assess allegations of violations of social rights. These issues are of particular interest to international legal scholarship. Interestingly, the jurisprudence of the constitutional courts of the Central and Eastern European states has not received much attention in the international debate, even though the democratic transition in this region, as well as the accomplished constitutionalisation of social rights, were of particular interest to legal science in the 1990s. The aim of this project is therefore to find out what approach to the judicial enforcement of social rights is adopted by the Central and Eastern European constitutional courts.

The project formulated the following research questions: Is it possible to identify among the Central and Eastern European constitutional courts the dominant approach to the enforcement of social rights? If not, what kind of different models can be identified in this respect? What are the main lines of social rights jurisprudence in the Central and Eastern European constitutional courts jurisprudence, i.a. whether constitutional courts refer (and to what extent) to concepts relating to the justiciability of social rights, including the standard of reasonableness, the minimum/core content of rights and minimum/core obligations of states? Have the changes in Central and Eastern European constitutionalism, that have taken place in recent years, meaning the shift from the standards of liberal democracy towards illiberal democracy as well as the recent crises (economic and COVID-19) affected the constitutional protection of social rights?

The research project consists of three main phases. The first two will examine the constitutional regulation and jurisprudence of constitutional courts relating to social rights in 19 Central and Eastern European countries. In the third stage of the project, an in-depth study of the jurisprudence of selected constitutional courts presenting different approaches to the judicial enforcement of social rights will be carried out, which also includes an empirical study conducted on a group of former or current constitutional court judges. This study will serve to better understand the context, determinants and direction of the development of the jurisprudence of the constitutional courts of the region in the field of social rights.

The results of the project will be published in a monograph and scientific articles. Their publication will help to fill the existing knowledge gap on the constitutional regulation and judicial protection of social rights in Central and Eastern Europe. The available national and international academic studies to date do not comprehensively analyse the proposed research problem, focusing instead on the jurisprudence of individual constitutional courts in the field of social rights or on individual social rights.