



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

8 April 2015

**Case Document No. 1**

**European Federation of Public Service Employees v. Greece**  
Complaint No. 115/2015

**COMPLAINT**

**Registered at the Secretariat on 12 March 2015**



Algemeen Secretariaat • Secrétariat Général • Generalsekretariat • Secretariat General • Secretaria General

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**European Committee of Social Rights  
Comité Européen des droits sociaux**

## **European Federation of Public Service Employees**

*Against*

*The Hellenic Republic*

## **COMPLAINT**

**Collective Complaint against Greece**

**Submitted by the European Federation of Public Service Employees**

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Europese Federatie van het Overheidspersoneel  
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## **1. ADMISSIBILITY**

1/ Greece is a State party to the European Social Charter and to the Additional Protocol providing for a system of collective complaints against which the European Federation of Public Service Employees (EUROFEDOP) and The Hellenic Military Medical Corps Association (Greek Acronym ESTIA) submits the collective complaint:

2/ Article concerned:

Article 1 (2) of the European Social Charter: "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon".

3/ EUROFEDOP observance by the of the admissibility requirements:

The EUROFEDOP, convinced of the importance of proper observance of worker rights throughout Europe and aware that the new collective-complaint machinery which the Council of Europe established on 9 November 1995 can contribute appreciably to attainment of that objective, has decided to submit a collective complaint to the Secretary General of the Council of Europe. Under Article 1 (b) of the Additional Protocol, the High Contracting Parties recognise the right of international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for that purpose by the Governmental Committee of the European Social Charter to submit collective complaints. The EUROFEDOP has consultative status with the Council of Europe. It is also on the Governmental Committee list of international non-governmental organisations allowed to submit collective complaints. The EUROFEDOP is on the list for a 4-year period running from the entry into force of the Additional Protocol (1 July 1998). It accordingly has the right to submit a collective complaint of unsatisfactory implementation of the European Social Charter. Unlike bodies coming under Article 1 (c) and Article 2 (1) of the Additional Protocol 1, international non-governmental organisations entitled to submit complaints need not come within the jurisdiction of the High Contracting Party. The EUROFEDOP is therefore entitled to bring a collective complaint against any of the countries bound by the European Social Charter, without prejudice to any other admissibility requirement. In addition, under Article 3 of the Additional Protocol, international non-governmental organisations referred to in Article 1 (b) may submit complaints only in respect of those matters regarding which they have been recognised as having particular competence. The EUROFEDOP, founded in Vienna in 1966, has the principle aim to promote co-operation between public service trade unions throughout Europe and represent the interests of employees in the public service to the European Union. Article 1 (2) of the European Social Charter "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon", represents a fundamental interest of any employee in the European public service.

In order to achieve these aims, EUROFEDOP undertakes various kinds of action to promote the full recognition and the exercise of the interests of employees in the public sector throughout Europe and promotes the creation of a representative and pluralist European Social Dialogue, either formally or informally, in the public sector. Furthermore, one of the 8 sectors of EUROFEDOP is the Defence Sector, dealing with the interests and working conditions of the Armed Forces staff throughout Europe. In addition,

and this is in contrast to the rules of the European Convention on Human Rights machinery, the EUROFEDOP, as an international non-governmental organization, does not have to give evidence of any particular interest in taking action since the Additional Protocol does not make admissibility conditional on any such requirement. The EUROFEDOP asks the European Committee on Social Rights to reject any objection by the Greek Government in this connection. The complainant is required to show in what respect a High Contracting Party has not satisfactorily applied a provision of the European Social Charter but is not required to give evidence of any personal interest in taking action.

Lastly, as regards Article 1 of the rules of procedure adopted by the European Committee on Social Rights, the complaint is signed by the President of EUROFEDOP, Mr Fritz Neugebauer, and the Secretary General of EUROFEDOP, Mr Bert Van Caelenberg. Under Article 21(1) of the EUROFEDOP Statutes, the president, who may delegate his powers to any other member of the Executive Bureau, represents the EUROFEDOP in all civil matters and is vested with all the powers necessary for that purpose.

#### 4/ Greece bound by the European Social Charter:

Greece signed the Council of Europe European Social Charter on 18 October 1961 and ratified it on 6 June 1984. In the official declaration it made in depositing the instrument of ratification, it stated that it was bound by all the articles in Part II of the Charter except Articles 5 and 62. It also signed and ratified the Additional Protocol of 18 June 1998 providing for a system of collective complaints. In lodging a collective complaint concerning Article 1 (2) of the European Social Charter, the EUROFEDOP accordingly meets the requirement laid down in Article 4 of the Additional Protocol.

It should also be pointed out that Greece has signed and ratified the 1930 ILO Convention 29 (on forced labour) and the 1957 ILO Convention 105 (on abolition of forced labour). Lastly Greece has signed and ratified both international covenants of the United Nations, which establish the right to freely chosen work (see Article 8, International Covenant on Civil and Political Rights and Article 6, International Covenant on Economic, Social and Cultural Rights). This right is likewise protected by Article 4 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, of which Greece is also a party. All these international treaties have been incorporated into domestic Greek law and, under the Greek Constitution, they have greater legal force than domestic law. The explanatory report to the Additional Protocol states that the fact that the subject matter of a complaint has been examined under the "normal" procedure for considering government reports does not, in itself, make the complaint inadmissible. Further, in ruling on the first collective complaint, by the International Commission of Jurists against Portugal, the European Committee on Social Rights stated: "Neither the fact that the committee has already examined this situation in the framework of the reporting system nor the fact that it will examine it again during subsequent supervision cycles in themselves imply the inadmissibility of a collective complaint concerning the same provision of the Charter and the same Contracting Party". It further stated: "The legal principles *res judicata* and *non bis in idem* relied on by the Portuguese Government do not apply to the relation between the two supervisory procedures". On the basis of the non-applicability here of *res judicata* and *non bis in idem*, the EUROFEDOP requests the European Committee on Social Rights to reject any objection on these grounds from the Greek Government given that the collective-complaints machinery is independent of and distinct from the regular machinery for dealing with national reports. Otherwise the new system would not have any point since all provisions accepted by a state party are examined periodically.

5/ The Hellenic Military Medical Corps Association (Greek Acronym ESTIA) represents about 200 doctors working in the medical sector of the Greek Armed Forces. The association was founded on March of 2013, as a scientific organization with the purpose, among others, of defending and promoting the professional rights of its members and at the same time promoting the social role that the officers of the medical corps play in each society.

## **2. SUBJECT OF THE COMPLAINT – THE LAW IN GREECE**

The European Federation of Public Service Employees (EUROFEDOP) and the Hellenic Military Medical Corps Association (Greek Acronym ESTIA) appeal to the European Committee of Social Rights against the Hellenic Republic for a cluster of violations concerning :

- i. The terms of work of the Medical Officers-Doctors of the Greek Armed Forces.
- ii. The forced labour, imposed on the Medical Officer-Doctors, depriving them of the right of free choice of profession and the right to develop their personality.
- iii. The violation of the official engagement of the Hellenic Republic in the Governmental Committee of the European Social Charter (101st meeting, 9-13 September 2002, Strasbourg), by par. 124, to discharge professional Officers who have received periods of training with no further financial obligation after 15 years of service.
- iv. The deception of the European Committee of Social Rights regarding the statement of the Hellenic Republic that the Greek Law 3257/2004 complies with the official engagement of the Greek Government in the Governmental Committee of the European Social Charter (101st meeting, 9-13 September 2002, Strasbourg), by par. 124, to discharge professional Officers who have received periods of training with no further financial obligation after 15 years of service.

The EUROFEDOP regards as one of its major concerns the representation of the interests of workers in the public sector and accordingly submits the present complaint against Greece. It observes that, since ratification of the European Social Charter, Greece has had in force two laws and regulations on the right to freely undertaken work which contravene Article 1 (2) of the Charter.

Greek law is thus at odds with the prohibition on forced labour in the European Social Charter. More specifically, the article 1 of the Greek Law 3257/2004 and the article 33 of the Greek Law 3883/2010 clearly violate:

- i. The official engagement of the Hellenic Republic in the Governmental Committee of the European Social Charter (101st meeting, 9-13 September 2002, Strasbourg), by par. 124, to discharge professional Officers who have received periods of training with no further financial obligation after 15 years of service.
- ii. The principle of proportionality, as a fundamental principle of the European legislation, regarding the amount of compensation in case of resignation compared to the cost of training of a Medical Officer-Doctor.
- iii. The right of the worker to earn his living in an occupation freely entered upon, as it is stated in:
  - a. Paragraph 2 of Article 1 of Part II of the European Social Charter.
  - b. The Article 5 for the prohibition of slavery and forced labour of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).

- c. The Paragraph 1 of the Article 15 for the free choice of occupation of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - d. The Article 4 for the prohibition of slavery and forced labour of the European Convention on Human Rights (Rome, 4th November 1950).
  - e. The Article 4 for the prohibition of slavery and servitude of the Universal Declaration of Human Rights (10th December 1948).
  - f. The Paragraph 1 of the Article 23 for the free choice of employment of the Universal Declaration of Human Rights (10th December 1948).
- iv. The right of a citizen of the European Union to engage in a gainful occupation in the territory of other Contracting Parties of the European Social Charter. This is a violation of:
- a. The Paragraph 4 of the Article 18 of Part II of the European Social Charter.
  - b. The Paragraph 2 of the Article 15 for the free choice of place of work and residence for the citizens of the European Union among the member-states of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - c. The Article 45 for the freedom of movement and of residence for the citizens of the European Union among the member-states of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - d. The Article 13 for the freedom of a citizen to leave his country of the Universal Declaration of Human Rights (10th December 1948).
- v. The forced labour imposed on the Medical Officers-Doctors of the Greek Armed Forces insults their dignity and their personality, thus violating:
- a. The Article 1 for the protection of human dignity of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - b. The Article 1 for the protection of human dignity of the Universal Declaration of Human Rights (10th December 1948).
- vi. The principle of good faith, as a fundamental value of the European Law System.
- vii. The ban of discrimination of any kind against European citizens, as it is stated in:
- a. The Article 21 for the prohibition of any discrimination of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - b. The Articles 2 and 7 for the prohibition of any discrimination of the Universal Declaration of Human Rights (10th December 1948).



### **3. JUSTIFICATION OF THE ABOVE MENTIONED LAW VIOLATIONS**

1/ The major problem that ESTIA members face is the length of compulsory service (forced-oppressive labour) for career Medical Officer-Doctors of the Armed Forces (AF) in Greece who have received periods of training.

Until 2004 the Hellenic Republic was enforcing the article 64 of the Greek Legislative Decree 1400/1973 regarding the length of compulsory service for the career Officers of the Greek Armed Forces.

According to the article 64 of the Greek Legislative Decree 1400/1973 for the Medical Officers-Doctors of the Greek Armed Forces the compulsory service was calculated as:

- i. The obligation was defined as three times the training in the relevant Military Academy. For the Medical Officers-Doctors, for whom the Greek Military Medical Academy (Greek Acronym SSAS) lasts 6 years, the obligation was  $6 \times 3 = 18$  years of obligatory service after graduation.
- ii. The service obliged the Officers to study in schools relevant to their training. For the Medical Officers-Doctors, this school was the obligatory specialization school, after which you become and are entitled as a specialist (an Internist, a Surgeon etc.).  
For the Medical Officers-Doctors, and only for them, and despite the fact that the specialization school was obligatory, there was an additional obligation of 5-year service, namely  $(6 \times 3) + 5 = 23$  years by now.
- iii. The service also established the participation of the Officers to post-training programs that were not obligatory and, if the post-training program lasted more than 6 months, it created an obligation three times that of the post-training, namely, for the Medical Officers-Doctors, with post-training of 2 to 3 years, it was  $(2 \text{ to } 3) \times 3 = 6 \text{ to } 9$  years, namely  $(6 \times 3) + 5 + (6 \text{ to } 9) = 29 \text{ to } 32$  years in total.
- iv. According to the article 64 of the Legislative Decree 1400/1973 there was a plateau of compulsory service set at 25 years of compulsory service. Namely, the 29 to 32 years in total of the paragraph (iii) above were reduced to the plateau of 25 years of compulsory service.

If we added these 25 years of obligatory service after graduation with the training years in Greek Military Medical Academy (SSAS), which are 6 years for Medical Officers-Doctors, and during which, the student offers services to the public sector as an hoplite with the excuse of the 6-year military training, then, the total time of obligatory service in the AF was 31 years. Namely a Medical Officer-Doctor, who entered the Greek Military Medical Academy (SSAS) at 18 was released at  $18 + 31 = 49$  years old, which meant that the Medical Officer-Doctor had exhausted all the time during which he/she could freely alternatively make a living, obligatorily providing service to the army, having lost the chance for freedom of choice.

2/ The length of compulsory service according to the article 64 of the Greek Legislative Decree 1400/1973, which was analyzed in the above paragraph (1), was a field of noncompliance by the Greek Government after numerous recommendations of the European Committee of Social Rights about violation of Article 1, par.2 of the European Social Charter.

More specifically, the Hellenic Republic, enforcing the article 64 of the Greek Legislative Decree 1400/1973, has been supervised for many years (14 years), by the European Committee of Social Rights, with consecutive interventions regarding the violation of article 1 par. 2 of the European Social Charter that it has countersigned.

After the Hellenic Republic had exhausted and exceeded the deadlines set by the European Commission, acknowledging the excessive oppression of the military staff with regard to the obligation to serve in the Greek AF based on the existent Greek Legislative Decree 1400/1973, it was obliged to participate in the Governmental Committee of the European Social Charter (101st meeting, 9-13 September 2002, Strasbourg), where, in order to terminate the regime of the aforementioned violations, **it was bound by par. 124, to discharge professional Officers who have received periods of training with no further financial obligation after 15 years of service.**

3/ Instead of fulfilling the aforementioned obligation of paragraph (2), the Hellenic Republic, in order to show that it has fulfilled its obligations, proceeded to the amendment of article 64 of the Greek Legislative Decree 1400/1973 with article 1 of the Greek Law 3257/2004, which concerns the compulsory obligations (time commitment) of the career Officers of the Greek AF, and sent it to the European Committee of Social Rights translated in English, as a reply to the recent query that the European Committee of Social Rights had posed.

Unfortunately, we regret to inform you that, the official reply of the Hellenic Republic on this matter is not only inaccurate, but when read in good faith, it conceals the truth. More specifically:

- i. The Hellenic Republic with the 14th Report on the Implementation of the European Social Charter for the years 2001-2002 towards the European Committee of Social Rights, dated 19/9/2003, stated that regarding the implementation of the paragraph 2 of the article 1 the Hellenic Republic prepares a law that “reduces significantly the obligatory years of service and the years of service after the graduation arising from any extra training periods”.
- ii. The European Committee of Social Rights with the Conclusions on the 14th Report of the Hellenic Republic on the Implementation of the European Social Charter in June 2004 states that “this new approach will reduce the obligatory years of service from 25 years to about 10 years. The Committee does not judge the obligatory years of service arising from the new law as excessive”.
- iii. The rationalisation report of the Greek Law 3257/2004 in the Greek Parliament in 2004 stated that “The term of the free choice of profession has brought the Hellenic Republic and more specifically the Greek Ministry of Defence defenceless in front of complaints and remarks of the Council of Representatives of the European Social Charter, for over-excessive oppression of the military personnel, regarding the years of obligatory service in the Greek Armed Forces.”
- iv. The Hellenic Republic with the 16th Report on the Implementation of the European Social Charter for the years 2003-2004 towards the European Committee of Social Rights, dated 14/10/2005, stated that regarding the implementation of the paragraph 2 of the article 1 the Hellenic Republic prepared the law 3257/2004 that does not imply 25 years of obligatory service on the Greek Officers of the Armed Forces, **but the Hellenic Republic did not refer the data for the obligatory service of the Greek Medical Officer-Doctors where the new law did not change the former situation.**

v. The European Committee of Social Rights with the Conclusions on the 16th Report of the Hellenic Republic on the Implementation of the European Social Charter in December 2006 states that "according to the previous report, the maximum obligatory years of service is reduced in that way from 25 years to 10 years. The Committee judges that this period (of obligatory stay in the Armed Forces) is in accordance with the articles of the Charter".

4/ In order that the mechanism, with which the truth is concealed, can be understood, an analysis of how the Hellenic Republic has amended the article 64 of the Greek Legislative Decree 1400/1973 with the article 1 of the Greek Law 3257/2004 is necessary, so that, although the legislation seems amended with the Greek Law 3257/2004, finally it will create exactly the same heavy obligations (if not heavier ones) **only for Medical Officers-Doctors**, of which the Hellenic Republic was accused and thus leads in inadequate compliance to the relevant recommendation of the Committee of Ministers to member states.

According to the article 1 of the Greek Law 3257/2004 the length of the compulsory service is calculated as:

- i. The obligation is twice the training in the relevant Military Academy. For Medical Officers-Doctors, for whom the training at Greek Military Medical Academy (SSAS) lasts 6 years, the obligation is  $6 \times 2 = 12$  years of obligatory service after graduation.
- ii. The service obliges the Officers to attend schools relevant to their training. For the Medical Officers-Doctors, this obligatory school is the specialization school, after which you become and are entitled as a specialist (an Internist, a Surgeon etc.).

For the Medical Officers-Doctors, and only for them, and despite the fact that the school is obligatory, there is an additional obligation of 5-year service, namely  $(6 \times 2) + 5 = 17$  years by now.

- iii. The service also established the participation of the Officers to post-training programs that are not obligatory and, if the post-training program lasts more than 6 months, it creates an obligation twice that of the post-training. Namely, for the Medical Officers-Doctors with post training of 2 to 3 years, it is  $(2 \text{ to } 3) \times 2 = 4 \text{ to } 6$  years, namely  $(6 \times 2) + 5 + (4 \text{ to } 6) = 21 \text{ to } 23$  years by now.

iv. The article 1 of the Greek Law 3257/2004 abolishes the 25 years plateau of compulsory service of the article 64 of the Greek Legislative Decree 1400/1973.

v. However, the amendment is completed with an addition to the Greek Law 3257/2004 (article 1, par. 15) that was not included in the original article 64 of the Greek Law 1400/1973, **where for any training period after graduation from any Greek Military Academy is mentioned that** "It is noted that for training missions of the paragraphs 3 to 8 that establish an extra period of compulsory service, the extra period of compulsory service is taken into account after the end of the training mission of paragraphs 3-8. The extra period of compulsory service is added to the original period of compulsory service. The training period will not be taken into account as time where any compulsory service period is being fulfilled." Paragraphs 3-8 refer to any training period after graduation from any Greek Military Academy.

Under the Greek law 1400/1973 the Greek Officers are classified in two statuses, the active Officers and the reserve Officers, so that all the obligations and rights of the Officers depend on their status. The active Officer always fulfills his/her obligation, because, at any time, he/she is at the disposal of the service, and whatever he/she does (training, mission etc.) is under the order of the service. The effect of this addition is that the duration of any training after graduation from any Greek Military Academy during which the Officer is active and acts under the order of the service is not counted in, for the first time since the establishment of the official Greek Army! It has been effective since 2004 and it applies mainly to the Medical Officers-Doctors. The accounting effect for the Medical Officers-Doctors is the following:

- a. \*Obligatory Specialization duration: 4 to 7 years, depending on the specialization.
- b. \*Post-training duration: 2 to 3 years, depending on the post-training.

Duration (a) and duration (b) are added to the initial obligation of the above paragraph (iii), namely (21 to 23) + (4 to 7) + (2 to 3) = 27 to 33 years. Namely, while the amended Greek Law 3257/2004 is by appearance presented to be fulfilling the requirements of the European Commission, in fact, with this addition, it is even worse for Medical Officers-Doctors (Table 1).

Table 1.

TRAINING	OBLIGATION ESTABLISHED			
	GREEK LEGISLATIVE DECREE 1400/1973		GREEK LAW 3257/2004	
Greek Military Medical Academy (SSAS)	6 x 3	18	6 x 2	12
Specialisation	5	5	5+ (4 to 7)*	9 to 12
Post-Training	(2 to 3) x 3	6 to 9	(2 to 3) x 2 + (2 to 3)*	6 to 9
		SUM		SUM
		29 to 32 (reduced to 25 due to the 25 years plateau of compulsory service)		27 to 33

\* Additional obligation due to the above mentioned (underlined) amendment.

5/ The current regime will be further clarified, with the analysis of the effects that a Medical Officer-Doctor has if he/she wishes to resign before he/she completes the above 27-33 compulsory years of service, considering that if we add to the above obligation 6 years of training in the Greek Military Medical Academy (SSAS), this results namely (27-33) + 6 = 33-39 years in total of service in the Military Forces.

If a Greek Officer resigns earlier than the conclusion of the established obligation, he is obliged to pay his/her salary multiplied by the years of obligatory service that have been defined him/her, reminding us of the time of slavery, when the slave was released paying a consideration for the services he/she deprived his/her master of.

Until 2010 the above term salary was defined by the Greek Law 3257/2004 as the basic salary of the Medical Officer-Doctor at the time of his resignation. **To make things worse, Greece in 2010 passed the law 3883/2010, where with the article 33 the above term salary was defined as the net salary (plus all the benefits) of the Medical Officer-Doctor at the time of his resignation. The net salary in Greece is about 35-40% larger than the basic salary, thus the mean amount of compensation was raised by about 35-40%, leading to a mean amount of compensation of about 140000-220000 euros.**

**The Greek Military Medical Academy (SSAS) has analysed the cost of the 6 years training of a Medical Officer-Doctor at 31195 euros (attached document of the Greek Military Medical Academy (SSAS) formally translated in English).**

To further clarify the situation, we will examine a typical Medical Officer-Doctor who enters the Greek Military Medical Academy (SSAS) at the age of 18 and graduates at the age of  $18 + 6 = 24$  years old. The net salary in 2013 of a Medical Officer-Doctor is approximately 1000 at the age of 24, 1150 euros at the age of 35, 1300 euros at the age of 40, 1500 euros at the age of 45 and 1700 euros at the age of 50. There are 4 scenarios:

- i. In the case of resignation at the age of 24, the net salary is multiplied with 12 years or 144 months. Thus, the amount of compensation for the Medical Officer-Doctor is  $1000 * 144 = 144000$  euros. The cost of training in the Greek Military Medical Academy (SSAS) is 31195 euros (attached document of the Greek Military Medical Academy (SSAS) formally translated in English).
- ii. The Medical Officer-Doctor specializes with the obligatory specialization school and has no further post-training. If the obligatory specialization school lasted:
  - a. 4 years he has a compulsory service of  $12 + 5 + 4 = 21$  years. He can resign without paying compensation at the age of  $24 + 21 = 45$ .
  - b. 5 years he has a compulsory service of  $12 + 5 + 5 = 22$  years. He can resign without paying compensation at the age of  $24 + 22 = 46$ .
  - c. 6 years he has a compulsory service of  $12 + 5 + 6 = 23$  years. He can resign without paying compensation at the age of  $24 + 23 = 47$ .
  - d. 7 years he has a compulsory service of  $12 + 5 + 7 = 24$  years. He can resign without paying compensation at the age of  $24 + 24 = 48$ .

On the following Table 2 is calculated the amount of compensation in case of resignation at the age of 35 and 40.

Table 2.

AGE OF RESIGNATION	35	40
DURATION OF SPECIALISATION SCHOOL		
4	138000	78000
5	151800	93600
6	165600	109200
7	179400	124800

iii. The Medical Officer-Doctor specializes with the obligatory specialization school and has a further post-training that lasts 2 years. If the obligatory specialization school lasted:

- a. 4 years he has a compulsory service of  $12 + 5 + 4 + 6 = 27$  years. He can resign without paying compensation at the age of  $24 + 27 = 51$ .
- b. 5 years he has a compulsory service of  $12 + 5 + 5 + 6 = 28$  years. He can resign without paying compensation at the age of  $24 + 28 = 52$ .
- c. 6 years he has a compulsory service of  $12 + 5 + 6 + 6 = 29$  years. He can resign without paying compensation at the age of  $24 + 29 = 53$ .
- d. 7 years he has a compulsory service of  $12 + 5 + 7 + 6 = 30$  years. He can resign without paying compensation at the age of  $24 + 30 = 54$ .

On the following Table 3 is calculated the amount of compensation in case of resignation at the age of 40, 45 and 50.

Table 3.

AGE OF RESIGNATION	40	45	50
DURATION OF SPECIALISATION SCHOOL			
4	171600	108000	20400
5	187200	126000	40800
6	202800	144000	61200
7	218400	162000	81600

iv. The Medical Officer-Doctor specializes with the obligatory specialization school and has a further post-training that lasts 3 years. If the obligatory specialization school lasted:

- a. 4 years he has a compulsory service of  $12 + 5 + 4 + 9 = 30$  years. He can resign without paying compensation at the age of  $24 + 30 = 54$ .
- b. 5 years he has a compulsory service of  $12 + 5 + 5 + 9 = 31$  years. He can resign without paying compensation at the age of  $24 + 31 = 55$ .
- c. 6 years he has a compulsory service of  $12 + 5 + 6 + 9 = 32$  years. He can resign without paying compensation at the age of  $24 + 32 = 56$ .
- d. 7 years he has a compulsory service of  $12 + 5 + 7 + 9 = 33$  years. He can resign without paying compensation at the age of  $24 + 33 = 57$ .

On the following Table 4 is calculated the amount of compensation in case of resignation at the age of 40, 45 and 50.

Table 4.

AGE OF RESIGNATION	40	45	50
DURATION OF SPECIALISATION SCHOOL			
4	218400	162000	81600
5	234000	180000	102000
6	249600	198000	122400
7	265200	216000	142800

v. Attached to the complaint are submitted the official documents by which 3 Greek Doctors of the Greek Armed Forces who resigned were charged to pay as compensation in favour of the Greek Republic 173911, 179048 and 160406 euros.

6/ The above situation, analyzed in paragraphs 1-5, clearly violates:

- i. The official engagement of the Hellenic Republic in the Governmental Committee of the European Social Charter (101st meeting, 9-13 September 2002, Strasbourg), by par. 124, to discharge professional Officers who have received periods of training with no further financial obligation after 15 years of service.
- ii. The principle of proportionality, as a fundamental principle of the European legislation. In the attached document of the Greek Military Medical Academy, formally translated in English, is stated clearly that the cost for the training of a Medical Officer-Doctor is only 31195 euros. The cost of 31195 euros for the training is clearly disproportionate to the amount of compensation in case of a resignation, which is a mean amount of 140000-220000 euros, as shown above.
- iii. The right of the worker to earn his living in an occupation freely entered upon, as it is stated in Paragraph 2 of Article 1 of Part II of the European Social Charter. In order to avoid financial disaster in case of resignation, due to the amounts of compensation, many Greek Medical Officer-Doctors remain in the service, experiencing forced labour in a regime of slavery. The regime of slavery also violates:
  - a. The Article 5 for the prohibition of slavery and forced labour of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - b. The Paragraph 1 of the Article 15 for the free choice of occupation of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - c. The Article 4 for the prohibition of slavery and forced labour of the European Convention on Human Rights (Rome, 4th November 1950).
  - d. The Article 4 for the prohibition of slavery and servitude of the Universal Declaration of Human Rights (10th December 1948).
  - e. The Paragraph 1 of the Article 23 for the free choice of employment of the Universal Declaration of Human Rights (10th December 1948).

- iv. During the forced labour period, the Medical Officer-Doctor is deprived of his right to engage in a gainful occupation in the territory of other Contracting Parties of the European Social Charter. This is a violation of the Paragraph 4 of the Article 18 of Part II of the European Social Charter. The fact that the Medical Officer-Doctor, who is a citizen of the European Union, is deprived of his right to freely choose his place of work and residence within the member-states of the European Union, also violates:
- a. The Paragraph 2 of the Article 15 for the free choice of place of work and residence for the citizens of the European Union among the member-states of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - b. The Article 45 for the freedom of movement and of residence for the citizens of the European Union among the member-states of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - c. The Article 13 for the freedom of a citizen to leave his country of the Universal Declaration of Human Rights (10th December 1948).
- v. The forced labour clearly insults the dignity and the personality of a Medical Officer-Doctor. This violates:
- a. The Article 1 for the protection of human dignity of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).
  - b. The Article 1 for the protection of human dignity of the Universal Declaration of Human Rights (10th December 1948).
- vi. Under the principle of good faith, it would be expected for the Medical Officer-Doctors who enter the Greek Military Medical Academy (SSAS) at the age of 18, to sign some kind of document, where the enormous amounts of compensation in case of resignation would be clearly stated. On the contrary, the Greek Medical Officer-Doctors never signed such a document.

It must be also stated, that as it is shown by the attached document from the website of the Greek Military Medical Academy (SSAS) regarding information for new students (<http://www.ssas.gr/index.php/el/2013-01-14-09-31-52/2013-01-21-07-07-20>), formally translated in English, the Greek Military Medical Academy (SSAS) states in its declaration that the compulsory service is only 12 years.

- vii. The obligatory time of service of all the non-Medical Officers of the Greek AF (Officers of the Greek Army, Navy or Air Force) is 8 years (the 4 years of training in the Military Academies multiplied by 2). Furthermore, the obligatory specialization school for the Medical Officer-Doctors is the only obligatory school in the Greek Armed Forces that creates an extra compulsory period of 5 years of service for the Officers that attend the school.

Thus, there is an obvious discrimination against the Medical Officers-Doctors that violates:

- a. The Article 21 for the prohibition of any discrimination of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union-2010/C 83/02).



- b. The Articles 2 and 7 for the prohibition of any discrimination of the Universal Declaration of Human Rights (10th December 1948).
  
- viii. The Greek Armed Forces for their own interest and needs oblige a Medical Officer-Doctor to follow an obligatory training (such as the obligatory specialization school) and at the same time create a new obligation by attending, beyond just the obligation to complete the obligatory training.

#### **4. RELEVANT CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

1/ In 2000, the International Federation of Human Rights filed a complaint against Greece for the violations of Article 1 para. 2 of the European Social Charter. On 28 June 2000 the Committee declared the complaint admissible. The Decision 7/2000 International Federation of Human Rights Leagues against Greece is based to the collective complaint In accordance with Article 7 para. 1 and 2 of the Protocol providing for a system of collective complaints and with the Committee's decision of 28 June 2000 on the admissibility of the complaint, the Executive Secretary communicated, on 4 July 2000, the text of its admissibility decision to the Greek Government, to the International Federation of Human Rights Leagues (IFHR), the complainant organisation, to the Contracting Parties to Protocol as well as to the European Trade Union Confederation (ETUC) and the Union of the Confederations of Industry and Employers of Europe (UNICE), inviting them to submit their observations on the merits of the complaint. The Executive Secretary also communicated the text of the decision to the Contracting Parties to the Charter and revised Charter for their information.

#### **2/ Submissions of the participants in the procedure**

a) *The complainant organisation, IFHR* considers that Greece is in violation of Article 1 para. 2 of the Charter on account of a series of provisions of national law which violate the prohibition of forced labour. Article 1 para. 2 reads as follows: "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon" As stated at paragraphs 2-4 of the admissibility decision, the provisions of national law at issue are:

- Legislative Decree No. 17/1974, which provides for the mobilisation of the civilian population "in any unforeseen situation causing disruption of the country's economy and society". This provision, the IFHR recalls, has been found by the Committee to violate the Charter. It further observes that although the Greek Government accepts that the legislation is not compatible with the Charter, the text is still not revised. The draft amendment under consideration by the Greek authorities is, it asserts, insufficiently precise to comply with the Charter.
- Section 64 of Legislative Decree No 1400/73, according to which career officers in the Greek army who have received several periods of training may be refused permission to resign their commissions for up to twenty-five years. The IFHR recalls that this provision has been found by Committee to violate the Charter and was the subject of several recommendations and resolutions of the Committee of Ministers of the Council of Europe (see Recommendation No R ChS (93) 1, adopted on 7 September 1993, Recommendation No R ChS (95) 4, adopted on 22 June 1995, Resolution ChS (97) 1, adopted on 15 January 1997 and Resolution ChS (99)2, adopted 4 March 1999). The IFHR contends that this situation cannot be justified, since other solutions are available to ensure reciprocity between public expenditure on training and the service performed by the beneficiaries of such investment. The possibility of reimbursing training costs is one such solution, as is the case in other Contracting Parties to the Charter, for example in France. This restriction cannot be justified, the IFHR maintains, either by national security or the long-term staffing needs of the defence forces. The IFHR refers to a judgment of the European Court of Human Rights (*Van der Mussele v. Belgium*, 23 November 1983, Series A,

Vol. 70 pp 16 – 21, §§ 32 – 41). It considers that, in the light of this decision, the compulsory period of service for the officers concerned, which is calculated as three or four times the length of the training received, should be viewed as excessive and disproportionate in relation to the aim pursued. As to the efforts by the Greek Government to bring Decree 1400/73 into conformity with Article 1 para. 2 of the Charter, the IFHR states that the plans are too vague to merit consideration.

- Articles 205, 207 (1), 208, 210 (1) and 222 of the Code of Public Maritime Law (Legislative Decree No 187 of 1973) and Article 4 (1) of Act No 3276 of 1944 on collective agreements in the merchant navy. These provide for penal sanctions against seafarers who refuse to carry out their duties, even when the safety of the vessel and the lives and health of those on board are not endangered. The IFHR recalls that these provisions have been found to violate the Charter and have been the subject recommendations and resolutions of the Committee of Ministers of the Council of Europe (Recommendation No R ChS (93) 1 adopted on 7 September 1993; Recommendation No R ChS (95) 4, adopted 22 June 1995, Resolution ChS (97) 1 adopted 15 January 1997 and Resolution ChS (99)2, adopted 4 March 1999). It further states that the intention of the Greek Government to revise the law concerned in order to comply with the Charter does not merit consideration because, first, the amendment under consideration refers to imprecise criteria, and second, there is no clear timetable for ensuring compliance.

*b) Observations by the Greek Government*

In its observations on the merits of the complaint concerning Legislative Decree No. 17/1974, the Greek Government stresses the fact that the General National Defence Staff has submitted a proposal to the legal services of the Ministry of National Defence to eliminate the term “emergency need” and that the “necessary legislative initiative is expected”.

- As to Section 64 of Legislative Decree No.1400/1973, the Government states that the obligation to stay in the Greek army for up to 25 years covers the expenses for the training provided. Furthermore, it asserts, abolishing that obligation would endanger national security. The Government considers the current law justified under Article 31 of the Charter. In addition, the Government notes that enlistment for a career officer in the armed forces, as well as further training, takes place on the initiative of the person concerned. However, the Greek Government states that it wishes to be in compliance with the provisions of the Charter and therefore proposals are under consideration to replace the provisions in question of Legislative Decree 1400/73.
- As to the Articles 205, 207 (1), 208, 210 (1) and 222 of the Code of Public Maritime Law and Article 4 (1) of Act No 3276/44 the Government of Greece states its intention to promote a legislative regulation to eliminate the problems regarding the application of Article 1 para. 2 of the Charter. It points out that the Governmental Committee decided during cycle XV-1 not to propose a recommendation against Greece, but to give time to proceed to the necessary legislative changes.  
The Greek authorities consider that the complaint should be declared unfounded in view of their intention to bring the abovementioned legislation into conformity with the Charter, and the fact that the review process has already started.

### *c) Observations by the ETUC*

The ETUC welcomes the fact that Greece has signed and ratified the Protocol providing for a system of collective complaints, thereby contributing to the effectiveness of the Charter and the protection of fundamental social rights. In its observations, the ETUC quotes various international legal instruments prohibiting forced labour. The prohibition of forced or compulsory labour is a universally recognized and protected fundamental principle. The ETUC recalls that the European Committee of Social Rights has on several occasions found the Greek legislation at issue to be in violation of Article 1 para. 2 of the Charter. Moreover, there are several recommendations by the Committee of Ministers in that context. According to the observations of the Greek Government, the problems identified have not yet been resolved. The ETUC considers that the Greek Government should act rapidly to bring its national legislation into full conformity with the Charter.

### **3/ Assessment of the Committee**

Under Article 1 para. 2, the Contracting Parties to the Charter undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon. This wording (“freely entered upon”) provides for a guarantee against forced labour. Forced labour is understood as “coercion of any worker to carry out work against his wishes and without his freely expressed consent” (see Conclusions III, p. 5). The Committee has also consistently interpreted this provision as prohibiting “the coercion of any worker to carry out work he had previously freely agreed to do, but subsequently no longer wanted to carry out” (*ibid.*). It therefore protects the freedom of workers to terminate employment (see for example Conclusions XIII-3, p. 71).

The Committee recalls that it has consistently held “the non-application of national legislation containing elements which are in conflict with Article 1 para. 2 of the Charter does not suffice to demonstrate a states compliance with this provision” (Conclusion XIII-3, p. 66). Such legislation has to be amended (Conclusion V, p. 6).

As the complainant organisation correctly points out, the Committee has since the eleventh supervision cycle concluded that Legislative Decree No17/1974 violates Article 1 para. 2 of the Charter (see Conclusions XI-1, p. 42; XII-1, p. 51; XIII-1, p. 47; XIV-1, p. 349; XV-1, p. 295). The wording of this regulation (“in any unforeseen situation causing disruption of the countries economy or society”) is of such a general nature that it “cannot be considered to be in keeping with Article 1 para. 2 of the Charter, even if the provisions of Article 31 of the Charter are taken into account” (Conclusion XI-1, p. 42).

In its observations, the Government of Greece accepts these conclusions. It admits that the terms used raise a problem of compatibility with the Charter and indicates that the necessary legislative initiative to remedy the situation is expected. The Committee underlines the fact that it first found this legislation to violate the Charter in 1989. Eleven years later, the legislation remains in force.

As for Article 64 of Legislative Decree No. 1400/73 concerning career officers in the Greek army, who have received several periods of training, the Committee has similarly concluded since the eleventh supervision cycle that this provision violates Article 1 para. 2 of the Charter. A compulsory period of service of up to 25 years is excessive and contrary to the freedom to choose and to leave an occupation (Conclusion XI-1, p. 43; most recently Conclusion XV-1, p. 294). In addition, the Committee of Ministers has addressed to the

Government of Greece two Recommendations, which were reiterated in two subsequent Resolutions. Again, the Committee wishes to underline that the provision at issue has not been amended after eleven years of consistent criticism.

Regarding penal sanctions against seafarers (Legislative Decree No. 987/1973 and Act No. 3276/1944) the Committee recalls its established case law, according to which Article 1 para. 2 prohibits the application of penal sanctions to seafarers who cease to perform their duties where neither the safety of the vessel nor the lives or health of persons on board are endangered (Conclusion XI-1, p. 43; most recently XV-1, p. 295). There are also two Recommendations and two Resolutions by the Committee of Ministers on this matter. Nevertheless the provisions concerned remain in force.

The Committee takes note of efforts by the Greek authorities to amend the provisions of national law cited above. It considers that these efforts should be intensified so as to bring the situation into conformity with Greece's obligations under Article 1 para.2 of the Charter without further delay.

On the above grounds, the Committee has reached the following:

Conclusion the situation in Greece is not in conformity with Article 1 para. 2 as regards each of the provisions complained of.

## **5. RECOMMENDATIONS TO GREECE**

The European Federation of Public Service Employees notes that the European Committee of Social Rights declared the violation of the above Articles of the European Social Charter and that this scheme was the subject of many of the recommendations of the Committee of Ministers of the Council of Europe (Recommendation No. RChS (93) 1, which adopted on 09/07/1993, Recommendation No. R ChS (95) 4, adopted on 07.22.1995, Resolution ChS (97) 1, adopted on 15.01.1997, and Decision ChS (99) 2, adopted on 03.04.1999).

The Committee of Ministers in his Resolution, **Res Chs(2001) 6** having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints and considering the complaint lodged on 7 February 2000 by the International Federation of Human Rights against Greece, and considering the report submitted to it by the European Committee of Social Rights, in which Greece is found not to be in conformity with Article 1 para. 2 of the Charter on each of the grounds raised in the complaint;

1/ takes note that as regards the first ground (Legislative Decree No. 17/1974) the Greek Government has advanced additional considerations not relied on during the examination of the merits of the complaint by the European Committee of Social Rights, i.e. the provisions of Act No. 2344 of 1995, but that it will give a full account of these in its next report on the implementation of the Charter, to be submitted by 30 June 2001.

2/ takes note that as regards the second and third grounds (the restrictions on the right of career officers in the army to resign their commissions for up to 25 years, and the possibility of applying penal sanctions to seafarers who cease to perform their duties where neither the safety of the vessel nor the life and health of those on board are endangered), which have already been the subject of recommendations by the Committee of Ministers, the Greek Government undertakes to bring the situation into conformity with the Charter in good time.

*(Adopted by the Committee of Ministers on 5th April 2001 at the 749th meeting of the Ministers' Deputies)*

## 6. CONCLUSIONS

The European Federation of Public Service Employees (EUROFEDOP) complains against the Hellenic Republic and ask for your intervention and your official opinion so that the following points will be achieved:

- i. The Hellenic Republic, recognizing its official engagement in the Governmental Committee of the European Social Charter (101st meeting, 9-13 September 2002, Strasbourg) by par. 124, will discharge the professional Medical Officers-Doctors with no further financial obligation after 15 years of service, irrespective of any additional training periods after graduation from the Greek Military Medical Academy (SSAS).
- ii. Based on the principle of proportionality, the Hellenic Republic will impose compensation in case of the resignation of a Medical Officer-Doctor that will not exceed the expenses of the Hellenic Republic for the training in the Greek Military Medical Academy (SSAS), which is 31195 euros.

In case the European Committee of Social Rights decides to open a formal inquiry on the inaccurate official report of the Hellenic Republic regarding the conformity of the Greek Law 3257/2004 with the European Social Charter, the Hellenic Military Medical Corps Association (Greek Acronym ESTIA) will gladly stand with the Committee for any further help or information may be needed.

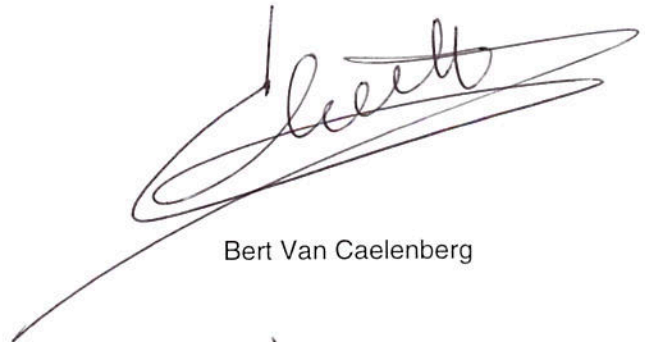
Brussels, 5 March 2015

The President of EUROFEDOP



Fritz Neugebauer

The Secretary General of EUROFEDOP



Bert Van Caelenberg