EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

21 December 2015

Case Document No. 3

European Federation of Public Service Employees (EUROFEDOP) v. Greece
Complaint No. 115/2015

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 18 November 2015

OBSERVATIONS ON THE MERITS OF THE GREEK GOVERNMENT CONCERNING COLLECTIVE COMPLAINT NO. 115/2015

In accordance with the Decision of the European Committee of Social Rights, dated 9 September 2015, on the admissibility of collective complaint No. 115/2015 lodged against Greece by the European Federation of Public Service Employees (EUROFEDOP), concerning the alleged violation of article 1, para.2 and article 18, para.4 of the ESC of 1961, with this document we legally submit our observations on the merits concerning the allegations raised by the complainant organisation.

A) Preliminary comments

Before we develop the argumentation on the merits of the Greek Government, in order to refute the allegations of the complainant organization, we would like to make certain general comments on the text of the Collective Complaint.

First, **the complainant organization alleges that in addition to the provisions of the European Social Charter, Greece manifestly violates also a series of other International Conventions.** For example in Section *2 – Subject of the Complaint*, the European Federation of Public Service Employees alleges that article *1, of Law No.3257/2004 and article 33 of Law No.3883/2010 clearly violate the right of the worker to earn his living in an occupation freely entered upon as it is stated, inter alia, in article* 4 for the prohibition of slavery and forced labour of the Universal Declaration of Human Rights and in para.1 article 23 for the free choice of employment of the Universal Declaration of Human Rights.

Second, in the same Section (para.6, iii) the complainant organization compares the knowingly and freely chosen work of medical officer-doctors to slavery by alleging that there is a violation of article 5 for the prohibition of slavery and forced labour of the EU Charter of Fundamental Rights, as well as article 15, para.1 for the free choice of occupation of the Charter of Fundamental Rights of the European Union, etc.

Finally, in para.6vii, the EUROFEDOP alleges that Medical Officers-Doctors are subjected to overt discrimination, thus violating article 21 for the prohibition of any discrimination of the EU Charter of Fundamental Rights and articles 2 and 7 for the prohibition of any discrimination of the Universal Declaration of Human Rights. We would like to note that as far as the Collective Complaint under consideration is concerned, discrimination can be constituted only in combination with a specific right provided for by the ESC and not per se. In this case, the EUROFEDOP does not invoke the relevant section of the ESC's Preamble in combination with some specific right.

Furthermore, we consider that at several points there is some confusion concerning EU law. More specifically, *in Section 3 – Justification of Violations (para.6, iv)* with regard to the allegation on the high cost of compensation medical

officers-doctors are required to pay in case of resignation from the army earlier than the normal age, the complainant organization states that *medical officers-doctors, who are EU citizens, are deprived of the right to freely choose their place of work and residence within the member states of the European Union, thus violating para.2 of article 15 of the Charter of Fundamental Rights on the free choice of place of work and residence for the citizens of the European Union*. In the same context, they allege that *article 45 of the Charter of Fundamental Rights on the freedom of movement and of residence for the citizens of the European Union, as well as article 13 on the freedom of a citizen to leave his/her country are violated.*

The aforementioned allegations of the complainant organization are indicative, since, on several occasions in the text of the Complaint, reference is made to International Conventions and EU legislation, as well as to the fact that these are violated by the Greek Law. We do not wish to elaborate on this by mentioning all these occasions, yet we would like to make it clear that such allegations are deemed unacceptable by us and we believe that they cannot be the subject matter of the present Complaint. Although the unity and interaction between international conventions concerning the protection of human rights is self-explanatory, it is the violations of the provisions of the ESC that are the scope of the Additional Protocol on Collective Complaints. Consequently, the observations of the Hellenic Government on the merits are focused on the rebuttal of the alleged violations of articles 1, para.2 and 18, para.4 of the European Social Charter and of them alone.

In addition to the above, we would like to mention that the text of the Collective Complaint contains certain vague allegations. More specifically, *in Section 2 – Subject of the Complaint* a comment is made, according to which *the Hellenic Republic violates its official engagement in the Governmental Committee of the European Social Charter (101st Meeting, 9-13 September 2002) to discharge professional officers who have received periods of training with no further financial obligation after 15 years of service.* Moreover, at several points the complainant organization refers to para.124, without clarifying what this paragraph refers to.

At another point it is mentioned that the Hellenic Government, after *«having exceeded the deadlines set by the* ***European Commission (?)*** *and 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,* ***was obliged to participate in the Governmental Committee of the European Social Charter****, where in order to terminate the regime of the aforementioned violations, it was bound by para.124, to discharge professional officers who have received periods of training with no further financial obligation after 15 years of service».*

We would like to note that the presence of representatives of the Hellenic Government in the Governmental Committee is a contractual obligation of our

country, under Law No.1426/84 on the Ratification of the European Social Charter and Law No.2422/96 on the Ratification of the Protocol amending the European Social Charter of 21st October 1991.

Concluding these initial observations, we would like to note that the EUROFEDOP has used exaggerated, extreme and often offensive characterizations against the Hellenic Government.

More specifically, in Section 2 – Subject of the Complaint (subpara.iv) it accuses the Hellenic Republic of *deceiving the European Committee of Social Rights via its statement about Law No.3257/2004 and its compliance with the official engagement of the Greek Government before the Governmental Committee of the European Social Charter (101st Meeting, 9-13 September 2002) to discharge professional officers who have received periods of training with no further financial obligation after 15 years of service*.

In the same context, in para.3 of the Complaint (page 9) it is mentioned that *the Hellenic Republic has deliberately concealed the truth from the European Committee of Social Rights* with regard to Law No.1400/1973 and No.3257/2004. Given the fact that the legislation is published in the Official Gazette and it is thus fully disclosed, in accordance with the principle of transparency applied in a modern state under the rule of law, such allegations are deemed at least unacceptable by us.

B) Observations on the merits

With regard to the observations of the Hellenic Government on the merits of this complaint, we would like to inform you of the following:

In accordance with the **principle of proportionality,** which follows from the rule of law (article 1, para.3 and 4, 26, 87, 93 up to 95 of the Constitution) and is explicitly provided for in article 25, para.1 of the Constitution, the common legislator, when adopting adverse measures against a category of persons entailing their exclusion from a corresponding more general and favorable law, must use objective criteria that are justified on the grounds of public interest. The only harsh measures adopted should be those that are absolutely necessary to the achievement of the objective pursued and to the subject of the regulation.

The measures imposed should therefore be, on the one hand, adequate, in order to bring about the desired result, and, on the other, the absolutely necessary ones, meaning that no other equally effective but less strict measure could be selected in order to achieve the pursued objective of public interest. Otherwise, if the measure imposed is of such intensity and duration that clearly goes beyond the objective pursued, i.e. the disadvantages are disproportionate to the benefits resulting from the achievement of this objective, it is contrary to the above mentioned constitutional principle and the provision laying down such a measure is, hence, invalid.

As regards the legislation under examination, the provisions in force of article 64 of Legislative Decree 1400/1973 (O.G. 114 A'), as amended by article 1, Law No. 3257/2004 (O.G. 143 A), stipulate the following:

«1. Graduate officers of Higher Military Educational Institutes (ASEI) and of the Greek Military Medical Academy (S.S.A.S.), from their designation as Second Lieutenants, Ensigns or Pilot Officers, **commit themselves to serving in the Armed Forces for a period that is double the length of their education**, as defined by the Organizations of ASEI and SSAS.

3. Officers who are sent **abroad for training** by the service, for a period longer than six months, commit themselves to serving in the Armed Forces for a period that is double the length of their education, but in no case for less than two years.

6. Officers who take **sabbatical leave,** either within the country or abroad, for a period that is longer than six months, commit themselves to serving in the Armed Forces for a period that is double the duration of their leave and of any extensions thereof.

7. Officers of the **medical corps**, for whom the service provides for **their specialty training, commit themselves to serving in the Armed Forces for five years**.

8. Traveling abroad for training or sabbatical leaves for periods of less than six months, are calculated cumulatively, provided that they are taken within a period of two years.

9. Officers sent abroad by the service for training, with or without the conduct of a competition, **are regarded as having moved abroad voluntarily.**

10. Officers, who in accordance with the provisions of this article, are either sent by the service or selected for training, following an application, **are required to submit a solemn declaration certifying that they are informed of the obligations they take on.**

11. The length of education at ASEI and SSAS is calculated from the enrolment of students in the School until their designation as Second Lieutenants, Ensigns or Pilot Officers. Yet, the years during which students were retained in the same grade are not calculated in the length of their education.

12. The length of education or training, in accordance with the above paragraphs, is calculated from the beginning till the end of education or training. Holidays provided for are also calculated in this period.

14. In all cases the calculations are made on a 30-day month.

15. The obligations stipulated in paras.3 to 8 **are calculated after the end of education** that entails the commitment **and are added to the initial commitment** mentioned in para.1. The length of education shall not count for the fulfillment of the commitment undertaken.

16. Those who leave the army on the grounds of resignation, dismissal or following a special report for retirement, under article 10 of Law No.2439/1996 (O.G. 219 A), **are required to pay damages to the State which are equal to the amount of their basic salary according to their rank multiplied by the number of the remaining months for which they had committed themselves to serving in the army. Those who leave the army at their request before fulfilling their**

commitments and have been trained abroad are required to also pay the expenses for their training in addition to the abovementioned damages. The damages or the cost of training, as appropriate, are considered and established as public revenue under article 55 of P.D. 16/1989 (O.G. 89 A).
17. The above paragraph does not apply to those who leave the army on medical grounds».

By adopting the provisions of article 1 of Law No.3257/2004, the legislator aimed at modernizing the legal framework in force and harmonizing the legislation with the contractual commitments of Greece resulting from the ratification of the European Social Charter (Law No.1424/1986). More specifically, para.2 of article 1 of the ESC stipulates that the contracting parties «undertake», inter alia, «to protect effectively the right of the worker to earn his living in an occupation freely entered upon».

Given the fact that the European Committee of Social Rights has repeatedly held that the length of service in the Armed Forces was excessive and, consequently, article 1, para.2 of the ESC is violated, the Hellenic Government:

1. **Reduced the duration of initial commitment to serving** for the officers in the Armed Forces, and **in particular for the officers of the medical corps from 18 (3x6) to 12 (2x6) years, i.e. from three times to double the length of education at the relevant military school**.
2. Retained the additional commitment of officers to serving in the Armed Forces **for five additional years in the case that the service provides for the specialty training of the said officers**.
3. Included a provision according to which **the length of education shall not count for the fulfillment of the commitment to serving in the Armed Forces**.
4. Gives the possibility to the abovementioned Officers to resign from the Armed Forces, provided that they will pay damages to the State equal to the amount of their basic salary, depending on their rank multiplied by the number of the remaining months for which they had committed themselves to serving in the army, by decision of the Minister of Defense, under articles 92, para.1 and 89 para.2 of Legislative Decree No.721/1970.

Taking into account the provisions of article 64 of Legislative Decree 1400/1973, as in force today, interpreted in combination with the constitutional provisions of article 5, para.1, 22, paras.1 and 4, the provisions of the ESC and article 56 para.4 of the Constitution, from which it follows that the constitutional legislator acknowledges the commitment of officers to serving in the Armed Forces for a minimum period of time, the following conclusions are reached:
(1) With regard to officers of the Armed Forces, the common legislator imposes restrictions, initially legitimate, on the length of their participation in the social, financial and political life of the country and on their right to work, in the specific form of the freedom to choose and change profession. This is due to the fact that, on the one hand, the Constitution itself (article 56, para.4) indirectly

acknowledges the imposition of such restrictions, and on the other, **these restrictions aim at serving overriding public interest, as well as organising, planning and ultimately ensuring the combat effectiveness of the Armed Forces**.

The public interest is affected when the Armed Forces, following careful planning so that their needs in executives (officers) are met and following the training – at their own expense – of these officers in specialties according to the existing needs, lose their executives early; this would be the case when they (the officers) are able to exercise the right to change their profession in a simple and unobstructed by any disincentive manner, without them being required to serve in the army for a minimum period of time.

The current restrictions do not affect the core of the right to work, since they do not go as far as to prohibit leaving the Armed Forces, as was the case under the previous legislative regime, according to which, officers were prohibited from tendering a resignation before completing the period of time for which they had committed themselves to serving in the Army. Under the current regulations, it is provided that officers who leave early the Army should pay damages to the State; this is something that acts as a **reasonable disincentive so that officers might not leave early to the detriment of public interest,** while **costs incurred by the State for the education of these officers might be restored,** since they **are provided with housing, food, salary and clothing in addition to education itself**.

(2) In case a medical officer-doctor leaves the Armed Forces early due to tendering a resignation, in order to calculate the amount charged **two times the length of his education at the relevant military school (6x2=12 years) is taken into account** as well as **an additional period of five years during which he commits himself to serving in the Armed Forces**, because of the specialization he gets (specialty). From these 17 years, the years of specialty training are not deducted, no matter how many they are, since they are included in his actual service in the army, both under Legislative Decree 1440/1973 and under Law No.3257/2004, given the fact that **the years of specialty training is considered as actual military service of the medical officer-doctor and not time spent for his education**, as is the case for the remaining cases provided for in paras.3, 4, 5 and 8, article 1 of Law No.3257/2004, where **the legislator explicitly defined time spent for his education** in para.12, article 64 of L.D.1400/1973. On the contrary, the years of specialty training for medical corps officers mentioned in para.7 of L.D.1400/1973, were not included in para.12 of the L.D., thus counting the years of specialty training in order to fulfill their commitment to serving in the army. It has to be noted that para.7 of the L.D.1400/1973 was also included by mistake in para.15 of Law No.3257/2004, as applicable, where the years of specialty training were considered as years of education.

(3) **The commitment to serving in the Army**, provided for by article 64 of the L.D.1400/1973, **is undertaken voluntarily and constitutes a reasonable restriction of the right to work on the grounds of public interest and, in particular, on the grounds of ensuring personnel of specific specialties for the Armed Forces.**

Moreover, damages specified in the above provision do not go beyond what is necessary to achieve the goal pursued, nor do they violate the principle of proportionality. Moreover, the amount of damages to be reimbursed is calculated in an objective manner and is irrespective of the amount of provisions (housing, food, salary, clothing, and training) granted to officers by the State during their studies at the respective academies. Such damages are considered as a means of restoring the costs incurred by the State in order to prepare professional army officers who **are paid regular earnings** in all stages of specialty acquisition at the respective academies.

As to whether the restrictions imposed by the current legislative regime are fair or not, we would also like to mention the following, which showcase that the occupational status of medical officers-doctors is more favorable than that of private doctors:

(1) Article 63, para.4 of L.D.1400/1973, as in force, provides that **officers of the medical corps may exercise their profession also on a private basis.** This was established in times when it was almost impossible to find a doctor, especially in areas near the borders and in islands where the only doctor a patient could find was the army physician. It is estimated that the reasons for such an exception are no longer valid while abuse of this right tends to become a rule. Moreover, in support of the above, the NHS doctors, as provided for in article 24 of Law No.1397/1983, article 63 of Law No.2071/1992 and article 1 of Law No.2194/1994 «are permanent civil servants and are not allowed to practice medicine as freelance professionals or exercise any other profession ….and to hold any other public or private position. They are also not allowed to be owners of a private clinic or pharmaceutical enterprise or shareholders in relevant companies».

(2) It's worth noting that **a medical officer-doctor acquires his - provided for by law - specialty at an earlier time than the respective private physician, due to his status as an army officer**, a discrimination which is justified by the fact that he must immediately return to the Armed Forces (article 8, Law No.123/1975).

Following the above and in addition to the need for a proper interpretative approach of para.15b, article 64 of L.D.1400/1973, as in force, which **mentions only the length of education and not the specialty training time** mentioned in para.7 of the same article, the current legal framework is fully in line both with the contractual commitments undertaken by Greece following the ratification of the European Social Charter and with the European Convention on Human Rights as it is also held by case-law following (indicative) decisions no.1571/2020 of the Council of State, 2475 and 3230/2020, 1970 and 2340/2013 of the plenary session of the Court of Audit.

Conclusions

We believe, therefore, that the provisions of article 64 of L.D.1400/1973, as in force, are neither contrary to the concept of human value as enshrined in para.1, article 2 of the Constitution, nor to the provision of para.1, article 5 of the Constitution by virtue of which the freedom to choose and exercise a profession is established as individual right. The restrictions at issue, i.e. the commitment to serving in the Armed Forces for a period that is double the years of education determined by the relevant school, as well as, in case of specialty training, the commitment to serving for five more years, are **in principle, appropriate and necessary for the public interest**, namely staffing the army with trained personnel (officers), without -at the same time- depriving the officer of his constitutional right to change profession. Most importantly, it should be clear that **during the years of specialty training, they are not just students of these academies, but officers who provide their services to the Armed Forces, by working in the relevant hospitals.**

Based on all the above, we believe that the national law and practice concerning the issue under consideration is consistent with the obligations undertaken by our country concerning the application of the abovementioned provisions of the European Social Charter.