EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

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Case Document No. 1

Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece
Complaint No. 165/2018

COMPLAINT

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COLLECTIVE COMPLAINT V. GREECE

Relating to laws 4366/14-08-2015, 4387/12-05-2016 and 4472/19-05-2017

Greece ratified the European Social Charter of 1961 by way of law 1425 on 20/21 March 1984 and subsequently the First Additional Protocol to the Charter and the Second Additional Protocol, providing for the Collective Complaints system, by way of the same law, namely Law 2595/98 (Official Gazette 63/A/24-3-98). Subsequently Greece ratified by way of Law 4359/2016 (Official Gazette A 5/20.01.2016) the Revised Social Charter which was signed in Strasbourg on 3 May 1996, the provisions of which are binding on the Hellenic Republic.

This complaint is twofold:

- Violation of Article 12 paragraphs 2 and 3 and of Article 23 of the Charter

I. <u>Violation of Article 12 paragraphs 2 and 3 and of Article 23 of the ESC</u>

A. Article 12 of the revised ESC, entitled "The right to social security", establishes the right to social security. Specifically it states: *"With a view to ensuring the effective exercise of the right to social security, the Parties undertake: … 2 to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security; 3 to endeavour to raise progressively the system of social security to a higher level."* The consistency of the provisions of the 1961 ESC and the revised 1996 ESC is determinant in the interpretation of the "new provisions" in effect.

Former Article 4 of the First Additional Protocol to the ESC establishes the right of elderly persons to social protection[1] and has now been incorporated into the Revised European Social Charter of 1996 in Article 23 entitled "The right of elderly persons to social protection". In particular, Article 23, with regard to which the jurisprudence of Article 4 of the first protocol to the ESC must be taken into account, now states "*With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:*

[1] **Former Article 4 – Right of elderly persons to social protection**
With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

1. • to enable elderly persons to remain full members of society for as long as possible, by means of:
   a. <u>adequate resources</u> enabling them to lead a decent life and play an active part in public, social and cultural life;

- *to enable elderly persons to remain full members of society for as long as possible, by means of:*

a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

b. *provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*

- *to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:*

a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

b. *the health care and the services necessitated by their state;*

- *to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.*"

The concept of "adequate resources" in the article is, pursuant to the explanatory report, to be interpreted in light of Article 12 of the ESC.[2]

B. The provisions with which this complaint is concerned violate the provisions of Article 12 paragraphs 2 and 3 of the ESC, as on the one hand they violate Greece's obligation to maintain the social security system at a satisfactory level in relation to the minimum standards of social security required by International Labour Organisation Convention 102, and on the other hand unjustifiably lower primary and auxiliary pensions, leading to the impoverishment of large social groups as found by your Committee in consideration of complaints 76-80/2011, where it was stated that the cumulative reductions envisaged by Laws *3845/2010, 3847/2010, 3863/2010, 3865/2010,03896/2011* [sic]*, 4024/2011, 4051/2012 and 4093/2012* violate Article 12 para 3 of the former ESC. In the context of this jurisprudence, the Council of State in their decisions 2287 and 2288 of 2015 also deemed Laws 4051 and 4093 of 2012 unconstitutional and more specifically found them to violate international conventions including the ESC. As also referred to in decision 2287/2015 of the Council of State, the provisions of Article 3 para 10 of Law 3845/2010, Article 44 para 13 of Law 3986/2011, Article 2 para 3 of Law 4024/2011, Article 6 para 2 of Law 4051/2012 and Article 1 para 1A subpara 1A.5 item 1 and subpara 1A.6 item 3 of Law 4093/2012 are also contrary to the European Convention on Human Rights. Not only has the State not implemented the aforementioned decisions of the Court of Cassation but it is cutting pensions further by way of the provisions of Law 4387/2016 and 4472/2017.

In this case, the contested provisions are as follows and concern the public sector as much as the private.[3]

[2] *The concept of "adequate resources" in the article is to be interpreted in light of Article 13 and, if necessary, Article 12 of the Charter."*, as the interpretation of the article is stated in the explanatory report available at the link https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentid=09000016800cb346

[3] The complex and extremely detailed character of the regulations does not allow for a comprehensive verbatim rendering of the relevant provisions. Therefore reference will be made each time to their substantive content and legal relevance to the contested levels of the revised ESC.

1. **Introduction of the National Pension and Contributory Pension as elements of the primary Pension and the substantive refusal to guarantee State responsibility for social security**

Article 2 paragraphs 1, 2 and 5 of Law 4387/2016 state: *From the entry into force of the present law, primary pension as of right, incapacity pension and pension transfer shall be calculated as the sum of two elements: the national pension in Article 7 and the contributory pension in Article 6 of the present law. 2. The National Pension shall not be funded by insurance contributions, but directly from the National Budget. 5. The state shall have a duty to guarantee in full the sum total of insurance allowances. Special provisions relating to state funding of the social security system are repealed",* while **Article 7 paragraph 6** of the same law states: *"Upon initial application of the present law the national pension shall be fixed at three hundred and eight four (**384**) euros per month…".*

2. **New reductions to primary pensions**

Article 8 of law 4387/2016 states: *"1.Public sector civil servants and military personnel entitled to a pension as of right, incapacity pension or pension transfer shall, pursuant to the applicable provisions, be entitled to the contributory part of the pension on the basis of the pensionable earnings in Article 2 of the present law, time insured as defined in Article 15 of the present law and yearly replacement rates as set out in the table in Paragraph 4, pursuant to the provisions of the subsequent paragraphs. 2.a. **In calculating the contributory part of primary pensions as of right, incapacity pensions or pension transfers, the pensionable earnings to be taken into account shall be the individual's average monthly earnings throughout their insurance period. This average shall be calculated by dividing the total monthly earnings by the total duration of the insurance period.** The total monthly remuneration earned by an insured individual shall mean the sum total of earnings subject to contributions throughout the duration of the insurance period. In calculating pensionable earnings, the insured person's earnings for each calendar year, increased by the annual salary changes calculated by the Hellenic Statistical Authority, shall be taken into account. In cases where a pension is granted on the conditions in the fourth subparagraph of case a in para 1 of Articles 1 and 26 of Presidential Decree 169/2007, either on the basis of the provisions that refer thereto, as they are in effect in each case, as well as for any persons mentioned therein who are granted a pension on the basis of the provisions in Law 612/1977, or on the basis of the provisions that refer thereto and are in effect in each case or on the basis of the provisions of Law 2084/1992, pensionable earnings on which the 35 year replacement rates are to be calculated shall take into consideration the monthly earnings of the insured individual for the duration of his whole insurance. b. For an insurance period treated as notional following payment of the expected redemption amount, pensionable earnings shall be defined as the amount which the monthly earnings-wages would be each month if the redemption amount was received as a monthly contribution. **3.** To calculate the contributory part of the pension for persons in cases b and c in paragraph 1 of Article 6, pensionable earnings shall be considered to be, pursuant to case a in paragraph 2, the average pensionable earnings as these were in effect in each case on the basis of the provisions of the same paragraph, arising from the insurance year 2002 until payment of civil service or military pensions commenced. **4.** <u>The final amount of the contributory part of the pension shall be calculated for the total period of insurance on the basis of the replacement rates in the table below, which is annexed at the end of the present law and constitutes an indivisible part hereof.</u> The*

replacement rate for each year of insurance within each age group corresponds to the amount stated in the third column of the table.[4]"

3. The reductions in law 4051/2012 and 4093/2012 are to be taken into account in the recalculation of primary pensions.

Article **14 of Law 4387/2016** states: "*1. a. In applying the unified rules of the new Unified Social Security Institution [EFKA] and the fundamental principles of Article 1, primary pensions already paid upon the entry into effect of the present law shall be readjusted in accordance with Articles 7, 8, 13 and 14 on the basis of the following paragraphs. b. In calculating the contributory part of pensions paid prior to the entry into effect of this law, to determine the pension amounts, the pensionable wage on which the pension already in place was fixed, as it was prior to the entry into effect of the present law, shall be taken into account, on the basis of the rules on adjusting pensionable earnings in the Public sector which were in effect upon the present law entering into effect. The Ministries of Finance and of Labour, Social Security and Social Solidarity shall jointly determine all other matters related to the application of this provision. 2. a.* ***Until 31.12.2018, pensions referred to in the previous paragraph shall continue to be paid at the rate they were paid as of 31.12.2014, pursuant to the provisions then in effect.*** *In particular, the calculation of the deduction for healthcare shall be carried out pursuant to the provisions of Article 1 para 30 of law 4334/2015 (A' 80) as they are in effect. b.* ***From 1.1.2019, provided that the paid amount of such pensions is greater than that arising from their calculation on the basis of paragraph 1, the difference shall continue to be paid to the beneficiary as an individual difference, offset yearly until it disappears completely, with the readjustment of the pension each time as per the implementation of paragraph 3. If the paid pension amount is lower than that arising from the calculation in paragraph 1, then this shall be increased by one fifth of the difference in equal increments within five years from the completion of the current programme of budgetary adjustment.*** *The above data shall be registered from 1.1.2018 for every insured person in the usual information system…."*

The legislator was eager to amend the above regulation as quickly as possible by way of Article **1 of Law 4472/2017** as follows: *"Article 14 para 2 item b of Law 4387/2016 (A'85) shall be replaced as follows: From 1.1.2019, if the paid amount of such pensions is greater than that arising from their calculation on the basis of paragraph 1, the excess shall be deducted.* ***The amount to be deducted pursuant to the above may not exceed 18% of what is paid of the insured person's pension on the entry into effect of the present law.*** *If, after the application of the regulation in the previous paragraph, the pension amount is greater than that arising from their calculation on the basis of paragraph 1, the difference shall continue to be paid to the beneficiary as an individual difference, offset yearly until it disappears completely, with the readjustment of the pension each time as per the implementation of paragraph 3. …* ***3.*** *a. The total amount of pension to be paid after the entry into force of the present law shall be increased annually as of* ***1.1.2022*** *by way of a joint decision of the Ministries of Finance and of Labour, Social Security and Social Solidarity on the basis of a coefficient to be determined fifty per cent (50%) by the variation of GDP and fifty per cent (50%) by the variation in the Consumer Price Index of the preceding year and may not exceed the annual variation in the Consumer Price Index. b. Provisions of public pensions legislation that provide for readjustment or increase in pensions paid by the Public sector in ways other than that*

[4] The amount of earnings is to be multiplied by the new lower replacement rates, which range from 11.55% for 15 years of insurance to 42.80% for 40 years.

described in case a or on the basis of provisions in effect regarding wages, shall be repealed."

4. Substantive abolition of pensions following a death

Article **12 of Law 4387/2016** states that: "*1. In the event of the death of a pensioner or insured person who has fulfilled the period required for the pension to be granted as of right or for incapacity pension the following family members shall be entitled to the pension: A. The surviving spouse, provided he or she is* ***over 55 years of age at the time of death of the pensioner or insured person.*** *In the event that the death occurs prior to the surviving spouse reaching 55 years of age then the surviving spouse shall be paid the pension for three (3) years.* ***If the beneficiary reaches the age of 55 whilst in receipt of the pension, payment shall cease at the end of the three year period and restart when they reach 67 years of age.*** *The restrictions above shall not apply provided and for so long as the surviving spouse at the time set out above has a child or children subject to paragraph 1B of the present law or lacks capacity equal to or above 67% to carry out activity permitting him or her to earn a living.5.a) The surviving spouse shall be paid the pension in full for three years from the first month following the death. b) After the passage of three years, if the survivor is working, self-employed or receives a pension from any source, he or she shall be paid 50% of the pension. 8. The provisions of this article shall be applied in cases where the death occurs after the present law comes into effect."*

5. New reductions to auxiliary pensions

Article **96 paras 1, 2 and 5 of Law 4387/2016** state that "*Upon the entry into force of the present law Article* ***42 of Law 4052/2012*** *shall be replaced as follows:*

"*Within the framework of the National Social Security System, the auxiliary pension for those insured at the Unified Auxiliary Pension Fund (ETEA) shall be fixed as followed: 1. The amount of pension paid shall be established on the basis of: a) demographic data shown in approved mortality tables and b) the notional rate of return to be applied to the sum total of contributions made, resulting from the percentage change in insured persons' pensionable earnings. 2. In the event of deficit, an automatic balancing mechanism shall come into effect, which absolutely precludes any readjustment of pensions. During the period of increased contributions, pursuant to the provisions of Article 97, pensions shall not be readjusted in the event that, if expenses are deducted from Fund income, the result shall either be negative or less than 0.5% of contributions, taking into consideration the accounting data of previous practice…" and* ***para 4*** *of the above Article provides for further reductions in auxiliary pensions as follows:*

"Auxiliary pensions already paid at the entry into effect of the present law shall be readjusted applying the provisions of the present article, provided that the sum total of the beneficiary's primary and auxiliary pensions exceeds the sum of one thousand three hundred (1300) euros. The above data shall be registered in the usual information system. In applying this condition, consideration shall be given to the amount of pension paid including health care contributions and the Pensioners' Solidarity Contributions of Article 38 of Law 3863/2010 (A 115) as it is in effect, and paragraphs 11, 12, and 13 of Article 44 of Law 3986/2011 (A 152) as it is in effect. Under no circumstances following the readjustment may the sum total of the primary and auxiliary pension be reduced beyond the aforementioned limit of one thousand three hundred (1300) euros, with the

extra amount paid as personal difference. In calculating the above limit on payment of pension with regard to persons with disability or chronic illness and families who have members who are disabled, no disability benefits of any sort shall be taken into account".

Also by way of Article **2 para 2 of law 4472/2017,** the legislator added to the above regulation para 7, which reads as follows: *"As of 1.1.2019, an auxiliary pension paid at this date, provided it exceeds the amount arising from its recalculation pursuant to the regulations in paragraph 4 and the ministerial decision of paragraph 6 of the present law, shall be readjusted to the level of the recalculated pension. In no circumstance may the amount of the auxiliary pension following readjustment as above be reduced at a percentage greater than eighteen per cent (18%) of the amount of auxiliary pension paid at the time the present law came into effect."*

Law 4336/2015, "*Provisions regarding pensions - Ratification of the Draft Agreement on the Financial Assistance by the European Stability Mechanism (E.S.M) and regulations regarding the implementation of the Financing Agreement",* which constitutes the Third memorandum, states on page 1020 that "*all auxiliary pension funds shall be merged into the Unified Auxiliary Pension Fund (ETEA) as of 1 September 2015 and it shall be guaranteed that all auxiliary pension funds shall be funded exclusively by their own contributions as of 1 January 2015; monthly guaranteed pension limits shall be frozen at nominal limits until 2021; and it shall be ensured that any persons receiving their pension after 30 June 2015 shall have access to basic guaranteed pensions on the basis of contributions and on contributory criteria only when they have reached the pensionable age required by law which is today 67 years of age."*

6. Gradual abolition of the Pensioners' Social Solidarity Benefit (EKAS) from June 2016 to December 2019.

Article 92 of Law 4387/2016 states that: *"From 1.6.2016 to 31.12.2019, the Pensioners' Social Solidarity Benefit (EKAS), which was introduced by Article 20 of Law 2434/1996 (A 188) and the Legislative Act Containing "Measures to Support Pension Reduction" (A 211), which was ratified by Article 1 para 2 of Law 2453/1997 (A 4) as amended and in effect,* ***shall be paid exclusively to persons who are already pensioners, as well as those entitled to old age pensions, incapacity pensions or bereavement pension through organisations affiliated with EFKA*** *pursuant to Article 53 to primary insurance organisations and the bank of Greece, save for pensioners at the Agricultural Insurance Organisation (OGA) whose pension begins prior to the entry into effect of the present law. In order for payment to be made, all the following conditions must be met: a. They have reached 65 years of age. For those receiving incapacity pensions who are incapacitated to a level of 85% and above, as well as for children receiving pensions due to the death of their parents, the age requirement need not be met. b. Their total net annual payment from pensions (primary, auxiliary and assistance paid in cash), wages, salaries and other benefits must not exceed the sum of seven thousand nine hundred and seventy two (7972) euros. In determining this income, no account shall be taken of sums corresponding to incapacity pension, pensions of war veterans or those injured in military service, victims of terrorism, or of welfare benefits. c. The beneficiary's total annual taxable individual income, as well as exempt income or income liable to special taxation, must not exceed the sum of eight thousand eight hundred and eighty four (8884) euros. d. Total annual taxable family income, as well as exempt income or income liable to special taxation, must not exceed the sum of eleven*

thousand (11,000) euros. The above amounts, in cases b, c and d, refer to income declared in the preceding tax year. e. The total net amount of primary and auxiliary pension paid at the time of issue of this law, which includes all kinds of income, must not exceed six hundred and sixty four (664) euros. For every year, from 1.1.2017 until 21.12.2019, the amount of pension to be paid as above shall be examined during the month of the ministerial decision in paragraph 4 or the amount of pension to which a person is entitled shall be examined in the first full month of payment, if payments on the pension start after the issue of the ministerial decision. f. As regards foreign nationals, they must reside lawfully and permanently in Greece. 2. Allowance amounts: a. For total allowance amounts from pensions (primary and auxiliary), wages, salaries and other payments or benefits up to and including seven thousand two hundred and sixteen (7,216) euros, payments of two hundred and thirty (230) euros shall be made monthly. b. For total allowance amounts from seven thousand two hundred and sixteen euros and one cent (7,216.01) up to and including seven thousand nine hundred and seventy two (7,972) euros, monthly (EKAS) payments shall be made as follows: aa. From seven thousand two hundred and sixteen euros and one cent (7,216.01) up to and including seven thousand five hundred and eighteen (7,518) euros, the sum of one hundred and seventy two euros and fifty cents (172.50). bb. From seven thousand five hundred and eighteen euros and one cent (7,518.01) up to and including seven thousand seven hundred and twenty (7,720) euros, the sum of one hundred and fifteen (115) euros. cc. From seven thousand seven hundred and twenty euros and one cent (7,720.01) up to and including seven thousand nine hundred and seventy two (7,972) euros, the sum of fifty seven euros and fifty cents (57.50). c. The same allowance amounts as above shall also be paid to those on incapacity pensions receiving a full pension. d. For old age pensioners and those on incapacity pensions receiving a reduced pension, as well as any beneficiaries who have not established automatic entitlement to a pension on the basis of time insured that they have spent in Greece, payments shall be equal to 2/3 of the above amounts. For the latter category the remaining 1/3 of EKAS payments that may not have been paid prior to the entry into force of the present provision shall not apply, pursuant to the preceding paragraph. As regards those on incapacity pensions, any change to the level of the recipient's incapacity within the same calendar year that EKAS payments are being made shall not effect any change in the level of the allowance. In cases of beneficiaries of pensions due to death, the EKAS amounts shall be distributed and the same percentages provided for in the provisions of the usual insuring body, irrespective of their share of inheritance. 3. In cases of beneficiaries meeting the conditions to receive EKAS for the period up to 31.12.2015, but who have not exercised their right or who have not been paid their allowance and provided it has not lapsed, pursuant to Article 137 of law 3655/2008 and para 6 of Article 40 of Decree Law 1846/1951, the provisions of Article 24 of Law 2556/1997 shall apply, as they are in effect, until the entry into force of the present law. 4. A joint decision of the Ministry of Finance and the Ministry of Labour, Social Security and Social Solidarity, issued on an annual basis, shall readjust respective allowance amounts in paragraph 2 of this article, as well as the allowance amounts in paragraph 2. With the above adjustments, the cumulative savings to the EFKA budget for this reason shall amount to 570m euros from 2016 to 2017, to 808m euros from 2016 to 2018 and 853m euros from 2016 to 2019. As of 1.1.2020 this provision shall be abolished. The issuing of the aforementioned joint ministerial decision and checking of allowance criteria for granting the payment for each year shall take place at the latest by the December of the preceding year so that as of 1 January each year EKAS payments shall not be granted to persons who are not entitled thereto. 5. Allowances shall be paid by EFKA. In the event of an inaccurate declaration in bad faith by a pension recipient either regarding the

agency making the payment or the payment data, as well as in the event of multiple collection of payments, double the improperly paid amounts shall be withheld from the sum of the primary pension, in six (6) instalments, by way of the competent body in EFKA. 6. The amount of EKAS paid by any insuring body shall not be taken into account as regards compliance with the allowance criteria in paragraph 1 of the present article. 7. EKAS amounts shall not be subject to the insurance contributions for Health Insurance or Solidarity Pension Contributions in Article 38 of Law 3863/2010 (A'115) as it is in effect. 8. Para 3 of Article 19 of Law 1902/1990 (A' 138) as it is in effect shall be applied to anyone ceasing to be entitled to EKAS pursuant to the provisions of the present law pending their final repeal. 9. EKAS shall not be paid to persons entitled thereto where they have permanent leave to remain in countries outside the European Union. 10. Article 20 of law 2434/1996 (A' 188) is repealed."

C. **Evaluation**

The Committee recognises that restrictions in social insurance provisions may not be in contravention of Article 12 paras 2 and 3. By way of the provision in Article 12 the Contracting Parties undertake to establish and maintain an institutional social security system at a satisfactory level and to endeavour to raise it progressively.

Evaluation of the situation in each state as regards restrictions on available allowances is carried out by the Committee in interpreting Article 12 of the ESC according to the following criteria which arise from the decision on the IKA-ETAM complaint against Greece, 7.12.2012 *"a) the nature of the changes, b) the reasons given for the changes and the framework of social and economic policy in which they arise, c) the extent of the changes introduced, d) the necessity of the reform and its adequacy in the situation which gave rise to these changes (the aims pursued), e) the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made, and f) the results obtained by such changes."*

Additionally, according to the Committee, when adopting provisions restricting rights set out in the Charter, the contracting parties must be in a position to show pursuant to Article G of the revised ESC that the reductions or limitations are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.[5] Even if due to the difficult economic situation of a contracting party it is impossible to maintain the social security system at the level it had previously attained, this state must try to maintain the regime at a satisfactory level, taking into account the expectations of the beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security.[6]

The unification of all agencies under the public legal personage "Unified Social Security Institution" alone does not constitute a reduction in allowances payable by the contracting party in respect of Article 12 of the ESC, as applicable mutatis mutandis. The law's explanatory report stipulates that the unification took place with the aim of sustainability, profitability and the equal distribution of sacrifices. EFKA will have to pay the contributory part of the primary pension.

[5] ECSR, Decision on the complaint of IKA-ETAM v. Greece, 7.12.2012, see para 72.
[6] Ibid, para 69

However, also pursuant to the EFKA Budget (Protocol no. F.EFKA 60265/2231/2016 Approval of the EFKA Budget for the 2017 Financial Year) there is an initial deficit of one billion, forty eight million, nine hundred and four thousand, and five hundred euros (€**1,048,904,500**). In other words, the main body ensuring the provision and realisation of this State duty for social insurance is starting out with a deficit. Further, EFKA, with extension after extension for payment of contributions has in fact declared its real difficulty in collecting its revenue. Further still, given that the contributory part must by law be paid by contributions, together with everything stated below, it is manifest that the EFKA set-up is problematic and jeopardises the very sustainability of the Greek security system!

Particularly for primary pensions, Articles 7, 8, 13, 14, 33 [sic], 27 and 28 of Law 4387/2016 introduce the distinction between national and contributory pensions and provide for their respective modes of payment as well as their sources of financing.

Specifically, Article 2 of law 4387/2016 provides that the national pension will not be funded by insurance contributions but directly from the State Budget, while the contributory part of the pension will be calculated on the basis of earnings on which contributions are paid. It is expressly stated in para 5 of Article 1 of Law 4387/2016 that special provisions relating to state subsidy of the social security system are abolished.

This structuring of pensions into national and contributory, is also expanding fully to those already in receipt of pensions, whose pensions are being recalculated. In this way however two self-contained pension divisions are being formed, of which only one is guaranteed by payment from the state budget (national pension).

On the other hand the primary part of the pension, which is funded by contributions (in general) (contributory pension) does not enjoy state funding, given that of course the provisions concerning funding of insurance organisations in general are being repealed. This moreover is also the provision introduced in the accompanying text to the Third Memorandum in Law 4336/2015, which explicitly refers to “the abolition within three years of all exceptions funded by state resources […] the abolition as of 31 October 2015 of all superfluous burdens on pension funding and their compensation by lowering allowances or increasing contributions for the specific funds”.

In addition, Article 56 of Law 4387/2016 does not provide as a resource for EFKA funding from the state budget, but only revenue received from workers’ and employers’ contributions and from return on the capital and reserves either of EFKA itself or of affiliated bodies, sectors, branches and accounts.

The distinction introduced by Joint Ministerial Decision no. oik.26083/887/7-6-2016 (Official Gazette B/1605/7-6-2016) of the Minister of labour, Social Security and Social Solidarity and the Alternate Minister of Finance “Readjustment of primary pensions – Protection of Pensions Paid” is clear if one takes into account the legislative framework in place prior to the contested decisions, when in the case of public servant and civil service pensions, pensions were paid for life directly from the Public Treasury (Article 1 para 1 of Presidential Decree 169/2007). Correspondingly, in the case of other pensioners, the legislation repealed by the provisions of Law 4387/2016 and the contested decisions provided for the state budget to finance insuring bodies (e.g. Article 27 of law 3655/2008, Article 4 of law 3029/2002, Article 24 of Law 1846/1951).

In this sense, the only state funding recognised in the case of pensions as structured by the provisions in Law 4387/2016 is payment of the national pensions, which however is **"welfare"** in nature and not related directly to the labour of the insured person (since the same amount of national pension will be received by someone insured for 20 years of work as someone insured for 40, and by insured persons with different pensionable earnings). The welfare nature of the national pension also stems from the fact that in the case of cumulative pensions, for which more contributions have been made, only one sole national pension is granted.

And what is more, compared to the previous regime for the basic pension, the criteria for granting the national pension are stricter, making the award thereof more difficult. For the basic pension to be granted the ex lege conditions were 15 years or 4500 days of insurance for a basic pension of 486 euros. Now, for the national pension to be granted, the requirements are 20 years or 6000 days of insurance for a national pension of 384 euros, so 102 euros less.

In essence, however, the provision restricting state funding to the national pension only implies that the contributory part of the pension must be fundable only via contributions from insured persons; in the event of deficits these will need to be covered either by an increase in contributions or a reduction in allowances (as moreover provided for in the annex to the Third Memorandum in Law 4336/2015).

The fact that the contributory part of the pension, namely the bit based on the relationship between contributions and allowances is not paid by the state budget but exclusively by that of EFKA through its resources is also clearly accepted in the Report of 5-5-2016 entitled "*Evaluation of the effects of proposed pension restructuring",* published by the Ministry as an annex to law 4387/2016: "*In fiscal terms pension restructuring aims at the long term sustainability of the system, while at the same time contributing to the country's fiscal stability. This dimension is pursued by way of funding the contributory part of allowances by insurance contributions and limiting state funding to the coverage of the national pension".*

<u>The text in question does not constitute actuarial research and does not appear to be scientific documentation of the financial parameters of sustainability of the status quo, nor of the newly created body and the effects that will come about on the standard of living of insured persons, since:</u>

[a] It does not contain financial data documenting the sustainability of the new body (EFKA). One would expect such research to include as far as possible an accurate description of income expected to come to EFKA from the collection of new increased contributions and its asset management as well as a calculation of the financial obligations EFKA will have to meet as much at the level of operational expenses as at the level of paying allowances to pensioners, taking into account of course the existing obligations of the individual Social Security bodies contained within EFKA.

[b] It does not contain detailed financial data for each of the unified Social Security Bodies to show whether or not they are sustainable (before and after being integrated into EFKA). One would expect such research to include data to document why pensions expenditure – at its lowest point in recent years due to much interference in pensions and allowances – hidden in the state budget must be further reduced at the very

moment it is already noted in the body of the text that the gravest challenges facing the social security system are unemployment and the ageing population.

Furthermore, although the text in question refers extensively to the funding of Social Security Bodies by the state budget to date, no data is provided to show that:

[a] the collection of contributions by the Social Security Bodies brought together as EFKA creates sufficient capital with which it is possible to ensure payment of contributory pensions no longer subject to funding, and what this capital is calculated to be

[b] whether there is a provision and if so, what, for EFKA funding as regards covering existing deficits inherited from the integrated bodies, given of course that state funding is not provided as a resource for EFKA

[c] evidently the total pension resulting from the application of the provisions of Law 4387/2016 is deliberately considered as earnings guaranteeing a decent standard of living to pensioners, with no consideration for the fact that the sole guaranteed amount (actually paid by the state budget) is that of the national pension, which is limited to 384 euros, a sum which even on the data of the document concerned fails dismally as a decent standard of living, being well below the poverty line. Similarly, no answer is given to the question which reasonably arises from the data on which the document itself relies, i.e. how the gap of 9.6 billion will be covered by contributions from insured people, when in 2015 it was being covered by the state budget that made the payment of pensions possible.

By not providing adequate answers to key questions in regard as much to the sustainability of the new unified EFKA as to ensuring a decent standard of living for pensioners, the document in question, which has been presented as "research", does not provide adequate data for the Committee and competent courts to reach judgement through the necessary, specific and in-depth scientific evaluation of the effects on pensioners but also on the sustainability of the Social Security Bodies (before and after the intervention of Law 4387/2016).

However, limiting state funding of EFKA to payment of the national pension only and the fact that payment of contributory pensions will be funded only by insured persons' contributions lead to a "*constitutionally unacceptable approach, where the State only regulates and organises Social Security, without obligation to take any part in funding social security organisations or where this obligation can be met with allowances that are akin to welfare, while also ensuring the sustainability of the organisations in question falls to the insured persons themselves, and is principally or exclusively associated with the mathematical relationship between the payment of contributions and the granting of allowances"* as expressed in decision no. 2287/2015 of the Plenary Session of the Council of State.

Additionally, when it comes to the recalculation of pensions already being paid, there is no discussion of pensionable earnings, but the basis for the readjustment of the primary pension takes into account the pensionable wage on which the pension that is already granted was calculated. Here it must be noted that Greece has never complied with the decisions of your Committee on complaints 76-80/2011 nor with the two decisions of the Plenary Session of the Council of State, nos. 2287/2015 and 2288/2015,

according to which the reductions in Laws 4051/2012 and 4093/2012 have been deemed contrary to Greece's international obligations both as regards the ESC and also contrary to the Greek Constitution respectively. It is thus in keeping that Articles 12 and 33 of 4387/2016 state that pensions paid shall be recalculated at the level they were on 31.12.2014. In other words the new law takes into account the level of pensions for recalculation including unlawful reductions, violating every meaning of res judicata!

Also, if the amount of pension paid or being paid at the date that Law 4387/2016 comes into effect, namely 12-05-2016, is greater than the amount reached after recalculation then any difference arising will continue to be paid and dealt with as "personal difference". However Article 14 paragraph 4 of the law provides explicitly for reductions if pension costs exceed the maximum increase agreed with the lenders. In essence, the new legislative regime introduces as a permanent fixture an automatic tool for reduction of pensions already awarded, which of course constitutes an excessive restriction and in fact a creeping degradation of pensioners' living standards.

Seeing this, the legislator after and while the personal difference has been calculated for many pensioners, comes and imposes a ceiling on cuts of the order of 18% in the recent period since the institution of Law 4387, by way of Law 4472/2017. Upon this change, which is not based on any financial research, the Court of Auditors, in its Minutes at its 2nd Extraordinary Plenary Session on 8 May 2017, acting in its Advisory Capacity as per the Greek Constitution stressed inter alia: "….*Given that, pursuant to paragraph b, the amount deducted may be up to or equal to 18% of the beneficiary's primary pension paid upon the entry into force of the present law, namely almost 1/5 thereof,* ***it may be asked whether this is an attack on property protected by Article 1 of the First Additional protocol to the European Convention on Human Rights****, to the extent that it affects pension rights already attained by those who left work prior to the entry into force of Law 4387/2016 and, therefore have claimed payment of their pension pursuant to their pension rights in force at the time they began, namely at the time they left work. It is also noted that although the deduction above comes to be added to successive cuts that have been made on pensions already being paid by earlier legislation adding to other tax burdens, the relevant explanatory report* ***does not contain any justification or reference to research*** *showing the appropriateness and necessity of this cut against other possible alternatives, or that this was dictated by reasons of wider public or social interest on principles of equality, equality in the distribution of public burdens (Article 4 paras 1 and 5) and proportionality, nor is there reference to any study of the financial or social effects on the standard of living of the category of pensioners in question.*

The principle of legitimate expectations enshrined in the fundamental principles of European law seeks to insure citizens against unpredictable change in circumstances and legal relations, and is governed by community law. This principle must also be applied to domestic law when it concerns the level of pensionable earnings for workers and pensioners, who are justified in their expectation that these will not be unjustly reduced in future (Supreme Court 9/2008).

Pursuant to this principle, which constitutes **the basic component of the principle of "the prohibition of social regression"**, the legislator may not arbitrarily or unexpectedly repeal or amend for the worse regulations concerning social security or worker's rights.

Consequently, the need recognised in existing legislation for those already receiving a pension which has already started and which then constitutes after its initiation an element of their property, to be paid their usual pension in full may not be restricted by a subsequent legislative regulation if there are no grounds of actual public benefit justifying the restriction, because this is incompatible with Article 1 paragraph a of the First Additional Protocol to the ECHR, since it tends towards an unjustified deprivation of the property protected thereby.[7]

In relation to pensions to be paid for the first time after the entry into effect of 4387/2016, the level of the contributory part of these is calculated on the basis of pensionable earnings which currently comprise the Average of the insured person's monthly earnings for the whole period of their insured life. This average is calculated by dividing total monthly earnings by the total period of insurance. This new fact leads of its own accord to reductions in expected pensions in future particularly for those close to receiving their pension and who find themselves facing a huge upset because this new Average will render pensions much lower in relation to the contributions they have paid for all those years.

Also, as the new replacement rates are fixed at a range from 11.55% for 15 years' insurance to 42.80% for 40 years, they will bring about an even greater reduction to pensions, essentially making pensions allowances.

As regards auxiliary pensions, new cuts are being imposed. The new reduction on auxiliary pensions, which follows so many others, comes into direct conflict with the principle of proportionality while at the same time blatantly affecting the decent standard of living of pensioners as it also leads to further shrinkage of their allowances compared to the current ones. It is also completely arbitrary to correlate the reduction of auxiliary pensions with a totally random and non-essential criterion,[8] namely the level of the primary pension.

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[7] *(see Court of Auditors 27/2004 [Act], EDKA., 2004 p. 288, 36/2006, EDDD, 2006, p. 360).*

[8] Moreover, according to recent national jurisprudence (Council of State Plenary 2287/15 and 2288/15), *"Even in these exceptional cases, however, the capacity of the legislator to reduce insurance provision is not unlimited, but is restricted in the first instance by the principles of social solidarity (Article 25 para 4 of the Constitution) and equality in public burdens (Article 4 para 5 of the Constitution), which impose the equal distribution of the burden of fiscal adjustment amongst all citizens, as well as by the principle of proportionality (Article 25 para 1 of the Constitution), according to which the specific measure must be appropriate and necessary to address the problem (see 2192-2196/2014 of the Plenary of the Council of State). In any event, the reduction of pensions may not contravene that which pursuant to the above constitutes the constitutional core of the right to social security, namely the granting to the pensioner of such allowances which will permit him to live with decency, guaranteeing the conditions not only of his physical being (food, clothing, shelter, basic household goods, heating, sanitation and medical care at all levels) but also of his participation in social life in a way that he is not essentially excluded in any way from the corresponding conditions of his working life (see Decision 9.2.2010 -1 BvL 1/09-, -1 BvL 3/09-, -1 BvL 4/09-, particularly Rn 135 of the Federal Constitutional Court of Germany). Moreover, in order to meet his commitments and not to exceed the parameters set out in the Constitution, the legislator, when taking measures pursuant to the above to cut pension allowances, must, in view also of his wider obligation to "plan and coordinate economic activity in order to consolidate social peace" (Article 106 para 1 of the Constitution), have undertaken specific, in-depth and scientifically detailed research showing on the one hand that the particular steps are actually appropriate and necessary effectively to address the problem of sustainability of social security bodies, in view also of the factors that cause them, so that taking such measures is in accordance with the above constitutional principles of proportionality and equality in public burdens, and on the other hand that the effects of these measures on the living standard of persons affected, combined with any other steps taken (taxation etc.), or the sum total of fiscal conditions in conjunction do not when taken together result in the impermissible violation of the core of the constitutional*

In the context of the new auxiliary insurance funding, the public legal personage called the "*Unified Auxiliary Insurance Fund*" introduces a reduction on auxiliary pensions without restriction, but also without any reasonable correlation being established between contributions paid and pension granted so that this can guarantee as satisfactory a living standard as possible, close to that attained by the pensioner during his working life. The following paradox is thus created: insured persons who had high pensionable earnings and paid significant sums in contributions and worked for many years receive a proportionally smaller amount of auxiliary pension in comparison to those insured persons with lower contributions and a shorter term of insurance, due to the totally random fact that the sum of their primary and auxiliary pensions exceeds the sum of **1300** euros. The recent introduction of the ceiling of 18% for auxiliary pensions too, again without any economic or social research but in a random and socially unsubstantiated way as analysed above, shows how the legislator's exclusive aim was to lower pensions, not to achieve sustainability but simply on pure cost cutting grounds.

As regards the status of those receiving pensions as the result of a death (bereavement pensions), the legislator creates an enormous social injustice, with incalculable and unspecified consequences for society. The institutional framework for bereavement pensions with a payment start date of 13 May 2016 is as follows.

In principle, a surviving spouse over the age of 55 years at the time of their spouse's death has the right to a bereavement pension for life. A surviving spouse over the age of 52 years at the time of the death has the right to a bereavement pension suspended after three years from the death of the pensioner-insured person until they reach 67 years of age. A spouse who has not reached 52 years of age at the time of the other spouse's death only has a right to a bereavement pension for three years. This change to bereavement pension awards comes as an upset to social conditions by introducing a mixture of strict regulations and creating huge social inequalities and risks to the living standard.

According to the explanatory report of the law in regard to the article under discussion, "*The imposition of an age limit is deemed appropriate given that providing bereavement pensions to persons under the age limits as above creates a disincentive to remain in or enter the labour market and burdens the insurance system disproportionately in violation of the distribution principle."*

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right to social security. Given also the as a rule complex and detailed nature of related questions, the lack of such research drafted in a comprehensible way and subject to checking by a judge, would essentially make judicial control of the said legislative measures ineffective as regards the above constitutional perspectives. Control, which even if does not extend to the correctness of political evaluations and choices, must however be exercised in a substantive and effective way towards its goal, namely upholding the legislator's constitutional obligations. Derogations as to the necessity of the above research or its content could only be justified in extreme cases, when there is a direct threat of collapse of the State economy and the particular measures are taken urgently to prevent such a danger. In such cases, the reasoned evaluation of the legislator may in the first instance be sufficient, according to the nature of the thing for the existence, gravity and direct nature of the threat and for the need in view of the circumstances for the particular measures to be taken immediately to address the situation. However that too is on the condition that the measures are not manifestly unsuitable or unnecessary and there are no serious indications that they exceed the limits of the sacrifice of the persons affected thereby."

For the first time the amount of pension is also limited if there is a big age difference between spouses. If the age difference between the deceased and their spouse is, with a deduction for the time they have been married, greater than ten years, the pension of the survivor is, for each full year of difference reduced as follows: a) 1% for 10-20 years, b) 2% for 21-25 years, c) 3% for 26-30 years, d) 4% for 31-35 years and e) 5% for >36 years.

The age criterion, perfectly lawful for a pension, is completely harmful, unjustified, unreasonable and inhumane. Not only is it an unreasonable deprivation of this right, with the introduction of an excessive limitation which introduces a degradation of the pension award for the great majority of people purely and simply because they have not reached a certain age at the time of the death, but the introduction of this measure is also without any research to show the financial necessity and economic impact of the change and in future an unknown number of beneficiaries will be deprived of their bereavement pension on an indefinite basis.

Also, the reduction in the amount of pension based on age difference is an unlawful criterion, unjustified because there is no logic or actual data to it, but instead the deduction occurs on the basis of age difference between the deceased and the survivor, in other words on completely random factors, making this regulation infinitely broad, in contravention of any notion of proportionality, equality and social justice.

In regard to the social solidarity allowance for pensioners (EKAS), the gradual abolition of this is being introduced from 1.6.2016 to 31.12.2019. Already with this law, EKAS is not being paid in large part to those already receiving pensions, as well as those who did not receive it prior to law 4387/2016. This is an allowance to which pensioners on low pensions are entitled. Those that were already being received prior to the implementation of the contested articles are gradually being abolished, by the staggered reduction in the level of EKAS. EKAS was introduced to support those on low pensions as such persons constitute ipso facto a vulnerable social and economic group in Greek society. With the abolition of EKAS, an allowance needed by a great swathe of economically vulnerable persons is being lost, narrowing the reach of social protection.

In general, the total of measures cumulatively but also each measure of the three laws, i.e. Law 4336/14-08-2015, Law 4387/12-05-2016 and law 4472/19-05-2017 violate Articles 12 para 2 and 3 and Article 23 of the revised ESC. The ESC's provisions are binding on Greece insofar as pursuant to Article 28 para 1 of the Greek Constitution they prevail over other provisions of law. There is an absence of in-depth precise research on these measures, and the system is non-distributive to the extent it is excessive and disproportionate and abolishes the social and safeguarding nature of social security in Greece. This legislative regime lowers living conditions for people in old age to the extent that is brings it down to the lowest decent standard of living!

It is noteworthy that the Presidents of the Judicial Associations, i.e. specifically the esteemed members of the judiciary Mr Christoforos Sevastides, President of the Courts of First Instance, Mr Evthymios Antonopoulos, Councillor at the Council of State, Ms Ireni Yiannadaki, President of Appeals, Mr Dimitrios Asprogerakas, Appeals Prosecutor, along with Ms Asimina Santorinaiou, Councillor at the State Judicial Council, and Mr Stamatis Giakoumelos, honorary Member of the Supreme Court, stressed, in regard to Law 4387/2016: *"We express our strong opposition to and protest the new measures introduced by laws 4387/2016 and 4389/2016 which once again mainly affect the waged*

and pensioners and particularly, and in a manifestly unjust way members of the judiciary and staff at the State Judicial Council, both active and retired….2. That as has been ruled by a decision of the Plenary of the Council of State (which deemed the two latest pension cuts unconstitutional), even in cases of unfavourable fiscal conditions, the legislator's capacity to cut insurance provisions is not unrestricted, but is limited firstly by the principles of social solidarity (Article 25 para 4 of the Constitution) and of equality in public burdens (Article 4 para 5 of the Constitution), which impose the equal distribution of the burden of fiscal readjustment amongst all citizens, as well as by the principle of proportionality (Article 25 para 1of the Constitution), pursuant to which the particular measure must be actually beneficial and necessary to address the problem; and in any event the pension cuts combined with the sum total of all general economic and taxation measures that have been put in place to address the country's budgetary problems….cannot be cumulative so that they lead to an impermissible lowering of pensioners' living standards, lower than that level that constitutes the constitutional core of the right to social security, namely the granting to the pensioner of such allowances which will permit him to live with decency, guaranteeing the conditions not only of his physical being but also of his participation in social life in a way that he is not essentially excluded in any way from the corresponding conditions of his working life(see Decision 9.2.2010 -1 BvL 1/09-, -1 BvL 3/09-, -1 BvL 4/09-, particularly Rn 135 of the Federal Constitutional Court of Germany)." The above reflections, of the most senior office holders in Greek justice, wholly substantiate our assertions.

Additionally, Ms N Kasimati, the Greek representative to the European Social Charter in Strasbourg, addressing Mr Juncker on 19 April 2016, stated the following: *"Unfortunately in recent years a large number of European Union decisions and actions taken in collaboration with the IMF – particularly the programme of financial assistance for Greece – have been severely restricted to one approach: strict austerity, accompanied by the eradication of acquired rights in the name of so-called "structural reforms" and mandatory reform at the expense of social cohesion and resulting in a humanitarian crisis, as admitted at the European Parliament, but also in official documents of the Quartet of Creditors. As a result, there is a clear contradiction between means and aims: the spirit and letter of the memoranda are entirely incompatible with the European Social Charter and at the same time pressurise and push member states such as Greece to violate their contractual obligations to the Charter. In view of this direct and imposed contradiction, Mr Juncker, do you believe that it would be necessary for the European Union to re-examine its policy harmonising it with the provisions of the above Convention thereby contributing effectively and realistically to the protection of its citizens' social and economic rights, which the European Union is obliged to uphold?".*

D. **Conclusion**

For the above reasons we request the European Committee on Social Rights to accept our demands and to recognise that Greece is in violation of the provisions of Article 12 paragraphs 2 and 3 and Article 23 of the Revised Charter. The legal entity named "Panhellenic Federation of OTE Telecommunications Pensioners" legally presents this complaint, as recently accepted again in the Decision of 22 March 2018 on Acceptability at point no. 4.

Athens, 26/4/2018
Mandated Lawyer
On the basis of Deed no. 1579 of the Administrative Council dated 18/7/2017