

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**



28 February 2011

Case Document No. 1

**General Federation of employees of the national electric power corporation
(GENOP-DEI)
Confederation of Greek Civil Servants' Trade Unions (ADEDY)
Complaint No 65/2011**

COMPLAINT

(Translation)

Registered at the Secretariat on 21 February 2011

Collective complaint against Greece concerning Act 3899 of 17 December 2010

Greece has ratified the 1961 European Social Charter, the 1988 Additional Protocol and the 1995 Protocol providing for a system of collective complaints.

There are two parts to the complaint:

- The breach of Article 3§1a of the 1988 Additional Protocol;
- The breach of Article 4§4 of the 1961 Charter.

I. Violation of the right to take part in the determination and improvement of the working conditions and working environment of the undertaking

A. Article 3§1a of the 1988 Additional Protocol reads:

"With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a. to the determination and the improvement of the working conditions, work organisation and working environment".

B. Act 3899 of 17 December 2010, section 13 (adding a paragraph 5a to section 3 of Act 1876/1990) provides that

1. the remuneration and working conditions specified in so-called special enterprise collective agreements may depart from the provisions of the relevant branch collective agreement. In such cases, the enterprise agreement shall take precedence, without limitations, over the relevant branch agreement.
2. So-called special enterprise collective agreements may also be concluded between employers with fewer than 50 employees

and the relevant enterprise trade union or, if this does not exist, with the corresponding branch trade union or federation.

C. Assessment

These provisions are in breach of Article 3 of the 1988 Additional Protocol in a number of respects:

- a. In the interests of greater flexibility of working conditions, which is the declared objective, they are intended to secure the general application of "special" enterprise agreements providing for working conditions that are consistently and unrestrictedly poorer than those specified in branch collective agreements.

Yet Article 3 of the Protocol entitles employees to take part in the determination and improvement of their working conditions, when these are inadequate.

It is therefore intended to remedy any shortcomings in working conditions and make existing requirements more beneficial to employees, where appropriate drawing on other sources. Clearly then, Greek law as it stands is directly incompatible with the relevant provision of the 1988 Additional Protocol.

- b. Under section 13§2 of Act 3899/2010, where there is no trade union in an undertaking, the corresponding trade union branch or federation has authority to negotiate enterprise collective agreements that depart from branch agreements. This means that unions outside the undertaking are empowered to negotiate and agree to a deterioration in employees' working conditions. Yet it is employees of the undertaking or their representatives to whom article 3 of the Additional Protocol grants the right to take part in determining working conditions. In this respect therefore, Greek law is in breach of this provision of the Protocol.

II. Violation of the right to a reasonable period of notice

A. Article 4 of the 1961 Charter reads: "With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake ... (4) to recognise the right of all workers to a reasonable period of notice for termination of employment".

Act 3899 of 17 December 2010, section 13 (adding a sub-paragraph A to paragraph 2 of Act 3863/2010) provides that:

A. The first twelve months of employment on a permanent contract from the date it becomes operative are deemed to be a trial period and the employment may be terminated without notice and with no severance pay unless both parties agree to the contrary.

B. Assessment

Clearly, depriving employees of all entitlement to a period of notice or severance pay in the first twelve months of employment is in direct contravention of Article 4§4 of the Charter. According to the Committee, "the right to reasonable notice of termination of employment applies to all categories of employees (Conclusions XIII-4, Belgium, p. 352). It also applies during the probationary period (Digest of the Case Law of the European Committee of Social Rights, December 2008, part I: Interpretation of the different provisions, Article 4§4).

CONCLUSION

For the reasons cited, we ask the European Committee of Social Rights to find this complaint admissible and to rule that Greece has violated Article 3 of the 1988 Additional Protocol and Article 4§4 of the 1961 European Social Charter.

Athens, 18 February 2011

