EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

25 November 2011

Case No. 5

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

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 23 November 2011

OBSERVATIONS OF THE HELLENIC GOVERNMENT ON THE MERITS OF COLLECTIVE COMPLAINT 65/2011

In accordance with the decision of the European Committee on Social Rights, dated 5th July 2011, on the admissibility of the collective complaint 65/2011 lodged against Greece by the General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and the Confederation of the G reek Civil Servants' Trade Unions (ADEDY) about violation of Article 3§a of the Additional Protocol of 1988 and of Article 4§4 of the European Social Charter (ESC) of 1961, we lawfully submit the present memorandum with our observations on the merits of the allegations made by the complainant organizations.

The Hellenic Government denies in their total the allegations made by the complainant organizations and requests the rejection of the above complaint as unfounded.

A. Fiscal and structural measures to tackle the financial crisis in Greece

Since the fourth quarter of 2009, the public debt of Greece and the ever-increasing loan cost for its financing, which led to the downgrading of the country's creditworthiness in December of the same year, added dangerously explosive dynamics to its already high public debt, and in combination with its ever-growing deficit jeopardized the country's ability to meet its debt obligations due to the prohibitive cost of borrowing in international bond markets. On 22nd April 2010, the Eurostat announced that the deficit in 2009 exceeded 13,6% of the GDP, and, on the one hand, the central government debt in 2009 exceeded 120% of the GDP,

amounting to almost 300 billion euros, while, on the other, the general government debt reached 113% of the GDP.

The country's grave financial situation and the subsequent inability to refinance its debt via the international markets, a fact which also threatened fiscal stability in the Eurozone, have led the Hellenic government and the European Union to establish a financial support mechanism for Greece by means of a loan, which was decided in Brussels on 25th March 2010. This mechanism was set up by the European Commission, the European Central Bank and the International Monetary Fund and intertwined the terms of the loan contract with the implementation of a programme of fiscal and structural measures to enhance the competitiveness of the Greek economy and improve the operation of the labour market. This programme is depicted in the Memoranda of Economic and Financial Policies, which were annexed to Act No3845/2010 "Measures for the implementation of the support mechanism for the Greek economy by the Eurozone member-states and the International Monetary Fund" which was adopted by the Hellenic Parliament on May 6th 2010.

The observance of the three-year timetable for the taking of structural measures as stipulated by the Memoranda constitutes a prerequisite for the disbursement of loan installments to Greece that are provided for by means of the mechanism.

Within this framework, the structural measures included in the Memoranda aim at:

a) eliminating the root causes of the public debt crisis that Greece is facing, through the implementation of measures which intend to restore its fiscal stability so that public expenditure correspond to public income,

b) creating the conditions for a sustainable public debt management, so that the Greek State might continue to finance its borrowing needs through the financial markets,

c) dealing with the structural problems of the labour market as well as of the social security and the public health and welfare systems, the sustainability of which is threatened by decreasing contributions due to the increasing unemployment and the intense demographic problem of the country, and

d) improving the competitiveness of the Greek economy by means of taking structural measures for the operation of the labour market, especially with regard to determining wages through collective bargaining, settling collective disputes, reinforcing flexibility in industrial relations and, generally, reducing the labour cost and combating unemployment which is intensified by the financial crisis.

The regulations against which the present collective complaint turns are included among the structural measures taken for the amendment of the operation of the labour market in order to enhance the competitiveness of Greek enterprises, i.e.:

1. The establishment of the special firm-level collective agreement, which reinforces the decentralization of collective bargaining *(article 13 of Act No3899/2010)* and
2. The establishment of probation period contracts *(article 17 of Act No3899/2010)*.

The aforementioned regulations comply with both the spirit and the letter of the provisions of article 3§1 and article 4§4 of the European Social Charter as we shall show below and, on these grounds, the Hellenic

Government denies the allegations made by the complainant organizations about violation of the ESC through the said regulations.

B. Refutation of the allegations of the collective complaint about violation of the provisions of the European Social Charter on the right to participate in the determination of working terms and conditions

(Article 3§1 of the ESC in relation to article 13 of Act No3899/2010, which added paragraph 5A to article 3 of Act No1876/1990)

The provision in question reads as follows:

Act No3899/2010

Article 13

Special firm-level Labour Collective Agreement

In Article 3 of Law 1876/1990 α new paragraph 5 A is added as follows:

"5A 1. a) Under a firm-level collective agreement, remuneration and working conditions may deviate from the relevant sector collective agreement ***up to the level of the general national collective agreement****.*

Such firm-level collective agreement, which may be renewed, shall be called "special firm-level collective agreement". Special firm-level collective agreements prevail over the relevant sectoral collective agreements, without limits. The provisions of article 10 and paragraphs 2, 3 and 4 of article 11 of Law 1876/1990 do not apply on the collective agreements of this paragraph. Special firm-level collective agreements ***take into account the necessity of improving firms' adaptability to market conditions, with a view to create or preserve jobs and improve the firm's competitiveness.***

b) The special firm-level collective agreement may regulate the number of employment positions, the conditions of part-time work, shift part-time

work, suspension of work, and any other terms of implementation including its duration term.

2.In exemption to the provisions of article 6, paragraph 1 subparagraph b of Law 1876/1990, the special firm-level collective agreement may be signed by an employer who employs less than fifty (50) employees and the relevant firm-level trade union and if there is no such union, by the relevant sectoral trade union or confederation.

3. For the implementation of the provisions stipulated under paragraph 1, the parties involved submit a reasoned report to the Council of Social Oversight of the Labour Inspectorate (C.S.O.L.I.) stating the justification of their intention to sign the special firm-level collective agreement). The Council delivers its opinion on the reasoning of the intended collective agreement within a strict period of twenty (20) days, after which it is presumed that its opinion has been delivered. The same procedure applies for the relevant collective agreement to be extended.

4. The collective agreement of paragraph 1 is in force at the date of being signed according to article 5 Law 1876/1990.

5. In case of violation of the terms of this article, the special firm-level collective agreement is void and in case of dismissals, the compensation is calculated on the basis of wages set by the respective sectoral agreement.

6. Any reduction of employee wages in deviation of what has been agreed in the context of the special firm-level collective agreement constitutes unlawful delay in payments of wages, for which Compulsory Law 690/1945, as amended by article 8, paragraph 1 of Law 2336/1995 is applied."

In accordance with the Greek law, the freedom of association and trade union action are protected, at the highest level possible, by the

Constitution (article 22§2 and article 23§1) and the International Labour Conventions 87/1948 (ratified by Legislative Decree4204/1961), 98/1949 (ratified by Legislative Decree 4205/1961) and 154/1981 (ratified by Act No2403/1996), which prevail over any contrary provision of law, by virtue of article 28§1 of the Constitution. Within this framework, freedom of association is specifically safeguarded by Act No1264/1982 and freedom of collective bargaining by Act No1876/1990.

It is commonly admitted that Act No1876/1990 has operated most effectively during the last twenty years by promoting collective bargaining regarding remuneration and working terms at sectoral, occupational and enterprise level. Act No1876/1990 stipulates, inter alia, the types of collective agreements and their rank in terms of their binding effect **making it clear that the terms defined by the National General Labour Collective Agreement (E.G.S.S.E.) prevail** over all the other types of collective agreements, i.e. occupational, sectoral and firm-level agreements. **The National General Labour Collective Agreement sets the minimum remuneration and working terms, which constitute the minimum safety net for the workers of the whole country** ensuring decent wages for decent living.

In the context of the current difficult financial situation of the country, fiscal and structural measures are taken. These measures include a partial restructuring of the free collective bargaining system, focusing mainly on the expansion of the levels of bargaining and the thorough consideration of its issues, so that the core of the freedom of association and of collective bargaining might not be affected, but safeguarded and extended to cases where it was not applicable until now.

Thus, the aforementioned provision reinforces the decentralization of the application system of collective agreements and provides for the –under specific terms– ability of the firm-level collective agreements to deviate from the sectoral collective agreements by means of special firm-level collective agreements, **which, however, shall not -under any circumstances- set less favourable remuneration and working terms than those of the E.G.S.S.E.**.

Nevertheless, the abovementioned paragraph 5A has been abolished by the recently passed Act No4024/2011 on "Regulations on pensions, unified wage and grade scale, job redundancy and other provisions to implement Medium-Term Fiscal Strategy Framework 2012-2015"; **that is, it applied only during the period between the entry into force of Act No3899/2010 (17-12-2010) and of the new Act No4024/2011 (27/10/2011)**. During this period, fourteen (14) Special Firm-level Labour Collective Agreements were registered with the competent Services.

It is worth noting that the –temporary– establishment of the new bargaining level and of the respective type of collective agreement (Special Firm-level agreement) that was included in the aforementioned provisions required the prior exhaustive negotiation between the competent and efficient employers' and workers' organisations in accordance with the relevant provisions of Act No1876/1990. Thus, the protection of the freedom of bargaining of the parties concerned was achieved, the state intervention in bargaining was prevented and collective autonomy was strengthened.

Moreover, it should be noted that paragraph 1 of article 37 of Act No4024/2011 strengthened the capacity to conclude firm-level collective

agreements in small enterprises as well, by means of replacing paragraph 5 of article 3 of Act No1876/1990 on firm-level collective agreements.

The relevant provision reads as follows:

"5. Enterprise agreements shall be concluded by the enterprise unions representing all the workers concerned, irrespective of their occupational category, job or area of specialization; where no such union exists the said collective agreements shall be concluded by union organisations at the first level in the sector concerned and by the chief executive of the enterprise.

The union of persons mentioned in the previous section is set up by at least three fifths (3/5) of the workers of the enterprise, irrespective of the total number of its workers and with no time limitation to its duration. If, following the possible setting up of a persons' union for the purpose of this paragraph, the precondition concerning the participation of 3/5 of the workers of the enterprise, which is required for the union's setting up, ceases to apply, the said union is dissolved without any other formality. As regards the other issues concerning the union of persons, case cc' of section a' of article 1§3 of Act No1264/1982 (A'79) continues to apply."

Furthermore, paragraph 5 of the same article temporarily suspends (throughout the period that the Medium-Term Fiscal Strategy Framework is in force) the application of the principle of favorability in case of concurrent implementation of sectoral and firm-level collective agreements. The relevant provision reads as follows:

5. A section is added to paragraph 2 of article 10 of Act No1876/1990 as follows:

"Throughout the period of application of the Medium-Term Fiscal Strategy Framework, the firm-level labour collective agreement shall prevail in case of concurrent implementation with a sectoral labour

collective agreement and in all cases it is not allowed to include working terms that are less favorable for the workers than the working terms provided for by national general labour collective agreements, in accordance with paragraph 2 of article 3 of this Act."

The above amendments in the system of ranking of the binding effect of collective agreements do not violate the freedom of collective bargaining, since **in any case only the legal representatives of workers** at enterprise level have the right to conclude firm-level labour collective agreements.

On these grounds **there is no violation of the provision of article 3§1 of the ESC.**

C. Refutation of the allegations of the collective complaint about violation of the provisions of the European Social Charter on the right of the workers to receive notice in case of dismissal

(Article 4§4 of the ESC in relation to article 17§5 of Act No3899/2010)

The provision in question reads as follows:

"5 a. In article 74§2 of Act No3863/2010, a section is added, i.e. section A΄, as follows:

"A. The working contract for an indefinite period of time is regarded as employment for a probation period for the first 12 (twelve) months from its conclusion, and may be terminated without notice and compensation, unless the parties otherwise agree."

b. The first section of article 74§2 of Act No3863/2010 becomes section B΄; case a΄ of para2 is replaced as follows:

"B. A salaried employee's working relationship for an indefinite period of time, of more than twelve (12) months' duration, may be terminated following a previous written notice by the employer, as follows:

a) For employees who have worked from 12 (twelve) months to 2 (two) years, 1 (one) month's notice prior to dismissal".

Through the above regulation, a general rule is created concerning the employer's exemption from the obligation to notify the worker of termination of the work contract, provided that the work contract has been concluded for an indefinite period of time and its termination is made during the first 12 (twelve) months as of the date of its conclusion. The same applies to the notice of termination of a work contract for a probation period in the first 12 (twelve) months as of the date of its conclusion, unless the parties agree otherwise. In this case, the purpose of the probation period justifies work instability up to the end of the probation period, but, at the same time, this contract is regarded as a work contract for an indefinite period of time, as far as the notice of dismissal during the first twelve (12) months as of the date of its conclusion is concerned.

By means of these clarifications and, given that article 4§4 of the ESC does not define the minimum duration of the work contract for an indefinite period of time and the duration of the necessary notice period, in case of termination of the work contract by the employer, the above regulation is reasonable; in particular, if the current economic crisis and the instability in Greek enterprises' activity are taken into account.

Conclusions

The provisions of article 13 and article17§5 of Act No3899/2010 are **reasonable measures to enhance competitiveness of Greek enterprises** by means of strengthening the decentralization of collective bargaining and reducing the labour cost, in case of termination of a work contract for an

indefinite period of time. The said regulations comply with the spirit and the letter of article 3§1 and article 4§4 of the ESC.

For these reasons, **the Hellenic Government asks the European Committee on Social Rights to reject the Collective Complaint No65/2011** filed by the GENOP-DEI and the ADEDY.