EUROPEAN COMMITTEE OF SOCIAL RIGHTS
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Case document No. 6

General Federation of Employees of the National Electric Power Corporation (GENOP-DEI)
Confederation of Greek Civil Servants' Trade Unions (ADEDY)
Complaints No. 65/2011

RESPONSE TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS

(TRANSLATION)

Registered in the Secretariat on 2 January 2012

RESPONSE TO THE OBSERVATIONS OF THE HELLENIC GOVERNMENT TO COLLECTIVE COMPLAINT No. 65/2011

I. General remarks

A. The Hellenic Government first of all refers in its observations to the financial crisis affecting Greece, the extent of public debt and the growing deficit which jeopardises the country's ability to meet its debt obligations. In order to address these problems, it refers to the Memoranda appended to Act No. 3845/2010 which provide for structural measures for the operation of the labour market intended to increase the competitiveness of the Greek economy by strengthening flexibility in industrial relations, reducing labour costs and tackling unemployment. In the Government's view, the regulations which are the subject of complaint No. 65 fall within the scope of these objectives and measures.

B. In response to these observations by the Government, it should be pointed out first of all that the Greek financial situation is well-known and making reference to it tells us nothing of which we are unaware. The crucial question is whether or not the measures adopted are in conformity with the European Social Charter.

Secondly, from a general legal point of view, it should be pointed out that the Greek acts referred to in the two complaints do not contain any explanatory memoranda in the true sense of the term, in other words containing reasons justifying the regulations laid down. The only documents setting out the reasons for the regulations contained in the successive texts to which the Memoranda relate, are the first Memorandum of 3 May 2010, and Act No. 3845/2010 to which it is appended. For example, the Memorandum specifies that the objectives of the programme include financial adjustment (fiscal consolidation and financial structural reforms), restoring competitiveness, and importantly, making salaries more flexible in order to keep costs under control (no doubt labour costs for companies) (Chapters II and especially III).

Similarly, the explanatory memorandum to Act No. 3845/2010 states that "changes have been made to labour legislation which are regarded as necessary at international level in order to send a message that the country has taken the irreversible decision to strengthen its competitiveness, thereby attract investment, and promote employment and development prospects for the weakest section of the population".

C. As this is the Hellenic Government's main argument, it must first of all be pointed out that none of the legal measures which are the subject of the complaints is such as to help ease the financial crisis and level of debt, and reduce the country's deficits. They have nothing

whatsoever to do with this. Secondly, to claim that improving or strengthening the country's competitiveness requires a dismantling of the workers' protection in the field of salaries and working conditions is a simplistic and facile approach deriving from an extreme neoliberal economic ideology. This ideology which views any regulations on fair working conditions as a mere obstacle to ending the crisis and to economic development, has been rejected by organisations such as the ILO, which rather advocates the opposite. According to the ILO Committee of Experts on the Application of Conventions and Recommendations "bringing the economy out of the crisis requires enhanced measures of social protection".[1] The extreme neoliberal approach is also belied by what happens in reality since it leads to a reduction in living standards, purchasing power, employee spending and therefore creates or perpetuates the economic recession. At all events – and this is what is important in this case – it is completely out of tune with the letter and spirit of the European Social Charter and the measures taken in line with this ideology are in general not in conformity with the Charter.

II. Particular remarks with regard to complaint No. 65

It is on the basis of the preceding criticisms that we submit our response to the observations on the two parts of complaint No. 65.

A. With regard to the part concerning the violation of Article 3 of the Additional Protocol, the Greek government claims that freedom of association (trade union freedom) and freedom of trade union action are protected at the highest possible level and refers to the Greek Constitution and International Labour Conventions Nos. 87/1948, 98/1949 and 154/1981. However, it should be pointed out that Greece still persists in not ratifying Articles 5 and 6 of the European Social Charter in respect of these same freedoms.[2]

Consequently, the Hellenic Government is poorly placed to invoke trade union freedom and freedom to engage in collective bargaining in the context of a collective complaint concerning a violation of the European Social Charter, particularly as the aim of collective bargaining in general and, in particular, that of Article 3 of the Protocol is to improve the working conditions of employees laid down by other sources, and not to take steps leading to a deterioration at firm level. The point is that as a result of the impugned

[1] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A) 2009 (I), para. 130, p.35.

[2] The erroneous pretext put forward is that lock-outs are forbidden by law (Act No. 1264/1982, Section 22.2) whereas it is allowed by the case-law of the ECSR. This is wrong, since in order for there not to be a non-conformity conclusion, all they need do is to make a declaration stipulating the prohibition in question, as was done by the government of Portugal whose Constitution (Article 57) itself prohibits lock-outs (European Social Charter, Collected Texts, 3rd edition 2001.

Section 13 of Act No. 3899/2010 and Section 37 of Act No. 4024/2011 which replaced it, the stated aim has been completely abandoned, in several ways. First of all, because firm-level negotiations, on account of the imbalance in power between the employer and employees, especially in small and medium-sized enterprises, must go hand in hand with certain guarantees if there is a real desire, as the Government claims, to strengthen the capacity to conclude collective agreements. These guarantees are missing, especially as a result of the regulations in force, since, even though there are trade unions, they have a weakened negotiating power, because of the almost invariably small size of the companies in which they operate. But more importantly, the new regulations totally disregard the size of the company and authorise "negotiation" in any company provided that 3/5 of the employees form a "union of persons"[3] (whereas Act No. 1264/1982 required a minimum of 40 employees, and moreover the union had a limited duration of six months, which became unlimited as a result of the new regulations). There can be no doubt that there is unlikely to be any negotiations in the true sense of the term in small firms, which make up the vast majority of Greek companies. Worse still: agreements concluded under these conditions take precedence over branch-level (or sectoral) collective agreements, which was already provided for in Act No. 3899/2010, the subject of the complaint in question. It is clear that this fact will lead to stagnation and ultimately the pointlessness of branch-level negotiations – an important level in Greece – but it is also clear that this is what those who advocate total market freedom want, including those who were behind the Memoranda and the acts at issue which, according to the biased claims of the Government to the effect that the aim of these acts is to expand the levels of bargaining to cases where the core freedoms of association and collective bargaining were not applicable until now, is false, self-serving and belies any attempt to claim that the regulations are in conformity with Article 3 of the additional Protocol.

Further confirmation of this is provided by the fact that for the three years during which Act No. 4024/2011 shall apply – consistent with the Memorandum in the medium term – the extension of branch-level collective agreements is forbidden.[4] This serves the purpose of achieving wage flexibility and in fact constitutes legitimisation of social dumping by employers who are not members of the signatory organisation(s) since the extension has the effect of equalising the competition conditions at branch level. These employers do not even have to derogate from branch-level agreements by means of firm-level agreements: they are

[3] According to the Greek Civil Code.

[4] The only "lower" limit (for the moment?) is set by the national inter-professional agreements laying down the minimum wages of non-specialist employees. These are maintained by Section 37.5 of Act No. 4024/2011 [at the request of] the European Commission, a party to the Memorandum.

totally free to "negotiate" at firm-level under the conditions described. Promoting, at any cost and with absolutely no guarantees, firm-level agreements, even if they are for a three-year period (which in any event is liable to be extended) is, by definition, contrary to the spirit and letter of Article 3 of the Additional Protocol.

B. With regard to the second part of complaint No. 65, i.e. the **violation of Article 4§4 of the European Social Charter**, the Government, for want of valid arguments, makes confused and irrelevant observations. The impugned provision of Section 17.5a of Act No. 3899/2010 is perfectly clear: any work contract of indefinite duration is regarded as employment for a probationary period for the first twelve (12) months and can be terminated without notice and without any severance pay, unless there is an agreement between the parties to the contrary. This means that:

a) the act notionally assimilates any contract of indefinite duration to employment on probation for a whole year, making no distinction with regard to the employee's specialisation. Through this notional and arbitrary assimilation, it seeks to pave the way for a "free" termination of the contract, as is more or less the case with probationary appointments. Furthermore, laying down an across-the-board one-year duration of this probation without any differentiation is unreasonable unequal treatment of the employees concerned, disregarding their degree of specialisation. This also applies, for example, to a non-specialist employee whose probationary needs last only a few hours or few days. Since the act establishes this notional assimilation, it should not only provide for a period of notice, but it should also differentiate the duration in accordance with the time required for this "probation", as is done by all legal and agreement-related regulations, at least among the contracting parties to the European Social Charter. In any case, the right to a period of notice should also apply during a probationary period.

b) The fact that the Government states that Article 4§4 of the Charter specifies neither a minimum length of work contracts of indefinite duration (to qualify for the right to notice) nor the duration of the notice period is completely irrelevant and in no way does it constitute an argument in support of the impugned regulation. Article 4§4 of the Charter recognises the right of **all** workers to a **reasonable** period of notice in the event of termination of employment. It therefore requires no minimum duration of the contract and allows for no exception, as moreover has been made clear in the text of the complaint, supported by the ECSR case-law; in several supervision cycles, the ECSR has established the reasonable nature of the duration of the notice period ruling on a case-by-case basis and finding both reasonable

and insufficient notice periods (see, amongst others, Conclusions XIII-3, Portugal, p.259; Conclusions XVI-2, Poland, p. 616).

Consequently, the regulations in question, depriving the employee of any period of notice whatsoever is not only not "reasonable", contrary to the claims of the Government, but is also a direct violation of the letter and spirit of Article 4§4 of the Charter.

c) Lastly, invoking, in a peremptory way, the boosting of the competitiveness of Greek firms by means of reducing labour costs in the case in question is out of place in attempting to establish conformity of the impugned provision with Article 4§4 of the Charter. As has already been stated at other points of the complaints, this argument is a reflection of an extreme neoliberal ideology which views any fair protection of workers as an obstacle to competitiveness. One could just as easily justify violations of all the social rights set forth in the Charter by the aim of improving the competitiveness of countries and firms. This is surely not the ideology on which the European Social Charter is based.