

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



28 February 2011

Case Document No1

**General Federation of employees of the national electric power corporation
(GENOP-DEI)
Confederation of Greek Civil Servants' Trade Unions (ADEDY)
Complaint No 66/2011**

COMPLAINT

(Translation)

Registered at the Secretariat on 21 February 2011

Collective complaint against Greece
concerning Act 3863 of 15 July 2010

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

This complaint argues that the legal treatment of young apprentices and young new-entrants to the labour market is incompatible with the letter and the spirit of the Charter.

There are two parts to the complaint:

- The breach of Articles 1§1, 7§2, 7§7, 7§9, 10§2 and 12§2 of the 1961 Charter.
- The breach of Article 4§1 in conjunction with Article 1§2.

I. Violation of the Charter provisions relating to young apprentices

A. The following articles of the European Social Charter are concerned:

- Article 1§1: "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment";
- Article 7§2: "With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy";
- Article 7§7: "... to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay";
- Article 7§9: "... to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control";
- Article 10§2: "With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments"; and

- Article 12§2: "With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102 Concerning Minimum Standards of Social Security".

B. **Section 74§9 of Act 3863/2010** provides that employers and individuals aged 15 to 18 may conclude special apprenticeship contracts of up to one year's duration to enable the latter to acquire particular skills. These apprentices shall be insured in the sickness branch (benefits in kind) of the insurance system and at one percent against the risk of accidents. There then follow various provisions relating to the maximum hours of work and the prohibition of night work. The provisions of labour legislation, other than those relating to occupational health and safety, do not apply to these young people.

C. **Assessment**

1. This section of the Act breaches several articles of the Charter, in particular Article 1§1, since it establishes so-called apprenticeship contracts that are in practice merely contracts of up to one year with no job security and also, subject to the limited exceptions cited, deprives 15 to 18 year olds of the protection offered by labour law. In interpreting Article 1§1, the Committee takes account, among other factors, of the structure of employment, **with particular attention paid to vulnerable categories, such as the young (Conclusions XVI-1, statement of interpretation of Article 1§1). (unable to trace this quote, RJT)**

2. The provision in question makes no reference to higher age requirements (beyond 15 years) for those performing dangerous or unhealthy occupations, or any obligation, for certain occupations, to provide regular medical check-ups for young persons under 18. This means that it is incompatible with Articles 7§2 and 7§9 of the Charter.

3. By excluding young people in this age group from the scope of labour legislation this provision also removes all entitlement to paid holidays, and as such is in breach of Article 7§7 of the Charter.

4. Social security coverage is confined to sickness benefits in kind, while excluding sickness allowances and the reimbursement of prescription charges, and to occupational accident coverage at a rate of 1%, which is in breach of Article 12§2 of the Charter. This extremely limited and rudimentary coverage clearly fails to meet the requirements of International Labour Organisation Convention 102, which does not recognise any of the limitations referred to, let alone regarding the age group concerned.

5. Finally, the so-called special apprenticeship contracts are of a maximum of one year's duration and place no obligations on employers regarding the young apprentices' acquisition of skills, and as such are also incompatible with Article 10§2 of the Charter. This article is concerned with apprenticeship systems or other systems for training young persons that states undertake to provide or encourage. Such a requirement presupposes the establishment of a coherent body of rules, which is completely lacking in the legislation concerned, since it establishes a special contract that does not in any sense form part of an integrated apprenticeship system.

6. In its case-law on the types of training provided for in Article 10§2 the European Committee of Social Rights refers to "the importance of combining theoretical and practical training and of maintaining a close contact between training institutions and the world of work" (Conclusions XIV-2, statement of interpretation of Article 10§2, p. 61). In its assessment of apprenticeship schemes, the Committee takes account of "division of time between practical and theoretical learning... [and] termination of the apprenticeship contract" (Conclusions, XVI-2, Malta). None of these factors is referred to in the provision in question and the maximum period of one year is insufficient for it to be considered a genuine apprenticeship system.

II. The breach of Article 4§1 in conjunction with Article 1§2.

Section 74§8 of Act 3863/2010

A. The European Social Charter reads:

- Article 4§1: "With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: 1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living";

- Article 1§2: "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon".

B. Section 74§8 of Act 3863/2010 provides that employers who hire new entrants to the labour market aged under 25 are entitled to pay them at a rate of 84% of the minimum wage laid down in the national labour agreement. The remainder of this provision is not relevant to this complaint. Basically, the employers concerned are exempted from paying these employees' social security contributions. These are met by a public body and the corresponding amounts are paid by employers into the employees' pay.

C. Assessment

In order to show that this provision is incompatible with the Charter, it is necessary to consider Articles 4§1 and 1§2 in conjunction with each other.

Under Article 4§1 the right to a fair remuneration is satisfied when employees and their families can afford a decent standard of living, which is assessed on the basis of the national average wage.

In addition, since the very first supervision cycle the Committee has interpreted Article 1§2 as entailing, *inter alia*, "the eradication of all forms of discrimination in employment" (Conclusions I, p. 15). According to the Committee, discrimination is not just an unjustified difference of treatment but may also arise by failing to take due and positive account of all relevant differences (see *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52). Since treating people in different situations differently is one aspect of the equality principle, failure to comply with this requirement constitutes discrimination. The principle is recognised both by the Court of Justice of the European Union (see judgment of 17 July 1963, Case 13-63, *Italian Republic v Commission of the European Economic Community*, CJEC 1963, p.335) and by the European Court of Human Rights (judgment of 6 April 2000, *Thlimmenos v. Greece*, no. 3469/97, ECHR 2000-IV, §44).

Turning more specifically to labour legislation, according to the Committee, the discriminatory acts and provisions prohibited by Article 1§2 "are all those which may occur in connection with ... employment conditions in general (mainly remuneration ...)" (Conclusions XVI -1, Austria). It should also be added that the Committee has indicated on a number of occasions that the ban on discrimination under Article 1§2 applies to all grounds

for discrimination, including age (Conclusions 2006, Albania). Yet the provision in question means that young persons and adults up to the age of 25 are all placed on the same low level of pay, with no account taken of differences in age and personal circumstances, such as level of education and training, family situation and whether or not they have children, simply because they are new entrants to the labour market. Ignoring the numerous possible differences between persons in the 15 to 25 year age range and treating them the same with regard to remuneration, while not even ensuring that they receive the national minimum wage for unskilled employees, clearly signifies that an unspecified number of those concerned are discriminated against on grounds of age, training and family situation. Article 4§1 requires all employees without exception to benefit from a fair remuneration, since it is not covered by Article 33 of the 1961 Charter. It is clear that the legislative provision in question does not guarantee all the employees concerned a fair wage and a decent standard of living. As such, it is incompatible with Article 4§1 in combination with Article 1§2 since it can be assumed that an unknown number of the employees whom it covers will receive an inadequate wage, irrespective of how the reference wage is calculated.

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 Articles 1§1, 7§2, 7§9, 7§7, 12§2 and 10§2 and Article 4§1 in combination with Article 1§2 of the 1961 European Social Charter.

Athens, 17 February 2011

(Signatures)