EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

2 January 2012

Case document No. 6

General Federation of Employees of the National Electric Power Corporation (GENOP-DEI)
Confederation of Greek Civil Servants' Trade Unions (ADEDY)
Complaint No. 66/2011

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. 66

I. With regard to the general observations on the Greek financial situation (under **A.1**), there is nothing to add to the response given to the observations concerning collective complaint No. 65 since they merely repeat verbatim the comments made in connection with that complaint.

Under **A.2**, the Government, in attempting to justify en masse the measures which are the subject of the two parts of the collective complaint, which adversely affect young employees, makes no distinction between the financial crisis and what it calls the country's economic crisis. In so doing, it indiscriminately attributes the level of unemployment, especially among young people, to these two crises. In point of fact, it turns the terms of the problem upside down, since the recent increase in the unemployment of young people is precisely the result of the measures for the most part laid down in the Memoranda and which were adopted in order to address the financial crisis, and it is these measures that have given rise to a major recession. As has been stated in other points of the complaints against Greece, these measures have resulted in a large-scale economic recession and an increase in youth unemployment, since seeking to improve competitiveness and attract investment by reducing labour costs and doing away with the existing fair working conditions of employees cannot but lead to economic recession. To argue the contrary is, at abstract economic level, the slogan of those advocating extreme neo-liberalism. This argument is in particular invalid for Greece which is situated in close proximity to countries that are much more competitive (the Balkan states, Turkey, even Egypt). It is therefore the "recipe" for creating the problem and the measures taken in this regard are merely the symptom of and not the solution to the problem.

From a legal point of view, it means that the measures, and in particular those regarding young people which are the subject of this complaint, are anything but necessary and appropriate to achieve the stated objective of improving competitiveness and economic development. Consequently, the observations of the Hellenic government, far from substantiating conformity of the measures in question with the European Social Charter, in fact confirm the fact that they violate the Charter, since they are based on assumptions which run counter to the reality of the situation.

Having made these general, but essential, comments, we now assess the specific observations of the Hellenic government, concerning each of the two parts of complaint No. 66.

II. With regard to the first part, namely the impugned provision of Section 74.9 of Act No. 3863/2010, we wish to make the following comments.

A. Regarding what the impugned provision terms the "special apprenticeship contract", there is a legally abnormal confusion of categories. Indeed, the basic Memorandum (III, C, No. 22), provides that "employment protection legislation shall be reformed, including the provisions on extending the apprenticeship period". Reading this passage, two points become clear: first, that it concerns an apprenticeship contract, and second, it concerns reducing the duration of that contract. However, given the fact that in Greece the true apprenticeship contract has no specified duration, the legislation has found in what it calls an apprenticeship contract a substitute in order to reduce the duration of the contract to a maximum of one year. The fact that this is a maximum and not minimum duration means first of all that the young "apprentice" has no guarantee of acquiring skills, which already invalidates the stated aim of the contract. In all, it is a youth employment contract which could, where appropriate, provide them with on-the job experience. The fact that it is remunerated at a high percentage (70%) of the national minimum wage provided for by the National General Labour Collective Agreement and that working hours are adapted to the young persons' situation is proof that it is in reality a work contract to which labour social security legislation should apply in its entirety (with a few specific exceptions). However, Section 74.9 of Act No. 3863/2010 in fine provides for the exact opposite. Consequently, the Hellenic Government's claim that the labour legislation applies is incorrect (B, g and following paragraph).

a) Accordingly, the impugned provision violates **Article 1§1**, on its own and in conjunction with **Article 1§2** of the Charter. First, because not only does it not pay any particular attention to young people, as required by the Committee (Conclusions, XVI –I, statement of interpretation of Article 1, par. 1, p. 9), but it even excludes them, in principle, from the application of social legislation (with a very few exceptions); this treatment, moreover, constitutes discrimination on the ground of age – which is prohibited by the Committee – and it therefore violates Article 1§1 in conjunction with Article 1§2 (Conclusions 2006, Albania, p.30).

b) **With regard to the various provisions of Article 7 of the Charter**, we have separate comments to make on each one. Accordingly,

- for Article 7§2, it must be acknowledged that under Act No. 1837/1989, Sections 2 and 16, and following the transposition into domestic law of Directive 94/33 by Decree No. 62/1988, there is no violation of this article of the Charter by the provision at issue. In support of this statement, reference may also be made to Ministerial Decision No. 130621/2003 cited by the Government. In contrast, citing Act No. 2918/2001 on ratification of ILC 182 and Section 4 of Act No. 3144/2003 is not relevant, as these primarily deal with protection against the worst forms of child labour exploitation;
- for Article 7§7, it must be noted that the failure to apply labour law to young people of the age referred to deprives them of any right to paid leave. This holds true even where the contract remains in force up to three weeks before the year is up. At least in such a situation, the provision at issue violates Article 7§7 of the Charter;
- for Article 7§9, we would observe that the reference by the Hellenic Government to Act No. 1837/ 1989 and to Ministerial Decision 1390/1989 does nothing to support its argument since even though these texts require an employment record to be drawn up for minors, together with an official medical certificate (Sections 8 and 11 of the act), the employment record must include confirmation of the vocational guidance given to the minor (cf the ministerial decision in question). However, by definition, in the provision at issue, this latter requirement is missing. Consequently, the regular medical examination, as required by Article 7§9 of the 1961 Charter, is missing in the case of the young people in question, which means that on this point there is a violation of that article.

c) With regard to the application in respect of Article 10§2 of the Charter, the Government refers to Act No. 3475/2006 which governs the true apprenticeship contract, meeting the requirements laid down in Article 10§2. However, this has no relevance to the subject of the complaint, namely the so-called special apprenticeship contracts, since none of the requirements of Article 10§2 are addressed in this case. It should be pointed out in this connection that Article 10§2 is one of the provisions of the Charter which, in order for compliance to be found, must cover all the persons it concerns (cf. Article 33 of the European Social Charter). The point is that given that

the provision at issue governs these contracts by referring to the concept of apprenticeship, such persons need to be incorporated into an apprenticeship scheme. It does not do this in order to justify not applying to the young people concerned all the social security rules (which is generally the case for the various legal regimes). The regulations in question are therefore self-serving. "You cannot have your cake and eat it". If both are desired, there is a risk of infringing the law twice by "killing two birds with one stone". Which is why the provision at issue also violates Article 12§2 of the Charter.

d) With regard to social security and therefore **Article 12§2 of the Charter**, reference should be made, once again, to the clause in the provision at issue which states that the apprentices in question "enjoy sickness insurance cover in kind as well as cover against accident risk at a rate of 1%" (no doubt "accident" should read "occupational accident"). This exclusion from the allowances for sickness and from reimbursement of the cost of medicines, and the almost total removal of cover for the risk of occupational accidents is manifestly directly contrary to International Labour Convention No. 102 and therefore is a violation of Article 12§2 of the Charter.

III. With regard to the second part of Complaint No. 66, namely Section 74.8 of the same act (No. 3863/2010), the Hellenic Government makes no submissions which could weaken the arguments put forward in the text of the complaint. In particular, presenting as an incentive to take on young people up to age 25 the fact that they will be paid 84% of the minimum wage provided for by the National General Labour Collective Agreement, in addition to the social security contributions, of which they themselves are exempt, is too weak an argument, if not erroneous. For, as has already been noted, this undifferentiated remuneration may apply to highly specialised and qualified adults (up to doctorate level) who have families. Furthermore, we refer to the arguments put forward in the complaint itself (under C. Assessment).

Lastly, the fact that the government, almost incidentally at the end of its observations, cites the general interest as justification, is too gratuitous to require a response.

Athens, 20 December 2011

(Signatures and stamps)