EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

16 January 2012

Case No. 1

Federation of employed pensioners of Greece (IKA-ETAM) v. Greece
Complaint No. 76/2012

COMPLAINT
(TRANSLATION)

Registered at the Secretariat on 2 January 2012

COLLECTIVE COMPLAINT AGAINST GREECE

concerning Acts Nos. 3845 of 6 May 2010, 3847 of 11 May 2010, 3863 of 15 July 2010, 3865 of 21 July 2010, 3896 of 1 July 2011 and 4024 of 27 October 2011

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

The complaint comprises two parts:

- the allegation of a violation of Article 31§1 of the Charter;
- the allegation of a violation of Article 12§3 of the Charter.

I. Violation of Article 31§1 of the Charter

A. Article 31§1 provides: "The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law …".

B. Section 1 paragraph 4 of Act No. 3845 of 6 May 2010, as amended by paragraph 9 of the single section of Act No. 3847 of 11 May 2010, provides: "The Minister of Finance shall be delegated to represent the Greek state and sign any bi- or multilateral memorandum of co-operation or loan agreement or contract with the European Commission, the member states of the Euro zone, the International Monetary Fund or the European Central Bank, so that the programme described in the previous paragraph (namely the Memoranda) will be applied. The Memoranda, agreements and contracts described in the previous paragraph shall be brought before parliament for discussion and information (sic). They shall enter into force and be implemented once they have been signed."

C. Assessment

The provision cited above makes it expressly clear that any texts adopted pursuant to it will not be fully-fledged "laws" as, in any democracy, a law must be voted by members of parliament, in other words by a majority decision. No legal text which has not been

passed by parliament deserves to be called a law. Consequently, all texts that are implemented after mere “discussion and information” and include restrictions on rights and principles enshrined in the European Social Charter are at variance with the Charter and in breach of Article 31§1.

In point of fact, several texts adopted in this way contain various restrictions that are incompatible with the Charter, such as those dealt with in Collective Complaints Nos. 65 and 66, and other restrictions likely to be the subject of collective complaints; this complaint relates to texts which are in breach of Article 12§3.

II. Violation of Article 12§3 of the Charter

A. Article 12§3 of the Charter provides: "With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake to endeavour to raise progressively the system of social security to a higher level.”

B. The legislation referred to below violates Article 12§3 as it reduces primary and auxiliary old age pensions and additions to pensions without providing the justifications required by the European Committee of Social Rights (ECSR), as will be explained in our assessment below (part C).

The legislation in question is as follows and relates both to the public and to the private sector.[1]

1. Reduction of the additions to pensions known as Christmas, Easter and vacation bonuses.

Section 3, paragraph 10, of Act No. 3845/2010 reads as follows: “Christmas, Easter and vacation bonuses provided for by any general or special statutory or regulatory provision for the benefit of pensioners and recipients of social assistance of all main pension bodies (except agricultural pensioners) shall be awarded provided that the beneficiary is over sixty; the Christmas bonus shall be €400 and the Easter and vacation bonuses shall each be €200.”

[1] The complex and highly detailed nature of the regulations makes it impossible to provide an exhaustive word-for-word description of the provisions concerned. Therefore, each time they are mentioned, reference will be made only to their key content and what is legally relevant to Article 12§3 of the Charter.

This represents an enormous reduction in these bonuses as the Christmas bonus used to amount to practically a month's pension and each of the other bonuses to half the monthly payment. These bonuses are also no longer paid at all if the total monthly pension including bonuses exceeds €2 500 (section 3, para. 14) or if the pensioner is under 60.[2]

Section 1 of Act No. 3847/2010 reiterates these rules in relation to civil servants and public sector employees and gives certain specific details concerning them.

2. Reductions in primary pensions[3]

a. Pensioners under the age of 55

In the public sector, as from 1 November 2011, the share of a primary pension exceeding €1 000 was reduced by 40% for persons under the age of 55[4] (Act No. 4024/2011, section 1, paragraph 10a).

The same rules apply in the private sector, including seafarers (same Act, section 2, paragraph 1).[5]

a. Pensioners aged 55 or over

For persons aged over 55 or over, the share of a primary pension exceeding €1 200 was reduced by 20%. This reduction also applies both to the public and to the private sector including seafarers (section 1, paragraph 10a, sub-paragraph 2, and section 2, paragraph 2 of Act No. 4024/2011). The reduction in the primary and auxiliary pensions of private sector pensioners who have taken early retirement was in the region of 50% (section 2, paragraph 2, sub-paragraph 2 of the same Act).[6]

[2] This age requirement is not applied to persons with disabilities, persons employed in arduous or unhealthy occupations or working in the construction sector, […], widows or widowers, persons under the age of 18, students under the age of 24 or persons with an incapacity of 67% or more to work in any occupation.

[3] As opposed to so-called auxiliary pensions, which actually form an integral (and permanent) part of the Greek pension scheme and will be dealt with below (in section 3).

[4] An exception is made in particular for those whose pension is combined with a disability bonus and for military personnel who are subject to automatic retirement or have completed 35 years of service (same section of the Act, paragraph 10c).

[5] Similar exceptions are made for these reductions, particularly for vulnerable groups (people with disabilities, victims of terrorism or other violent acts and their orphans, or persons employed in especially arduous occupations or having completed 35 full years of insurance contributions).

[6] Exceptions to these reductions, similar to those described in the previous footnote, are laid down for the categories covered by these provisions (section 2, paragraph 2, sub-paragraph 3).

c. Irrespective of their age, the pensions of public sector pensioners receiving two pensions were each reduced separately (section 1, paragraph 10d of the same Act).

3. Reduction in auxiliary pensions

Act No. 4024/2011 also reduced so-called auxiliary pensions, which actually form an integral part of the Greek social insurance system. What seems surprising is that these reductions vary according to the branch concerned and the corresponding pension fund. For instance, for those covered by the Supplementary Insurance Fund for Employees (ETEAM) the reduction was approximately 30% and the only lower limit that was imposed was that the auxiliary pension could not be less than €150. For the various similar funds, particularly those of state enterprises, the reduction was approximately 15% whereas for the civil service pension fund,[7] it was 20% and when, after the reduction, the remaining sum exceeded €500, it was 50% (section 2, paragraphs 3 and 4).

4. Pensioners' social solidarity contribution

a. A so-called pensioners' social solidarity contribution was introduced for all categories of pensioner (in both the public and private sectors) by Act No. 3863/2010. It consists of a levy on pensions of €1 400 or more under any scheme and is charged on a sliding scale depending on the amount of the pension. Contribution rates were set initially by Act No. 3863/2010, section 38, paragraph 2, and were applied from 1 August 2010 onwards, but increased rates, applicable since 1 August 2011, were introduced by Act No. 3986/2011, section 44, paragraph 10. Currently, they are as follows:

a) for €1 400 to €1 700, 3% (unchanged);
b) for €1 700 to €2 000, 6% (instead of 4%);
c) for €2 000 to €2 300, 7% (instead of 5%);
d) for €2 300 to €2 600, 9% (instead of 6%);
e) for €2 600 to €2 900, 10% (instead of 7%);

[7] This is a fund financed by shares purchased by civil servants, which has nothing to do with auxiliary pensions and is the responsibility of the Ministry of Finance. With complete disregard for this fact and against the "natural order" of things, the fund was "transferred" to the Ministry of Labour and Social Insurance to be treated as an auxiliary insurance fund, hence making it possible to reduce the dividends by regarding them fictitiously as auxiliary pensions (section 3, paragraph 1a).

f) for €2 900 to €3 200, 12% (instead of 8%);

g) for €3 200 to €3 500, 13% (instead of 9%);

h) for €3 500 or more, 14% (instead of 10%).

The only lower threshold for these reductions of pension after deductions is €1 400 (section 38, paragraph 3a).

b. Pensioners under the age of 60 are required to make a supplementary contribution, which is added to the general social solidarity contribution and charged at the following rates:

(a) for pensions between €1 700 and €2 300, 6 %;

(b) for pensions between €2 300 and €2 900, 8%;

(c) for pensions of over €2 900, 10%.

c. According to the legislation, the aim of all of these contributions is to cover the deficits in the main pension branches of the social insurance fund (section 38, paragraph 1, sub-paragraph 2). No time limit has been placed on them, and it can be noted that, from 1 January 2015, they will be paid into a state insurance fund for inter-generational solidarity (section 38, para. 7). This is therefore a substantial, permanent monthly reduction in pensions exceeding €1 400.

5. Suspension or reduction of pensions for pensioners with an occupation

Section 16 of Act No. 3863/2010 contains highly (perhaps excessively) detailed rules on the repercussions on pensions of taking up an occupation. In principle, the regulations are modelled on those for the private sector but also apply *mutatis mutandis* to civil service pensioners when they are engaged in an occupation outside the public sector in the broadest sense (section 16, para. 3a). In particular:

(a) neither primary nor auxiliary old age pensions from the primary insurance funds may be paid to anyone under the age of 55 with an occupation;

(b) for pensioners over 55, the gross amount of primary pension exceeding the equivalent of 30 days' wages for a non-specialised employee (determined annually as at 31 December of the preceding year) is reduced by 70% (or by 50% for pensioners coming under the schemes for the liberal professions and self-employed workers).

This is just another example, among many others, of unequal treatment on grounds of age, which is moreover unlimited in its duration.

The severity of these regulations has been tempered by Act No. 4024/2011 on the medium-term programme. This applies equally to public sector and private sector pensioners (including former seafarers). Since 1 November 2011, the share of the primary pensions of pensioners under the age of 55 exceeding € 1 000 has been reduced by 40%. Once they reach 55, this reduction no longer applies (section 1, paragraph 10a and section 2, paragraph 1). For persons who are not covered by the regulations in question, the pension reduction is approximately 20% when their primary pension exceeds €1 200 (section 1, paragraph 10a, sub-paragraph 2 for civil servants and section 2, paragraph 2, for the private sector and seafarers).[8]

6. Reduction of private sector pensioners' social solidarity benefit

This benefit, which was provided for by Act No. 2434/1996, as amended by Act No. 2556/1997, has been reduced and the eligibility conditions have been more strictly regulated under section 34 of Act No. 3996/2011.

This is a non-contributory benefit. Although it applies to pensioners with very low incomes, it does form part of social security benefits, as was originally intended. In principle, it is awarded to persons receiving an old-age, disability or survivor's pension under a private sector scheme (including seafarers) who have reached the age of 60 and are permanently resident in Greece (paragraph 1). The eligibility requirements are that total annual income from pensions, wages and other benefits does not exceed €8 472.09, that annual taxable income does not exceed €9 884.11 and that annual family income does not exceed €15 380.90. The amount of benefit decreases on a sliding scale as annual income from pensions, wages and benefits increases. The most important point to highlight is that these income levels have been reduced. The result is as follows:

- for incomes of €7 715.65 or less, monthly benefit is €230;
- for incomes between €7 715.65 and €8 018.26, monthly benefit is €172.50;
- for incomes between €8 018.27 and €8 219.93, monthly benefit is €115;
- for incomes between €8 219.94 and €8 472.09, monthly benefit is €57.50.

These sums are awarded to pensioners receiving a full old-age or disability pension; where the pension is reduced, the benefit amounts to two-thirds of the amounts set out

[8] The exceptions to this regulation are similar to those already referred to above in footnote 4 for civil servants (section 1, paragraph 10a, sub-paragraph c) and footnote 5 for private sector employees (section 2, paragraph 2, sub-paragraph 3).

in paragraph 3. Persons with more than one pension receive the benefit from only one source, which they may choose themselves (section 6).

Lastly, to alleviate the reductions for the poorest members of society, a new allowance of €30 has been introduced for those meeting certain special income requirements. Pensioners must fulfil the following three conditions simultaneously to be eligible:

a) total net annual income from pensions and wages must be between €8 472.10 and €9 200 (not including war victims' pensions, pensions for mothers of several children and social assistance benefits);
b) total annual individual income must not exceed €9 884.11;
c) total annual family income must not exceed €13 500 (section 2).

The above income criteria for the social solidarity benefit apply only to 2011 and can be revised annually by a joint ministerial decision of the ministries concerned (section 5).

In conclusion, it should be said that the benefit has been withdrawn from nearly 20 000 people whose incomes lie above the lower limits that have been set. Furthermore, some 12 000 people will no longer receive the benefit "because it has been impossible to determine whether they are entitled to it or not" (circular from the main employees pension fund, IKA, 18 November 2011).

C. Assessment

The Committee accepts that restrictions on social security benefits may not be in breach of Article 12§3, but to assess the situation in such cases, it takes account of the extent of the restrictions and the context of the social and economic policy in which they arise, the need for the reform and whether the measures are in keeping with the aims pursued (Case-Law Digest of the ECSR, 1 December 2008, pp. 91 and 92; Conclusions

XVI-1, statement of interpretation of Article 12; see, among others, Conclusions XIV-1, Finland, Article 12§3, pp. 232 and 233).

As the measures were adopted successively in response to changes in the Memoranda, the Government did not take the trouble to give reasons in the explanatory notes accompanying each of these measures. It only did so in the explanatory notes on the first Act (No. 3845/2010), which took up the arguments expressed in the initial basic Memorandum issued on 3 May 2010. (Apart from some general comments on Act No. 3865/2010, which is not the subject of this complaint, the "explanatory notes" added to the subsequent legislation simply summarise its content and do not give any grounds).

In view of these circumstances, without reiterating the arguments expounded in our responses to the Greek Government's observations on Collective Complaints Nos. 65 and 66, we must base ourselves on the reasons given in the basic Memorandum (the first of the series) and Act No. 3845/2010. According to these texts the economic recovery programme has two aims – firstly a financial adjustment, in other words redressing the imbalances in public finances and reducing Greece's external debt, and secondly restoring competitiveness (Appendix III of the Memorandum, paragraphs II and III, particularly No. 7).

In this context, an adjustment (which is to say a reduction) in incomes is said to be necessary in order to reach the two goals that have been set, or in other words to protect the higher public interest, because "the alternative would be collapse and disaster" (explanatory notes).

In fact the reason given is only an ostensible one and not really a true justification. Firstly, the multiple reductions in pensions and pension supplements and, above all, their exorbitant scale, going as far as the savage cuts to pensions for those under 55, are so sweeping that it must be asked whether they meet the necessity criterion. The answer is undoubtedly no, because there are a series of alternative measures which could have, and should have, been taken, such as measures to harness the productive potential of state assets, particularly real property, estimated at some €400 billion,[9] a major increase in taxation of capital and of stock exchange and inter-bank transactions, suppression of the mass tax fraud made possible and sustained by the current taxation system, the closure of branches of banks linked to the Greek state which

[9] According to the Emeritus Professor for international economic relations, A Koutris, Panteion University (the journal Dionysos, November 2011, p.4).

have been set up in foreign tax havens, and the immediate ratification of the agreement signed on 4 November 2010 between Greece and Switzerland on the exchange of information on tax fraud.

With regard, more specifically, to the so-called pensioners' social solidarity contribution (covering both the public and the private sector), which is claimed to be necessary to cover the deficits of the Social Security Funds, the need for this is extremely questionable, not to say entirely unestablished. The explanatory notes on Act No. 3863/2010 reiterate the argument put forward in the first Memorandum (Appendix III, paragraph 7), according to which "the largest overspending in the state budget stems systematically from the Social Security Funds …"; it concludes from this that the aim of the social solidarity contribution is to even out this overspending and adds, most surprisingly that this will not harm the financial situation of individual pensioners "as it is they who will ultimately benefit"!

Notwithstanding this questionable assertion, which can only relate to pensioners in the relatively distant future, the argument is at odds with the notion that this is a necessary measure, for three reasons highlighted by eminent academic writers.

Firstly, now that the capital in the social security funds no longer has to be deposited with the Bank of Greece, which meant that for decades it did not earn any interest, the social security funds have become one of the major investors in the Greek capital market and their rational management is a key factor in market stability (P. Tinios, Professor at the University of Piraeus, *Social security fund assets. A diachronic misunderstanding and its impact*, Social Security Law Review, 2010, pp. 420 et seq. and, before this, M. Nektarios, *The management of insurance fund reserves in Greece*, same review, 2003, pp. 801 et seq.).

Secondly, the liquid assets in these funds are "despoiled" by the state and the banks, with the result that substantial resources are lost (A. Kintis, Professor at the Athens University of Economics, "*The contribution of proper management of social security fund assets to the viability of the social security system*", same review, 2010, pp. 427 to 431). Lastly, these funds possess a large quantity of real property, whose potential is not realised, constituting a "monument" to the squandering of the state's resources, and even their movable property is managed in a largely passive manner (A. Kintis, *ibid*, p. 432).

The problem with the social security funds, which is not the only problem but most certainly a symbolic one, clearly shows that there would be other ways of reducing public debt and stabilising the funds in question than cutting pensions to the point that, when all the reductions are added up and regardless of the upper and lower limits set, most pensioners are forced to live below the poverty line. These successive drastic cuts in pensions do not meet any need and tend to gradually reduce the social security system, at least where pensions are concerned, to one of "minimum assistance", which is incompatible with the Charter.[10]

These are the effects of the "downward" changes that have been made to the private sector pensioners' social solidarity benefit through these stricter eligibility requirements. This benefit is awarded to the most disadvantaged categories of the population and withdrawing it from them not only propels them below the poverty line but brings them very close to the minimum survival line.

The range of alternative measures referred to above shows firstly that making such huge cuts to pensions was neither necessary nor inevitable and, secondly, that the Greek government has focused on one area alone (reducing incomes and, specifically, pensions of all kinds) and hence has failed to strike a fair balance between the general interest of the community and the need to protect the fundamental rights of individuals, as required also by the case-law of the European Court of Human Rights (*Kjartan Ásmundsson v. Iceland,* judgment of 12 October 2004, Application no. 60669/00, paragraph 40 et seq.). It should be added here that, applying Protocol No. 1 to the European Convention on Human Rights (Article 1, paragraph 1), the European Court has ruled that the public interest and, a fortiori, the need to restrict the use of possessions protected by this provision – which includes pensions – must be verified in accordance with a particular procedure (established case-law; see, in particular, *Sporrong and Lönnroth v. Sweden*, judgment of 23 April 1982, Series A, No. 163, paragraph 51). However, when the texts cutting pensions were adopted, no actuarial studies had been carried out and so the requisite verifications were missing.

Generally speaking, not only did the measures adopted fail to meet the requirement of necessity but they were also unsuited to achieving the aims being pursued, in other words they failed to fulfil the final criterion adopted by the ECSR to assess the conformity of measures with Article 12§3 of the Charter. This is because the major pension reductions inevitably reduce the purchasing power and hence the living

[10] Conclusions XIV-1, statement of interpretation of Article 12, p. 47

standards of pensioners and, when combined with wage cuts and increased taxes on the incomes of middle earners, defying all reason and sense of fairness, inexorably lead to economic recession; this outcome is entirely at odds with the aim of economic recovery and has already happened in Greece. Respected authorities have underlined that austerity measures lead only to dead ends and vicious circles, and it is solely the advocates of extreme economic neo-liberalism, who are prisoners of their own ideologies, who blindly assert the contrary. As the Nobel-prize-winning economist, Paul Krugman recently pointed out, in the current crisis austerity has failed everywhere it has been applied (New York Times, 13 November 2011). In the same vein, Paul Seabright of the Toulouse School of Economics calls austerity a bitter and ineffective pill to swallow (Le Monde, 13 December 2011).

To sum up, by relying primarily on reductions in pensions under all the schemes so as to tackle its financial problems, the Greek state has failed to make maximum use of available resources and taken largely inappropriate measures (cf. Autism-Europe v. France, Complaint No. 13/2002, decision on the merits, 4 November 2003, §53; European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits, 18 October 2005, §37).

Conclusion

For the reasons cited, we ask the European Committee of Social Rights to find this complaint admissible and to rule that, through the measures referred to, Greece has violated Articles 31§1 and 12§3 of the 1961 Charter.

Athens, 2 January 2012

[Copy certified on behalf of the Federation of employed pensioners of Greece (IKA-ETAM) by its President, Mr D. Koumpouris]