EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

17 June 2019

Case Document No. 6

Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece
Complaint No.165/2018

FURTHER RESPONSE FROM THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 12 June 2019

HELLENIC REPUBLIC

MINISTRY OF LABOUR, SOCIAL SECURITY & SOCIAL SOLIDARITY

DIRECTORATE OF INTERNATIONAL RELATIONS

DEPARTMENT OF RELATIONS WITH INTERNATIONAL ORGANIZATIONS

Athens,12/06/2019
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To the Council of Europe

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Subject: Collective Complaint 165/2018, *Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece*» – additional observations on the merits

I. GENERAL:

We have already replied on the majority of additional observations made by the complainant organization and we have set out our views in detail. It would be appropriate, therefore, instead of reiterating our positions, to focus on the reported information below. However, in any case and in support of our arguments, we refer to our filed observations and their content in order to refute the additional allegations of the complainant organization by emphatically denying them once again.

II. ON THE ALLEGATIONS OF THE COMPLAINANT ORGANISATION

1. On the allegation regarding excessive cuts under Law 4387/2016 and Law 4472/2017

In order to remove any doubt, we would like to note once again that no cuts were made to pension amounts by virtue of Law 4472/2017 and Law 4387/2016. The cut made to the personal difference amount for main pensions **was repealed** by article 1 of Law 4583/2018 (O.G. 212/A/18-12-2018). Similarly, by virtue of the above mentioned law, article 96, para.7 of Law 4387/2016, which was added by article 2 of Law 4472/2017 regarding supplementary pensions, was also repealed.

More specifically, provision was made for all pensioners whose pension amounts, after the recalculation in accordance with Law 4387/2016, were lower than the one computed in accordance with the previous calculating method, so that the excess amount would continue to be paid to the beneficiaries. Moreover, as of 1-1-2019, **620.000 pension amounts increased** due to the recalculation under Law 4387/2016, which is a fact that proves in practice that, contrary to the allegations of the complainant, not only were cuts not introduced but there were actual increases in the pensions of thousands of pensioners, taking advantage of the new legislative framework! Thus, it is once again confirmed that the social security reform introduced by Law 4387/2016, succeeded in rationalizing the Social Security System, did not introduce any direct or indirect cuts, did not have negative consequences on the income of pensioners and, in fact, increased the pensions of a large number of retirees with a view to guaranteeing equality for all insured persons.

2. On the allegation regarding the level of pension «cuts» under Law 4387/2016 and Law 4472/2017, as presented in the relevant accompanying reports of the General Accounting Office.

The complainant organization refers to the General Accounting Office Reports made three years ago that accompany the above mentioned laws, in an attempt to deceive about the alleged validity of its arguments, by making long reference to all "cuts" to pensions imposed during the years 2016-2019 and creating false and misleading "impressions". We would like to note the following on the above allegations:

It is obvious that the complainant organisation, referring to Report No.141/16/2016 of the General Accounting Office (as the document accompanying Law 4387/2016), «lists» a series of alleged cuts to pensions, while in fact it includes (obviously not by accident) a number of legislative interventions that are not relevant to the above mentioned issue (see Nos. 10, 12, 13, 14, 15). Moreover, on the one hand, it artfully refers to provisions that actually never resulted in increased contributions and, consequently, reduced income for the insured and, on the other hand, it refers to provisions that have already been abolished by subsequent legislative interventions.

More specifically, we deny the allegation made by the complainant concerning increase in social security contributions for the self-employed, freelance professionals and farmers both for

main as well as supplementary insurance, as manifestly unfounded, given the fact that Law 4387/2016 never imposed the above mentioned increases, but actually introduced uniform rules to calculate contributions paid by the insured, linking them to their actual income. The complainant also hides the undisputable fact that the above mentioned contribution rates under articles 39 and 40 of Law 4387/2016 **were reduced**, pursuant to Law 4578/2018 (Α΄ 200). It also hides the fact that, by virtue of the same law, a specific favourable provision was introduced regarding contributions paid by newly insured persons (during the first five years of insurance) by virtue of article 39Α. Similarly, by virtue of the above law, relevant reductions were also made in contributions for supplementary insurance (article 97) as well as in the lump sum benefit (article 35), since these are now calculated on the minimum salary, irrespective of the income, contrary to what the complainant falsely alleges.

In addition to the above, in order to refute one by one the allegations of the complainant we would like to note the following:

The alleged reductions in family allowances and benefits under articles 10 and 27 of Law 4387/2016 («cuts» No.3) were abolished by virtue of the above mentioned Law 4583/2018.

Moreover, as regards survivors' pensions (No. 4), by article 19 of Law 4611/2019, very favourable changes were made to pension entitlements of beneficiaries – family members of the deceased pensioner or insured person. For example, 1) the age limit (55) was abolished so that the surviving spouse might receive pension, 2) the pension rate for the surviving spouse increased from 50% to 70% and 3) the age prerequisite for beneficiary children extended from the age of 18 to the age of 24, irrespective of whether they attend or not any recognized higher education institutions, private vocational centers, etc. Furthermore, it was clarified that three years after the payment of the survivor's pension, if the surviving spouse is employed or self-employed or receives pension from any other fund, depending on how long he/she has been employed/self-employed, he/she is entitled to 50% of the survivor's pension amount, which may not be less than the threshold set in para.4, subpara.B, article 1 of Law 4499/2017 (Α΄ 176).

Moreover, the alleged «reduction in annual expenditure on pensions granted by the public sector fund – the Unified Social Security Institution (EFKA) due to the implementation of a ceiling» does not relate to the subject matter of the present complaint, given the fact that, even if the said allegation were true, it is obvious that it refers to the establishment of a ceiling and not a threshold; therefore, we cannot talk of or the said allegation may in no way be linked to the alleged violation of article 12 of the ESC on the obligation of the Parties to maintain the social security system at a satisfactory level, as alleged by the complainant. In addition and irrespective of the above, the disputed provisions in articles 13 and 27 of Law 4387/2016, that, in any case, were consistent with the European Court of Human Rights' case law on non-vested pension entitlement of a certain amount, were in force for a limited period of time (till the 31.12.2018) and therefore have ceased to apply as of 1.1.2019.

Furthermore, no reduction in lump sum benefits and dividends were introduced by Law 4387/2016 (articles 35 and 48), as the complainant alleges falsely and misleadingly, since the law **objectively specifies the calculation method used for lump sum benefits in a uniform manner** for all insured persons, both for those insured till 31.12.1992 as well as for those insured from 1.1.1993 onwards, as required by the principle of equality and, especially, the Notional defined contribution pay-as-you-go pension scheme for all insured persons. The above legislative framework is consistent with the principle of reciprocity and the principle of equal treatment, since the lump sum/dividend amount depends, inter alia, also on contributions paid by the insured person, contrary to the previous legislative framework according to which the final lump sum amount depended on statistical data and the economic situation of the retirement year and in particular on the number of applications for retirement filed in the reference year.

Finally, we would like to note that Law 4611/2019 established the payment of the 13th pension to all pensioners with a view to supporting and increasing their income.

There is no need for any analysis on Report No 112/24/2017 of the General Accounting Office (accompanying Law 4472/2017), since the provision was never implemented, in accordance with the detailed information above. The same applies also with regard to Report No.128/12/2017 of the General Accounting Office (accompanying Law 4475/2017), which simply postpones the readjustment of main pension amounts based on the GDP and the Consumer Price Index and in no case does it result in reductions in paid pension amounts.

3. On the allegation regarding universal reduction in pensions pursuant to article 44 of Law 4387/2016.

The complainant submits – and obviously exaggerates in order to make an impression that by virtue of Article 44 of Law 4387/2016, the largest alleged horizontal and universal reduction in pension amounts was completed of all the reductions made throughout the period of the memoranda. Not only is this an obviously vague allegation, but also in no way does the complainant provide evidence to substantiate it, particularly with regard to the total amount of 2billion euros, arbitrarily referred to in the complaint at issue!!

However, in addition to and irrespective of the above, we would like to note the following on the substance of the allegation:

As you already know, from 1.1.2012 till 30.6.2016, after the implementation of the provisions on pension cuts by virtue of Laws 4024/2011 (Α΄226), 4051/2012 (Α΄ 40) and 4093/2012 (Α΄ 222) and JMD. 476/2012 (Β΄ 99), the deductions for healthcare were calculated on the total amount of main pension or pre-pension entitlement (temporary retirement pension) without the abovementioned reductions, resulting in the deduction of contributions for healthcare on pension amounts that were not paid to pensioners. By article 44 of Law 4387/2016 (Α΄ 85) the calculation method used for this deduction changed and it is now calculated on the paid main pension

amount. Article 2 of Law 4501/2017 then rectified this problem of the previous calculation method and thus the amounts exceeding the amount calculated according to the correct method and deducted from pensions during the period from 1.1.2012 till 30.6.2016 for healthcare were returned to pensioners.

4. On the allegation regarding identification of zero deficit clause with the balancing mechanism

The complainant organization obviously using vague, unclear and almost incomprehensible allegations, wrongly identifies two completely different mechanisms to address any deficits in supplementary funds, namely the zero deficit clause with the automatic balancing mechanism, stating on pages 2, 13 and 17 of the complaint that both mechanisms lead to the saying «you can't get blood from a stone».

However, it is appropriate to clarify the difference between those two above mentioned systems that address any deficits in funds. More specifically, the zero deficit clause in supplementary pensions provided that, in the event of deficits, a relevant reduction would be made in paid benefits in the following year. By contrast, the automatic balancing mechanism as described in article 96 of Law 4387/2016, operates as follows:

In the event of deficits, the automatic balancing mechanism **completely excludes any adjustment of pension amounts to the detriment of pensioners**. More specifically, the above mentioned mechanism shall be implemented in two stages.

a) Till 31.5.2022 (period of increased contributions) pensions shall not be adjusted if, after deducting the fund's expenses from its revenues, the result is either negative or less than 0,5% of contributions, taking into account the accounting data of the previous fiscal year and

b) As of 1.6.2022 pensions shall not be adjusted if, after deducting the fund's expenses from its revenues, the result is negative. In addition to the above procedure and only in the event of deficits the **assets of the Fund's Supplementary Insurance Section shall be used**.

The above presentation of both systems shows that the new mechanism substantially improves the system for addressing any deficit of the Fund, since the zero deficit clause uses reduction in paid benefits while the automatic balancing mechanism excludes any adjustment of supplementary pensions covering thus the deficits from the assets of the ETEAEP Supplementary Insurance section.

5. On challenging the existence of an actuarial study

Although we have presented in detail our observations on the Actuarial Study prepared for Law 4387/2016 by the National Actuarial Authority, we would like to note once again that the study was approved by all relevant bodies and organisations (ILO, Aging Working Group of EPC) and was positively assessed by the Ageing Working Group of EPC before the abolishment of the

provisions of Law 4472/2017 (provisions that were taken into account in the study), and, therefore, the results are even more favourable for pensioners. Consequently, the complainant's allegation that there is no relevant actuarial study is once again rejected.

III. CONCLUSION

The allegations of the complainant organization in the document of additional observations are not only vague and general, but have also proven to be completely unfounded and incorrect. The allegations regarding the lack of an actuarial study and the State's liability to guarantee the entire main and supplementary pension entitlement were already proven to be incorrect in our previous observations, while the constant reference to cuts under Law 4472/2017 becomes devoid of content since the law has been abolished.

We believe that both the Greek legislation and practice with regard to the questions at issue are fully compatible with the obligations of our country in terms of implementing the above provisions of the Revised European Social Charter, as we also detailed in our first reply, and we request that you consider as unfounded and reject the entire allegations of the complainant organization regarding violation of articles 12 and 23 of the Revised ESC.

THE MINISTER

EFFIE ACHTSIOGLOU