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EUROPEAN SOCIAL CHARTER

Comments by the Greek General Confederation of Labour on the 5th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF GREECE

Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29
for the period 01/01/2017 – 31/12/2020

Comments registered by the Secretariat

on 26 September 2022

CYCLE 2022

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GREEK GENERAL CONFEDERATION OF LABOUR
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Αθήνα 26-9-2022

To

Council of Europe

European Committee of Social Rights

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DGI-ESC-Reporting-System@coe.int

Subject: Observations submitted by the Greek General Confederation of Labour –GSEE for the implementation of "Labour Rights'" (articles 2,4,5,6, 21, 22, 26,28,29) of the revised European Social Charter.

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ANNEX I

Introductory Observations

1. Ratification of a revised European Social Charter.

1.1. The European Social Charter (ESC) was ratified by Greece by virtue of L. 1426/1984 (Government Gazette A'32). By Law 2595/98 (Government Gazette A'63), both Additional Protocols to the ESC dated 1988 and 1995 were ratified, while by L. 2422/1996 (Government Gazette A'144) the amending Protocol (1991) was ratified, which improved the examination process of the ESC implementation.

With regard to the revised European Social Charter (rev. ESC), already signed by Greece since 3 May 1996, all its articles were ratified by L. 4359/2016 (Government Gazette A'5), with the exception of the provisions of Article 19, para. 12, due to the country's "inability to address them (at the time of ratification) in terms of material conditions and available resources", as stated in the explanatory memorandum to the draft law of ratification.

1.2. By virtue of the second Article, L. 4359/2016 it is stipulated in the first paragraph that the provisions of Article 6 shall not bind the country in respect of the establishment and use of arbitration mechanisms for regulating labour disputes, according to Article 22, paragraph (2) of the Greek Constitution, in particular, with regard to the right of unilateral recourse to arbitration in case of failure of the collective bargaining process. In the Explanatory Memorandum to the draft law of rev. ESC ratification, it is stated that, as ruled by the Council of State Plenary decision 2307/2014, following GSEE Complaint[1], the greek Constitution 'requires the legislator to establish an arbitration system in case of failure of the collective bargaining process' and that 'the initiation of the procedure does not require the consent of the two parties of the collective dispute, but the will of one of the parties is sufficient.' Paragraph 2 of the same Article states that Article 6 of the rev. ESC does not bind Greece with regard to regulating the employers' right to collective action, in particular with regard to the prohibition of a lock-out, which is prohibited under the national law by virtue of para. 2 of article 22, L. 1264/1982).

1.3. The third Article stipulates that by Presidential Decrees, the provisions of the rev. ESC, that were not ratified by L. 4359/2016 (article 3 para. 4, article 19 para 12) may be ratified at a later stage, when the country's economic situation so permits . At the time of the submission of GSEE's observations on the 5th Greek Implementation Report of the rev.ESC on the provisions of the 3th thematic group, these Presidential Decrees had not been issued, nor had their preparation procedure been known.

1.4. On 29 June 2022, and in view of the 30 June 2022 deadline for Observations to be submitted, GSEE, in an urgent letter to the Secretariat of the competent Directorate of the Council of Europe for the European Social Charter, submitted a request for an extension of the deadline for comments on the Greek Report, since this National Report had not yet been communicated to the Confederation by the competent Ministry of Labour and Social Affairs. In the message dated 10 July 2022, whereby the relevant Secretariat of the Council of Europe responded to the request by GSEE, indicating that a deadline for the submission of observations on the National Report would be set upon receipt, GSEE requested that a reasonable deadline for its response be granted, in case the Greek Report is submitted during the usual summer holidays' period for the month of August. Subsequently, on 13 July 2022, the competent Directorate of the Ministry of Labour and Social Affairs forwarded with its message to GSEE the 5th National Implementation Report on the rev. European Social Charter. GSEE does not know whether and when the National Report was formally submitted to the Council of Europe.

[1] See observations on article 6 of the rev.ESC (see below under point III. 4)

2. Reference period (1/1/2017-30/1/2020) on the progress of the implementation of rev.ESC provisions under examination.

2.1. The report on the implementation progress of the labour rights' provisions of the 3rd thematic unit of the rev. ESC (Articles 2,4,5,6, 21, 22, 26,28,29) covers the period 1-1-2017 to 30-1-2020. Although the deadline for the submission of the national Reports was 31 December 2021, we don't know when Greece formally submitted the national Report to the Council of Europe. However, the competent Directorate of the Ministry of Labour and Social Affairs forwarded on 13/7/2022 to GSEE, by e-mail, the '5th Greek Implementation Report of the revised European Social Charter' (see above under point I. 2).

2.2. **GSEE underlines that, in order to correctly reflect the situation in Greece, this Report should include data covering the period from 2017 to the time of its submission (2022)**, for the following reasons:

(i) the period 2017-2020 is characterized by the formal (not substantial) completion in August 2018 of the third loan program ("3rd Review of the Economic Adjustment Program[2]") of Greece, which was also accompanied by the obligation to take mandatory supplementary measures[3]. The national institutional framework, as far as the content of labour rights of the 3rd thematic unit of the rev. ESC is concerned , has since 2010 been characterized by the deregulatory interventions imposed in the context of the economic crisis and the inelastic terms of the international lending mechanism to Greece[4]; such terms, due to their long-term application, have acquired permanent characteristics and, above all, a lasting negative impact on the exercise of the specific rights of workers. In addition to re-establishing the exercise of certain rights (such as the age discrimination in the minimum wage/salary see below point III. 2) , most of the anti-labour measures imposed under the country's lending conditions still remain in force. Moreover, further anti-labour measures on this already established situation were imposed by legislation which has entered into force to this day, with a cumulative negative impact on workers and their rights[5]. Therefore, it is

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[2] https://www.consilium.europa.eu/en/policies/financial-assistance-eurozone-members/greece-programme/

https://www.consilium.europa.eu/en/policies/financial-assistance-eurozone-members/greece-programme/timeline/

[3] Indicatively see Answer given by Mr Moscovici on behalf of the Commission

https://www.europarl.europa.eu/doceo/document/E-8-2018-000241-ASW_EN.html

[4] See Collective Complaint 111/2014 submitted by GSEE, its update by GSEE in 2016 and the evidence put to the attention of the European Committee of Social Rights at its public hearing.

[5] See also Greek National Commission for Human Rights (Observations on Draft Bill of Law 4808/2021, where it is mentioned «The Greek National Commission for Human Rights (GNCHR), responding again with responsibility to the mandate assigned to it by its founding law as the National Human Rights Institution (NHRI) and the independent advisory body to the Greek State on matters pertaining to human rights protection, is monitoring matters related to the promotion and protection of individual and collective labour rights, as well as other relevant labour rights, such as the protection of dignity, health and safety of workers, in the context of inter alia adapting the Greek legislation to the international and European provisions on human rights protection. (...) Given the significance of the issues regulated by this Draft Law, the GNCHR, by promoting the adoption of a human rights based approach, putting people at the centre, is submitting specific observations and recommendations, while, at the same time, pointing out important issues concerning the law-making process. The GNCHR draws the State's attention to the need to assess the cumulative impact of the measures that have been taken both during the economic crisis as well as during the ongoing health pandemic crisis on labour rights. (...)In particular, as regards the law making process, the GNCHR points out that the cumulative regulation of more than one issues of paramount importance for the rights of workers, such as the long-awaited ratification of the ILO Convention No. 190 or the incorporation of Directive (EU) 2019/1158, in a single Draft Law, which in fact introduces significant reforms in the legal framework on the protection of employment, that interact and cumulatively limit the protection scope for employment at the individual and collective level, is negatively assessed. The GNCHR notes that this controversial law-making process has not only deteriorated over the last decade, but it now tends to be consolidated as a practice with permanent characteristics. In fact, this phenomenon is exacerbated by the fact that the present Draft Law, both during the public consultation process and during its submission to the Parliament, was not accompanied by an appropriate Explanatory Memorandum, as part of the Impact Report, that would contribute to the understanding and assessment of its content. Moreover, the GNCHR notes with disappointment that, despite its repeated

critical for the examination that the national Report should reflect the current framework at the time of its submission, all the more so since updated information on the country's current legal framework is officially requested in the reporting questionnaira for its preparation.

2.3. A characteristic piece of legislation is the L. 4808/2021 dated 19 June 2021 (Government Gazette A'101), which not only maintained in force provisions already declared by the European Committee of Social Rights as incompatible with the ESC, but new restrictive regulations have also been imposed to the detriment of the individual and collective rights of workers in Greece. Since no institutional information and consultation with GSEE on the draft Law of the subsequent law 4808/2021, the Confederation sent urgent written statements at the end of May 2022, with remarks to the Ministry of Labour and Social Affairs, highlighting the following critical points:

> *"The Ministry of Labour's Draft Law promotes the adoption a series of anti-labour measures that breach the fundamental principles and rights of the country's labour legislation, at a time when the country is affected by the ongoing pandemic, with all the impact already felt and anticipated on the economy, work and society.*
>
> *The labour, social and economic regulatory environment is in any case prohibitive for such legislative interventions. The persistent economic crisis, and indeed in pandemic conditions, calls for positive initiatives, which should focus on measures to support work rather than further deregulating it.*
>
> *These are provisions whereby employers are given tools to impose working and remuneration conditions on the basis of individual employment contract.*
>
> *The Draft Law is expected to knock down the last "bastion" of the country's labour law, whatever remained upright after the ten-year implementation of the Memoranda and the pandemic that has been going on for a year and a half. These measures also include the adoption of L. 4635/2019, which is strangling the right of unilateral recourse to arbitration, which is protected by the Constitution, as ruled by the decision no. 25/2004 of the full Plenary of the Supreme Court and the decision no. 2307/2014 of the State Council Plenary.*
>
> *The Draft Law provisions are to be added to a series of anti-labour regulations which have imposed extreme precarious conditions on labour relations, have sustained major blows on the institution of free collective bargaining and have hit the model of safe and decent paid work.*
>
> *In an environment of extreme labour market flexibility and extreme labour insecurity in the country, fueled by high unemployment rates, the widespread use of flexible forms of employment and the erosion and degradation of the state's control mechanisms, the Draft Law also takes on, in addition to its anti-labour orientation, strongly antisocial features."*

The 5th national Report being submitted in the context of the 2017-2020 reference period contains partial references to L. 4808/2021, only on individual issues of "positive provisions" in the national institutional framework[6], which in principal constituted a national obligation stemming

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recommendations on the need to effectively monitor and assess the impact of both the austerity measures and the restrictive measures taken to address the COVID-19 pandemic on the enjoyment of human rights and especially on labour rights, the cumulative impact of these measures has never been assessed.(....)"

https://www.nchr.gr/en/news/1259-summary-of-gnchr-observations-on-draft-law-of-ministry-of-labour-and-social-affairs.html

[6] See references to provisions of L. 4808/2021 in the Greek text of the 5th Greek Implementation Report of the revised European Social Charter – 3rd thematic unit 'Labour Rights', p. 22 (reference to article 67 on teleworking), p. 23 (reference to articles 68-71 on providers of services – natural persons on digital platforms. This provision is justifiably decried because it institutes a negative presumption against the dependent labour contract; therefore, the remaining provisions of said articles are rendered non applicable), p. 47 (reference to article 133 on the extension of the term of office of trade unions management bodies), p. 48 (reference to reconciliation processes in Labour Inspectorates), p. 72 (reference to the ratification of the International Labour Convention 190). The national Report also refers to the

from the ratification of international conventions. On the contrady, the 5th national Report avoids reference to critical anti-labour provisions imposed the same period (after 2020) such as the provisions on the reduction of daily rest periods for workers, the suspension of collective rights for workers in the event of non-inclusion of trade unions in the mandatory - for their legal function - public Registry, the annulment of the results of the trade unions electoral processes if they are not carried out digitally etc., the knowledge of which would have an important impact on the country's examination of the implementation status of the rev. ESC's labour rights' provisions (see comments below in the specific articles of the rev.ESC).

(ii) During 2017-2020, Greece continues to go through a tough period which was further intensified by the increased influx of migrants and refugees[7]. In response to this parallel crisis, measures to limit access to work have been taken until and including the time of the National Report (July 2022) submission, in the context of restricting the social inclusion policy for international protection applicants, refugees, beneficiaries of subsidiary protection and migrants[8]. The knowledge of these measures would have an important impact on the country's assessment of the state of implementation of the provisions of the rev. ESC under examination. As it is known, serious violations of international rules (e.g. the European Convention on Human Rights) concerning the terms and conditions of work of foreign workers have been identified by critical court judgments, such as the ruling by the European Court of Human Rights Chowdury and others v. Greece[9], with crucial pending issues as regards Greece's substantial compliance.

Ministerial Decision of April 2022 (Ministerial Decision B'2030/21-4-2022), whereby the increase of the minimum salary/wage was decided from 1 May 2022 (p. 17).

[7] UNCHR Greece, Operational Data Portal

https://data.unhcr.org/en/situations/mediterranean/location/5179#_ga=2.247438023.295015393.1658845416-1406292524.1650005793

[8] Despite the explicit regulatory framework on the prohibition of work related discrimination against third country national' migrant workers'(Law 4443/2016), refugee integration in Greece, is seriously hindered also due to the legal and administrative obstacles faced by asylum seekers and refugees in accessing their rights (work, education, health, housing). For example, asulym applicants' access to the labour market has been further hindered by obstacles (mostly important delays) in acquiring a Foreigner's Temporary Insurance and Health Coverage Number (PAAYPA), which is a requirement for employment. The framework under which PAAYPA is granted remains vague, while the transition from PAAYPA to AMKA (the steady social security number) has proved particularly time-consuming (already in many cases it reaches a year!) and hindered even more access of this population to the labour market and to healthcare. As further noted by the Greek National Commission for Human Rights in September 2020, "in practice, it is ascertained that asylum seekers cannot benefit from the right to work, as the documents of ERGANI have not yet been adapted so that PAAYPA holders can be included, while due the coronavirus and the difficulty in renewing international protection applicants' cards, employers are reluctant to employ staff with an expired card.

https://www.gcr.gr/media/k2/attachments/Joint_NGO_Briefing_on_the_situation_in_Greece_27_10_2021.pdf

https://www.gcr.gr/en/news/press-releases-announcements/item/1365-open-letter-of-17-organizations-to-the-minister-of-migration

AIDA Country Report on Greece (2020) pg 182 https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-GR_2020update.pdf

https://www.gcr.gr/el/news/press-releases-announcements/item/689-koini-anafora-25-organoseon-gia-peristatika-paraviasis-dikaiomaton-ton-aitounton-asylo

Greek National Commission for Human Rights (GNCHR) Reference Report on the Refugee and Migrant Issue (Part B), 24 September 2020 https://www.nchr.gr/en/news/1131-gnchr-reference-report-on-the-refugee-and-migrant-issue.html
ILO, Assessement report on necessary amendments of the legal framework regarding inspections in agriculture and Recommendations for reforms in line with ILO Convention No129.

https://www.ilo.org/employment/units/emp-invest/WCMS_686992/lang--en/index.htm

[9] The Court noted, in particular, that the applicants' situation was one of human trafficking and forced labour, and specified that exploitation through labour was one aspect of trafficking in human beings. The Court also found that the State had failed in its obligations to prevent the situation of human trafficking, to protect the victims, to conduct an effective investigation into the offenses committed and to punish those responsible for the trafficking. Notably, GSEE has repeatedly requested the ratification of Convention 129 (Labour Inspection (Agriculture)) while encouraging the Greek Government to benefit from the Confederation's experience on the related issues as well as to ask for ILO's technical assistance to that direction. The ratification of ILO C 129 is part of the commitments included in the national Road Map to

(iii) Following the economic crisis, the imposed austerity measures in the context of the conditionalities of the country's international lending mechanism and their impact to workers' rights and standards of living, the threat of the COVID-19 pandemic had a cumulative impact in the first quarter of 2020, pressing again the social fabric and leading to the imposition of measures for coping with the crisis almost since spring 2022. While recognizing the need to protect public health and society as a whole from the risks of the pandemic spreading, the measures adopted were widely based on provisions already found not to be in conformity with the protective framework of the rev, ESC . Also due to this reason, it is necessary that the national Report provides up-to-date information up to and including the time of its submission given that for the drafting of the national Report, it is explicitly asked that reference is made to the impact and the measures to combat the COVID - 19 pandemic, which continued to be in force during 2022. It should be noted that in Greece, there is no tripartite institution for social dialogue (State, workers, employers) to assess the effects on workers of the pandemic itself, and of the measures taken to address it, in order to take appropriate restorative action where necessary (pls see below Observations under Article 2 para.1 rev.ESC questions d), e), Article 5 rev.ESC question b). The lack of a framework for institutional tripartite social dialogue, and in general, the lack of institutional social dialogue in Greece, which is considered to be part of the European social acquis, cannot be considered to be covered by the public consultation process (opengov.gr) of the Government's legislative initiatives (See relevant reference to the national Report on Article 21 of Rev.ESC).

(iv) Greece's response to multiple and parallel crises, particularly since 2010, accompanied by extensive restrictive measures against the individual and collective rights of workers showcased the Greek State's weakness to respond to its obligation to make an official assessment of the social and economic impact of these measures based on official data and appropriate economic and social indicators (e.g. indicators of disposable income, living standards and material deprivation, employment rates, unemployment, poverty and exclusion, flexible forms of work, unlawful behaviour and analysis of its forms,etc). The cumulative negative impact on workers' rights is obvious, on the one hand, as it concerns the need for immediate and adequate restorative measures to protect work not only for those workers already affected by existing anti-labour legislation, but also for those who are in serious danger of being affected by their exposure to the risks of deregulated labour legislation and the multifaceted employers' illegal and, in general, unlawful behaviour.

2.4. In view of the above, the labour provisions adopted following the country's formal exit from the international lending mechanism until today (i.e. after the reference period 2017-2020) can be characterised as measures "beyond" the working and social reality in Greece. Based on our Observations on the National Report, assessing the consequences of the provisions from 2010 onwards, it becomes obvious that the current institutional framework in Greece unilaterally serves business interests that do not safeguard the country's progress in terms of economic and social efficiency, equality and justice, nor the respect of basic principles of the European Social Pillar and key objectives of the UN Agenda 2030, that Greece has committed itself to, while at the same time there are very serious issues of violations of European and binding international rules, including the revised ESC.

2.5. It should be noted that the prevailing anti-labour character of most of the legal provisions in force in Greece, by means of a variety of provisions and instruments affecting the core of the protection of individual and collective labour law, combined with the impact on workers of the violent split of the Labour Inspectorate from the Ministry of Labour (see below), as its natural,

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tackle Undeclared Work, which despite the fact that was validated with a tripartite procedure in October 25, 2016, has not been properly implemented.

See also Rule 9.3 - Communication from an NHRI (Greek National Commission for Human Rights (GNCHR)) (08/06/2020) in the case of Chowdury and Others v. Greece (Application No. 21884/15)

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809eb8eb

functional and operational area, it counteracts the positive nature of some provisions put forward in 2021 (such as the – partial-protection of workers from violence and harassment at work and the unequal treatment due to parenting-which fulfilled the country's international and european legal obligations- and the right of teleworkers to disconnect). This Observation is made to reveal the real scope of these rights, which consists of over-flexible workers, deprived of substantial collective rights and means of protection and at the same time exposed to weakened access to judicial and administrative control of infringements against them.

3. Labour Inspectorate

3.1. As already mentioned above, the 5th Greek Report makes a piecemeal reference to critical pieces of legislation, as in L. 4808/2021 (Government Gazette A'101). several provisions of L. 4808/2021 significantly change the national regulatory framework in critical areas of labour law. One of the most radical reforms imposed by L. 4808/2021 is i) the conversion of the Labour Inspectorate, from an autonomous administrative and operational structure of the Ministry of Labour and Social Security (Labour Inspectorate Body) into an independent authority (Labour Inspectorate Authority, Articles 102-125) and (ii) the transfer of responsibility for carrying out the reconciliation process (Article 13 L. 1876/1990) by the Ministry of Labour and Social Affairs and the Labour Inspectorate, of a national reach, to the Mediation & Arbitration Organization, headquartered in Athens and with one Office (branch) in Thessaloniki (Article 98).

3.2. There was no prior institutional information and consultation with GSEE, as the national social partner on the workers' side for this rapid change in the Labour Inspectorate, although the Council for Social Control of the Labour Inspectorate (Συμβούλιο Κοινωνικού Ελέγχου Επιθεώρησης Εργασίας - ΣΚΕΕΕ), a competent tripartite institution for social dialogue and social control of Labour Inspectorate was convened in April 2021, under the light of the requirements of the International Labour Convention 81. It should be noted that when the content of the Draft Law of the subsequent Law 4808/2021 became known, GSEE submitted an urgent request to the Ministry of Labour, stating the reasons for its opposition, for the convening of SKEEE, which was rejected [10].

3.3. In August 2021, and in addition in May 2022, GSEE submitted[11] urgent Observations on this critical issue to the International Labour Organization for the violation of the International Labour Convention 81 ratified by Greece, where among the submitted date the following are also mentioned:

> *"GSEE, within the scope of its responsibility and the necessary social control, for effective and unhindered access of workers to public labour inspection authorities for the purpose of claiming their rights and protecting them against widespread and multi-faceted employers' unlawful behavior in Greece, jeopardizing not only the living conditions, but also the health and safety and, unfortunately, the life of workers, over time,* ***calls on the State and the Ministry of Labour to safeguard a stable executive structure for the Labour Inspectorate at central level within the Ministry of Labour. GSEE also requests the shielding of SEPE, by strengthening it with autonomous and adequate resources and means of independence.*** *This central organizational proposal is in line with the principles and guarantees of ratified International Labour Convention 81 (L. 3249/1955) and responds to the need for (a) strengthening, through the State's supervision, the accountability, efficacy and effectiveness of all Labour Inspectorate departments and for contributing decisively to Labour Inspection's work; and (b) for appropriate and timely planning and coordination on the basis of continuous assessment of data and results of the Labour Inspectorate work,*

[10] Letter by GSEE no. 201/27.4.2021 to the Ministry of Labour and Social Affairs is relevant.

[11] GSEE Press Release 3-9-2021 https://gsee.gr/deltia-typou/%ce%b4%ce%b9%cf%80%ce%bb%ce%b7-%cf%80%cf%81%ce%bf%cf%83%cf%86%cf%85%ce%b3%ce%b7-%cf%84%ce%b7%cf%83-%ce%b3%cf%83%ce%b5%ce%b5-%cf%83%cf%84%ce%bf-ilo-%ce%b3%ce%b9%ce%b1-%cf%84%ce%b9%cf%83-%ce%b1%ce%bd/

through the relevant public IInformation Systems. The aim is for the Labour Inspectorate to provide targeted and unhindered services across the Greek territory.

The State has an obvious obligation to know and apply adequately the content of the ratified International Labour Convention 81, whose implementation must be guaranteed. Regarding Greece's compliance with the requirements of the International Labour Convention 81 (a) decisions and recommendations to Greece have been issued by the ILO inspection bodies and (b) an extensive technical assistance has been provided by the ILO both for the Labour Inspectorate with commitments for specific executive-operational planning on the basis of needs assessment reports (2012, 2018) and for tackling undeclared work; this resulted in the tripartite agreement between the State – workers and employers on the Road Map for undeclared work, with specific key actions and accountability of the Ministry of Labour and Labour Inspection in the implementation of the operational program agreed by three parties of targeted controls on undeclared and under- declared work.

As it is well known, as early as 1997, by a decision of the competent Bodies to examine the 'Representations' , which was endorsed by the ILO Governing Body[12], a complaint against Greece was sustained; the issue of the Labour Inspectorate operation 'under the supervision and control of a central authority', if this is a consistent administrative practice of the State (Greece) having ratified the International Labour Convention 81 (Articles 4,19,20) was considered as compliant with the requirements of this International Convention. Moreover, it was also recognized as positive in the Report submitted later by the (at that time) Minister of Labour. In particular, the ILO states that 'The Commission underlines that placing the Labour Inspectorate system under the supervision of a central authority facilitates the formulation and implementation of a uniform policy for labour inspection throughout the territory and a cohesive application of labour law'. This is a currently relevant statement also today regarding and operation of the central Information System ERGANI under the responsibility of the Ministry of Labour and Social Affairs. Subsequently, and following the evolution of the legislative framework in Greece with regard to the organizational structure of Labour Inspection, the ILO Committee of Experts on the implementation of Conventions and Recommendations noted its satisfaction that the organizational legislative framework allows the implementation of the International Labour Convention 81, acknowledging also the importance and social control role of workers and employers in planning the activities and the annual planning of Labour Inspection[13]. This social control is ***permanently repealed***

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12 REPRESENTATION (article 24) - GREECE - C081 – 1997 https://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2507040,en:NO

Report of the Committee set up to examine the representation alleging non-observance by Greece of the Labour Inspection Convention, 1947 (No. 81), made under article 24 of the ILO Constitution by the Federation of the Associations of Public Servants of the Ministry of Labour of Greece).

13 The Committee of Experts states in its Report that 'the Committee particularly notes that, with the adoption of Act No. 2639 of 2 September 1998 on the establishment, inter alia, of a Labour Inspection, and Decree No. 136/99 regarding the Organization of the Labour Inspection, a labour inspection system has been established under a central authority with responsibility to the Minister of Labour; this authority is assisted by a tripartite advisory body empowered to issue recommendations regarding the planning of action undertaken by the Labour Inspection and the annual activities reports and also to make proposals with a view to improving the efficacy of the labour inspection system; the labour inspection personnel is governed by the Public Service Statute; the inspection services must submit to the central authority, within the prescribed time limits, periodic reports on their activities, and an annual report drawn up by the central authority must be transmitted to the ILO no more than six months after the end of the period which it covers. The Committee notes with interest that the new texts also give effect to Articles 3, paragraph 1; 5(a) and (b); 7; 9; 10; 11; Article 12(1)(a), (b), (c)(i) and (ii); 13; 14; 16; 17 and 18. The Committee is addressing a request regarding certain points directly to the Government ».

Observation (CEACR) - adopted 1999, published 88th ILC session (2000), Labour Inspection Convention, 1947 (No. 81) https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2187201

from the organizational framework of the Independent Authority of the Labour Inspectorate put forward by the draft law.

*As GSEE pointed out in the Press Release[14] with its first comments on governmental announcements on the draft law of the subsequent Law 4808/2021,"**particularly in the established landscape of labour in the private sector, where conditions of "jungle" prevail, the promoted anti-labour regulations will constitute a blow for the world of work, particularly when the Ministry of Labour converts the Labour Inspectorate into an Independent Authority, rather than upgrade, enrich and shield it. In other words, it abdicates the political responsibility to control employers' infringements following the example of Pontius Pilate. The Labour Inspectorate, instead of being the strongest executive structure of the Ministry, by means of negligent draft legal arrangements and without prior consultation with Workers' and Employers' representatives, is driven towards "uncharted" waters during the post-pandemic era being critical for the labour market. If the "individual employment contract" is seen as an ideological principle of liberalism, the transformation of Labour Inspection into a labour market advocate constitutes ideological acrobatics that are extremely dangerous for workers."***

3.4. The Federation of Associations of the Ministry of Labour and Social Affairs also recoursed to the International Labour Organization submitting Observations for the same reasons.

3.5. In view of the above, the 5th Greek Report on its references to the Labour Inspectorate and the monitoring and planning commitments from the Ministry of Labour and Social Affairs not only is inaccurate, but has nothing to do with the current state of play in Greece. Already, and with considerable delay, the Ministerial Decision on the establishment of Labour Inspectorate, as an independent authority, was published on 19 July 2022 (Government Gazette B'3597), while to this day the Ministerial Decisions on Labour Inspectorate's Establishment Plan provided for in Article 121, para. 6, L. 4808/2021 for the organization and structure of its departments, determines their responsibilities and other critical arrangements, has not been issued.

Therefore, as it concerns the crucial aspect of the legislation enforcement control, the national Report should have reported the specific critical provisions of L. 4808/2021 for the Labour Inspectorate. The knowledge of these provisions is having a significant impact on the country's assessment of the state of implementation of the provisions of the European Social Charter under examination.

4. Work and the Digital Age. From the need to address the COVID – 19 pandemic to the need to adequately ensure workers' rights.

4.1. GSEE acknowledges the challenges of adapting the labour law to the new digital environment and information and communication technologies.

However, this process of diagnosing the challenges that have arisen and of appropriate adaptation of the protection of labour and workers must be carried out in the light of the fundamental principles and rules of labour protection and following an institutional social dialogue with GSEE; in the context of this dialogue, the Confederation, representing all private law workers in Greece, has the potential, the ability and the experience to highlight the issues concerning workers throughout Greek territory and put their rights at risk. The knowledge and experience of GSEE is up to date and constant, as it is fueled by (i) the 146 second-degree associations which are its members (79 Labour Centers and 67 Federations) and their first-degree trade unions being its members and (ii) the data from the functioning of the workers' and unemployed persons'

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14 GSEE Press Release 12.5.2021 https://gsee.gr/deltia-typou/%cf%80%cf%81%cf%89%cf%84%ce%b1-%cf%83%cf%87%ce%bf%ce%bb%ce%b9%ce%b1-%cf%83%cf%87%ce%b5%cf%84%ce%b9%ce%ba%ce%b1-%ce%bc%ce%b5-%cf%84%ce%b9%cf%83-%ce%ba%cf%85%ce%b2%ce%b5%cf%81%ce%bd%ce%b7%cf%84%ce%b9/

information Structures of the Confederation (GSEE information Center for Workers and Unemployed, Information and Consulting Network of Workers and Unemployed of GSEE Labour Institute, ANTI-COVID 19 Platform).

Moreover, the mandatory application of teleworking to a large proportion of workers, as a means of tackling the pandemic, has highlighted a key problem to the detriment of workers, being inherent to this widely flexible form of work. This is an uncontrolled extension of the working time and on call work at the employer's disposal, with all the obvious adverse effects on workers, including workers with false self-employed contracts for the provision of work or services.

4.2. In this context, GSEE published in March 2021 its comprehensive proposal on the regulatory framework for teleworking, sent to the national employers' organizations and the Government, inviting them to a social dialogue[15]. In forwarding its Proposal, GSEE underscored the main points whereupon the required legislative initiative on behalf of the State should focus, as follows:

- The legislative regulation and protection of the Right to Disconnect from the information and communication technology tools used in teleworking by workers is an urgent duty of the State, as a permanent measure to tackle abusive employers' practices.

  The legislation should also:

- have the appropriate scope to include the exclusive or predominant use of information and communication technologies/systems, including work through an electronic platform, in the concept of teleworking. Teleworking outside the employer's premises refers to the work provided by information and communication technologies from the employee's home or from one or more locations throughout the working time or part of it, on a regular basis. A 'teleworker' refers to a worker with a contract or employment relationship for which he/she makes exclusive or predominant use of information and communication technologies/systems and carries out this work from home or from one or more locations, outside the employer's premises. The concept of "teleworker" also includes employees working through an electronic platform.
- set minimum conditions for the implementation and enforcement of the right to disconnect, and adopt effective measures concerning workers and trade unions/representatives.
- ensure the application of the right to disconnect to all workers, regardless of their employment status, their activities and the sector (public or private) in which they are employed. Special emphasis should be placed on the most vulnerable workers and those with care responsibilities.
- effectively prevent employers from requiring employees to be directly or indirectly available, or accessible, outside the agreed working hours. In addition, workers who belong to the staff should avoid contacting or communicating outside collectively agreed working hours with their colleagues on labour issues.
- be clear that the time when a worker is available or accessible to the employer is working time and to ensure that the right to disconnect is not only linked to working time but also to workload and workload assessment.

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[15] See Proposal for GSEE on the regulatory framework for teleworking (in Greek)

https://gsee.gr/deltia-typou/%ce%bc%cf%80%cf%81%ce%bf%cf%83%cf%84%ce%b1-%cf%83%cf%84%ce%b9%cf%83-%ce%b5%ce%be%ce%b5%ce%bb%ce%b9%ce%be%ce%b5%ce%b9%cf%83-%ce%b7-%ce%b3%cf%83%ce%b5%ce%b5-%ce%b3%ce%b9%ce%b1-%cf%84%ce%b7%ce%bd-%cf%80/

https://gsee.gr/deltia-typou/%ce%bf%ce%bb%ce%bf%ce%ba%ce%bb%ce%b7%cf%81%ce%b7-%ce%b7-%cf%80%cf%81%ce%bf%cf%84%ce%b1%cf%83%ce%b7-%cf%84%ce%b7%cf%83-%ce%b3%cf%83%ce%b5%ce%b5-%ce%b3%ce%b9%ce%b1-%cf%84%ce%b7-%cf%81%cf%85%ce%b8/

- ensure that all workers are fully informed of their working conditions in general, and in particular of all elements related to the implementation and enforcement of the right to disconnect.
- assign a role to the social partners, as well as to the data protection supervisory authorities, to ensure that any surveillance/monitoring tools are used only when necessary and in an appropriate manner, in order to guarantee the right to privacy and data protection of workers.
- make sure that all (digital) vocational education and training activities be regarded as an employment activity and be carried out during agreed working hours.
- ensure that workers, including trade unionists/representatives of workers, who use the measures/means to implement and exercise their right to disconnect, do not face adverse consequences such as dismissal or other retaliation.
- ensure that workers and their trade union/labour representatives have adequate and rapid access to judicial and administrative procedures to fight against any relevant unlawful and discriminative treatment.

4.3. During the implementation of pandemic response measures, teleworking was used as a working method in both the public and private sectors, as mentioned in the national Report. In June 2021, Article 67 of Law 4808/2021 regulated anew teleworking by law. Until then, teleworking was regulated mainly in the national context by the provisions of the National Collective Bargaining Agreements that have incorporated critical European framework-agreements such as telework (National Collective Bargaining Agreement 2006-2007, Article 4), stress-at-work (National Collective Bargaining Agreement 2008-2009, Article 7) but also individual arrangements such as accessibility of employees with disabilities to the use of Computers and the familiarity of employees with the new information and communication technologies (National Collective Bargaining Agreement 2008-2009, Articles 14, 15), and later with provisions by law (L. 3846/ 2010, Article 5).

Although the article 67, L. 4808/2021 contains crucial provisions for the provision of teleworking, such as the recognition of the right to disconnect (para. 10), the primarily voluntary nature of its enforcement, with exceptions (para. 3), the taking over of some of the cost by its provision (para. 4). However, the planned Presidential Decree (para. 12) has not yet been issued. Thus there is no legal provision on the specific rules on the health and safety of teleworking, minimum technical and organizational means to ensure the right to disconnect, the control procedure by the Labour Inspectorate, in particular regarding its access to the relevant data in order to check that working hours are observed and that labour legislation is generally respected.

5. The role of the National General Collective Agreement (NGCA) and its disempowerment as a mechanism to produce generally binding uniform minimum levels of wage and conditions of work.

5.1. The National General Collective Agreement (NCGA) has been for decades a key, integrated and autonomous system of economic and social stability and development, through the establishment of minimum levels of labour protection and practical response to the historic "social agreement" reached in 1990 between all Parties in the Parliament and the leading employers' and workers' associations (Law 1876/1990). The long-term consistency and stability in the setting of minimum wage and working conditions on equal terms for all workers in the Greek territory has contributed to the development of labour law and led to the recognition of the NGCA as an institution of economic and social progress in the country and tangible respect of the Constitution, EU and international law.

5.2. The State's direct intervention in the collective autonomy following the imposition of the specific measures, described as "structural", which took place in Greece from 2010 onwards on the basis of invoking the national interest, but in clear breach of the principles of proportionality and necessity, it resulted in the disempowerment of the fundamental institution of the NGCA and in less favorable regulation of minimum working conditions to the detriment of workers. This intervention should also be considered in combination with the insecurity governing working relations, with the increased rates of undeclared and/or flexible work, the increasing unemployment rates which make prospective workers more vulnerable to accept abusive terms of work and reduced protection, the threat of loss of full-time jobs and the acceptance by workers of flexible working conditions.

5.3. For GSEE, the abolition of the anti-labour memorandum-era laws 4093/2012 and 4172/2013 and 4564/2018, which both in principle and as a point of order, deprived the leading organizations representing workers and employers from the power to autonomously regulate and set the minimum salary/wage, striking a blow to collective autonomy through the exclusive state regulation of the "statutory", as of 2018, minimum salary/wage. Obviously, the Executive power treated the highest trade union organizations as troublesome competitors, despite the fact that their representatives experience the real and not virtual economic and social life of the country, have been democratically elected, have adequate supporting structures and are able to know well the general public and social interest of our country.

Unfortunately, this aggressive attitude, despite the declarations of respect for social dialogue and collective autonomy, seems to be continuing by preserving the State's intervention to the exclusive formation of the minimum wage of workers.

5.4. In any event, restoring the NGCA institution is in full alignment with the Proposal for a Directive of the European Commission "on adequate minimum wages". In accordance with Article 13 thereof (Proposal for a Directive) it is stipulated that *"Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so. In so doing, the Member States shall take all necessary steps to ensure that the results sought by this Directive are guaranteed at all times*[16]*."*

5.5. GSEE, fully aware of its role and responsibility in protecting and promoting workers' rights across the Greek territory and given the many challenges in the world of work having emerged and continuing to emerge while addressing the coronavirus pandemic, considers that the National General Collective Agreement should

(a) be restored on its full content and universality in terms of its economic and institutional commitment; by regulating anew and safeguarding the minimum salary and wages and re-establishing the safety base for all workers by setting the minimum levels of general economic and social protection

(b) highlight, through the results of collective bargaining, its leading regulatory role in crisis management measures and strict response to health protocols and the developments in coping with the pandemic with regard to the organization of work and the use of teleworking; anticipating and managing the changes and challenges of the digital and green transition while respecting and promoting individual and collective labour rights, with full employment as a basic condition of equality, respect for the personality, health and safety and respect for the personal/family life of workers; and

(c) be used as a means of pressure on the State to restore the institutional tripartite social dialogue, which has been completely inactive for a decade, leading to multiple unilateral State interventions in areas belonging to the regulatory and/or administrative autonomy of the national social partners.

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[16] https://eur-lex.europa.eu/legal-content/EL/TXT/?uri=CELEX:52020PC0682

https://eur-lex.europa.eu/legal-content/EL/HIS/?uri=CELEX:52020PC0682

5.6. It should be noted that since 2013, a stable provision has been included in National General Collective Agreements with the following content:

"Wage bargaining conditions. The contracting parties explicitly agree that if, during the application of (t)his National Collective Bargaining Agreement, any restrictive provision imposed by legislative intervention on the contents of NGCA of the years 2010-2011-2012 be lifted anyhow, then direct negotiations will be initiated to determine the wage conditions of (t)his NGCA".

5.7. It should be underscored that the content of the National General Collective Bargaining Agreement is not unequivocally economic. The National General Collective Bargaining Agreement has been a leading tool for adopting regulatory provisions on terms of human rights equality, even before the State itself regulates these issues (within the framework of national regulations, but also in the context of the transposition of European Directives.

For example, important minimum standards of work for the promotion of gender equality, maternity protection and reconciliation of family and work life, with universally binding application to all workers in the Greek territory, were agreed, after collective bargaining, as terms of the National General Collective Agreement (NGCA) and were recognized as pioneering, especially since 1990, for the promotion of gender equality, non discrimination, maternity, parental and child protection at work[17]. It should be mentioned that recent Law 4808/2021 (OJ A'101), through which also EU Directive 2019/1158 on work-life balance for parents and carers is transposed in the national Legislation (art 24-54) adopts many of NGCA's regulatory provisions, without any reference to it. It is noted that on previous similar occasions, when national legislation adopted provisions of the NGCA, an explicit reference was made to the law[18]. Law 4808/2021 makes no reference to the NGCA, despite the fact that this provision was incorporated to the national legal framework through explicit provision in L. 3144/2003 (art.7 according to which "...article 6 of NGCA 2002-2003 is ratified and acquires the force of law..."). The same happens with the provisions of L. 4808/2021 that introduce as new, despite their inclusion in the national legal framework, the provisions of NGCAs on paternity leave (art 27) , the leave for visiting children's school (art 38), marriage leave (art 39), protection of single parents (45), time off for the care of dependants (art 42) etc. This is also a clear example of State's ignorance to the outcome of the bipartite social dialogue.

Furthermore, it is also worth pointing out that, as early as 1993, NGCA expressed a concern about racial discrimination and xenophobia, declared respect for the cultural and religious rights of workers and stressed the need to formulate and implement equal opportunity policies on recruitment, selection and job placement, as well as in education and training, irrespective of racial, ethnic, religious or cultural particularity, and the need to facilitate adaptation to the new working environment. Provisions and commitments are also being introduced to protect workers with disabilities and to adapt their working conditions by means of specific measures, measures for workers with HIV-AIDS, measures to protect the employment of workers participating in a drug detoxification program, etc.

5.8. With the adoption of the relevant provisions, a set of minimum work protection limits was created, a safety net which was endangered and continues to be jeopardized by the institutional weakening of the NGCAs by removing the possibility of regulating minimum wage levels with universal effect and thereby exercising a positive influence on other types of collective labour agreements to better regulate remuneration and working conditions through participatory processes.

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[17] https://www.gov.gr/en/sdg/work-and-retirement/terms-and-conditions-of-employment/general/national-general-collective-agreement-egsse

[18] Indicative example is the content of article 37 of Law 4808/2021 on the forms and duration childcare leave granted after the end of maternity leave, which is based on the collective agreement on that issue since 2002 through explicit term of the NGCA 2002-2003.

In this context, GSEE would like to highlight Greece's non-compliance with the decision by the European Committee of Social Rights on the breach of the 1988 Additional Protocol also, with regard to Article 22 of the rev. ESC examined under the current process.

II. Follow-up to GSEE Observations on Greece's compliance with the decision by the European Committee of Social Rights on the Collective Complaint 111/2014.

By the statement of case - letter (ref.no. 643/31.8.2018) submitted by GSEE to the Department on Collective Complaints of the ESC, the Confederation stated that (until that time) and as it concerns the ECSR decision on Collective Complaint 111/2014 and on Collective Complaints 65/2011 and 66/2011, no measure had been taken by Greece in the context of the required compliance of national legislation and practice with the proper implementation of the ESC. It should be noted that GSEE had sent an official letter as of 26.6.2017 to the Ministry of Labour pointing out the obligation to repeal the legislation found by the European Committee of Social Rights to be in breach of the European Social Charter **(see Annex No 1).**

Apart from a few exceptions of legal provisions that repealed (explicitly or non-explicitly) certain provisions which have been found to be in breach of the European Social Charter, both in the reference period (1/1/2017 – 31/12/2020) as well as to this day, Greece has systematically failed to comply with the obligations arising from the provisions of the rev. ESC. This failure is also confirmed by the fact that critical provisions, which are included in our Collective Complaint, not only have they not been abolished until now, but the legislative framework has been further deteriorated in specific areas of individual and collective labour relations.

III. Observations on specific articles

1. Article 2 of rev.ESC

1.1. Article 2 para.1

1.1.1. The European Committee of Social Rights (ECSR) decided unanimously on 23 March 2017 that the Article 2, para. 1 of the the European Social Charter is breached (reasonable duration of daily and weekly work with a gradual reduction of the latter), because of the excessive allowed limits on weekly working time and the lack of adequate guarantees for collective bargaining (as it concerns the framework within which they will be conducted).

1.1.2. Questions a) and f). The national Report does not mention neither the progress of Greece's compliance with the ascertained violations of the ESC, nor thecritical amendments of the national legal framework, which took place after the 2017-2020 reference period and until the time of its submission, given that these amendments entered into force in June 2021 by L. 4808/2021). In particular:

1.1.3. **The provision of Article 3 of Presidential Decree 88/1999 , in terms of maximum daily working time remains in force**, allowing workers to work up to 13 hours per day, thus maintaining the minimum obligatory rest period for workers at unacceptable low limits.

1.1.4. Noting that our Observations made below also concern the comments made in the national Report in question (a) on Article 4, para. 2 of the rev. ESC, GSEE would like to stress that the national Report **does not make reference to the current legal framework, whereby it is now possible to organize the working time by individual employer-worker agreement** (article 59,

L. 4808/2021)[19]. In other words, the essential term relating to working time can now be regulated

[19] **Working time has important causal link to the safety and health of workers** and is regulated both by the national and the EU law. Initially, the Directive **93/104/EC** of the Council dated 23-11-1993 laid down the basic (minimum) safety and health requirements for the organization of working time. This Directive has been transposed into national law by **the Presidential Decree 88/1999.** This Directive was amended by the Directive 2000/34, which was subsequently replaced by the Directive 2003/88. The Directive 2000/34 was incorporated into the Greek legal order by the Presidential Decree 76/2005, that amended the previous Presidential Decree 88/99.

Furthermore, the Presidential Decree 88/99 (as modified by the Presidential Decree 76/2005 and hereinafter in force) provides (Article 14) for the possibility of derogations from its provisions, **authorized only by means of collective bargaining agreements** between the most representative trade unions of employers and workers or between employers and the most representative trade unions of workers or by agreements between employers and workers' representatives at the works councils on condition that

-workers are granted equivalent periods of compensatory rest or

- in exceptional cases where it is objectively impossible to grant equivalent periods of compensatory rest, the workers concerned shall be afforded appropriate protection in accordance with the occupational risk assessment.

1. The working time arrangement (the system of allocating working time implemented by offsetting increased working hours of a period with the least hours of another period) was already legislated in the national law, by Article 42, L. 3986/2011 (Government Gazette A'152) replacing Article 7, L. 3846/2010 (Government Gazette A' 66).

In companies with contractual working time up to 40 hours per week, it is allowed, for a period of increased employment, for a worker to be employed 2 hours per day in addition to 8 hours, provided that the additional hours are deducted from the working hours of another period. Instead of reducing working hours, an equivalent daily rest or a combination of reduced hours and rest days may be granted to workers

2. **Two working time arrangement systems were envisaged** in national law :

(a) **on a six-month basis** (the period of increased employment and the corresponding period of reduced employment may not exceed 6 months per year)

(b) **on an annual basis** (up to 256 hours from the total working time within one (1) calendar year may be broken down by an increased number of hours over periods not exceeding 32 weeks per year; with a corresponding reduced number of hours worked for the remainder of the calendar year)

3. Based on the legal framework in force until June 2021 (when L. 4808/2021 was put in force), a worker is entitled to refuse taking on additional work, if he/she is unable to perform it and said refusal is not abusive. This refusal by a worker is not a reason to terminate the employment contract

4. In any case, even during periods of increased employment, the provisions of the legislation on **compulsory daily and weekly rest** must be adhered to. It is therefore prohibited to provide work continuously (all 7 days of the week) even if it is for a limited period of time. Similarly, the daily rest should be provided. In particular, for each period of twenty-four hours (24 hours), the rest may not be less than eleven (11) consecutive hours (Article 3 of the Presidential Decree 88/1999, as modified by L. 4093/2012). The daily and weekly rest provisions are mandatory provisions of both domestic and EU law

5. According to the legal framework in force during the period 2017-2020, the implementation of the settlement system **is defined as follows:**

- By **operational collective agreements** or
- By an **agreement of the employer with a trade union organization** or
- By **an agreement of the employer with the works council** or
- By **an agreement of the employer with an association of persons** (the association of persons is set up by at least 25% of the employees in the undertaking over 20 employees and 15% if the number of employees is maximum 20 employees. For the rest, the provision of the sub-paragraph cc`of the paragraph 3 of article 1, L. 1264/1982 shall apply
- By enteprise **or sectoral collective agreements, another arrangement system** may be set **up** depending on the specificities of the enterprise or the sector .

6. It should be noted that the possibility of working time arrangement through an agreement concluded by the employer and an **association of persons**, given their role, was a provision **which should have been abolished**. As we have pointed out on several occasions, the representatives of the spurious formations of the " associations of persons" do not enjoy any trade union guarantees, which prevents them from operating independently against the employer, making them **the employer's figurehead.** In this context, it is necessary to abolish the associations of persons and their ability to conclude binding agreements with the employer. It is a characteristic feature that the International Labour Organization's Committee on Freedom of Association (CFA), examining the Complaint and the observations submitted by GSEE (case 2820), has repeatedly called for the provisions on associations of persons to be revised, following social dialogue, in order to safeguard the role of trade unions in free collective bargaining.

not by a collective agreement, but on the basis of individual employment contract,where the employer is the dominant party. With this provision, the application of the working time regulation system is now essentially the employer's managerial prerogative. Therefore, one more tool is granted by virtue of law to further make work more flexible and to avoid paying overtime work. The worker's request, if any, is of non substantial importance, since, in view of the existing inherent inequality in the employee-worker relationship, under no circumstances, particularly in the present circumstances of precarious employment, will the worker be able to refuse the employer's proposal to request a working time arrangement , since, at this level - and without the involvement of a trade union - the employer is the dominant party and will be able to impose his will on the worker. This means that, even in normal circumstances, the required request by workers (for arrangement) will most often not be the result of free will, but of enforced action, due to the existing employer-dependent relationship or the accompanying threats (dismissal, adverse change, etc.).

The condition set by the provision referred to above, i.e of the non existence of a trade union organization or the non agreement between a trade union organization and an employer, in order to agree to an arrangement with the worker individually, does not change the situation since in Greece about 99,9 % of the enterprises are small and medium-sized (SMEs), where, because of the low number of workers , there are no trade unions.

This will allow working time to be regulated and be taken over by employers, who will be able to make arrangements as they see fit. It is clear that this regulation is reversing mandatory rules of national law which safeguard the eight-hour schedule and is also in conflict with EU law.

The results of the above mentioned provisions in force are as follows:

- The trade unions are being by-passed, their collective autonomy is being violated and their trade union action and functioning is damaged.
- Trade union freedom is affected
- No new jobs will be created
- There will be a reduction in the remuneration of workers, through the non-payment of their extra work, during periods of increased employment
- With the weakening of the Labour Inspectorate (see above under point I.3) and the absence or difficulty of controls, this measure will in fact lead to a breach of the limits on daily and weekly employment allowed and will circumvent the 8-hour limit.

1.1.5 **GSEE would also like to report abusive practices already beginning to occur, and indeed on the part of the State,** with regard to the possibility of individual agreements to regulate working time by way of derogation, in particular, from the regulations on working time limits which constitute content of collective agreements with binding legal effect. . In particular, amid the tourist season and the intensification of working conditions and serious and multifaceted employers' unlawful behaviour, the Ministry of Labour with its Circular dated 7 July 2022 [20] concerning the provision of "clarifications" on the implementation of the national sectoral Collective Agreement of tourist and food-serving establishments, which had been declared by a

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7. The (previous) system of working time arrangements had not been widely implemented . The reasons are (a) that trade unions, in carrying out their institutional role, are protecting the legal working time, (b) that employers where there is a need for additional work take recourse to **overtime, with a low remuneration (-pay for overtime: hourly rate + 20% surcharge, -overtime pay, up to 120 per year: hourly rate + 40% surcharge, -overtime pay, over 120 hours per year: hourly rate + 60% surcharge, - for each hour in exceptional overtime: hourly wage + 80% increase), (c) labour fraggmentation,** (d) **flexible forms of employment (** part-time work, rotation, etc.) leading to labour intensification. It is well known that employers already have all the tools to impose flexible and informal labour relations. Moreover, given the lack of adequate Labour Inspection's controls, a large proportion of employers benefit from high unemployment and labour market unlawful practices rates , already leading to shrinking of labour rights

[20] https://www.e-nomothesia.gr/kat-ergasia-koinonike-asphalise/egkuklios-64427-7-7-2022.html

Ministerial Decision as generally binding (on 22/6/2022) for all workers in the sector, despite the explicit regulation and safeguarding of five-day work, interferes into collective autonomy and its effects and "gives direction" to the employers for the possibility of six-day work by individual agreements, "for personal or family reasons", deliberately misinterpreting and, in violation of the collective agreement, the provision allowing flexible working arrangements to parents of children up to 12 years of age or carers (Article 31 L. 4808/2021, Article 9, EU Directive 2019/1158). Although the response by GSEE and the competent Panhellenic Federation of Tourism and Food Workers has been immediate[21] and led to the withdrawal of this Circular , there are serious complaints about the practical use of this approach by employers, particularly in island regions, where workers , in many cases, do not have access at all to a local Labour Inspectorate Department.

1.1.6. On the issue of maximum daily, weekly and annual additional work limits (overtime work, see below the Observations in Article 4, para. 2 of the revised ESC)

1.1.7. Further to what was mentioned in point I.4, on the digital transition challenges in job protection and **in the protection of the right to a reasonable daily and weekly working time for workers on digital platforms**, the national Report makes no reference to Article 69 of L. 4808/2021, which regulates the contractual relationship between digital platforms with service providers.

This new regulation introduces a negative presumption to the detriment of the existence of a dependent work (in which terms and conditions of employment can be examined by the Labour Inspectorate), since the service provider is entitled, under its contract, to use subcontractors or substitutes, to provide its independent services to any third party, to determine the time when the services are to be provided, etc. It is foreseen that only the signing of a standard contract with the above content will create a presumption at the expense of the dependent employment contract even if the reality of employment, as is usually the case, will be completely different. This is a regulation leading to a weakening of the legal position of digital platform workers and hardening their position to submit evidence, as they will be the ones to break the presumption above, in particular, where, according to the correct legal classification of their contract, the latter should be considered as a dependent employment contract.

The above mentioned legal provision is problematic since the correct legal classification of legal employment relationships is judged ad hoc and in this case, on the basis of the characteristics building the profile of legal relationships in practice.

The need to protect this category of workers requires the establishment of a presumption in favor of their dependent work and the application of the protective labour legislation framework, national, EU and international . GSEE notes that the provisions of Articles 70 (right to establish a trade union association and the right to strike), 71 (health and safety) and 72 (information on rights of collective organization and health and safety) of the L. 4808/2021 typically recognize the specific rights for service providers on digital platforms. However, in sunstance , these provisions, based on the negative presumption to the detriment of dependent employment, are rendered non applicable or at least difficult to be applied, since the current legal framework in Greece for these rights is legally based on the dependent employment contract, while the Labour Inspectorate also has competence to monitor the enforcement of labour law (and therefore these rights) only for workers with a dependent employment contract.

1.1.8. With regard to the protection of the right to a reasonable length of daily and weekly work, the national Report also fails to mention the adoption by law of **a broad definition of the status of a "managerial employee"** (Article 79, L. 4808/2021, Ministerial Decision 90972/Government Gazette B'5393/19.11.2021).

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[21] https://gsee.gr/grammateies/ergasiakes-scheseis/aparadekti-paremvasi-tou-ypourgeiou-ergasias-sto-periechomeno-tis-ethnikis-kladikis-sse-tou-episitismou/

https://www.poeet.gr/index.php/news/1178-d-t-poeet-11-07-22

https://www.poeet.gr/index.php/news/1177-d-t-poeet-08-07-22

In the Chapter with provisions for ERGANI II information system, Article 79 contains enabling provisions, including in paragraph 4(f)'. The Minister for Labour and Social Affairs is also authorized by its decision to define 'the elements whereby it is ascertained whether the worker has one of the status mentioned in case a of Article 2 of the International Convention of the International Conference of Washington, ratified by Article 1, L. 2269/1920)".

According to the law in force during the reference period 2017-2020, in accordance with Article 2, para. a'of ILO Convention C001 (Washington Convention), the employees of large undertakings shall not be subject to the time limits provisions in force, if they are employed with specific duties of supervision or management and/or in a confidential capacity, thus they exert a decisive influence on the management and development of the undertaking and are clearly distinguished from other employees. According to the prevailing strict interpretation of Article 2, L. 2269/20 "on the ratification of the Washington Convention", a "managerial employee" shall be any official who exercises over a number of employees powers belonging to the core of the employer's powers (managerial prerogative) or whose work is particularly responsible or is characterized by its superior nature. An essential characteristic of a managerial employee is that he/she undertakes a broader management and supervision and has a decisive influence on the direction and development of the employer's business

According to the case-law strict interpretation, of the above provision, from the "managerial employee" definition are excludedthe normal heads of units or directors of certain services or sectors of a business. In this context, the concept of a managerial employee requires overall employer responsibility for the whole of the undertaking and autonomy in strategic decisions, or at least important employer decisions, relating to the whole of the undertaking or at least to one, but autonomous, sector. The qualification of an employee as a managerial employee or not is a matter of proper legal status, for which the Courts are predominantly responsible to recognise.

Under the new legal provision, as also specified by the Ministerial Decision 90972/2022, the simple heads of service fall within the scope of the managerial employee (so that the provisions on working time do not apply to them) who do not exercise, as well known in practice, the powers of the core of the employer's managerial rights. In particular, Part II of the above-mentioned Ministerial Decision, mentions that:

> *'Employees holding a supervisory or management post or employed in a confidential position shall be deemed to be those employees who, in accordance with express terms laid down in their individual employment contract and which are declared the Information System 'ERGANI': A. a. Exercise the managerial right over other employees in the undertaking; or b. represent and bind the undertaking vis-à-vis third parties; or c. are members of the board of directors or equivalent management body of the employer; or d. are shareholders or partners holding more than 0.5% of the employer's voting rights;* ***or***
>
> *B. Heads of Directorates, Units or Departments or other autonomous departments of the employing enterprise specified in its organization chart, provided that the employing enterprise entrusts them with the supervision of part of the continuous, intermittent or extraordinary but always essential operation; and these workers are paid on agreed monthly salaries which are not less than the sixfold statutory minimum wage,* ***or***
>
> *C. Are remunerated on agreed monthly earnings not less than the eightfold of the statutory minimum wage.'*

1.1.9. **Observations of the National Commission for Human Rights (GNCHR)**

In its report dated 10 June 2021[22], the GNCHR makes specific Observations on the draft Law of the subsequent L. 4808/2021 as regards working time provisions, as follows:

[22] GNCHR Report on the Draft Law of the Ministry of Labour an Social Affairs, adopted by the GNCHR Plenary on June 10, 2021.Full text in greek and Summary in English

«Also, the GNCHR expresses its concern over the implementation of flexible arrangements as to employment terms for working parents, especially given that this is combined with a general flexibility as regards working time, which is promoted in other provisions of the same Draft Law. The GNCHR recommends to the competent Authorities to ensure the guarantees of transparency and objectivity, as well as the prohibition of discrimination against workers on grounds of exercising the aforementioned rights.(...)

As regards Part IV, GNCHR points out the extension of permitted overtime work accompanied with an increase of the remuneration for illegal overtime hours, which could, in fact, be rendered inapplicable, especially given the extent of authorisation granted to the Secretary-General of Labour to increase permitted overtime work above the 150 hours limit, thus rendering the once illegal overtime work, legal. However, this regulation carries risks for workers, especially if one takes into account the possibility of arranging working time, which the employer can use in order to secure, through his agreement with workers, working time beyond legal hours, while evading illegal overtime hours. In addition, another factor of particular importance in terms of endangering the workers' protection is the retreat of the to-dateexisting collective dimension of labour agreement about working time, by granting the possibility for an individual agreement between the employer and the worker about working time. Accordingly, the essential term concerning working time can now be regulated not by a collective, but by an individual employment contract, with the result that the implementation of the system of working time arrangement is now owned to the managerial prerogative of the employer.(...)

With respect to the collabourative digital platforms, a field which needs to be further regulated in the context of labour law as well, the GNCHR expresses its concern as to the proper human rights protection of workers who are employed in the context of a dependent employment relationship, in view of the introduction of the negative presumption of non-existence of dependent employment relationship, given that the employee has the right, under his contract, to use subcontractors or substitutes, to provide its independent services to third parties, to determine himself the time for providing his services etc. Hence, the mere signing of a contract with the aforementioned content will generate a presumption to the detriment of the contract of dependent employment, according to which the worker, who is in fact providing dependent employment for a platform, is called upon to overturn it, by proving the true nature of his employment as dependent. Accordingly, the need to protect this category of workers requires the establishment of the presumption in favor of their dependent employment relationship.

GNCHR welcomes the Draft Law provisions on the right to disconnect from work, while at the same time expressing its reservations as to its interaction with the concept of "on call teleworking", which, by virtue of its ambiguity, could possibly undermine the scope of the right to disconnect.

GNCHR deems that the introduction of the Digital Employment Card is a step towards the right direction, as addressing the phenomena of undeclared work constitutes a legal and legitimate aim. Nonetheless, the implementation of this provision does not seem to benefit everyone, given that it can only be applied to specific industries and companies. Lastly, the processing of a large number of personal data concerning not only their presence, but also the habits of the workers, raises serious concerns.(...)".

1.1.10. After the notification of the 5th National Report to GSEE, we were also informed of the reported statistics of the Labour Inspectorate controls, for which there is official information to GSEE since 2017[23] (See above also under point I.3 the Observation on the functioning of the

https://www.nchr.gr/en/news/1259-summary-of-gnchr-observations-on-draft-law-of-ministry-of-labour-and-social-affairs.html

[23] https://www.sepe.gov.gr/organismos/ektheseis-pepragmenon/

tripartite body responsible for the Social Control of the Labour Inspectorate (SKEEE), which was already under-operating and is no longer in operation).

1.2. Article 2 para.2

1.2.1. The national Report makes no reference to the current legal provisions amending the framework in force during the reference period 2017-2020 and introduces additional **exceptions to the fundamental rule of compulsory rest on Sundays and holidays** (Article 63 L. 4808/2021).

1.2.2. Pursuant to the new provision of article 63, L. 4808/2021, the list of undertakings for which the principle of Sunday, as general holiday day, does not apply is extended and thereto the following services/business/sectors are also granted the right to function on Sundays: postal services (courier), activities for the production of health products or nursing materials, the production, storage, transport and distribution of medical products and paramedical materials, supply chain ("logistics"), in particular the reception, storage, collection and distribution of goods, as well as the repair and maintenance of forklifts and hoisting machines,"shared services centers" of groups of companies, in particular in the fields of accounting, human resources, payroll, Computers (IT), regulatory compliance, supplies and other, data centers and in general computer centers for groups of companies, centers for digitization of archive documents, provision of call center services and customer technical support services, the production of ready-mixed concrete and quarries, the extraction of minerals and mining and security activities.'

At the same time, the cycle of companies being able to operate on Sundays is being extended following authorization from the Labour Inspectorate and by adding to the undertakings already provided for, bureaux de change which are not branches of banks, undertakings which operate seasonally or use materials, subject to rapid deterioration, in maintenance, repairing and cleaning works.

Similarly, Sunday-day operation is also foreseen and allowed in cases of carrying out examinations for degrees and diplomas acquisition; in cases of legitimate out-school activities of private schools (such as one-days and two-day conferences, seminars, conferences, rhetoric and other competitions, races, coaching, cultural events, humanitarian, charitable and environmental actions, including guards, drivers and bus attendants, cleaning staff, computer staff and the secretariat and any other worker necessary for the performance and smooth running thereof); in the case of maintenance of public or private schools, which cannot be carried out on the days when teachers and pupils are present; in cases of adaptation and upgrading of information systems.

1.2.3.The extension of the list of companies which can now lawfully operate also on Sundays leads to a significant restriction of the fundamental working time principle of Sunday – general holiday, with all the consequences impacting on the professional and private lives of workers and must be taken into account alongside the other legal arrangements (see above) pertaining to the deregulation of the working time protective framework.

1.3. Article 2 para. 3

1.3.1. The national Report makes no reference to the current legal framework, amending the framework in force during the reference period 2017-2020 and introducing a 'possibility' of annual leave taking-up until the first quarter of the next calendar year (Article 61 L. 4808/2021).

1.3.2. Considering that the annual leave of workers is a fundamental right linked to the protection of their health and safety, the national legislation, as improved in terms of the minimum protective thresholds also by the National General Collective Agreements (e.g. National General Collective Agreement 2008-2009 on the increase of the duration - days of annual leave for workers who have worked for more than 10 years in the same employer or 12 years in different employers, National General Collective Agreement 2010-2012 to ensure payment of the annual leave allowance, see I.5 above), contained basic rules such as:

(a) the provisions of the institutional framework relating to the annual leave of workers are of public order; therefore, it is not allowed or is considered void any explicit or tacit agreement or waiver on behalf of workers of the relevant claims

(b) worker's redundancy during the period of leave is prohibited.

(c) the annual leave of workers must be granted in full and on continuous days, excluding the possibility of splitting the annual leave, imposed in 2012 as part of the deregulation of the labour protection during the country's period of international borrowing (case 3 of subparagraph IA.14 of Article 1, L. 4093/2012)

(d) the annual leave must be granted and the remuneration associated with it be paid by the end of the calendar year concerned, i.e. the latest by 31st December. If an employer does not grant the leave requested by the worker, the former shall pay the remuneration of the period of leave due up to the end of the calendar year, plus the allowance, with a surcharge of 100%.

1.3.3. This last basic regulation was amended by Article 61 of L. 4808/2021, allowing for the annual leave to be granted until the first quarter of the following calendar year, i.e. by 30 March. This regulation appears to stem from the possibility of transferring the annual leave applied by the emergency arrangements in the context of pandemic response measures (e.g. Article 69, L.). 4756/ 2020, Article 132, L. 4808/2021). As it becomes obvious, this regulation now obtains permanent characteristics, changing the basic rule of exercising the right to annual leave, for reasons of workers' health and safety due to accumulation of work load, by the end of the calendar year, and it is expected to further intensify the already widespread employer's unlawful behavior in granting the annual leave. In addition, a further consequence is the added tax burden on workers, as earnings linked to annual leave will be carried forward to the following year, increasing their taxable income to amounts corresponding to the previous (tax) year.

1.3.4. Unfortunately, daily practice witnesses a high level of employer's unlawful behavior with regard to (a) the pressure on workers to split their annual leave, depending on the company's needs, (b) the non-payment of remuneration and leave allowance, (c) the setting-off of days of justified absence of workers when measuring the days of annual leave entitled (such as days specifically for seasonal enterprises, when the leave is normally granted after the end of the seasonal period (usually much later). These abusive practices are more widespread than those submitted as complaints to the Labour Inspectorate, as confirmed by the data available to GSEE through the our member trade unions.

1.3.5. National Report on point iii) as it concerns domestic workers.

We would like to refer to the key points raised by GSEE during the process of the adoption of ILO C189 (domestic workers convention). Greece should ratify ILO C 189, through a process of institutional social dialogue, where the Confederation can present its data and experience from extended abusive practices.

Inadequate attention that is paid to key aspects of the situation and working conditions of domestic workers in national law, who are employed (if not undeclared) through the so called "ergosimo"(labour stamp). The applicable labour stamp in Greece is structured as a means of payment of occasionally employed workers and not as a means of insurance or of combating undeclared work.

"Ergosimo" was institutionalized by Law 3863/2010 (OJ A' 115) as a means to pay wages and social security contributions to contingent workers. The 'reasoning report' of the initiating law does not refer to combating undeclared work as a reason for issuing an "ergosimo", but only 'to insure even the most atypical and temporary types of employment.' According to the initiating law, "ergosimo" appertains to the following categories: (a) domestic work, such as home cleaning, gardening, maintenance services, private lessons, baby-sitting, elder care, disabled-people care, aestheticians, and nursing; and (b) agricultural work. "Ergosimo" is bought by the employer, for a

minimum payment of €5 and is given to the employee, who cashes it, and keeps the net wage while the social insurance contribution (employers and employees) is withdrawn automatically [24].

Important gaps of national legislation as it concerns domestic workers' terms of work:

i) Workers through "labour stamp" are not substantially covered by labour legislation.

ii) The difference between live-in and live-out workers should be clarified in national legislation, given the practical impact of this distinction on basic working terms (for example, working hours). Considering the special working conditions of live-in workers and those employed part-time by numerous employers and the fact that insurance coverage is not retroactive in cases of undeclared and illegal employment, special provisions and mechanisms should be included to ensure access to social security benefits and regular remuneration, also ensuring the legality of employment.

iii) The duration of breaks and the weekly rest period should also be specified, as laid down in the national law.

iv) It should state explicitly that food and accommodation have to be provided in the case of live-in work.

v) National legislation should explicitly provide that domestic workers should be paid in accordance with any collective agreement that provides for a more favourable remuneration for their work. It should be ensured that wages are paid in money, including for live-in workers, whose board and lodging should not to be considered as remuneration, but rather as a provision to meet the employer"s needs better and to offset the constant, immediate and daily dependence of the workers on their employer and their way of living.

vi) Measures should be taken to ensure equality of treatment between domestic workers and other wage earners in respect of OSH.

vii) Special measures on the protection of domestic workers should me implemented to ensure that domestic workers recruited or placed by employment agencies, particularly migrant domestic workers, are effectively protected against abusive practices. These agencies must be established and operate legally, and must be subject to regular and rigorous inspection.

viii) The overwhelming majority of domestic workers are women, mostly migrants or refugees, who suffer social exclusion and work mostly informally beyond the scope of national labour legislation and enforcement mechanisms.

ix) Migrant domestic workers should be protected against repatriation or expulsion in case their employment contract or residence permit finish because of employers' failure or unlawful behaviour on the legal obligations for declared labour and social security coverage.

x) Effective protection of affected domestic workers by the Labour Inspection should be provided, given that workers through labour stamp are in law and practice excluded from access to Labour Inspection. Especially for migrant workers, the State must facilitate their access to Labour Inspection alleviating language obstacles (see also GSEE Observations on art,. 26 rev ESC as it concerns the improvement to submit patterns for apparent and violence only in greek).

xi) Domestic work is considered as atypical and excluded, by legislation and practice, from labour law and important social security provisions. There is a need to put a stop to the atypical nature of this employment and provide incentives for employers to register their domestic workers, for example. by offering tax incentives (deduction of these expenses from taxable income).

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[24] ILO Diagnostic Report on undeclared work in Greece, 2016 pg 45, 69

https://www.ilo.org/emppolicy/pubs/WCMS_531548/lang--en/index.htm

See also Supporting the implementation of the roadmap on tackling undeclared work in Greece

https://www.ilo.org/employment/units/emp-invest/WCMS_481007/lang--en/index.htm

1.4. Article 2 para. 4

1.4.1. On the basis of the data available to the GSEE from our members – trade unions' organisations and from the operation of our Structures for free of cost information to workers and unemployed persons (Information Center for Workers and the Unemployed (KEPEA)/Employees' Information Center of GSEE Labour Institute), together with the social turmoil faced with the threat of pandemic and its spread, and the simultaneous increase in work accidents and loss of lives, we would like to emphasize the State's obligation to restore where needed, and further strengthen the regulatory framework for employees' Health and Safety and on the other hand, for the Labour Inspectorate (but see above under I.3.).

1.4.2. GSEE underlines that it considers that Greece has not yet complied with the the European Committee of Social Rights ruling on the Collective Complaint 30/2005 (IMDA against Greece).

1.4.3. With regard to the current institutional framework on Health and Safety to ensure fair working conditions, by eliminating risks in intrinsically hazardous or unhealthy professions and, where such risks have not yet been eliminated or reduced sufficiently, to adopt measures either to reduce working hours or to grant additional paid leave to workers in these professions, GSEE would like to make the following basic observations related to the application of Article 2, para. 4 but also Article 22 of the rev.ESC:

- The rise of work accidents is steadily increasing[25].
- Risk assessment and appropriate measures are not feasible as there is no permanent ad hoc structure at central level in the Ministry of Labour for planning and coordination, on the basis of a continuous assessment of data and results, measures and actions on Health and Safety at work, in whatever sector it is provided (public, private, agricultural and maritime work). GSEE has submitted specific proposals for the operation of this structure[26]. This proposal by GSEE is inextricably linked to the need to regulate the process of setting up and operating an Body for Occupational Hazard Insurance, as an insurance Institution for occupational morbidity (work accidents and occupational diseases), in the context of the national social security system functioning and in line with the example of many other European States
- The critical Judgment Committee for the arduous and unhealthy occupations is not convened on a regular basis, whereas it should operate consistently and smoothly[27]. The care for the health and safety of workers working under unhealthy and hazardous conditions, both in specific workplaces and independently of businesses or workplaces, is a permanent issue requiring the State to be constantly vigilant in terms of restoring working conditions and occupational risk during work; it should also be vigilant in terms of social security coverage and care and compensation for the risk threatening and/or incurring damage to workers' health (physical and mental).

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[25] https://gsee.gr/deltia-typou/28-%ce%b1%cf%80%cf%81%ce%b9%ce%bb%ce%af%ce%bf%cf%85-%cf%80%ce%b1%ce%b3%ce%ba%cf%8c%cf%83%ce%bc%ce%b9%ce%b1-%ce%b7%ce%bc%ce%ad%cf%81%ce%b1-%ce%b3%ce%b9%ce%b1-%cf%84%ce%b7%ce%bd-%cf%85%ce%b3%ce%b5%ce%af/

[26] https://gsee.gr/deltia-typou/%ce%b5%cf%80%ce%b9%cf%83%cf%84%ce%bf%ce%bb%ce%b7-%ce%b3%cf%83%ce%b5%ce%b5-%cf%83%cf%84%ce%bf%ce%bd-%cf%85%cf%80%ce%bf%cf%85%cf%81%ce%b3%ce%bf-%ce%b5%cf%81%ce%b3%ce%b1%cf%83%ce%b9%ce%b1%cf%83-%ce%ba/

[27] Greek National Commission for Human Rights, Proposals on the review of the status of arduous and unhealthy occupations and related health and safety issues at work

http://nchr.gr/images/pdf/apofaseis/ergasia/EEDA_BAE.pdf

- In order to assess the situation and take appropriate measures, **it is necessary to set up a National Research and Reference Center for measurements on the Identification of Harmful Factors for occupational health and safety**, by reinstating the Ministry of Labour's applied research laboratories - which are now into desuetude for years - and by exploiting specialized scientific potential, in liaison with ELINYAE (which, according to art 128 of L. 4808/2021, is the official consultant of the State in Health and Safety issues and is administered by the national social partners), as well as with public laboratories and research centers in the field of occupational health and safety in our country. The establishment of this critical body is set to fill the gap in the non-execution and non-documentation/reporting of measurements determining workers' exposure to various health-related factors; consequently, the lack of supervision and protection of workers' health by Greek companies.
- A reliable system for reporting and recording occupational morbidity (occupational diseases and accidents) and the system for monitoring, evaluating and using data on the basis of the common European standards ESAW and EODS respectively, Eurostat, are therefore necessary. Provisions for appropriate recording work accidents by the police where the immediate presence of the Labour Inspectorate is not possible.
- Given that Greece is also exposed to extreme weather conditions, exacerbated by climate change, the State's negligence to introduce into legislation on Health and Safety of Workers explicit regulations on employers' obligations and, in particular, prohibitions to prevent strain on workers and to regulate their working conditions in cases of exposure to severe weather phenomena (heat, cold, etc.) is unjustified. Such regulations should be accompanied by severe sanctions and intensification of preventive and timely controls by the Labour Inspectorate. So far, the Ministry of Labour has been restricted to issuing Circulars which are important but are deprived of the legal force and the importance of a legislative regulation and of sanctions in the event of its violation[28].
- The amendment of L. 3789/1957 on Work Regulations is crucial with a view to make mandatory the content of the Health and Safety of Workers chapter and in the light of experience from coping with the pandemic. It should be noted that in the case of measures to prevent and combat violence and harassment at work, in the light of C190, and whereas these issues are inextricably linked to the health and safety at work dimension, the L. 4808/2021 (upon ratifying C190) by Article 11, only makes mandatory the disciplinary procedure within the Work Regulations, and could extend this obligation to all provisions on the health and safety of workers.
- It is crucial to ensure workers participation during the Labour Inspectorate checks on Health and Safety, in the context of the Article 16, para. 7 of L. 1264/1982 with the possibility of Labour Centers (2nd level trade union organisations with local coverage) authorizing a representative of the Federation concerned. To establish a procedure for sending reports from trade unions twice a year with a notification regarding the targeting

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28 https://gsee.gr/deltia-typou/%ce%b1%ce%bd%cf%84%ce%b9%ce%bc%ce%b5%cf%84%cf%8e%cf%80%ce%b9%cf%83%ce%b7-%cf%84%ce%b7%cf%82-%ce%b8%ce%b5%cf%81%ce%bc%ce%b9%ce%ba%ce%ae%cf%82-%ce%ba%ce%b1%cf%84%ce%b1%cf%80%cf%8c%ce%bd%ce%b7/

https://gsee.gr/deltia-typou/%cf%85%ce%b3%ce%b5%ce%b9%ce%b1-%ce%ba%ce%b1%ce%b9-%ce%b1%cf%83%cf%86%ce%b1%ce%bb%ce%b5%ce%b9%ce%b1-%ce%b5%cf%81%ce%b3%ce%b1%ce%b6%ce%bf%ce%bc%ce%b5%ce%bd%cf%89%ce%bd-%cf%83%ce%b5-%cf%83%cf%85%ce%bd-4/

of the Labour Inspectorate Health & Safety at Work audit with a specific chapter in the Labour Inspectorate annual report on the number and type of labour reports and the response of the audit work. The fulfillment of the basic request to safeguard and strengthen workers' participation will be significantly impeded, as the right to do so is one of those suspended in the event of non registration of the trade union in the State register, while the right to social participation and control in the Labour Inspectorate work is abolished from its transformation into an independent authority (see GSEE Observations in point I.3 and in Article 5 of the rev.ESC).

1.5. Article 2 rev. ESC and health sector/care workers

1.5.1. The care sector in Greece faces major challenges mainly staff shortages, low pay, excessive hours of work, demanding working conditions, and underfunding, largely due to social and health budget cuts during the economic crisis.

1.5.2. Greece features at the bottom end of EU rankings, in terms of public funding, and adequacy of health coverage and benefits. Highlighting the key role of a skilled, highly trained, motivated workforce, GSEE also emphasises that long-term care services remain underdeveloped and the primary care network is not sufficiently developed, as noted by the EU Social Protection Committee in its 2021 report[29]. Exacerbated by the COVID-19 pandemic, these problems only deteriorate under the impact of the war in Ukraine and the energy crisis.

1.5.3. In this context, the ratification by Greece, of the European Social Charter as well as of ILO C149 (LD 1672/1986, OJ A' 203) commits the State to implement with adequate measures the minimum standards of work and LTC workers, avoiding interpositions in collective autonomy and the determination of working conditions, to protect workers in the sector from arbitrary employers' practices by effective labour, and health and safety inspections while fostering stable structures of institutional social dialogue, both for the public and the private sector.

1.5.4. Regrettably, Greece has failed in observing obligations arising from its international labour rights' protection obligations, which adversely affects nursing personnel[30].

Important aspects of this non – observance are manifest in the nursing personnel's labour rights, such as the unilateral deterioration of payment and terms of work in both the public and the private sector, the augmented managerial prerogative, resulting particularly from the absence of sectoral collective agreements (the last was concluded for the private sector in 2016), the employers' non observance of their obligation to provide for minimum personnel numbers, the work overload and the often inhuman conditions of work during the COVID 19 pandemic. In a context of structural flows, excessive hours, shift rotation, unattractive pay, understaffing, arduous working conditions as well as recruitment and training deficits place a heavy personal and professional burden on nursing personnel; female nurses in particular[31]. Women remain the principal caregivers both in formal and informal settings.

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[29] https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8432&furtherPubs=yes

https://ec.europa.eu/social/main.jsp?advSearchKey=SPCannualreport&mode=advancedSubmit&catId=1307&doc_submit=&policyArea=0&policyAreaSub=0&country=0&year=0

[30] The State's failure to observe these obligations, along with non-sufficient and inadequate measures to combat undeclared work and the lack of integration policies for migrants and asylum seekers, should be considered in conjunction with the reluctance of Greece to ratify Domestic Work Convention 189 (2011).

[31] Laura Addati, Umberto Cattaneo and Emanuela Pozzan. 2022 Report on "Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work". ILO, Geneva

1.5.5. Shortcomings in adequate labour inspection will further deepen due to the recent detachment of the Labour Inspectorate, from the competent ministry and its transformation to an independent body, free of accountability and social control processes (see above under point I.3) Also public sector workers' face important labour control deficits.

GSEE would like to emphasise certain critical aspects regarding pay and working conditions of nursing personnel in both public and private health sector summarised as follows:

-Over the last years, as mentioned above, due to the economic crisis in Greece, there have been major budget cuts regarding employment of new nursing staff. Understaffing of hospitals and inadequate recruiting of professionals combined with shift work and long working hours poses a heavy personal and professional burden on nursing personnel and undermines health services and the wellbeing of patients[32]. According to current main legislation, nursing staff in hospitals works in 3 consecutive 8-hour shifts In particular, the morning shift currently engages 2 to 4 nurses while afternoon and night shifts only one nurse. In previous years, morning shifts at public hospitals were staffed by 4-6 nurses while the afternoon shift by 3-4 and the night shift by 2-3 nurses according to the nature and severity of cases at the various departments.

-The heavy toll on nursing personnel working irregular shifts in Greece is evinced by a study [33] finding, inter alia, that female nursing personnel, and personnel suffering from a chronic disease, were most affected by rotating shifts as they had elevated scores on the majority of the Standard Shiftwork Index (SSI) scales, such as sleep, chronic fatigue, digestive and cardiovascular problems, cognitive and somatic symptoms, languidity, and neuroticism. Nurses with longer working experience and those with family responsibilities scored higher on some of the SSI scales, such as sleep disorders, shift time anxiety, social and domestic disruption, burn out and feelings of disengagement and deprivation[34].

-As already mentioned, important difficulties to collective bargaining and the conclusion of new sectoral collective agreements, were aggravated by anti-labour measures that led to the expiry of former collective agreements and the employers' (abusive) advantage to pay nursing personnel in private hospitals with the minimum wage[35].

-GSEE also expresses concern regarding widespread precarious care work among mostly undeclared, mostly female domestic care workers who engage in live -in care, mostly coming from migrant groups or mobile citizen categories. Unskilled female migrant carers are hired by the dependent's family on the basis of an oral agreement and not of a formal employment contract. Exacerbated by lack of access to formal care and economic necessity, this grey area calls for a cohesive policy approach, under the light of ESC provisions, along with the provisions of the ILO C189 Domestic Workers Convention.

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[32] Zogopoulos Panagiotis, Ioanna Galatianou, Panagiotis Kokkalis, Ioannis Ydraios, Georgios Tsanis and Aggelos Leventis, 4th International Conference on Nursing & Healthcare "The lack of nursing staff at public hospitals in Greece: The effects of economic crisis" .

https://www.omicsonline.org/proceedings/the-lack-of-nursing-staff-at-public-hospitals-in-greece-the-effects-of-economic-crisis-37218.html

[33] Korompeli A, Muurlink O, Tzavara C, Velonakis E, Lemonidou C, Sourtzi P, "Influence of shift work on Greek nursing personnel" *Saf Health Work.* 2014 Jun;5(2):73-9. doi: 10.1016/j.shaw.2014.03.003.

[34] Malliarou Maria, Zyga Sofia, Fradelos Evangelos, Sarafis Paulos, Measuring Death Attitude and Burnout of Greek Nursing Personnel, American Journal of Nursing Science. Special Issue:Mental Health Care: Aspects, Challenges and Perspectives. Vol. 4, No. 2-1, 2015, pp. 74-77. doi: 10.11648/j.ajns.s.2015040201.23 http://www.sciencepublishinggroup.com/journal/paperinfo?journalid=152&doi=10.11648/j.ajns.s.2015040201.23

[35] While the rev ESC and C149 emphasize the role of collective bargaining and full participation of nursing personnel and their representatives in determining work conditions, no sectoral collective agreements were concluded in the private health sector since 2016. The lack of sectoral collective agreement (also) in this sector was one of the major impacts of the austerity anti-labour measures imposed on collective labour rights since 2010, having a further impact on the protection of workers individually as it concerns their terms of work.

-Atypical and undeclared work in hospitals, and in home care still remains extensive, with no improvement. Across Europe, the percentage of the population who provides informal care at least once a week as a proportion of the total population aged 18 or above shows the highest prevalence in Greece, where over 30% self-report as informal carers [36]

In this context, GSEE underlines the reluctance or non-willingness of Governments and/or employers' organisations to engage to an institutional on-going social dialogue on the due labour and social security rights and obligations related to care work and health services. Despite lessons from COVID-19 pandemic regarding the key role of long-term care workers, medical and nursing personnel in adequate levels of public health and care provision, Government appear unwilling to foster and engage in institutional social dialogue on the adequate and effective organisation of human resources and the need for social investment in health and LTC. This attitude endangers public interest and should be urgently addressed by institutional tripartite social dialogue, guided by the principles of international standards of work.

Given the above mentioned, GSEE expresses great concern regarding persisting gaps in protection and rights of long-term care workers, including nursing personnel, and paid and unpaid (family) care providers.

2. Article 4 rev. ESC

2.1. Article 4 para.1: In its Decision dated 23 March 2017 on the Collective Complaint 111/2014, in the context of its decision in the Collective Complaint 66/2011, the ECSR concluded unanimously that Article 4, para. 1 of the ESC was violated (right to a remuneration able to ensure a decent standard of living for workers and their families), as regards (i) the reduction of the minimum salary/wage for workers under the age of 25, introducing further discrimination against them on the grounds of age, recognizing also an infringement of Article 1, para. 2 of the ESC, (ii) the formation of the minimum salary/wage (under the legislation, as referred to in the collective complaint 111/2014) of less than 60% of the average salary, (iii) unequal treatment, in terms of seniority increase, of the long-term unemployed over 25 years of age.

2.1.1. Question d). The national Report does not mention nor the progress of Greece's compliance with the ascertained violations of the ESC, nor any critical amendments to the national legal framework, which took place after the 2017-2020 reference period until the time of its submission.

On the issues referred to in the national Report, GSEE notes the following:

2.1.2. **The age-based discrimination based on the 25ο year of age of workers,** stipulated by explicit legislative provisions (Article 1, para. 2 Ministerial Council Act 6/2012, Article I.A.11.3 L. 4093/2012) as to the level of the minimum salary/wage (which was also the subject of a unanimous decision to breach Article 1, para. 2 of the ESC), was not abolished by an explicit provision of law, but in practice, through the entry into force in September 2018 of the procedure for determining the minimum salary/wage by the Government (Article 103 L. 4172/2013, Government Gazette A'167), which was completed at the end of January 2019[37]. By the Ministerial

36 European Commission, DG for Employment, Social Affairs and Inclusion, (2018) Zigante, V., "Informal care in Europe: exploring formalisation, availability and quality", Publications Office, 2018, https://data.europa.eu/doi/10.2767/78836

37 Article 103 of Law 4172/2013 stipulates that the new system whereby the State regulates the statutory minimum wage (for workers) and the statutory minimum salary (for employees) can be implemented after 1.1.2017 (Article 103, para. 2). This process started being implemented as of September 2018 (Article 2, L. 4564/2018 (Government Gazette A'170) and was completed with the adoption on 30-1-2019 of the Ministerial Decision to increase the (reduced) minimum salary/wage (Ministerial Decision 4241/127, Government Gazette B' 173/2019).

Decision 4241/127/2019 (Government Gazette B'173), the minimum salary was increased after 7 years, without age-based discrimination, to EUR 650 (gross) and the minimum wage to EUR 29.04 (gross). As stated in the national Report, taking into account the period during the pandemic that the minimum salary/wage was not increased and after its increase since May 1, 2022, the statutory minimum salary in Greece stands EUR 713 and the minimum wage amounts to EUR 31.85.

2.1.3. **The provision I.A.11.paragraph 3c'(iii) remains in force. Based on this provision, the long-term unemployed over 25 years of age are further treated unequally and have decreased increases due to seniority in their minimum salaries.**

In addition, the provisions on i) the reduced remuneration of working minors at the age of 15-18 year-old through special apprenticeship contracts and their exclusion from the labour legislation (except for health and safety rules) and (ii) the leave of working minors under the age of 18 who were found unanimously to be in breach of Article 7, para. 7 of the ESC (Article 74, para. 8 and 9 L. 3863/2010) remain in force and in any event have not been abolished by explicit legislative provision.

It also remains in force, and in any case has not been abolished by a legislative provision, the provision of the second Article, para. 2, L. 3845/2010 (exclusion of young unemployed persons up to 24 years from the minimum remuneration when engaged in apprenticeship contracts),

2.1.4. Critical observations by GSEE remain relevant in relation to the violation of more of the provisions of the rev.ESC under consideration, such as

-The regulation of the procedure for determining the minimum salary/wage by the State (Article 103 L. 4172/2013), followed the removal from L. 4093/ 2012(Article I.A. 11) of the long-established system of regulating minimum salary/wage with universal legal binding effect and without discrimination for all workers through the National General Collective Agreement (NGCA), concluded between the top trade unions (GSEE) and employers' organizations following free collective bargaining. Following the substitution of article 8, para. 1, L. 1876/90, the NGCAs determine, through a general application to employees across the country, the non-wage working conditions. They could even regulate the wage conditions, the basic salaries and their surcharges (e.g. marriage allowance) to levels above the state arrangement, applying though only to affiliated members of the NGCA signatory parties (GSEE and employers organisations, See I.5 above)

(ii) The only increase foreseen to remain in the minimum salary/wage was the three-year service increase, but with the suspension (in fact a ban) of any previous working service (three-year) increase completed after 14-2-2012 until the unemployment rate falls below 10%. This prohibition is still in force (Article 4 Ministerial Council Act 6/2012, Article IA.11.para.3f' L. 4093/2012).

(iii) The extra payment for the three-year of previous service on the statutory minimum salary was challenged before the Council of State by SEV (Hellenic Federation of Enterprises) (and other employers' associations) requesting the annulment of the Ministry of Labor's circular dated 18-2-2019, that provided guidance on the application of the new minimum salary of € 650,00 and minimum wage of € 29,04 respectively and which made referrence to to the current legal framework for the wage increase on periods of three-years' previous service. The Council of State in its Decision No. 148/2022, rejected the application for annulment by SEV as inadmissible on the grounds that the contested ministerial circular is not legally enforceable. The State Council accepted that the ministerial circular , apart from the Ministerial Decision on the fixing of the minimum salary and wage, also reflected the provisions in force on three-year previous service. It is therefore not the ministerial circular but the Law that creates legal obligation to pay three-year precious service allowances, since the relevant three-year service legislative provisions have not been repealed and are therefore legally binding on employers.
The clarification that the minimum salary and wage are perceived as a unique reference value (amount) means that this procedure does not affect all other benefits (three-year previous service, marriage allowance, etc.) determined by law or by another source; the amount of these benefits is determined based on the unique reference amount. These non-affected benefits include, as

mentioned above, increases due to past experience (three-year service), as defined in paragraph 3c-3f of Article 1, para. IA, Subpara. IA. 11 of L. 4093/2012 (without the age-based discriminations)

2.1.5. The reference period 2017-2020 includes, as indicated above, the commencement in 2019 of the application of the procedure for the regulation by the State of the minimum salary/wage. For that important transformation of the national legal and social framework, GSEE highlighted the following on this issue [38]:

-The increase in the minimum salary, while applying the already voted lowering of the threshold for paying income tax, will be wiped out by taxation, bearing in mind that workers are already the steady 'packhorses' and possibly the most consistent in the tax system. Workers will be asked to give back to the State almost the entire amount of the increase, as a large part of their taxable income so far will now be taxed at a rate of 22%, in line with what is currently valid. -It is unacceptable, especially after the much-vaunted typical exit from the lending Memoranda, to activate the Memorandum-based law with a provocative absence of the living wage dimension from the reference criteria of the formation of the minimum wage , namely the ability for workers to meet their living needs from their wage, given that after the State's intervention with the Ministerial Council Act No 6 in 2012 and the reductions in salaries and allowances imposed on the then in force National General Collective Agreement, combined with the explosive increase in flexible forms of employment, the purchasing capacity of the minimum wage has fallen dramatically.

-This increase is not retroactive for 2018, since it was granted one-off for 2019 (and indeed from 1/2/19 i.e. for 11 months), while there no new procedure was foreseen for increasing the minimum salary for 2019, while it was officially declared that the next procedure for setting the minimum salary/wage will take place in 2020.

-Fundamental collective acquisitions of workers are not guaranteed. This memorandum-driven mechanism for regulating the minimum salary, which was legally confirmed in August 2015 under the third memorandum, wants the State to act as the absolute regulator of workers' income in the private sector and therefore to keep disempowered the means of trade unions to negotiate, to put pressure on and finally regulate through NGCA the minimum wage . Through this State-led mechanism a large part of the social policy relating to the minimum wage is controled , such as unemployment benefits and the cost of employment programs. Something that is not allowed to be understood because the State's responsibility is enormous is that by taking employers' organizations away from the table of real collective bargaining with GSEE, they are giving employers the direction not to negotiate with all workers' organizations that sign the collective agreements in every level of collective bargaining (sectoral, professional, enteprise)

- The abolition (in practice, not with an explicit legal provision) of the shameful provision on the subminimum salary of young people up to 25 years of age is not a Government initiative, but an obligation of Greece to comply as early as 2017 with the conviction establishing an infringement of the European Social Charter of the competent Body of the Council of Europe following the complaint by GSEE in 2014. On the other handl, important violations have not been restored such as the abolition of the 12-month trial period without payment of compensation in the event of dismissal, infringements in the regulation of workers' working time, infringements in the equal treatment of young apprentices, the violation of workers' right to participate in the definition and improvement of their working conditions and conditions.

2.1.6. Question b). The Annual Report for 2022 by GSEE Labour Institute (INE-GSEE) for Economy and Employment[39]refers to the following among other critical elements:

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[38] https://gsee.gr/deltia-typou/i-gsee-gia-tin-afksisi-tou-katotatou-mis/

[39] Annual Report 2022 on the Greek economy and Employment (in Greek)

https://www.inegsee.gr/ekdosi/etisia-ekthesi-2022-ine-gsee-i-elliniki-ikonomia-ke-i-apascholisi/

https://www.inegsee.gr/wp-content/uploads/2022/07/Ethsia_Ekthesi_2022.pdf

- The combination of the effects of the pandemic, the significant increase in prices and the geopolitical developments caused by the Russian invasion in Ukraine creates new sources of economic and social instability. The Greek economy, before it managed to resume its pre-pandemic level, is facing a new destabilizing shock centered on energy, raw materials and basic food prices. This disturbance directly affects the supply side and indirectly, through the pay-as-you-go effects of inflation, the demand side, increasing the risk of a significant slowdown in the economy.
- In 2021, Greece recovered from the pandemic shock, although real GDP per capita fell below the 2019 level by about 1%. However, including the cost of living, Greece had the second lowest GDP per capita in the EU. In addition, it was the only Member State where this fundamental was below the 2007 respective level. This finding reveals the dramatic shrinking in the standard of living of the majority of Greeks.
- In the second half of 2021 consumption marginally exceeded the level of the corresponding quarter of 2019. Its development in the near future will depend on the evolution of disposable income and, above all, on the impact of soaring prices on households purchasing power.
- Despite the increase in primary government expenditure during the pandemic, social benefits accounted for 41.2% in 2021, down by 6.9 percentage points compared to 2019, the largest decline among Euro area Member States.
- With regard to workers, it is noted that, despite an improvement over the period 2016-2019, still in 2020 Greece continued displaying the highest rate of individuals who reported a failure to carry out medical examinations due to economic difficulties in the Eurozone (2%). However, the data on the unemployed are a cause for concern, where the corresponding figure –albeit clearly improved compared with the average over the previous four years (13.7%)– was still at a high 7.9% rate in 2020, the second worst performance in the Euro area
- In 2021, the employment rate among people aged 15-64 rose versus 2020 to 57.2%, well below all the other economies of the Euro area. In December 2021, the unemployment rate fell to 12.8%. The high unemployment rate and the swathe of soaring prices are putting negative pressure on the labour market, as economic poverty indicators are recording an alarming rise.
- In 2021, the evolution of salaries were not as positive as employment, because during the second and third quarter, the average salary in the economy as a whole and in the private sector had not recovered to the 2019 level and shows the potential of a significant deviation from the EU average. At the same time, the swathe of augmenting prices significantly reduces the purchasing power of salaries. The increase in the minimum salary will to some extent mitigate the fall in the purchasing power of workers, which in April 2022 skyrocketed to 18%. There is also a significant divergence from the EU in key labour market quality elements, such as the protection of workers from collective agreements.
- In particular, in the second quarter of 2021 Greece recorded the second worst performance in the EU after Austria, as the real average salary was by 4.4% lower versus the same quarter of 2019. In the third quarter the gap was reduced to -0.6%, making it the 7th worst performance in the EU. In addition, Greece is the only Member State where the actual average salary is below the 2019 level in both quarters under consideration. The overall increase in the minimum salary by 9.7% in 2022 is estimated it will only partially limit the loss of purchasing power caused by the swathe of soaring prices. In April 2022, the loss of purchasing power of the minimum salary was equal to 18% compared to 14.7% in March. The average private sector salary had lost 9.9% of its purchasing power in April 2022, while the average part-time salary was 28%. The impact of the soaring prices on the standard of living of citizens is particularly uneven.

- Similarly unequal is the remuneration of part-time workers compared to full-time workers, as well as the remuneration of women versus men , taking into account working hours. In March 2021, on average, part-time workers were employed by 76% of full-time workers time, but were only paid 38% of full-time workers pay, while women worked the same hours as men, but received 84% of their remuneration. Compared with March 2019, the full-time and part-time payroll gap may have been reduced by 3.7%, but part-time employment increased by 4.6% compared to full-time employees. In March 2021, respectively, women worked almost the same time as men, but received 16.5% lower salary. In March 2019, women again worked almost the same year as men, but received 17.5% lower average salary. Although the gap between 2019 and 2021 reflects a slight increase in women's pay, this is by no means capable of narrowing the pay gap that exists in relation to men. One of the main causes of this gap is the high employment of women in low-paid jobs. In any case, it is estimated that the current swathe of soaring prices will have an uneven impact on both part-time workers compared to full-time workers and on women in relation to men; this development will further increase the fragmentation of the Greek labour market (see also question a)in Article 4, para.3 of of the rev.ESC).
- The risk of poverty in work threatens both men and women in Greece and in the EU. More specifically, in 2020, a 7.9% of women employed in the EU and a 7.1% in Greece were at risk of in-work poverty. In men the relative percentages are higher over time. In 2020, 12% of employed men in Greece and 9.6% of employed men in the EU were at risk of in-work poverty. These findings show the general problem of the quality of jobs in Greece and the need to transform its development model. The rate of in-work poverty is also differentiated per age group. We note that the rates in Greece for the 50-64 age group before and after 2010 were particularly high. In the period 2011-2016, a 17.4% of workers aged 50-64 in our country had an equivalent disposable income below the relative poverty line, while for the same period, the EU rate was only 8%. In the period 2019-2020, the percentage of this age group decreased to 13.3%, but it is still far higher than in the respective EU percentage (8.3%). Young people aged 18-24 in Greece also face a significant risk of in-work poverty. In 2019-2020, 15% of young people aged 18-24 in Greece and 12.1% in the EU were at risk of in-work poverty. A greater convergence of rates between Greece and the EU is observed in the 25-54 age group, particularly in recent years. By way of example, in the two years 2019-2020, the rate of workers aged 25-54 at risk of in-work poverty was 9.2% in Greece and 8.8% in the EU.
- The risk of in-work poverty is much greater for part-time workers both in Greece and in the EU, with the rates in our country, however, still being, in this case, more than 2 times higher than the respective ones in the EU over the whole period considered. In Greece, the risk of poverty among part-time workers increased after 2010 to 30.3% in 2016, while in the same year in the EU the rate of some employees at risk of poverty was almost half (16.2%). In the two year-period 2019-2020, the rate of part-time workers in Greece with an equivalent disposable income below the poverty line was 20.1%, while in the same period only 9% of full-time employees were found in a similar position. In the EU, in 2020, the rates for part-time and full-time workers were 13.8% and 7.3% respectively.
- In 2021, 16 national sectoral and professional collective labour agreements , 9 local professional collective labour agreements and 182 enterprise collective labour agreements were signed. The 34 collective labour agreements (sectoral and professional) in force potentially cover around 625,000 people, representing around 27% of all salaried employees. The 182 enterprise collective labour agreements cover potentially 152,077 employees.
- The impact of the pandemic and the soaring prices impacting on the labour market and workers is dramatic. A key to avoiding instability in the upcoming period is to substantially strengthen the disposable income of households and increase sustainable employment. It is also very important to protect fundamental labour rights relating to the legal and upper limits of working time, safety and health at work, and to strengthen collective bargaining

and labour agreements. Sustainable and decent work must be the central objective of economic and social policy.

- Strengthening labour protection institutions is the most effective democratic means of supporting the resilience of the Greek economy and alleviating social inequalities. These principles were universally expressed and supported at the International Labour Organization's World Forum in February 2022 for Human-centric development and are included in its 100-year declaration on the future of decent work. It is emphasized that, especially in situations of great uncertainty, social dialogue is fundamental institution for protecting social cohesion and democracy. Collective bargaining strengthens the democratic foundations of labour markets and the confidence in the democratic values of our societies. Social dialogue and collective bargaining provide a human-centered, inclusive, resilient and sustainable development outlook

2.2. Article 4 para.2

2.2.1. The national report makes no reference to the legal framework in force under which the framework of the reference period 2017-2020 is amended (Article 4, para. 2 3, 5, 6 L. 2874/2000) **concerning overtime work** (article 58 L. 4808/2021).

According to the new provision of Article 58, L. 4808/2021, the number of legal overtime work is increased to 150 hours per year, from 120 in force in the period 2017 - 2020. At the same time, three (3) hours of legal overtime is set as a daily limit. This limit, taken together with eight hours and one hour of overtime adds up to 12 hours of daily work, without prejudice to the statutory allowed employment of up to 13 hours per day (see section III.1 above).

Furthermore, it is stipulated that for each hour of illegal (i.e. undeclared) overtime, the worker is entitled to compensation equal to the hourly rate paid, plus 120%, from the current 80%.

In addition, this provision (new paragraph 6) adds an enabling provision authorizing the Secretary-General of Labour and Social Affairs of the Ministry of Labour and Social Affairs to authorize overtime work by decisions to workers **of all undertakings and works**; In addition to the maximum permitted overtime work per year, i.e. more than 150 hours, in cases of an urgent nature, the remuneration for such overtime is set at the same rate as the hourly rate paid, increased by 60%.

This regulation extends the limits on the permissible overtime work for workers. Moreover, it increases the surcharge for illegal overtime, but in practice this increase may become inapplicable, in particular by allowing the Secretary-General to raise the limit for overtime to more than 150 hours, making legal the initially illegal overtime work, in conjunction with the arrangement of working time through individual agreement, introduced by article 59 of the same law (see above), that would lead to additional unpaid employment.

2.2.2. The national report makes no reference to the legal framework in force under which the framework of the reference period 2017-2020 is amended (Article 38, para. 2 11, L. 1892/1990) concerning **the provision of additional work by part-time workers** (article 57 L. 4808/2021).

The law in force during the reference period 2017-2020 provided for the possibility of additional work for part-time workers with a mark-up of 12 per cent (12 %) on the agreed remuneration for each additional hour of work provided. There was also no provision for work to be provided in non-continuous time.

Article 57 Law 4808/2021 adds an arrangement whereby additional work may be provided by a part-time worker, if the latter agrees so, and by non-continuous working hours in relation to the agreed working hours of the same day.

Part-time work, as is known to be particularly extensive in Greece and is most often hiding full-time undeclared work. The possibility of providing additional work by part-time workers, and even

at a non-continuous time to part-time work, completely deregulates and fragments the private life of part-time workers.

It should be noted that the GSEE's comments on this point also refer to the comments in the national Report in question b) on Article 4.para 1 of the rev. ESC.

2.2.3. **Observations of the National Commission for Human Rights (GNCHR)**

In its Report dated 10 June 2021[40] on the provisions of the draft Law of the subsequent L. 4808/2021 as regards working time provisions, GNCHR makes the following Observations :

> "Also, the GNCHR expresses its concern over the implementation of flexible arrangements as to employment terms for working parents, especially given that this is combined with a general flexibility as regards working time, which is promoted in other provisions of the same Draft Law. The GNCHR recommends to the competent Authorities to ensure the guarantees of transparency and objectivity, as well as the prohibition of discrimination against workers on grounds of exercising the aforementioned rights. (...)
>
> As regards Part IV, **the GNCHR points out the extension of permitted overtime work accompanied with an increase of the remuneration for illegal overtime hours, which could, in fact, be rendered inapplicable, especially given the extent of authorisation granted to the Secretary-General of Labour to increase permitted overtime work above the 150 hours limit,** thus rendering the once illegal overtime work, legal. However, this regulation carries risks for workers, especially if one takes into account the possibility of arranging working time, which the employer can use in order to secure, through his agreement with workers, working time beyond legal hours, while evading illegal **overtime hours. In addition, another factor of particular importance in terms of endangering the workers' protection is the retreat of the to-date existing collective dimension of labour agreement about working time, by granting the possibility for an individual agreement between the employer and the worker about working time.** Accordingly, the essential term concerning working time can now be regulated not by a collective, but by an individual employment contract, with the result that the implementation of the system of working time arrangement is now owned to the managerial prerogative of the employer. (...)".

2.3. Article 4 para.3

2.3.1 Based on the statistical data on Greece of INE research, women during the period 2008-2014, were gradually forced to leave paid work in order to meet needs that were not covered by the State and related to the care of the family, children and the elderly[41]. In 2018, 23.7% of women in the active population were unemployed, compared to 14.7% of men[42]. This is a significantly larger gap than the EU average (0.5%)[43]. Similar are the results of the INE Annual

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[40] GNCHR Report on the Draft Law of the Ministry of Labour an Social Affairs, adopted by the GNCHR Plenary on June 10, 2021.Full text in greek and Summary in English

https://www.nchr.gr/en/news/1259-summary-of-gnchr-observations-on-draft-law-of-ministry-of-labour-and-social-affairs.html

[41] During the period 2008-2014, the men employment reduced by 26.4% and that of women by 19.5%.

Especially for women, the risk of poverty and social exclusion in Greece rose to 36.7% in 2014 from 29.8% in

2008, Update, INE GSEE Edition 240, March-April 2018

[42] General Secretariat for Demography and Family Policy and Gender Equality (GSDFPGE) "Women's Unemployment", Table 3 Unemployment rates by gender 2013-2018.

[43] EIGE database EU - 28 for 2017.

Report 2020[44], which shows that the pandemic had a serious impact on young women's unemployment. Specifically, in the fourth quarter of 2020, the unemployment rate for women aged 15 to 19 exceeded 70%, when in the first quarter of the same year, it was equal to 35.6%. For women aged 25 to 29, the unemployment rate increased from 25%, in the fourth quarter of 2019, to 33% in the fourth quarter of 2020. According to INE GSEE findings, the pandemic crisis has exacerbated gender inequality, especially at a young age, in a labour market where gender equality was far from achieved prior to the onset of the crisis. Furthermore, certain gaps are still identified in the existing legislation and in its implementation in practice, that limit women's labour rights, such as the high female unemployment rate (21,50% in December 2020), gender pay gap (appr 17% in March 2021)[45], dismissals of pregnant women in the private sector in flagrant breach of the law, the absence of a minimum single maternity benefit to all working mothers and the continuous reduction of the already insufficient day-care structures for children and dependent persons. Moreover, the impact of the multiple State interventions to collective autonomy, especially as to the scope and mandatory character of both general and sectoral Collective Agreements setting uniform labour standards, resulted in the widening of the gender pay gap. The real assessment of the state of play can't be achieved due to the continuous failure to collect reliable statistics on the grounds of gender discrimination in the workplace in Greece.

2.3.2. See also above for Annual Report figures of the year 2022 by INE-GSEE.

2.4. Article 4 para. 4

2.4.1. European Committee of Social Rights (ECSR), by its decision dated 23 March 2017, unanimously concluded that there is a violation of Article 4 para. 4 of the European Social Charter (right of all workers to a reasonable notification period in case of termination of employment)

2.4.2. Question (b). The national Report does not mention neither the progress of Greece's compliance with the ascertained violations of the ESC, nor critical amendments to the national legal framework, which took place after the 2017-2020 reference period until the time of its submission, as such entered into force in June 2021 by L. 4808/2021). In particular:

2.4.3. **The provisions of article 17, para 5, L. 3899/2010 (12-month trial period) and subp. IA.12 case 1, L. 4093/2012 (notification oof termination during the trial period) remain in force.**

2.4.4. The Article 64 of Law 4808/2021 **repeals the distinction between employees and workers (white collars vs blue collars), with regard to the notification period and the dependent employment contracts.** In the legal framework in force during the reference period 2017-2020, compensation for workers fell short of the compensation granted to employees (see also Tables on page 32 of the national Report, which are no longer valid). By article 17 para. 5, L. 3899/2010 it was determined that "the first twelve months of employment on an employment contract of indefinite duration shall be deemed to be a trial period", instead of two months laid down under the (then) law as was previously the case. Subsequently, by law 4093/2012 it was stipulated (Subparagraph IA.12 case. 1) that "the termination of the employment contract of indefinite duration of a private sector employee exceeding twelve (12) months cannot occur without prior written notice from the employer...".

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[44] INE GSEE, Annual Report 2020, The Greek economy and the employment, October 2020 [in Greek] p. 10.

[45] INE GSEE Annual Report 2022

https://www.inegsee.gr/wp-content/uploads/2022/05/ETHSIA_EKTHESI_2022.pdf

Observatory – Bulletin on Economic Developments

https://www.inegsee.gr/wp-content/uploads/2022/01/DOE0122.pdf

This excessive extension of the trial period (12 months instead of the two-month period in force until then) obviously aims to circumvent the law on the termination of the employment contract complaint, since it aims to facilitate employers from granting the statutory severance pay, through "free of cost" (i.e. severnace pay) termination of contracts within the first 12 months and to replace workers made redundant by other workers; such practices are common to the staff employed as workers, in particular in manual and often arduous and dangerous work; to a large extent, these workers are foreign nationals with increased vulnerability to employers' unlawful behavior and arbitrariness.

2.4.5. The national Report makes no reference to the current legal framework under which, **in the event of an employment's contract termination with prior notice, the employer has the right not to accept the employee's services in full or in part** (Article 65, L. 4808/2021). In this case, the employee's remuneration will be paid in full until the end of the notification period. If the employer exercises this right, the employee reserves the right to take up work under a different employer during the period of notice, without affecting the effects of the complaint and the amount of payable compensation.

Under the law in force during the reference period 2017-2020, an employer shall not have this possibility. With the new rules, the worker will be cut off – taken out of the job, and even at a time when the effects of the employment contract termination have not yet been achieved. With the new regulation, taking into account the difficulties faced by redundant workers in Greece to re-join employment , it is likely that pressure and harassment against workers will increase in order to leave the working environment before the lapse of the period of the written termination notice. This risk is particularly acute for people who are vulnerable to illegal discrimination (gender, age, disability, nationality, sexual orientation, gender characteristics, etc.) and employers' reprisals, such in case of people who engage in trade union activities.

2.4.6. GSEE would like to point out that it would be crucial, although it does not form part of the group of provisions to be checked, to refer to other provisions of the L. 4808/2021 directly or indirectly affecting the correct application of Article 4 of the revised European Social Charter. One of them is the provision of Article 66 L. 4808/2021 regarding **the amendment of workers' protection framework from redundancies.**

The Article 66, para. 1 lists the grounds for invalidity of the complaint of persons enjoying increased protection (for example, when it is due to unfavorable discrimination, when it occurs due to retaliation after the lawful exercise by the workers' of theirrights, when it is due to the exercise of rights in the event of violence and harassment, the termination of employment contract of pregnant and child-bearing women, and of the father of the newly born child, when there is no valid reason, for a period of 18 months since birth, when termination occurs during the annual leave; the termination of employment of workers - members of families with many children, disabled, workers during military service, post-graduate trainees in tourist businesses; termination of employemnt in breach of the laws on collective redundancies; termination of employemnt of trade unions' representatives, in accordance with article 14 of L. 1264/1982 etc.) The new provision stipulates that if the dismissed worker proves before the Court actual facts capable of supporting the conviction that his/her dismissal is invalid for one of the reasons set out above, it is up to the employer to prove that the dismissal is valid. This is not a reversal of the burden of proof, but as the provision lays down, the burden of proof of the reason or reasons for the invalidity of the employment contract termination rests with the employee. The employer may provide after evidence to prove that dismissal is valid. GSEE notes that this provision is also contrary to the EU law, especially on the grounds of illegal discrimination, for which the relevant EU Directives (2006/54/EC, 2000/78 EC, 2000/43/EC) explicitly provide for the reversal of the burden of proof to protect the victims of unequal treatment and/or harassment at work based on illegal discrimination.

If the dismissal suffers for any reason other than the above, rendering it void, such as breach of the obligation for written dismissal , non-payment of severance pay, abusiveness, etc., the Article 66 exempts the employer from the consequences of oustanding payment and reduces the worker's

protection against dismissal in so far as it deprives him/her of the right to claim overdue wages and his/her job, namely:

(i) Waiver of payment of outstanding wages: Based on the law in force during the reference period 2017-2020, the basic consequence of the nullity of an employee's redundancy is that such redundancy is considered as non-occurring one, resulting in the continuation of the employment relationship and the employer's default. This also implies an obligation on the employer to pay the employee's outstanding salaries for as long as the employer's default lasts.

The employer's default shall last until it is removed in a lawful manner. Legal ways of removing the default are, for example, the employer's repetition of the termination without the label of invalidity, the employee's employment and payment of salary, the agreed dissolution of the employment contract, etc. For as long as the employer's default is not removed, the latter shall be liable for overdue payments until the employee's claim to overdue salaries is judged to be abusive.

The provision of Article 66 relieves the employer of the basic consequence of outstanding pay claims, i.e. the obligation to pay outstanding salaries, which is replaced by the payment of an additional compensation (which may not be less than the remuneration of 3 months, nor more than the double of the statutory compensation). The measure also affects the worker's social security coverage, since, contrary to what is happening with outstanding salaries, whereby the employer's outstanding status constitutes working time incurring all the social security consequences, the severance pay is not subject to social security contributions but only to tax deductions.

According to the new legislation, the level of remuneration- severance pay is defined after taking into account the company's economic situation. In the current economic situation of companies, it is certain that the level of this severance pay will be low

The provision is essentially a measure of liberalization of redundancies, since it is activated by the employer alone, without leaving the Court of Justice the discretion to judge otherwise.

(ii) Non-re-employment of the worker: By virtue of the provision of article 66, L. 4808/2021, the obligation to re-employ the worker, as a result of the invalidity of the employment contract termination and the employer's outstanding status (Article 656 Civil Code) is set aside. The employer, upon request to the Court, may cancel this possibility, since the return to work is a measure of effective judicial protection for the worker who was subject to invalid redundancy. The loss of a job, particularly where dismissal was found to be invalid, cannot be remedied by the compensation introduced by the new provision.

In this context, all protection against dismissal is removed as the employer is relieved of the basic consequences of the invalidity of the termination and the employee will lose both the outstanding wages and his/her job position.

Furthermore, according to Article 66, even where grounds for dismissal of all categories co-exist (e.g. dismissal due to discrimination and at the same time non payment of the severance pay), the worker may not at the same time request annulment of the contract's termination and its consequences (e.g. outstanding salaries) and civil enforcement. In the event of accumulation of the relevant action-related requests, said action shall be rejected as inadmissible. This is one more example whereby the worker is prevented from exercising his/her rights in Court where there are grounds for invalidity of dismissal.

In addition, in accordance with Article 66, in the event of invalidity of the employment contract termination because it was not served in writing or the statutory severance pay was not paid, the employer is given the opportunity to restore the termination by correcting the deficiencies rendering it null and void within 4 months from redundancy. It should be noted that the worker is

entitled to appeal against the validity of the redundancy within a three-month period from its occurrence before the competent Court; therefore, in this case, the employer shall have already been informed of its shortcomings. The employer is also given the opportunity to correct the shortcomings of the employment contract termination, even upon the lapse of the 4-month period, in which case the fulfillment of the conditions will be considered as a new termination and the previous one shall be considered as non existent.

The new provision shall enable the employer to correct mistakes and omissions by canceling the consequences of the redundancy invalidity and the resulting oustanding period consequences, making the trial initiated by the employee devoid of purpose and depriving the latter of all protection.

It should be noted that under the law in force during the reference period 2017-2020, the failure to pay full severance pay shall incur invalidity of redundancy and the creation of outstanding pay claims for the employer. Only if the employer proves that the failure to pay the severance pay in full is due to his/her excusable error, the latter can be exempted from the consequences of invalidity and late payment. However, in large companies with an organized economic and legal service, the possibility of recognizing an excusable error with regard to the level of severance pay was highly limited.

By virtue of the new provision of article 66, L. 4808/2021, a provision is also introduced whereby, by a legal fiction, if the severance pay falls below the statutory rate of up to 10%, it is considered to have occurred due to an excusable error and the worker made redundant may file an action only for its completion. This is a horizontal provision which limits the cases of invalidity of redundancy, even in large undertakings where the existence for example of a structured human resources directorates or legal services and the knowledge of the relevant framework on severance payments, would rule out the classification of the reduced severance pay as excusable error. Moreover, since the payment of a reduced severance pay of up to 10% is exempted from the effect of nullity, there is a reason to fear that employers will pay 10% less severance pay from the outset, since the worker is deprived of the possibility to challenge the redundancy for that reason.

The provision effectively releases redundancies and deprives workers of all protection. The provision is added to the existing deregulation of the current framework governing the employment termination legislation (e.g. abolition of the valid reason of redundancy, reduction of redundancy period of notice, reduction of severance pay, substantial reduction – abolition ofimportant procedural privileges of labour claims, that impedes workers' fundamental right to effective access to justice..

2.4.7. Observations of the National Commission for Human Rights (GNCHR)

In its memorandum with Observations dated 10 June 2021[46] on the provisions of the draft Law of the subsequent L. 4808/2021 concerning the provisions on the protection of workers from redundancies, it is stated:

> "GNCHR also notes, as far as the law of termination of employment contracts is concerned, and in particular as to the nullity of dismissal, that the employer is absolved from the obligation of reinstatement and the obligation to pay arrears of wages, which is replaced by the payment of additional compensation. This measure will also affect the worker's insurance coverage, since, as opposed to what applies to arrears of wages, the dismissal compensation is not subject to social insurance contributions, but only to tax. **Given also the restrictive austerity regulations for the protection of employment, which are still in force, GNCHR finds that the protection sphere for workers as regards dismissal is excessively affected by the strengthening of the managerial prerogative of employer**

[46] GNCHR Report on the Draft Law of the Ministry of Labour an Social Affairs, adopted by the GNCHR Plenary on June 10, 2021.Full text in greek and Summary in English

https://www.nchr.gr/en/news/1259-summary-of-gnchr-observations-on-draft-law-of-ministry-of-labour-and-social-affairs.html

with respect to the termination of employment contracts. Moreover, the same provisions allow the employer, on the one hand, to correct the defects of the termination afterwards, resulting in considering the fulfillment of the requirements as a new termination, while the previous one is now considered ill-founded and, on the other hand, to nullify the repercussions of the nullity of dismissal and the consequent arrears of wages, rendering the lawsuit initiated by the worker even more obsolete".

3. Article 5 rev. ESC

3.1. The national Report, albeit critical as regards the progress of Greece's compliance with the provision of article 5 introduced in the national regulatory framework through the ratification of the revised ESC, does not report on critical amendments to the national legal framework, which took place after the 2017-2020 reference period until the time of the Report's submission, as such took effect in June 2021 by L. 4808/2021 to the detriment of the fundamental right trade union right of workers. In particular:

3.2. By virtue of the provisions of articles 82-101 and 133, L. 4808/2021 (A'101), published on 19.6.2021, **among a number of restrictive provisions, equally serious amendments were made to the historical and central to the organization and functioning of the trade unions Law 1264/1982 "Democratisation of the trade union movement and the protection of workers' trade union freedoms" (GG' 79),** such as:

a) the terms and conditions for the establishment and operation of the **General Workers' Trade Unions' Registry "Γενικό Μητρώο Συνδικαλιστικών Οργανώσεων των** democratisation of the trade union movement and the protection of workers' trade union freedoms. **Εργαζομένων – ΓΕ.ΜΗ.Σ.Ο.Ε.)under State control (from 1-1-2022) in conjunction with the respective personal data submitting obligations, which include the disclosure also of sensitive personal data of trade union members (such as the elections minutes) and sanctions against them in the event of non-registration** (Articles 83,87, 96), such as:

- all types of workers' trade unions in Greece fall within the scope of the obligation to register to the General Workers' Trade Unions' Registry [47], i.e i) the trade unions of all levels (first, second and third level) of private-law workers in the private and public sector (Article 1, para. 1,3 L. 1264/1982) (ii) the trade unions (first, second and third level) of workers with public-law contracts in the public sector, as well as permanent workers of Local Government organizations, Higher Education establishments, ecclesiastical public law entities and other legal persons governed by public law (Article 30 L. 1264/1982) , (iii) the trade unions of Greek police officers in the Hellenic Police (Article 30 A, L. 1264/1982), (iv) the trade unions of the current military forces on active duty of all sectors and degrees in all Armed Forces and forces industries and in the Common Corps (Article 30C, L. 1264/1982), (v) the pensioners organizations members of the third level organisations (GSEE and ADEDY),

- the new trade unions, if they do not register to the General Workers' Trade Unions Registry, shall not acquire legal status,

- in the event of non registration of the trade union or until any failure to register has been remedied, the following shall be suspended:

  i) its right to collective bargaining and the conclusion of Collective Agreements

[47] The obligation to register to the General Workers' Trade Unions Registry does not cover journalists' organizations and seafarers' organizations, for which a special law will be passed. Moreover, this obligation does not apply to the professional organizations set up by law as legal entities governed by public law, such as the Bar associations (Article 1, para. 2, L. 1264/1982).

(ii) the protection of trade union executives against redundancy and secondment. Specifically for the protection of trade union executives, protection is suspended upon the lapse of ten (10) days: a) from the elections and (b) the put in place of the unions' elected governing bodies if the election minutes, showing the order in which the elected members were elected or the decision to set up their agoverning bodies were not submitted to the General Workers; Trade Union Associations Registry.

(iii) the rights of the trade union and its elected representatives under the (new) Articles 16 and 17, L. 1264/1982 (right to trade union leaves, right to a (digital) notice board, right to call a general meeting at the workplace, right to a monthly meeting with the employer, right to an office at the workplace, right to distribute communications at the workplace(s); right to be present at Labour Inspectorate checks)

(iv) consequently, the exercise of the collective right to strike by trade unions will therefore also be affected, as the individual right of workers to take part in a strike will be also seriously affected and endangered

(v) until any omission related to the data submission required for the registration of the trade union in the General Workers' Trade Union Registry is remedied no funding of the trade union or its structures is paid out from the State or co-financed resources (it is noted that due to the legal prohibition for the trade unions to receive State funding, this sanction mainly concerns the functioning of the scientific institutes of trade unions, such as INE GSEE)

(vi) in the event of non-registration, the trade unions may not appoint, within the framework of institutional social participation, their representatives in the administrations of the Institutions supervised by the Ministry of Labour and Social Affairs (for example to the e-National Social Security Fund, e-EFKA), and the Ministry's collective bodies (e.g. bodies for public dialogue, , social security administrative committees of local character).

b) the form and content of the obligatory (now) kept in digital form records of trade unions, whose content is not defined by law but will be determined by a Ministerial Decision (Article 84, without transitional validity), which has not yet been issued

c) the framework for the digital – remote trade unions' general assemblies and subsequently for the trade union electoral processes (Articles 86, 87 and 133) with the obligation to make digital means available for convening general assemblies (without transitional period)

d) notwithstanding the ascertained violation of the International Labour Convention 87 by the International Labour Organization's supervisoryBodies[48] with regard to the collective spurious structures of "associations of persons", which were "created" under the terms of the Memoranda for the purpose of signing collective labour agreements on less favorable terms for workers (notably reductions in salaries) and do not meet the operational guarantees of trade unions, they are now permanently recognized as trade unions (article 82).

3.3. **Critical issues arising from the implementation of the new provisions, whose content is obviously contrary to the Greek Constitution and the international commitments of the country from fundamental regulatory texts, such as the rev. ESC, the International Labour Convention 87,** the **GDPR** are the following:

[48] Case No 2820 (Greece) - Complaint date: 21-OCT-10

https://www.ilo.org/dyn/normlex/en/f?p=1000:50001:::NO:::

- The establishment and functioning of the the General Workers' Trade Union Registry, on which the Personal Data Protection Authority was not consulted, as it should, concerns extensive processing of personal data of special categories (sensitive) contained in trade unions' electoral records by the State, with employers' access thereto, without the strict guarantees of the provisions of the GDPR provisions (Article 9, para.) 2 item d'). In the legal framework in force during the reference period, the process of obtaining trade union legal personality was completed through the guarantees of the judicial authorities, as assisted by their administrative services. The critical trade unions' documents were kept in the archives of the competent Court's administrative services , where access was given after an explicit approval given by Judicial Authority' under strict conditions.
- The obligatory registration of trade unions in the General Workers' Trade Union Registry constitutes now a criterion for the access and exercise of fundamental rights both of trade unions as well as of workers' elected representatives. The burden on trade unions encumbered with additional administrative burdens is also an additional substantial obstacle, especially when they have a mandatory notification obligation e.g. to the Internal Revenue Service in order to be granted a TIN (Tax Identification Number - ΑΦΜ). It should be noted that the "sanction" of the suspension (essentially abolition) of the exercise of fundamental collective rights does not exist for employers' organizations and their representatives, as regards their inclusion in the relevant employers' Registry (Article 96).
- This important transition to the compulsory digital operation of trade unions and their procedures should have been made within an appropriate and adequate transitional period. We note that, despite the general significance of this issue and the organizational impact to the internal operation of trade unions, GSEE was never been asked about the know-how and experience on the needs of proper funtion of trade unions, which includes the procedural rules of general assemblies, of electoral process, of proper keeping of trade unions' records. The Ministry of Labour, as a State Body, does not have such an experience, thus the imposition of these measures, without the due in terms of time and content, social dialogue reveals the State's interference to trade unions' operation and action. We also point out that critical personal data that allow the identification of trade union members, such as their e-mail address are not foreseen in the new legal provision to be kept in the membership record , although they are directly linked to the new and compulsory remote – digital trade unions' procedures, but above all, with the new obligation of organizations to provide for the possibility of remote participation to their elections, while disregarding the digital exclusion risks of trade unions or/and of their natural persons-members without the possibility to access digital media.
- In addition, the provisions of Article 87 require electronic voting for the election and the electoral processes of trade unions. The elections for the appointment of trade unions' governing bodies and their representatives to higher level organizations constitute a pivotal issue, with a number of legal, operational and organizational extensions and parameters. Nevertheless, the voting procedure is not defined by law, while the Law vaguely refers that that the Ministry of Labour will supply a relevant software free of charge. To date, no suitable software has been provided for trade unions elections, accessible to trade unions throughout the territory and available on time when needed, without hindering their operation, under the light of electoral rules and guarantees, such as the secret ballot rule and the principle of proportional representation, which are ensured in the basic-organizational and historical law 1264/1982 on trade unions. The concept of "appropriate" software means the development of an electronic voting system, adapted to the characteristics of trade unions' elections within constitutional electoral authorities, offering security mechanisms for voters' privacy.
- With regard to the implementation of this very serious mandatory organizational change in the functioning of trade unions, the only action on the part of the State was the late

adoption of a joint Press Release by the Ministers of Labour and Digital Governance[49], published on 10-2-2022. With this Press Release, which has no legal binding effect vis-à-vis to the respective obligation of the State: a) trade unions (as well as other organizations, bodies, etc.) are also given the possibility of using the 'ZEUS' software (software through the National Technology and Research Infrastructure Network) without any further specification of the principles and rules governing the electoral processes of the trade unions and without any consideration by the State of the digital exclusion risks of trade unions and/or natural persons-members who do not have access to digital media, b) trade unions are bound to request access to the use of this software at least three (3) weeks before their elections (while for example they may have an urgent electoral procedure to be carried out by secret ballot), while on the basis of our information, the waiting period of responding to trade unions' requests is prolonged, c) it is explicitly stated that if the trade unions do not guarantee the possibility of electronic remote participation of their members in the elections, then, their elections will be invalid and will therefore not have a legitimate administration and will not be legally able to exercise their fundamental trade union rights (convocation of general assemblies, participation to collective bargaining processes and conclusion of collective agreements, decision on strike action, etc.), of which they are anyway deprived, if they are not registered in the trade unions State Registry (see above point 3.3). It is noted that in other cases when ZEUS software was provided for carrying out digital elections, Ministerial decisions were issued with specific regulations as to the essential characteristics of the electoral process (e.g. election of elected representatives to executive and disciplinary Boards of the public services, legal entities of public law and local governments,[50]election of representatives to the executive boards of teachers at all degrees[51], electoral procedures for sports organizations[52], electoral procedures for the nomination of administration and representatives to University bodies[53] etc. as well as on the side of enterprises e.g. for the elections in the Hellenic Chamber of Hotels (HCH[54]).

3.4. **The implementation of the above provisions caused major disruption to the functioning of trade unions in Greece, taking into account the following:**

- The serious and irreversible negative impact caused by the operation of the General Trade Union Registry, the confusion that has prevailed and the expected strengthening of employers' unlawful behaviour against workers and their trade unions throughout the territory while their collective rights are suspended due to their pending registration or their right to refuse to register to the General Workers' Trade UnionRegistry, especially due to the pending recourse of trade unions on the legitimacy of this Registry before the Council oF State and the Hellenic Data Protection Authority (see below)

- The widespread impact on the structure (geographical and organizational) of the trade union representation system in Greece, as established mainly by L. 1264/1982, which is

[49] Joint Press Release of the Ministries of Labour & Social Affairs and Digital Governance

https://grnet.gr/2022/02/10/zeus-psifoforia-syndikalistikes-organoseis/

[50] Ministerial Decision ΔΙΔΑΔ/Φ.37.21/1296/οικ.3731 (Government Gazette 944/10-3-),

[51] Ministerial Decision Φ.350/51/139940/Ε3 (Government Gazette 4537/14-10-2020),

[52] Ministerial Decision 72664 (Government Gazette 719/24-2-2021)

[53] Ministerial Decisions 147084/Ζ1 (Government Gazette 5364/19-11-2021), 77561/Ζ1 (Government Gazette 2481/22-6-2020), 60944/Ζ1 (Government Gazette 2358/3-6-2021),

[54] Ministerial Decision 14333 (Government Gazette 3987/30-8-2021)

substantially affected by the beginning, albeit illegal, of the General Workers' Trade Union Registry operation.

-The fact that the obligation to register to the General Workers' Trade Union Registry, together with the digital transition imposed as a general horizontal measure on a key institution for collective involvement of society as a whole, requires economic and operational instruments and infrastructure; the latter are not accessible to a large part of trade unions, but also to natural persons – members, together with the need to train and familiarize themselves with the use of digital media, especially in electoral processes, in order to fully respect all procedural guarantees.

3.5. Due to issues of major general interest raised by the protection of violated rights by the greek Constitution and ratified relevant international conventions, but also by the widespread processing of personal data in breach of the rules and guarantees of the General Data Protection Regulation, the above-mentioned Ministerial Decision on the General Workers' Trade Union Registry has already been challenged since November 2021 with an application for annulment before the Council of State by the Labour Center of Athens (second-degree organisation -member of GSEE, and its first-degree member trade union "ACS postal services Workers' Union" and with recourse to theHellenic Data Protection Authority by GSEE.

3.6. Question b). In Greece, there is no tripartite institutional social dialogue (State, workers, employers) to assess the effects of the pandemic itself on workers, and the measures taken to deal with it, in order to take appropriate remedial action, where necessary (see above under I.2.2.iii)

3.7. Observations of the National Commission for Human Rights (GNCHR)

In its Report dated 10 June 2021 on the provisions of the draft Law of the subsequent L. 4808/2021 concerning the provisions regarding the exercise of workers' trade union rights, GNCHR made the following Observations:

«The Greek National Commission for Human Rights (GNCHR), responding again with responsibility to the mandate assigned to it by its founding law as the National Human Rights Institution (NHRI) and the independent advisory body to the Greek State on matters pertaining to human rights protection, is monitoring matters related to the promotion and protection of individual and collective labour rights, as well as other relevant labour rights, such as the protection of dignity, health and safety of workers, in the context of inter alia adapting the Greek legislation to the international and European provisions on human rights protection. The GNCHR's aim is the elabouration and formulation of policy proposals and specific recommendations to the competent State Authorities, and in the present case, to the Ministry of Labour and Social Affairs, which will contribute effectively and in a timely manner to the de facto compliance of the Greek government with the international and European obligations assumed by Greece.(...)

GNCHR notes, however, once again deeply concerned, that this Draft Law was not submitted to it in order to deliver timely opinion on it, as it should in the context of its institutional role.

Given the significance of the issues regulated by this Draft Law, GNCHR, by promoting the adoption of a human rights based approach, putting people at the centre, is submitting specific observations and recommendations, while, at the same time, pointing out important issues concerning the law-making process. GNCHR draws the State's attention to the need to assess the cumulative impact of the measures that have been taken both during the economic crisis as well as during the ongoing health pandemic crisis on labour rights.(...)

Regarding the provisions on trade unions, GNCHR expresses its reservations as to the necessity of registering trade unions to the General Register of Trade Unions of Worker, because such requirement, as an additional criterion for the exercise of constitutional rights, constitutes an interference, which is not sufficiently justified. In

the light of the principles that i) the State owes, on the one hand, to secure via its legislation and on the other hand to abstain from acts infringing the right of workers and employers to freely organize their action and decisions and ii) any restrictions raised by the legislation in exercising human rights cannot possibly lead to an offense of the core of the limited right and to ultimately depriving the beneficiary from its exercise, GNCHR states its strong concern about the provisions put forward for the General Trade Union Associations Registry. GNCHR also notes that the provisions of article 83 constitute a state intervention in the process of establishing a trade union and of instituting the prerequisites for exercising the trade union action, jeopardizing the trade union's existence itself, because its registration in the General Trade Union Associations Registry becomes a condition for its legal personality acquisition, substituting the operational independence guarantees of a Court. Moreover, the internal autonomy of trade unios and their action are at stake through said state intervention. By introducing state control in internal autonomy and action of trade unions, the core of trade union freedom is affected, because the exercise of the trade union action depends on its compliance with the preconditions of article 83, whose non adherence is controlled by the State. Therefore, said restrictions constitute state intervention in the establishment and functioning of a trade union; as a result, an issue of agreement results with the article 23, para.1, Constitution and the country's obligations, as deriving from the international conventions that protect these rights (article 28, para. 1, Const.)

In addition, GNCHR is submitting specific recommendations on the process and the general principles that should govern electronic voting, in order to, on the one hand, ensure the transparency and integrity of the procedure and, on the other hand, provide crucial guarantees of confidentiality and privacy protection for individuals.

GNCHR notes that the Draft Law introduces a disproportionate restriction on the right to strike, while recalling that, under the current regime, the 24-hour notification is informal and can be performed in any way (meaning not in writing), provided that the trade union can prove that the employer has been timely notified, if the latter disputes it. The written notification of the employer, served by a bailiff, cannot be justified on grounds of public interest, as it nullifies the main feature of the strike, which is immediate exercise of the collective right, also in conjunction with the additional restriction imposed by the present Draft Law concerning the suspension of the right to strike until public debate process is completed.

Last but not least, GNCHR, concerned whether the Hellenic Data Protection Authority has previously delivered its opinion, submits observations on the compatibility of the Draft Law provisions with the legal framework on Data Protection".

All the above are extensively elabourated to the full text of GNCHR's Observations[55].

3.8. The above-mentioned critical elements had to be included in the national Report regarding the implementation of Article 5 of the revised ESC, as the situation of the reference period 2017-2020 does not currently correspond to reality.

4. Article 6. Rev. ESC

[55] GNCHR Report on the Draft Law of the Ministry of Labour an Social Affairs, adopted by the GNCHR Plenary on June 10, 2021. Full text in greek and Summary in English https://www.nchr.gr/en/news/1259-summary-of-gnchr-observations-on-draft-law-of-ministry-of-labour-and-social-affairs.html

4.1. As regards the ratification of the rev.ESC by Greece by virtue of L. 4359/2016 (see under I above), the second article of the ratification law is reminded, where it is stipulated in the first paragraph that the provisions of Article 6 shall not bind the country as regards the establishment and use of arbitration mechanisms for settling labour disputes, according to Article 22, paragraph (2) of the Greek Constitution, in particular, with regard to the right of unilateral recourse to arbitration in case of failure of collective bargaining process. In the explanatory memorandum to the draft law of ratification, it is also stated that, as resolved upon by the Council of State Plenary decision 2307/2014, following GSEE Complaint, the Constitution 'requires the legislator to establish an arbitration system in case of failure of collective bargaining process' and that 'the initiation of the procedure does not require the consent of the two parties of the collective dispute, but the will of one of the parties is sufficient.'

4.2. The national Report, albeit critical as regards the progress of Greece's compliance with the provision of article 6 introduced in the national regulatory framework through the ratification of the revised ESC, does not report critical amendments to the national legal framework, during the reference period (e.g L. 4635/2019). Moreover, it does not report critical amendments having taken place after the reference period 2017-2020 until its submission in 2022, as taking effect by virtue of L. 4808/2021 to the detriment of workers' fundamental right to collective bargaining and conclusion of agreements. In addition, as mentioned above, nowhere in the relevant part of the national Report is it mentioned that the rights of the workers, which are mentioned as supporting the promotion of the consultation and negotiation processes with the employers, are suspended and not exercised for as long as the trade union is not registered the General Workers' Trade Union Associations Registry (See Observations above on article 5). The impact from these additional restrictions are added up to the already serious cumulative impact from multiple legislative interventions to the right of collective negotiations, imposed by the conditionality of our country's international lending.

4.3. In the Collective Complaint submitted by GSEE 111/2014, its update in 2016 and its public Hearing in 2017 by the European Committee of Social Rights, GSEE analyzed with data the anti-labour measures imposed on workers during this period and their consequences, which continue to be also visible in the reference period 2017-2020, but also at present. The dramatic consequences on the working conditions and remuneration of the workers were mainly due to the consequences of the legislative and practical undermining of free collective bargaining and the ability to conlude collective agreements, fundamental process that was supported since 1990 onwards by the subsidiary arbitration mechanism of the Organization of Mediation and Arbitration and the right of unilateral appeal to both processes by the interested parties.

The legislation imposed on the institutional framework of the rules and principles for collective labour agreements mainly in 2012 to date[56], was not limited to the intervention in the content and the reduction or "freezing" of salaries or the repeal of protective provisions against redundancies, but proceeded to the demolition in practice of the entire mechanism of collective bargaining and arbitration. This demolition rendered workers passive subjects in the process of shaping working conditions; the settlement of these conditions was referred, as a result, to individual negotiation and individual labour contracts, where the employer is absolutely dominant. In addition, it influenced the basic trade union right, being deprived of the basic tool, the collective autonomy, as well as the right to a strike, since for all essential issues being the demands of a strike, the legislation raised a series of prohibitions, rendering thus implicitly illegal any relevant strike.

These provisions incurred a dramatic impact on the life of the country's workers (see referenecs in GSEE's Collective Complaint and its update). This impact was visible during the reference period 2017-2020 and still remains visible today (see below GSEE Labour Institute's data). Some of these consequences involve the dramatic decline in workers' living standards in conditions of a

[56] In 2018, some provisions were partly restored (the principle of favorable provision and the declaration of the National General Collective Agreement as generally compulsory) by article 5, para. 1, L. 4475/2017

deregulated labour market and their deprivation of the basic collective rights to claim protection and improvement of their working rights and protection of their value and decency.

4.4. The arbitration of the Organization of Mediation and Arbitration has constituted the auxiliary mechanism for the settlement of working conditions, when negotiations for the conclusion of a collective bargaining agreement fail. The arbitration system established (in its initial form) by l. 1876/90 constituted a fundamental choice of the Greek State that was unanimously supported by all Hellenic Parliament Parties, while its content was the object of agreement by the leading associations of employers and employees (SEV and GSEE). The arbitration of l. 1876/90 replaced the authoritarian state arbitration of L.3239/55, that suffocated both collective autonomy and the right to strike. The right to unilateral recourse to arbitration is a reasonable "sanction" to the party that with its behavior reverses the framework of dialogue created by a third party mediation, while offering an institutional guarantee that there shall be a collective agreement and that the arrangement of the working conditions shall not revert back to the individual work contract. The constitutionality and legality of the arbitration system under l. 1876/90 (in its initial form), has already been judged with the unanimous decision no. 25/2004 by the full Plenary of the Supreme Court and decision no. 2307/2014 by the Council of State Plenary, following an appeal by GSEE, decisions that are invoked by the explanatory Memorandum to the ratification law of the rev. ESC. Pursuant to Council's of State , according to the wording and scope of the constitutional provision, the legislator is bound to establish an arbitration system, as an auxiliary procedure for the resolution of collective work disputes, in case of failure of collective bargaining process, to settle all working conditions and not only the basic salary/wage. Activation of this procedure does not presuppose consensus by both parties of the collective dispute; based on this constitutional provision, the will of at least one party is sufficient.

The character of recourse to arbitration only as a last and auxiliary means of collective dispute resolution reflects the real function of arbitration by the the Organization of Mediation and Arbitration, as an auxiliary collective dispute resolution mechanism, when negotiations fail. The Organization of Mediation and Arbitration statistical data from the long standing arbitration practice do confirm its auxiliary function. However, due to Greece's reservation on the provisions of article 6 of the rev ESC, regarding the establishment and utilization of arbitration mechanisms for the settlement of labour disputes, particularly regarding the right of unilateral access to arbitration in case of failure of collective bargaining, we will not particularly refer to the legislative interventions to the right of unilateral recourse to arbitration by the Organization of Mediation and Arbitration

4.5. After 10 years of implementation of the restrictive measures at the expense of the right to collective bargaining and the basic principles that governed the conclusion of collective labour agreements, despite the formal reinstatement of some of them in August 2018, taking into account the additional restrictive measures imposed until today, the state of play of the right to collective bargaining and conclusion of collective labour agreements in Greece, which can only be exercised if the relevant trade union organization of the workers is registered to the General Workers' Trade Union Registry, is as follows:

- The competent (per type of collective agreement) trade union organizations have the right to collective negotiations and the ability to conclude collective labour agreements on behalf of workers. Trade unions must operate based on the principles and rules of the L. 1264/1982. Particularly for enterprise collective labour agreements, the "associations of persons" are also granted by law the ability to conclude them; however, these associations are not established nor do they operate on the basis of principles and rules of l. 1264/1982. Any contestation of the representativeness of the trade union organization is resolved judicially (Article 4 and Article 6, Law 1876/1990, as modified by Article 54 of Law 4635/2019 and article 96 of Law 4808/2021, see observations in article 5 and article 28 of the rev.ESC).
- **The types of collective labour agreements** are the following: i) the National General Collective Agreement - NGCA (see above under point I.5), concerning the workers of the

entire country, deprived (unfortunately) of the authority to regulate the minimum salary/wage with universally binding effect; NGCA, according to the legal framework imposed in compliance to the lending conditionalities of Greece, can now regulate other (non-salary) terms of work with universally binding effect; in case salary/wage terms are concluded by the NGCA, they are binding only to the members of the contracting parties, ii) the sectoral collective labour agreements concerning the employees of several similar or related holdings or enterprises of a certain city or region or the entire country, iii) the enteprise level collective labour agreements, concerning the workers of one holding or enterprise, iv) the national occupational collective labour agreements that concern the workers of a certain profession and the related specialties of the whole country and v) the local occupational collective labour agreements, which concern the workers of a certain profession or the related specialties of a specific city or region (Article 3, L. 1876/1990, as modified since 2010 and onwards and then with the last amendment by article 53 of L. 4635/2019)

- **As regards the legal validity and the binding effect of the collective labour agreements' terms**, this is direct and mandatory, within the scope of each collective agreement, for the members of the contracting trade union organisation(s) except a) the non-salary terms (i.e. terms on conditions of work) of the NGCA which bind all employees and employers in the Greek territory (until 2012 this also applied to the minimum salary/wage), b) the terms of the sectoral and occupational collective labour agreements that are declared as generally binding, c) the terms of the enteprise collective labour agreements, which bind the entire personnel of an enterprise (article 7, L. 1876/ 1990, Article 8, L. 1876/1990, as modified since 2010 and onwards and then with the last amendment by article 96 of L. 4808/2021)

- **Regarding the principle of the most favorable regulation** i) the terms of an individual contract prevail, only if they provide more favourable protection to workers, ii) in the event of concurrent collective labour agreements for the regulation of an employment relationship, the sectoral or enteprise collective agreement takes precedence over the occupational collective labour agreement, with the comparison being made in two sections (remuneration section and other matters) (article 7 L. 1876/ 1990, Article 10, L. 1876/1990, see exactly below).

- In successive regulations, **exceptions were imposed to the principle of the most favorable regulation in force since 1990,** namely:

  i) the national and local occupational and the sectoral collective labour agreements may include special conditions or exempt from the application of specific conditions employees working in special category enterprises such as social economy enterprises, non-profit legal entities and enterprises facing serious financial problems , such as companies in a state of pre-bankruptcy, alternative-to-bankruptcy or bankruptcy proceedings or out-of-court settlement or restructuring. By a Minister's of Labour and Social Affairs Decision, after the opinion of the Supreme Labour Council, the criteria for the companies that are excluded are specified and the categories of collective agreements' terms that are excluded for these companies and every relevant issue for the implementation of this provision, in particular for taking measures to protect existing jobs, especially for each company (article 3 L. 1876/1990 as modified since 2010 and onwards and then with the last amendment by article 53 of L. 4635/2019). This provision is expected to largely affect the scope of application of sectoral collective labour agreements, as well as their very existence, since as is clear many companies will seek to be exempted from sectoral salaries, while their employees will see their salaries to be significantly reduced. In fact, if we take into account the almost stereotypical invocation of financial problems by businesses and the often abusive recourse of businesses to bankruptcy proceedings, the range of exceptions from the scope of application of the sectoral general collective agreements is predicted to be particularly large. Neutralizing the scope of sectoral general collective agreements certainly disturbs the entire collective bargaining system balance and unavoidably shifts the field of

bargaining from the sector to the enterprise, where the employer is the dominant party.

ii) in case of enterprises, facing serious financial problems and are in a state of pre-bankruptcy, alternative-to-bankruptcy or bankruptcy proceedings or in out-of-court settlement or financial restructuring, the enterprise collective labour agreement takes precedence over the sectoral one, as long as the sectoral one does not provide for exceptions to the application of its terms, in accordance with paragraph 8 of article 3, L. 1876/1990. By a Minister's of Labour and Social Affairs Decision, after the opinion of the Supreme Labour Council, the cases of enterprises being exempted are specified and any relevant matter for the implementation of this provision is determined, in particular for taking measures to protect existing jobs, especially for each enterprise. This means that even if a company's exemption from the application of the sectoral Collective Agreement has not been agreed between the parties, the sectoral agreement is not applied if there is an enterprise-level collective labour agreement in place, taking precedence even if it is more unfavorable. The exemption here from the scope of the sectoral agreement is not instituted by the concluding parties, but takes directly effect from the law. It is worth noting that the reversal of the more favorable regulation rule is not accompanied by any measures to protect workers and employment in the company, for example by a ban on redundancies. The new provisions on the above mentioned exceptions undermine the principle of more favorable regulation on concurrent sectoral and enterprise-level collective agreements, which is also constitutionally founded. In addition, by reducing the coverage of sectoral negotiations and collective agreements, the collective autonomy guaranteed by the Constitution is also being undermined. As is well known, the principle of more favorable regulation applies, regardless to the local or professional scope of a collective agreement because the law does not provide for a prioritization system of collective labour agreements. These provisions lifts the regulatory force of the favourability principle in so far as the local sectoral or occupation-level collective agreement takes precedence over the corresponding national one, even if the latter is more favorable to the worker. In this way, through local sectoral agreements, it becomes possible to reduce the salaries of the national sectoral collective agreements. This would encourage the creation of "islets" where the national sectoral labour agreement salary would no longer apply and the only limit would be the minimum salary,

(iii) the national sectoral or occupational collective agreement does not take precedence over the local equivalent (article 10 L. 1876/1990 as modified since 2010 and onwards and then with the last amendment by article 55 of L. 4635/2019),

- **As regards the period of validity of collective labour agreements**, this is at least one (1) year and at most three (3) years. If a collective agreement expires or is terminated, the terms retain – subject to restrictions – their regulatory power (binding effect) only for three (3) months; the NGCA's extension period is six (6) months (Article 9, L. 1876/1990, as amended since 2010, with important arrangements such as the Ministerial Council Act 6/2012 for the three-month extension of validity of Article 40, L. 4320/2015 for the six months of the NGCA the extensions of collective agreements validity that expired during the pandemic -2020,2021-).
- **According to the newly introduced, obligation of collective agreements' codification**, any terms of collective agreements concluded before the entry into force of the L. 4808/2021 (June 2021) shall cease to apply if they are not included codified in the next collective agreement to be concluded after that date (Article 8, L. 1876/1990, as modified since 2010 and onwards and then with the last amendment by article 96 of L. 4808/2021).
- **Non-contracting parties**, as it concerns workers' and employers' organizations, may join a collective agreement concerning their category, but not of another enterprise (Article 11, L. 1876/1990).
- Following the six-year suspension of the procedure and following new restrictive legislative interventions, it is possible by decision of the Minister of Labour to **extend the**

collective agreements' binding force to non-members of the contracting organizations of workers and employers of sectoral or occupation-level collective labour agreements by declaring them to be generally binding. However, it is possible by Ministerial Decision to exempt enterprises from this extension[57] (Article 11, L. 1876/1990, as modified since 2010 onwards and then with the last amendment by article 56 of L. 4635/2019).

- **The minimum duration of a collective agreement is one (1) year.** A collective agreement can't be denounced before its first mandatory validity period has elapsed, unless the circumstances existing at the time of its signing have substantially changed. At the end of the year, the termination is feasible by stating the reasons thereof (Article 12, L. 1876/1990). **The maximum duration of a collective agreement is three (3) years.**

The conciliation procedure of article 13, L. 1876/1990, extensively presented in the national Report as being carried out by the Labour Inspectorate or by the central Administration of the Ministry of Labour in cases of national or general interest, is no longer valid as such. The relevant competence has now been transferred by a provision of Article 98, L. 4808/2021 to the Mediation & Arbitration Organization (see GSEE Observations referred to in point I.3 above). It is noted that the Labour Inspectorate is no longer part of the Ministry of Labour following its transformation into an independent

[57] In particular, the extension requires (a) a request by any of the parties to the Minister of Labour (b) documentation of the impact of the extension on competitiveness and employment and its notification to the Supreme Labour Council (tripartite body of the Ministry of Labour). The data taken into account by the Supreme Labour Council in its opinion to the Minister for Labour are (a)the request (b) the documented attestation by the competent department of the Ministry that the collective labour agreement is already binding for employers who employ more than 50 % of the workers in the sector or profession; and (c) the findings (conclusions) of the consultation between the parties concerned before the Supreme Labour Council on the necessity of extension and the impact on business competitiveness, the functioning of competition and employment. According to the new framewok, the Minister is deprived of the possibility of extending him/herself and declaring compulsory the collective agreement for all employees in the sector or profession , which already binds employers employing 51% of the sector's or profession's workers, as was the case during the reference period 2017-2020. The conditions laid down render considerably more difficult the collective agreement extension, since criteria such as the extension impact on businesses competitiveness or the functioning of competition, besides their ambiguity, are totally one-sided, **since the list does not include criteria relating to workers (e.g. protection and salary serving livelihood purposes).** This provision introduces even greater wage flexibility – precarity by reversing the living wage criterion. It is important to be noted that, the declared purpose of the new legislation to strengthen business competitiveness will not be fulfilled, as the IMF's reports demonstrate and the official data from the implementation of earlier provisions under the Memoranda of Understanding (Article 37, L. 4024/2011), according to which even that the possibility to extend sectoral and occupational collective agreements had been suspended, not only did they not lead to an improvement in competitiveness, but on the contrary to its decline. On the contrary, the main target of these provisions is substantially the State's intervention in the collective bargaining system in order to reduce wages in the private section and the level of protective provisions on terms of work. With the current legal framework, an obligation is introduced on the party filing the request for declaring generally binding a collective agreement (mainly on worker's side) to accompany it with a report giving evidence on the impact of said extension on competitiveness and employment. This report shall be addressed to the Minister of Labour and shall be communicated to the Supreme Labour Council. As it is known, the critical elements of this documentation are kept in public databases (e.g. ELSTAT, ERGANI, OPS, EFKA). These databases either do not provide the data requested by trade unions' organizations at all, or take a long time to provide them and, indeed, without the necessary cross-checks, due to the problems in the interoperability of these systems. In several cases, too, the reason put forward for the delay in giving the data is the high cost needed to ask the companies handling the databases to proceed with the complex data notification. This obligation on the collective agreement parties to be extended, and particularly on workers, contravenes the provisions of the legislation, which requires the State to provide the necessary information on 'developments in the national economy, including employment, prices and salaries data' (Article 4, para. 4, L. 1876/1990). Insofar as the submission of this report is a part of the legitimacy of the extension process, it becomes obvious that a "legitimate reason" is created for the Minister's refusal to extend a Collective Labour Agreement. The new provisions also allow companies facing serious financial problems and find themselves in pre-bankruptcy, alternative-to-bankruptcy or bankruptcy proceedings, or in conciliation or out-of-court settlement or restructuring procedure to be exempted from the application of terms or the completion of the collective agreement declared mandatory. This may be the case regardless of whether the extended collective labour agreement foresees exceptions to the application of conditions to workers in these enterprises. All these provisions incur a blow to sectoral collective labour agreements, since they undermine both the drawing up, their implementation and extension. Finally, the new provision also stipulates that the extension is effective from the publication of the Minister's decision in the Government Gazette and expires three months after the expiry of the collective labour agreement, confirming the reduction, by virtue of Ministerial Council Act 6/2012, of the extension of the collective labour agreement terms after their expiry or termination, from six to three months

authority. It is also underlined that this competence was conferred without the corresponding financial and operational support to the Mediation & Arbitration Organization, in order to be able to meet the need to serve the workers' and employers' right for access to the onciliation process throughout the Greek territory.

- **The mediation procedure** for collective disputes resolution and the prospect of concluding collective agreements has been regulated since 1990. The mediation procedure was not left out of the legislative measures by imposing on the Mediator the obligatory joint consideration,in order to form his proposal, of private-economic criteria in favor of employers, without reference to criteria relating to workers (such as the livelihood-specific salary function, the health and safety of workers, etc.). Under the current framework, the Mediator examines the economic state of play and development of the competitiveness of the productive activity the collective dispute refers to and the evolution of the salary's purchasing power (Article 15, L. 1876/1990, as modified since 2010 onwards and then with the last amendment by article 15 of L. 4549/2018).

- **For the arbitration procedure,** please see above under 4.4.

- Furthermore, in June 2021, by the provision of Article 99, L. 4808/2021, a provision was added whereby, when an action is brought against an arbitration decision (either before the Court of First Instance or before the Court of Appeal), the validity of the collective labour agreement at issue or of an arbitration decision is suspended until the final irrevocable court ruling on the action. This means that even if there is a collective regulation, it will not be possible to apply, if an action is lodged, for a long time until the case is brought to an end by an irrevocable court judgment. The consequence of this provision is that by lodging an action for challenging the validity of an arbitration decision, even unfounded, the application of the collective regulation may be indefinitely deferred. The provision contravenes article 22 para. 2 of the greek Constitution, which protects collective autonomy as it deprives workers of the application of a collective regulation of their remuneration and working conditions (Articles 16, 16A and 16B of L. 1876/1990, as modified since 2010 and onwards and then with the last amendment by article 99 of L. 4808/2021).

4.2. Question b). The Annual Report for 2022 by GSEE Labour Institute (INE-GSEE) for Economy and Employment[58]refers to the following among other critical elements:

- Taking into account the annual evolution over time since 2010 and following the available data from the Ministry of Labour and the Mediation & Arbitration Organization on collective labour agreements, we note that in 2021, a weakening of free collective bargaining and a reduction in the number of collective labour agreements is observed. In 2021, 16 national sectoral and occupational-level employment contracts, 9 local occupational-level and 182 enterprise -level contracts were signed.
- On the basis of the monthly reports of the ERGANI information system for 2021, the 182 new collective enterprise - level agreements cover 152.077 employees. Of these, 141 company-level contracts (77%), covering 86.171 employees, maintain their remuneration level unchanged; 33 company-level contracts (18%), involving 60.263 employees foresee moderate payroll increases, and the remaining 8 collective labour agreements, involving 5.733 employees, provide for reduced earnings.
- In relation to the above, it should be noted that, during 2021, a total of 34 collective labour agreements were in force, including the National General Collective Agreement. In addition

[58] Annual Report 2022 on the Greek economy and Employment (in Greek)

https://www.inegsee.gr/ekdosi/etisia-ekthesi-2022-ine-gsee-i-elliniki-ikonomia-ke-i-apascholisi/

https://www.inegsee.gr/wp-content/uploads/2022/07/Ethsia_Ekthesi_2022.pdf

to the 25 new sectoral and occupation-level collective labour agreements signed in 2021, eight (8) more collective agreements were in force, concluded in 2018, 2019 and 2020.

- The 34 collective labour agreements (sectoral and occupation-level) in force potentially cover a relatively large number of workers, some 625.000 people, representing 27% of all employees as reflected in the annual report of the 2021 'Ergani' information system (2.278.394 persons). However, the coverage rate of workers is reduced to 23%, if it is calculated based on the number of employees of the ELSTAT Labour Force Survey (2.656.500 persons). The actual coverage rate is further reduced, if it is taken into consideration that out of all sectoral and occupation-level employment contracts, only 5 collective agreements have been declared as generally binding, i.e. mandatorily applied to all workers by all enterprises in the sector or profession. These collective agreements concern: hotels, tourist accommodation, banks, sea-faring ships operators and electricity technicians in elevators. The remaining collective agreements are binding only for the members of the contracting parties (employers and employees).
- As regards the wage/salary terms of the collective agreements concluded, the analysis of their content shows that most of them maintain unchanged remuneration under the previous agreements (only 5 out of the 25 agreements signed in 2021 foresee an increase in remuneration).
- This trend of significant reduction in the number of collective agreements (especially sectoral ones) and the resulting reduction in the coverage rate of workers is not only a Greek phenomenon, although in our own country, the collective bargaining institution weakening was faster and more 'vehement' due to the non flexible terms of the conditionalities of the lending memoranda. In 2018, with the accumulated negative impact of the Memoranda of Understanding, the coverage rate of workers under collective agreements was 25,8%. This finding is clearly related to the extensive legislative changes in the system of collective bargaining during the period of Memoranda. These changes aimed at decentralizing collective agreements from national and sectoral level to the enterprise-level and to the individual-level as ultimate target. The aim was to cut down on labour costs – in particular by tightening up the mechanism of extension, i.e. the declaration of sectoral and occupation-level collective labour agreements as generally binding. These changes resulted in a drastic reduction in the number itself of sectoral collective agreements, the replacement of the National Collective Labour Agreement as a mechanism for establishing the minimum salary by the new system of the statutory minimum salary (Article 103, L. 4172/2013) , as well as the tightening up the Mediation & Arbitration Organization arbitration procedures.

4.3. Article 6 para.4

4.3.1. As regards the ratification of the rev.ESC by Greece by virtue of L. 4359/2016 (see above under I), paragraph 2 of the second article the Article 6 of the Charter does not bind Greece with regard to regulating the employers' right to collective action, in particular with regard to the prohibition of a lock-out, which is prohibited under the national law by virtue of para. 2 of article 22, L. 1264/1982). Therefore,and with prejudice of further anti-labour measures as it concerns workers' right to strike, GSEE will limit herein to mentioning-evaluating the legislative provisions in force related to workers' right to strike.

4.3.2. The national Report makes no reference to the restrictions on the exercise of workers' right to strike imposed in June 2021 by L. 4808/2021). These additional restrictions must also be taken into account in the light of the substantial limitation of the trade union right through the compulsory registration procedure to the General Workers' Trade Union Registry under the threat of suspension (abolition) of the exercise of these fundamental collective rights of workers (see above comments on article 5 of the rev.ESC). In particular:

4.3.3. Article 91 of Law 4808/2021 modified the article 19 of Law 1264/1982 on the notification of strikes and work stoppage. The new regulation sets a new procedural requirement for the legality of the strike. It stipulates that the employer's notice of the exercise of the right to strike is written and delivered by by a bailiff to the employer or employers concerned and includes the day and time when the strike starts and ends, the form of the strike, the requests for the strike and the reasons it is based on.

The content of article 19 of L. 1264/1982 in force during the reference period 2017-2020 is merely limited to a warning addressed to the employer, which does not need to be notified by a bailiff, since the essential element is to inform the employer. The warning notification shall not require, except for the requests, the detailed description and justification of the reasons founding the requests

Pursuant to the Greek legislation, the right to strike is already subject to a number of restrictions and conditions of legality, despite its constitutional protection under Article 23, para. 2 of the Constitution. The new regulation imposes further restrictions leading to blocking the right to strike .

4.3.4. The article 93 of Law 4808/2021introduces restrictions under the title "protection of the right to work". Under the new regulation, the trade union declaring a strike is obliged to protect the right of workers who do not participate in the strike, to come and leave freely and without hindrance from their work place and to provide it without obstacle and without physical or psychological violence against them by anyone. In the event of a breach of this obligation, the strike can be interrupted by a court ruling (being issued at a considerable speed for Greek judicial standards, despite the well known delays). In this case, the declaration of a new strike shall be again subject anew to all legal formalities.

The new regulation makes the trade union responsible for actions by third parties, with dramatic impact on the right to strike. Moreover, the introduction of vague concepts such as psychological violence poses great risks to the exercise of the right to strike, being in danger of becoming inactive. The restrictions and prohibitions laid down in the new provision, combined with other anti-union provisions, do not only hinder the legitimate exercise of the right to strike, but lead to its collapse in breach of Article 23, para. 2 of the Constitution.

4.3.5. The article 94 modifies the article 3 of Law 2224/1994 on public dialogue before a strike takes place. The new regulation provides that, for as long as the public dialogue is ongoing, the exercise of the right to strike in companies referred to in paragraph 2 of article 19, of L. 1264/1982 (public or utility character) shall be suspended. The law in force during the reference period 2017-2020 stipulated that the conduct of a public dialogue does not suspend the exercise of the right to strike. However, the parties (employers and workers) during the public dialogue could agree to regulate the duration of the public dialogue and the suspension of the right to strike. It is a deprivation of a right of workers, which is the last resort to assert their rights.

4.3.6. The article 95 modifies the article 21 of Law 1264/1982 for the security personnel in the event of a strike. In accordance with the new provision , to the agencies, companies and undertakings referred to in paragraph 2 of article 19 (public service or utility), in addition to security personnel , a personnel is also available to meet the basic needs of the community as a whole during the strike (Minimum Guaranteed Service Personnel). These minimum needs are defined as at least one third (1/3 !!!) of the service normally provided.. This is a large coverage rate of the needs that if measured and added to the services by any non-strikers, the effectiveness of the right to strike is undermined

It is also stipulated that the declaration of a strike is banned without first specifying the security personnel and, where necessary, the minimum guaranteed service personnel or without actually making available to the employer such staff, subject to a managerial right, under the responsibility of the trade union which declaring the strike. This is a horizontal regulation not taking into account the specific nature of each enterprise referred to in Article 19, para. 2, L. 1264/1982 in relation to minimum guaranteed service personnel . This regulation is a challenge to the right to strike, since

the restrictions and conditions imposed prevent it from being exercised on terms of effectiveness protected by Article 23, para. 2 of the Constitution and art.6 of the rev. ESC.

The law in force during the reference period 2017-2020 requires the availability of security personnel. In the case of enterprises of public utility, staff is required to meet the basic needs of society as a whole. The law did not lay down a minimum percentage of such personnel; however, it provided for an agreement to be drawn up between employers and employees by 25 November each year and, in the event of non-agreement, the law laid down recourse to the mediation procedure of the Mediation & Arbitration Organization. If mediation on the question of appointing security personnel does not result in an agreement, the case may be referred from either side to the committee referred to in Article 15 of the L. 1264/1982 (now being phazed out, see observations in Article 5 of Rev.ESC).

5. Article 26 rev. ESC

5.1. Whereas the Government is responsible for the implementation and the reform of laws promoting equality and protecting against discrimination, harassment and violence the social partners' role in promoting the right to dignity at work, equal opportunities and equal treatment in the field of employment is important and multifaceted. International monitoring Bodies recommendations to allow space for social dialogue are routinely ignored along with previous agreements whereby the national social partners had expressed convergence of positions. As example we can cite, the outcome of the Greek national social partners' Joint Action (with the technical support of the ILO) under the title "Reinforcing social dialogue with a view to effectively combating discrimination in the labour market prohibited by law" which has resulted to i) joint awareness actions ii) a jointly agreed policy paper with concurrence on the national state of play and agreed recommendations and iii) a joint public statement – engagement "To restore confidence and empower their effective participation in social dialogue", adopted with the presence of former ILO Director General Guy Ryder.

5.2. The State's neglect in setting out a timely, permanent and substantial tripartite social dialogue, adversely impacts also the field of equality, prohibited discriminations, sexual and moral harassment and violence in the workplace preventing effective preventive measures based on the experience of the social partners. The competent tripartite social dialogue Body for gender equality, established under the auspices of the Ministry's of Labour and Social Affairs Supreme Labour Council , does not function for almost a decade. GSEE has repeatedly asked for its proper function. GSEE has also repeatedly requested the broadening of this Body's competency to cover, along with gender equality, all grounds of forbidden discrimination, violence and harassment provided for in the national and European framework, so as to monitor coherently the situation and trends of discriminative and abusive practices in the labour market. Furthermore, and since the ratification of C190 (L. 4808/2021 (OJ A' 101) in June 2021, GSEE has repeatedly asked for the urgent need to broaden the mandate and restore the function of this tripartite Body so as to cover also gender violence and harassment at work, thus monitoring coherently the application in practice of the C190 and its implementation measures, given also the separation of Labour Inspectorate from the Ministry of Labour. Until now, no progress has been made on this issue.

5.3. The pandemic has caused an unprecedented health, economic, social and humanitarian crisis, exacerbating pre-existing systemic inequalities, discrimination and marginalisation, while disproportionately affecting women and the most vulnerable social groups, including Roma, refugees, asylum-seekers and migrants, detainees, persons with disabilities and chronic diseases and LGBTQI+ people. Indeed, acknowledging that COVID-19 is a syndemic pandemic, interacting with and exacerbating existing inequalities in chronic diseases and the social determinants of health, GNCHR[59] noted that the pandemic created a vicious circle, whereby high levels of inequality

[59] GNCHR Report on the Draft Law of the Ministry of Labour an Social Affairs, adopted by the GNCHR Plenary on June 10, 2021.

and discrimination fuel the spread of the virus, which, in turn, perpetuates and exacerbates serious pre-existing inequalities against those groups who are affected the most. GSEE also shares the concerns on the impact of the emergency measures on domestic violence in case of vulnerable categories of women, including migrants and refugees, Roma people, women with disabilities and LGBTQI+ who are under threat as victims of multiple discrimination.

5.4. Due to the lack of institutional dialogue process (also) on the implementation measures of ILO C190, which was ratified by Law 4808/2021 (Part I and II), GSEE with another urgent letter of May 2021 on draft Bill[60] of Law 4808/2021, has urged to Ministry of Labour and Social Affairs on the State's obligation to ensure the coherence of the legal framework on gender equality, discrimination, violence and harassment at work. GSEE's focused on the already in force (before the draft Bill of Law 4808/2021) legislative framework[61] and the obligation not to introduce legal provisions that create rights, obligations and process before the competent Authorities that are contradictory, incoherent and create confuse for workers which are victims of inequalities, violence and harassment at work. Legal uncertainty has been also created as it concerns the vital right for access to competent Authorities of victims of inequalities, violence and harassment at work due to the transform of the Labour Inspection to independent authority (art 102 of Law 4808/2021) and the revealing, due to the incoherent framework, of procedural difficulties, such as the competency now of three (3) independent authorities (Labour Inspection, Ombudsman, National Transparency Authority) on control procedure and the procedural requirements. Public sector workers have also to face this incoherency, as well as the legislative gaps or deficiencies related to the competent Bodies as it concerns protection against discriminatory or abusive practices.

5.5. Also, Labour Inspectorate i) doesn't examine ex officio the dimension of discriminative or sexually or morally abusive practices when examining workers' complaints on violations of their labour rights, unless the workers explicitly invoke the provisions on anti-discrimination and/or harassment and violence legislation and ii) separates according to the Labour Inspections internal competency, the examination of workers' complaints either to the Labour Relations' Inspectorate or to the Health and Safety Inspectorate, despite the fact that for example discrimination against pregnant workers or violence at work need to be jointly addressed. Furthermore, the situation is more aggravated by the fact that not all Greece (an importantly island country) is covered by the before mentioned Labour Inspectorates and Ombudsman offices are based in the capital – Athens, as well as the ones of the National Transparency Authority.

5.6. On that issue, the Greek National Commission's for Human Rights (GNCHR) Observations on Draft Bill of Law 4808/2021 has stated that " (I)n particular, as regards the law making process, GNCHR points out that the cumulative regulation of more than one issues of paramount importance for the rights of workers, such as the long-awaited ratification of the ILO Convention No. 190 or the incorporation of Directive (EU) 2019/1158, in a single Draft Law, which in fact introduces significant reforms in the legal framework on the protection of employment, that interact and cumulatively limit the protection scope for employment at the individual and

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https://www.nchr.gr/en/news/1259-summary-of-gnchr-observations-on-draft-law-of-ministry-of-labour-and-social-affairs.html

[60]GSEE letter on the draft Bill of Law 4808/2021 https://gsee.gr/?p=37487 (in greek)

[61] C190 implementation measures that are included in Law 4808/2021 were adopted without due diligence to the already existing framework in force through Law 4531/2018 (OJ A' 62, on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence in general (the Istanbul Convention), Law 4604/2019 (OJ A' 50 on Substantive Gender Equality, Preventing and Combating Gender-Based Violence), Law 4443/2016 (OJ A' 232)among others,

on the transposition into Greek legislation the Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation), Law 3896/2010 (OJ A 207 concerning the application of the principle of equal opportunity and treatment of men and women in terms of employment - transposition of Directive 2006/54/EC).

collective level, is negatively assessed" and that "However, GNCHR negatively assesses the way in which the ratification of the ILO Convention No. 190 is being attempted, as the submitted Draft raises serious concerns as regards the implementation measures. The implementation of the ILO Convention No. 190 is expected to be difficult mainly due to its regression compared to the already existing national institutional framework, in view of its ambiguities, omissions and contradictions. At the same time, as regards the provisions introducing the definitions of the phenomena of violence and harassment at work, despite the improvement of the Draft submitted to the Parliament, GNCHR notes with regret that there remain plenty of issues of non-compliance with the existing framework, to the extent that the present Draft Law is not taking into account European law and the EU acquis in the field of violence and harassment in the world of work. At the same time, GNCHR emphasizes the need for the ILO Recommendation R206 concerning the elimination of violence and harassment in the world of work to be employed for the interpretation and supplementation of the ILO Convention No. 190, as it encompasses the main implementation pillars of the ILO Convention No. 190. GNCHR notes that it is required, among other things, that the protective institutional framework is properly formulated on the basis of the root causes of violent behaviors and acts". Furthermore, GNCHR places "particular emphasis on the confusion caused by the Draft Law with regard to the limits of the relative competences of the finally three (3) co-responsible Independent Authorities - the Labour Inspectorate (SEPE), the Ombudsman and the National Transparency Authority - stressing that ambiguity and duplication of responsibilities are to the detriment of victims of violence and harassment, as well as of CSOs assisting them. To this end, GNCHR recommended the clarification and complete rewording of the relevant provisions[62]".

5.7. GSEE emphasizes the lack of a coordinated data system connecting the public authorities—notwithstanding the Greek State's obligation to collect/provide comprehensive information (for example, Ministry of Labour; labour and social security data bases; National Statistical Authority - ELSTAT; Judiciary, Ombudsman). It should be also emphasized as it concerns Labour Inspection that i) GSEE is not aware of its recent annual Reports and ii) will not exercise trade unions' right for social control on labour inspection program and activities, given that under Law 4808/2021 (art 102 et seq.) Labour Inspection is separated from the Ministry of Labour and transformed into a Independent Authority, thus the competent tripartite Body of the Ministry of Labour "Council for Social Control of the Labour Inspectorate (SKEEE)" has stopped functioning (see above under point I.3)[63].

5.8. The lack of a coordinated data system results in the failure to collect reliable statistics on discrimination, harassment and violence in the workplace on the basis of all grounds of discrimination[64]. Whereas data for 2010-2019 period on the general impact of the economic crisis and austerity measures at work demonstrate exacerbation of gender-related discriminations (including harassment and violence at work), they fail to provide detail regarding the qualitative and quantitative characteristics of discriminations against women.

5.9. As it concerns important obstacles that hinder the due application of article 26, indicatively we refer to the following:

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[62] GNCHR Observations on Draft Law of Ministry of Labour and Social Affairs o.p.

https://www.nchr.gr/images/English_Site/ERGASIA/Summary_of_GNCHRs_Observations_on_Draft_Labour_Law_final.pdf

[63] See also GSEE's urgent Observations submitted to the ILO on the implementation of C81 (2021).

[64] For example as it concerns the take up of parental leaves GSEE refers to the annual Reports as it concerns Greece on leavenetwork.org, where almost every year there is steady reference on "There is no information on the uptake of the various types of leave.Statistics provided by the Labour Inspectors' Authority on private sector employees record people on leave by sex; however, there is no information about how many employees are eligible, but do not make use of their entitlement. Furthermore, these statistics are collected under the equal treatment legislation and do not provide any data on the uptake of leaves that apply exclusively to mothers" Country Report of 2021 https://www.leavenetwork.org/annual-review-reports/country-reports/

And annual Reviews available here https://www.leavenetwork.org/annual-review-reports/archive-reviews/

- The deregulation of workers' protection legal framework from redundancies and their right to fair remuneration (see above under point III.2.4.6) and especially the imposition of limits to the amount of reverance pay and overdue wages, is hindering in subtsance the right for effective access to justice, which is crucial for workers – victims of sexual harassment and/or recurrent reprehensible or distinctly negative and offensive actions directed against them in the workplace or in relation to work. This legislation in no means corresponds to State's obligation under art 26 of rev. ESC to take all appropriate measures to protect workers from such conduct and puts further obstacles to the already limited exercise of workers-victims' of these behaviours to the competent Authorities and the Courts, thus further contribute to the already existing under-reporting of these phenomena.

- An important part of cases (complaints) related to discriminatory cases and abusive practices remain invisible, as the Labour Inspectorate, when examining, for example, a worker's complaint on dismissal or pay reduction or change in working arrangements, does not introduce on its own initiative (ex officio) an inspection on the possible breach of national anti-discrimination legislation, which also refers to violence and harassment on grounds of these discriminations (L. 3896/2010 on the application of the principle of equal opportunity and treatment of men and women in terms of employment, L. 4443/2016 on equal treatment between persons irrespective of personal characteristics such as race, color, national or ethnic origin, religious or other beliefs, and family or social status, among numerous other factors), unless the worker in written and explicitly refers to her/his complaint to these Laws.

- Furthermore, complaints submitted before the Labour Inspection on violence and harassment cases, are examined by the Labour Inspection only if they are written in greek (art. 3 Ministerial Decision 101269/2022/ OJ B' 5978 on Law's 4808/2021 - ILO C190 implementation measures process before the Labour Inspection). If complaints are not written in Greek and don't refer explicitly to the legislation in breach, then they are declared as inadmissible, thus imposing further restrictions against non national or illiterate workers-victims, despite their known vulnerability. This obligation is not imposed by law as it concerns the process before the Ombudsman, according to Laws 3896/2010 and 4443/2016.

- As it concerns the implementation measures of ratified C190 by Law 4808/2021, as it regards the scope of the C190 (art 3 L. 4808/2021), not all fields in which work is provided and which are mentioned in C 190 are covered. In particular, the following fall outside the ambit of the L.4808/2021: those who provide work in the agricultural sector and seafarers. At the same time, given the lack of an Explanatory Memorandum, it is not clear at all what the phrase "informal economy" covers in terms of its legal scope, as it is neither defined in the Draft, nor is there a reference to any relevant definition thereof. The scope also remains limited in terms of the employer's obligations, since Law 4808/2021 (art. 9-10) is limiting the obligation to adopt policies in order to prevent and eliminate violence and harassment at work, as well as the obligation to deal with internal complaints only to companies employing more than twenty (20) individuals. Given that Greek economy consists mainly of micro, small and medium- sized enterprises, this criterion of twenty (20) employees is neither provided for in the ILO Convention No. 190, which clearly stipulates that all workers must be protected without discrimination, nor is it justified anywhere in the Draft Law.

5.10. Remarkable is the recent increase, in Greece, of incidents of sexual harassment, abuse and exploitation in power relations, including the workplace, politics, sport, arts and educational settings . GSEE has also welcomed the courage of the gold medallist in sailing Sofia Bekatorou to publicly denounce the incident of sexual abuse she suffered at a young age, in the context of exploitation in a power relation and hierarchy in the workplace and has emphasized to its public Statements that access to justice for victims of sexual violence, the role of trade union by their side or on behalf of them before the Authorities, the effective investigation of violations of sexual

life and freedom and the fair administration of justice are among the most fundamental aspects of the protection of fundamental rights. GSEE has asked on the urgent restoration of institutional tripartite social dialogue with explicit mandate on zero tolerance and targeted actions on i) the timely intervention to protect victims of all forms of sexual violence, the effective judicial protection of their rights and the victims' access to fair justice through effective, transparent and confidential and without delay procedures, ii) the strengthening of all services dealing with cases of sexual harassment and abuse, such as health structures, police, psychological, social and legal support services, telephone hotlines and accommodation to women under threat, iii) the systematic and regular collection of detailed, reliable and comparable data, iv) the adoption and strengthening of awareness-raising and information activities aimed at preventing and raising awareness of the rights of victims,while encourage them to break their silence.

6. Article 28 rev. ESC

6.1. The national Report makes no reference to the restrictions on the exercise of the trade union rights imposed in June 2021 by L. 4808/2021 and even in provisions which are regarded by law as "minimum trade union rights" (article 18 L. 1264/ 1982, for the articles 14-17). These additional restrictions must also be taken into account in the light of the substantial limitation of the trade union right through the compulsory registration procedure with the General Workers' Trade UnionRegistry under the threat of suspension (abolition) of the exercise of these fundamental collective rights of workers (see above comments on article 5 of the rev.ESC). In particular:

6.2. Under the new provision in Article 88, which amended, without prior information to GSEE, the provision in Article 14 of the crucial and historical for trade unions Law 1264/1982, protection against dismissal is granted to the following extent: i) if the trade union has two hundred (200) members, five (5) members of the administration (instead of seven (7) provided for in the reference period 2017-2020) are protected; (ii) if the trade union has one thousand (1000) members, seven (7) members of the administration (instead of nine (9) provided for in the reference period 2017-2020) (iii) if the trade union has more than one thousand (1000) members, nine (9) members of the administration (instead of eleven (11) foreseen in the reference period 2017-2020) are protected.

Moreover, the number of founding members now protected from dismissal is limited to the first 21 founding members if more than eighty (80) workers are employed in the company. Under the law in force in the reference period 2017-2020, the founding members are protected in the following way: (i) the first 21 founding members, if the enterprise where they work employs between 80 and 150 workers; (ii) 25 members if they employ more than 150 workers; (iii) 30 members, if they employ more than 300; (iv) 40 members if they employ more than 500; (v) 7 members if they employ 40-80 workers.

6.3. Under the new rule of Article 88, if there are more trade unions in the same employer, its representatives do not have the protection separately set out in the provision, based on the number of members of each trade union. The new provision sets a ceiling on the number of members to be protected by the employer and the extent to which the representatives of each trade union are protected shall be proportionate to the number of votes cast in the last elections for administration in relation to all the members of all the organizations who voted in the last elections for the nomination of administrations. The law in force during the reference time 2017-2020 (which was applicable under l. 1264/1982) did not contain such restrictions

6.4. The transfer of elected trade unions representatives. The new provision in Article 88 limits protection against transfer, as it allows the transfer of protected workers, if this is strictly necessary for the company's operation or is imposed for health protection reasons. With the new provision, the trade union that under the legal provision of the reference period 2017-2020, had to be informed, consulted previous to the transfer so as to express its opinion on the transfer of protected workers is by-passed. In other words, under the law in force since 1982, the transfer of

protected workers was not permitted without the consent by the trade union concerned. The employer had the right to refer the matter to the judicial Committee (Trade Union Executives Protection Committee) mentioned in Article 15 of L. 1264/1982, which decided on the necessity of the transfer , which also abolished (see Observations under art, 5 revESC and below under 6.5) .

6.5. With regard to the protection of elected trade union representatives from dismissal. With the provision of article 88, the elected trade union representatives shall enjoy the same level of protection applying in accordance with the legal framework for pregnant women (para. 1 of article 15, L. 1483/1984). In other words, dismissal will be permitted for a serious reason; the validity thereof will be judged by the Courts. The list of reasons for which the dismissal of protected trade unionists is restricted in the current reference period 2017-2020 is hereby repealed. The judicial Trade Union Executives Protection Committee in Article 15 (Article 101 of 4808/2021) is also repealed. The Committee had so far the competeny to consider the reason of trade unionists redundancy, adopting a decision on that issue . GSEE highlights the composition of this Committee of Article 15, which consisted: i) at first instance, of the President of the Court of first Instance of the Region, where the trade union representative provides the work; of a representative of employers (appointed as appropriate by the representative of the Chamber of Commerce or the Industry Association);and of a representative of workers (designated by GSEE) and (ii) to a second degree (appeal), of the oldest President of the Court of First Instance, of a representative of the employer and one of the employees (by designating different persons, as per the above procedure). This Committee changed its composition in terms of representation of employers and employees in the event of dismissal of a trade Union representative of civil servants. The Committee also considered the cases of contestation of representativeness between workers' trade unions and employers' organizations at the stage of collective bargaining for the signing of collective labour agreements (Article 6, para. 2, L. 1876/1990), a procedure which was also repealed.

The repeal of the Committee of article 15, L. 1264/1982 constitutes one more measure of dismantling the protection of protected persons, since its existence serves to clear the issue of the reason of trade unionists redundancy relatively quickly. Referring the redundancy question of protected persons solely to the Courts (without a previous judgment by the Committee) will cut the dismissed trade unionist from its job and the trade union action field, together with the extremely slow pace of required for justice to be served.

6.6. The special protection of elected trade unions representatives, who are directly exposed to the risk of persecution by the employer due to their trade union action, was enshrined in Articles 14 and 15 of the Law 1264/1982 in the current reference period 2017-2020. These articles implement the constitutional requirement to protect the basic trade union right (article 23, para. 1 of the Constitution) as well as the corresponding requirement of international conventions binding the country (Article 28, para. 1 of the Constitution), such as the revised ESC and ILO C87.

Without the trade union action's protection against redundancy and transfer, the effectiveness of the exercise of trade union rights is highly questionable. The new provisions dismantle the protection of trade unionists protected from redundancy. The previously applicable article 14, para. 10, L. 1264/1982 , allowed the redundancy of protected persons on an exceptional basis, for one of the reasons set out in that article. This provision introduced exceptional law; therefore, in the interests of safeguarding the protection of trade union action, being a priority of L. 1264/1982 (before the amendments), its provisions were narrowly interpreted. The new provision further broadens the grounds for redundancy by introducing the vague concept of "serious reason". The specification of this provision by the Courts will "legitimize" a wide range of illegal dismissals of protected trade unionists, even without the prior identification of the grounds for dismissal by the judicial committee of Article 15, L. 1264/1982, which is repealed.

6.7. By virtue of the provision of article 90, L. 4808/2021, the article 17 is modified of law 1264/1982 on trade union duties exercise leave by elected trade union representatives. In particular, there are procedural obstacles to the exercise of the right to trade union leave, since the new provision requires the trade unionist wishing to make use of this leave, to inform the employer in writing in any way, including by e-mail, as soon as possible, and in any event no later

than the week preceding the start of the trade union leave. In urgent cases, the prior notification time may be limited to forty-eight (48) hours. Only in very exceptional cases, the trade union leave may start immediately after the employer is informed, if it is objectively impossible to do so earlier. Under no circumstances shall the employer approve the trade union leave, when it is simply announced. The new provision makes it difficult to exercise the right to trade union leave.

There is no reference to notifying the employer and no time limits are set in the law in force during the reference period 2017-2020.

6.8. Article 28 of rev. ESC guarantees the right of workers' representatives to facilities that allow them to carry out their mission quickly and efficiently, both during and outside their hours of work. These facilities, such as the right to trade union duties' leave, must be granted in principle on the basis of negotiations between trade unions and employers, or by other appropriate means, as it concerns their effective and unhindered exercise. Law 1264/1982, as modified by law 4808/2021, governs the absence leaves that members of the governing Bodies of each trade union are entitled in order to be able to exercise their duties (art.17). According to art. 18 of L. 1264/1982 the rights provided for in ar. 17 are the minimum rights, therefore "2. Arrangements more favorable for the exercise of those rights that have already been acquired or will be acquired by agreement between employees and employers or by Collective Labor Agreements or Arbitration Decisions prevail"[65].

One indicative example of State's interference to the exercise of this crucial right of elected workers' representatives is the unilateral by the Ministry of Education restriction of the framework related to school teachers' representatives leave, both in public and private schools. According to the Federation of Private Educators of Greece (OIELE)[66] – 2nd degree organization – member of GSEE, and the Greek Primary Teachers' Federation (DOE)[67] – 2nd degree organization – member of ADEDY, for decades- as can be easily proven by the relevant Ministerial Decisions- the Ministry of Education and Religious Affairs granted the members of the Governing Board of both second level organizations (Federations), full leave of absence from their work. This was a union facility, allowing the Governing Bodies to exercise their trade union duties since the Organizations have numerous members that work throughout Greece and the level of complicity of the educational issues and the importance as it concerns the State's educational obligations to children arising is high and obvious in periods of exceptionally difficult circumstances, like the COVID-19 period. Additionally, it is acknowledged that the partial presence of a Board member who is absent for a few days every month in a school unit disrupts the educational bond between the children and the teacher and causes problems to the educational process. Therefore, especially for the above mentioned Organizations the trade union absence leave system that had been agreed upon between them and the Ministry of Education and Religious Affairs and implemented over a number of years, recognized a full absence leave for all the members of the Board in order to be able to carry out their duties as workers representatives.

In April 2022 and without any previous notification and without any form of social dialogue, the Ministry of Education issued the No 42981/N1/22-4-2022 Ministerial Decision granting the

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65 It has been fully recognized under no. 41/2001 opinion of the Legal Council of the State (Department D), that despite the fact that the agreement between employer and employees for the provision of additional trade union facilities cannot constitute a regulation, "it nevertheless constitutes an agreement between employees and the Management, in meaning of the proposed provision of art. 18 of Law 1264/1982. In fact, since the above provision does not specify the observance of a certain formula for the valid conclusion of the agreement in question, it can be concluded that it is concluded in any case appropriate way, as long as it is easy to prove its existence, so that no doubts arise during its application".

66 OIELE (Omospondia Idiotikon Ekpaideytikon Leitoyrgon Ellados) is the sole secondary trade union organization who represents the teachers in Greece that work in private schools, daycares and nurseries, foreign language schools and private special education vocational schools. OIELE is governed by a 15 members Board that represents the Organization, communicates with the public authorities and manages every affair that has to do with its members throughout the greek territory.

67 DOE (Didaskaliki Omospondia Ellados) is the sole trade union Federation who represents the primary public education teachers in Greece that work for the Greek Ministry of Education and Religious Affairs. DOE is governed by an 11 members Board that represents the Organization, communicates with the public authorities and manages every affair that has to do with its members throughout the greek territory.

Members of the Board of OIELE only partial leave of absence according to art.17 of the law 1264/1982 and unilaterally abolishing the agreement for additional trade union facilities. In specific, according to this decision only the President of the Board has a full leave while the rest of the members are given the right to be absent from their work only for a number of days every month. Additionally, although the Ministry was informed on the newly elected Governing Bodies (December 2021) the Ministerial Decision was issued 4 months later and had a retrospective effect. As a result a major issue arose concerning the Board members absence during this period, that provoked also anti-union behaviour against their elected members on behalf of the schools' administration bodies, both in the public and the private sector.

Teachers' Federations have the duty to protect their members' rights throughout the country and in a coordinating way. The day-to-day operation of the Federations includes recording problems and trying to solve them through interventions in the leadership of the Ministry of Education and the relevant agencies. A large amount of administrative Committees throughout Greece have the authority to decide on official matters for their members and monitoring these matters, appearing and intervening is a crucial and highly demanding obligation. The same obligation applies for Court processes. As a result, the Organizations are in inability to efficiently perform their duties and adequately represent their members. Nonetheless their function is inextricably linked to the protection of children's rights and the participation in the effort to create a safe and healthy learning and education environment for them. Workers' representatives have to face every day problems concerning the operation of the schools, the shortage in infrastructures and teachers and the formation of the educational process. They come into contact with dozens of school units every day, they become recipients of the problems and they try to find solutions for them through interventions in the Ministry and the competent authorities. Through public interventions, seminars and studies, they try to contribute to the formation of a healthy educational climate in schools on the one hand and to solving problems and covering the gaps in infrastructure and educational personnel on the other.

The above mentioned case of State's interference to the exercise of trade union rights, is revealing of the principle that for the right to organize to be meaningful, the relevant workers organizations should be able to further and defend the interests of their members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers representatives.

Through this process, the Ministry of Education unilaterally abolished the trade union system of leaves for the public and private sector teacher's representatives, which has been in effect for decades in Greece. That constitutes a violation of ratified by Greece rev. ESC (art 28) and of ratified ILO C87, for which the two Federations have also recourse to the ILO.

6.9. By virtue of the provision of article 89, L. 4808/2021, the article 16 is modified, Law 1264/1982 for "democracy at the work place" and a restriction on the right of workers' representatives to be present during labour controls is introduced. In addition, pursuant to the new provision, two (2) representatives of the board of directors of the most representative trade union and, in the absence of a trade union, one (1) representative of the local Labour Center shall be entitled to attend the inspection or control and submit their remarks.'

According to the law in force during the reference period 2017-2020, the right to do so exists, but without limiting the number of representatives of the organizations entitled to attend inspections and audits.

This crucial right, is one of the trade unions' suspended rights, if the organisation is not registered to the Registry of trade unions (see above Observations under art,5 of rev.ESC).

6.10. The above-mentioned critical elements had to be included in the national Report regarding the implementation of Article 28 of the revised ESC, as the state of play of the reference period 2017-2020 does not currently correspond to reality.

7. Article 29 rev. ESC

7.1. The Greek Parliament adopted implementing Law 4472 /2017 (OJ A' 74) titled "Public Pension provisions and amendment of Law 4387/2016, application measures of budgetary targets and reforms, social support measures and labour regulations. Mid-term Financial Strategy Framework 2018-2021 and other provisions". This legislation was the outcome of the Supplemental Memorandum of Understanding concluded last May by the Government of Greece and its creditors, describing in full detail the 140 prior actions Greece will need to take not only for 2019 and 2020 but start already in 2017. More specifically, the Supplemental MoU recapitulated the outstanding prior actions included in the Greece's third bailout package of August 2015 and requested additional prior actions for measures after the Greek Program ended in August 2018. Under the heading "Structural policies to enhance competitiveness and growth: Labour market and human capital", a sizeable part of prior actions related to the labour market. In brief, these measures, included several interventions on collective bargaining and dismissals as well as on industrial action.

7.2. As all these measures, the measures of Law 4472/2017 on collective dismissals were legislated without any recourse to social dialogue or consultation with the social partners, despite also the special ILO report[68]. As example we can cite, the position of the social partners on collective dismissals as expressed in the 2014 Geneva agreement (30-9-2014) between the national social partners under the auspices of ILO. In this respect, the employers' side emphasized the particular needs of enterprises in the case of restructuring and/or mergers and acquisitions, while the workers' side underscored the need to respect information and consultation rights.

7.3. The Article 17 of Law 4472/2017 abolished the administrative approval of collective redundancies by the Minister for Labour as well as the corresponding responsibility of Heads of Regions (Prefects). The Supreme Labour Council (the tripartite governing body, which is set up as a 'collective redundancies control unit', with equal representation of the State and the social partners) has the sole responsibility of **ascertaining** whether the employer's obligations to inform and consult the employees' representatives have been fulfilled. The only possibility of the Supreme Labour Council, in the event of failure to comply with the employer's obligations, is either to extend the consultation or to set a deadline to the employer to fulfill its obligations.

In any event, even if the employer fails to meet its obligations, collective redundancies will take place within 60 days of the notification of the consultation minutes (and 90 days after the call for consultations).

As a result of the abolition of the ministerial veto, the 3 criteria taken into account by the Minister have been removed from the mentioned provision (in order to extend the consultations or not to approve collective redundancies in whole or in part): (a) labour market conditions; (b) the company's state of play; (c) interest to the national economy.

The "relaxation" of the control of collective redundancies must be taken into account in particular in the absence of a social plan for the redundant workers protection. The social plan is not the employer's obligation, who is simply free to bring it to the attention of employees.

In addition, the possible finding by the Supreme Labour Council that the employer has complied with its (limited) obligations, will hinder the workers to lodge an action and for the Courts to diagnose the invalidity of collective redundancies.

7.4. The Court of Justice of the European Union (CJEU) ruled in its judgment C-201/15 dated 21 December 2016 that the provision of L. 1387/1983 on the administrative authorization of collective redundancies **does not clash with Directive 98/59/EC**. The CJEU also considered that

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[68] ILO, Report on collective dismissals: A comparative and contextual analysis of the law on collective redundancies, January 2017 http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/WCMS_541637/lang--en/index.htm

the three (3) criteria mentioned above , taken into account by the Minister for Labour, with the exception of the criterion regarding 'interest to the national economy', which was not accepted, should be specified and clarified so as not to render Directive 98/59/EC ineffective.

7.5. Before the deregulation (also) of the law on collective redundancies, the Greek legislator had used the principle of the most favorable regulation, enshrined in EU law, to create a more protective environment for workers. The protective regulations (invalidity of redundancies for which the conditions of the law are not met, prior approval of collective redundancies by the competent state body) were particularly justified by the fact that in Greece we have a largely state-dependent entrepreneurship, while most companies underpin their creation and operation on bank borrowing (drawing resources from society's money). The equity capital rate in relation to borrowed capital is significantly lower compared to the average of the European Union countries).

GSEE strongly observes that any restrictions in business freedom, e.g. administrative, tax, penal etc affect not only business freedom but also any kind of freedom. It is common knowledge that any kind of restrictions not only cover discontinuation of an enterprise but also the setting up of a business, e.g with regard to issuing the licenses required to run a business.

FOR ALL THE REASONS EXPOSED ABOVE

The Greek General Confederation of Labour (GSEE), in its capacity of the supreme trade union organisation in Greece representing all workers employed in the Greek territory under private law contracts, calls upon the European Committee of Social Rights (ECSR) to examine the Observations submitted herein, as well as any subsequent observation that may be additionally submitted in the case that new anti-labour and anti-union measures are implemented, as regards the non–observance by the Greek State of fundamental labour rights enshrined in the revised European Social Charter's thematic group 3 ("labour rights").

Thanking in advance for the time and attention accorded to our Observations, we remain at your disposal should any additional information or explanation be needed.

On behalf of the G.S.E.E.

Yannis Panagopoulos	Nikolaos Kioutsoukis
President	General Secretary

CC: European Trade Union Confederation (ETUC)

Mr Stefan Clauwaert sclauwaert@etuc.org

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Γ.Σ.Ε.Ε.
ΓΕΝΙΚΗ ΣΥΝΟΜΟΣΠΟΝΔΙΑ ΕΡΓΑΤΩΝ ΕΛΛΑΔΑΣ
Μέλος της ITUC και της ETUC

G.S.E.E.
GREEK GENERAL CONFEDERATION OF LABOUR
Affiliated to ITUC and ETUC

Αριθμ. πρωτ. 523

Αθήνα 27/6/2017

TO :

the Minister of Labour, Social Security and Social Solidarity

Mrs E. Achtsioglou

Cc:

Department of the European Social Charter – Collective Complaints

Directorate General of Human Rights and Rule of Law

Subject: "Withdrawal of all legislative measures for the four-year period 2010-2014, which according to the Decision of the European Committee of Social Rights of the Council of Europe, dated March 23rd 2017, violate the European Social Charter (ESC)"

Minister,

As you already know, the GSEE has lodged its Complaint no.111/2014 to the European Committee of Social Rights (hereinafter "the Committee") of the Council of Europe requesting the Committee to find that through a series of legislative measures adopted by the Hellenic Republic repeated infringements of the European Social Charter have taken place. We focused our Complaint on the most critical legislative interventions during the period 2010-2014 in the private sector's labor issues covering also organizations and enterprises of the broader public sector operating under the principles of private sector economy; those interventions constitute, inter alia, violation of the European Social Charter.

The Committee by its Decision, dated March 23rd 2017, drew, as you know, the following conclusions:

1) unanimously that there is a violation of Article 1§2 of the European Social Charter (worker's right to earn his/her living in an occupation freely entered upon). The Committee ruled that the provisions foreseeing a minimum wage/salary for workers below the age of 25 years are incompatible with article 1§2 of the Charter. Making reference to the Decision of GENOP-DEI and ADEDY v. Greece, No. 66/2011, the Committee highlighted that the size of the reduction in the minimum wage and the manner in which it has been applied to all

workers under the age of 25 is disproportionate, even with regard to the framework of the current economic crises.

2) unanimously that there is a violation of Article 2§1 of the European Social Charter (reasonable duration of daily and weekly work with gradual reduction of the latter). According to the Committee's Decision, in order to be considered in conformity with the Charter, the maximum duration of work must also operate within a precise legal framework which clearly delimits the scope left to employers and workers to modify, by collective agreements, working time. In the case of Greece, the law itself does not define the scope available to the negotiating parties. After the dismantling of the collective bargaining system, it is not foreseen that the collective agreements that will henceforth be concluded with the employers should determine a maximum working time nor are there any specific guarantees relating to the application of these agreements.

The Committee therefore accordingly holds that the situation of workers with respect to working time is in violation of Article 2§1 of the Charter on account of the excessive length of weekly work authorized and the lack of sufficient collective bargaining guarantees (of the framework under which they will be negotiated).

3) unanimously that there is a violation of Article 4§1 of the European Social Charter (right to a fair remuneration sufficient for a decent standard of living for workers and their families). Given that there is no guarantee for a fair remuneration, the reduction in the minimum wage for workers under the age of 25 is disproportionate and constitutes discrimination on grounds of age.

The Committee held that for remuneration to be considered fair within the meaning of Article 4§1 of the Charter, the minimum wage/salary must not fall below 60% of the average wage. The Committee concluded that the statutory minimum wage/salary and the minimum wage/salary for workers under the age of 25, as fixed by the Ministerial Council Act 6/2012 and L. 4093/2012, are inadequate and that they violate fair remuneration, as stipulated by Article 4§1 of the Charter. Moreover, the Committee ruled that reduced increases due to seniority in the minimum salaries of workers above the age of 25 years who are long term unemployed (Section IA, Subparagraph IA.7 L. 4254/2014) contains an element of discrimination that deteriorates the situation of this group of workers.

The Committee concluded therefore that Article 4§1 of the Charter is violated since there is no guarantee of a minimum remuneration.

The Committee moreover observed that the situation regarding the minimum salary for workers below the age of 25 has not been brought into conformity (following the decision in GENOP-DEI and ADEDY v. Greece Complaint no. 66/2011), this is why it reiterated that the size of the reduced minimum wage of workers under 25 years and the way such reductions are applied in all workers below the age of 25 are disproportionate to the purpose of (overcoming the crisis) and constitute discrimination on grounds of age.

The Greek legislative measures that were examined by the Committee for their conformity with Articles 1§2, 2§1, 4§1 of the European Social Charter are among others, article 31 L. 4024/2011 on the abolition of pay terms included in collective agreements in the broader public sector to the extent they exceed the fixed upper limits and the imposition of a remuneration cap, article 37 L.

4024/2011 on the conclusion of collective agreements by associations of persons in all the enterprises where there are no trade unions, by priority and versus branch (sectoral) trade unions , as well as suspension, for as long as the implementation of the Medium-Term Fiscal Strategy Framework lasts, of the most favorable arrangement principle (favorability principle) in the event of plurality of branch-level and enterprise collective agreements, which means that the less favourable enterprise collective agreement shall prevail. Article 1 of the Ministerial Council Act 6/2012 was also examined by the Committee regarding the decrease of the minimum salary and wage of the then applicable general national collective agreement by 22% and 32% for young workers up to the age of 25 years, as well as article 2 para. 2, 3 and 5, 5 para. 1,2 Ministerial Council Act 6/2012, on the automatic termination of collective agreements and arbitration awards and the abolition of the permanence clause and all other similar clauses of workers's protection from redundancies. Law 4093/2012 was also examined on the establishment of a new system for formulating a statutory minimum salary for employees and minimum wage for blue collar workers unilaterally by the State and Law 4254/2014 (Section IA, Subparagraph IA.7) was examined on discrimination on the grounds of age.

4) unanimously that there is a violation of Article 4§4 of the European Social Charter (right of all workers to a reasonable period of notice for termination of employment). The Committee noted that the absence of provision of a notice period or severance pay during the probationary period constitutes a violation of Article 4§4 of the Charter. The Committee examined the conformity with Article 4 para. 4 of the Charter besides the pieces of legislation mentioned above, of Law 3899/2010 and Law 4093/2012. By virtue of article 17 para. 5, law 3899/2010 it was determined that *"the first twelve months of employment on an open-ended contract shall be deemed to be a trial period"*, instead of two months laid down under the legislation it was previously in force. Subsequently, by Law 4093/2012 it was stipulated (Subparagraph IA.12 case. 1) that *"the termination of the open-ended employment contract of a private sector employee exceeding twelve (12) months cannot occur without prior written notice from the employer..."*.

The Committee, considering the Complaint no. 65/2011 by the trade union organisations ADEDY and GENOP DEH v. Greece, examined whether the increase of the trial period (during which the dismissal from the employer is free) violates the Charter. Based on its jurisdiction regarding this provision, the Committee ruled that the meaning of trial period is not incompatible with giving employers the possibility to verify the suitability of the personnel they recruit but it should not be applied so broadly rendering inapplicable for the worker the guarantees regarding the notice period and the severance pay. **In this context, the Committee confirmed the violation of Article 4 para. 4 of the Charter and held that the right to a reasonable notice period in case of employment termination should be applied in all categories of workers** regardless of their status or qualification, including non regularly employed workers. It is also applied during the trial period. The national legislation should be as broad so as to offer protection to all workers. The main rationale behind the notice period is to give workers the appropriate time to find another job before the termination of current employment without being deprived of work remuneration. Therefore, any

notice period of less than a month for one-year working experience violates the Charter.

The Committee confirmed the systematic non compliance of the Greek legislator with the obligations deriving from Article 4 para. 4 of the Charter, particularly from the fact that **Law 4093/2012 was voted after the above Decision was issued by the Committee that ascertained the said violation.**

5) unanimously that there is a violation of Article 7§5 of the European Social Charter (right of young workers and apprentices to fair remuneration), because the minimum wage for minor workers aged 15-18 years is not fair. In the framework of examining the legislation mentioned above, the Committee made reference to its previous Decision (GENOP-DEH/ADEDY v. Greece, Complaint no. 65/2011) where it specifically examined the conformity of article 74, para. 9 L. 3863/2010 with Article 7 para. 5 of the Charter. By virtue of article 74 para. 9 of Law 3863/2010 it is stipulated that workers aged from 15 to 18 years may conclude special apprenticeship contracts with employers for one-year duration to acquire skills at a 70% rate of the minimum wage/salary under the national general collective agreement. The Law also foresees that these persons do not fall under the scope of the labor law except for the health and safety provisions.

A "fair and appropriate" wage, in accordance with the Committee, is assessed by comparing the remuneration of minor workers with the starting or the minimum salary of adult workers. In any case, the reference/comparison salary (of adults) should be sufficient to cover what is foreseen in Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

If the minimum wage falls below the statutory levels for adult workers, the Committee does not consider such level of remuneration fair nor in conformity with the interpretation of Article 7§5 of the Charter.

6) unanimously that there is a violation of Article 7§7 of the European Social Charter (right to not less than three weeks' annual holiday with pay for persons of under 18 years of age). The Committee examined the conformity of article 1 of the Ministerial Council Act 6/2012 and Subparagraph IA. 11, law 4093/2012 with Article 7 para. 7 of the Charter and it made reference to a previous decision GENOP-DEH/ADEDY v. Greece, Complaint no. 65/2011) where it specifically examined the conformity with article 7, para. 7 of the Charter of article 74 para. 9 l. 3863/2010,

7) With 9 votes in favor and 3 votes against as to the violation of the 1988 Additional Protocol (right of workers to take part in the determination and improvement of the working conditions and working environment and adoption of measures by the Member-States to safeguard this right). The inconformity with the Additional Protocol regards articles 31 and 37, l. 4024/2011, the articles 1, 2 and 5 Ministerial Council Act 6/2012, Subpara. IA,l. 4093/2012 and the Law 4254/2014, for the aforementioned provisions.

The Committee ruled that Article 3 of the 1988 Additional Protocol obliges the State to guarantee that other procedures are in place, beyond the ones provided for in Articles 5 and 6, that aim at the effective exercise of workers'

rights in determining and improving working conditions. The abolition of the previous collective bargaining regime does not offer equivalent measures able to guarantee that such obligations shall be fulfilled. This is why the Committee concluded that the Article 3 of the 1988 Additional Protocol is violated.

Minister,

The Decision dated 23-3-2017 by the European Committee of Social Rights of the Council of Europe, issued after the public hearing of GSEE and the Greek Government, constitutes a forthright condemnation of the legislative measures that violate the European Social Charter, which is the quintessence of the European tradition for the protection of social rights. The Decision builds a protection wall for the workers against the threat of imposing new measures against them.

Assessing the severity of the economic crisis affecting people in Greece, particularly the working population, the Committee decided that the violations of the 1961 Charter that have been unveiled are of particular significance due to

a) the large number of the relevant provisions and their impact on workers

b) the large number of affected citizens and

c) continuation of the violations observed in previous Decisions.

It is clear that no justified reason, no financial crisis or sovereign debt crisis, no internal devaluation policy through salaries cut aimed at improving competitiveness, no exceptional circumstances can justify the barbarity of legislative measures victimizing workers and the economy as a whole, as ascertained by the European Committee of Social Rights.

In this context, following the Decision of the Committee dated March 23rd 2017, it is imperative to annul all the above mentioned legislative measures that hit severely workers right to work and their decency and infringe blatantly the European Social Charter.

On behalf of GSEE

The President

Yiannis Panagopoulos

The Secretary General

Nikolaos Kioutsoukis