EUROPEAN COMMITTEE OF SOCIAL RIGHTS
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Case Document No. 3

Greek General Confederation of Labour (GSEE) v. Greece
Complaint No.111/2014

OBSERVATIONS BY THE EUROPEAN TRADE UNIONS CONFEDERATION (ETUC)

Registered at the Secretariat on 4 September 2015

Collective Complaint

Greek General Confederation of Labour (GSEE) v. Greece

Complaint No.111/2014

Observations by the European Trade Union Confederation (ETUC)

4 September 2015

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Overview

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1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (CCPP - Article 7§2) the European Trade Union Confederation (ETUC) would like to submit the following observations.

2 The ETUC is aware of the very difficult situation Greece finds itself within. In many public statements the ETUC has criticised the austerity measures required by European and international institutions. Most recently it has stated that "Austerity policies have created a profound social and humanitarian crisis."[1] This statement was preceded by i.a. a more fundamental declaration stating generally:

> The ETUC declares its support for the Greek trade unions in their struggle against the unprecedented IMF–EU–ECB onslaught that methodically dismantles core labour rights, uproots labour institutions and demolishes the social state depriving workers of vital institutional capabilities to defend themselves. In particular, free collective bargaining is impeded, collective agreements abolished and trade unions intimidated, while social dialogue is systematically destroyed to be replaced by authoritarian unilateralism that renders national social partners redundant.[2]

3 In an increasing number of statements, studies and other forms of public awareness raising actors from all sides have raised their voices in order to alarm politicians at all levels concerned to secure the enjoyment of human rights in general and fundamental social rights in particular. The most important documents will be referred to later.[3]

4 Against this background, the ETUC welcomes the fact that Greece has ratified the Collective Complaints Procedure Protocol (CCPP) thus allowing the filing of complaints (as the present one). While noting that Greece has ratified the 1961 European Social Charter (ESC) and the 1988 Protocol it is to be deplored that it has not yet ratified the 1996 Revised European Social Charter (RESC). Moreover, Greece has not accepted very fundamental social rights such as the freedom of association (Article 5) and the right to collective bargaining (Article 6). The ETUC expresses its sincere hope that Greece will fill all these gaps and ratify the RESC by accepting all substantive provisions in a very near future.

I. General observations

5 This case raises very substantial human rights issues. Indeed, the austerity measures imposed by international, European and national institutions have created an unforeseen and unforeseeable reduction (if not denial) of even very important fundamental social rights which are at the heart of this complaint, in particular the guarantee of decent remuneration (Article 4§1).

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[1] ETUC Declaration on Greece, adopted by the ETUC Executive Committee at its meeting on 17-18 June 2015; https://www.etuc.org/documents/etuc-declaration-greece-0#.VcMgivneIVI.

[2] ETUC Declaration on Greece, Brussels, 7 March 2012; https://www.etuc.org/documents/etuc-declaration-greece#.VcNLsvneIVI.

[3] See below under II.

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6 The ETUC is fully aware of the fact that the European Committee of Social Rights (ECSR) has dealt with austerity measures in general and in seven collective complaints with the specific measures in Greece in particular. For the ETUC it would appear that practically none of the issues raised therein are solved yet.[4]

7 Before going into any substantial details the ETUC would like to comment on two admissibility issues. First, the complainant organisation being member of the ETUC should not be subject to scrutiny as to the representativeness criterion (even if it is positive as in the present case). In this respect the ETUC would like to repeat its arguments developed since collective complaint n° 10/2000.[5] Second, the ECSR declares the references to Articles 30 and 31[6] as inadmissible. Also in this respect, the ETUC would like to repeat its doubts concerning this interpretation of Article 31[7] all the more as it is extended now to Article 30.

II. International law and material

8 The ETUC would like to add pertinent references to international law and material to the description provided in the complaint.[8] Mainly, it will refer to documents which have potentially not been taken into account by the ECSR in the previous decisions and conclusions. It will restrict the references to legal instruments which have been ratified by Greece.

A. United Nations

9 The most important social human rights standard in the UN is the International Covenant in Economic, Social and Cultural Rights (ICESCR) which has been ratified by Greece in 1995. Concerning Articles 1, 2 and 4 of the Charter at stake in this collective complaint, the relevant provisions in the ICESCR are Articles 6 and 7 which read as follows:

> **Article 6**
>
> 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
>
> 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training

[4] See amongst others: the general introduction of Conclusions XiX-2 (2009) and the ECSR decisions in relation to collective complaints 65/2011, 66/2011 and 76/2012 to 80/2012.

[5] See ETUC observations in case No. 10/2000 STTK ry and Thy ry against Finland: "However, the ETUC deplores that – contrary to the fundamental understanding of all participants in the CHARTE-REL-Committee - the ECSR did not refer to the ETUC-membership of STTK in the decision on the admissibility." See, in this respect also Explanatory Report to the CCPP: "it would be wrong to restrict this right to the national organisations mentioned in Article 23 (that is those which are members of the international organisations referred to in paragraph 2 of Article 27)", para. 22.

[6] Articles without any further indication refer to the 1961 ESC.

[7] See ETUC observations in cases No. 76 – 80/2012 under III.C.2.

[8] As to legal impact of the 'Interpretation in harmony with other rules of international law' see the ETUC Observations in No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden - Case Document no. 4, Observations by the European Trade Union Confederation (ETUC), paras. 32 and 33.

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programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

10 Only for Article 6 ICESCR a General Comment has been adopted by the Committee on Economic Social and Cultural Rights (CESCR).[9] Concerning Article 7 ICESCR a General Comment is being prepared.

11 Furthermore and also in the framework of the UN, the United Nations Independent Expert on foreign debt and human rights, *Juan Pablo Bohoslavsky*, recently stressed that human rights should not stop at the doors of international organizations and international financial institutions:

At stake are not only debt repayment obligations, but as well the very foundations on which the European Union is built: a union of nations that has respect for human rights, human dignity, equality and solidarity at its core.

The harsh conditionalities of the Greek adjustment programme have resulted in severe cut-backs in social spending, health care and education, raising concerns about the ability of the Greek government to ensure basic economic and social rights. The austerity and reform policies implemented since 2010 have so far not been able to bring Greece back on track.

[9] The Right to Work - General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/18, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfUKxXVisd7Dae%2fCu%2b13J25Nha7l9NlwYZ%2fTmK57O%2fSr7TB2hbCAidyVu5x7XcqjNXn44LZ52C%2bIkX8AGQrVyIc. For the relevance of this General Comment in the framework of this collective complaint, see amongst others paras. 68 and 73 of these observations.

> They have rather deepened the social crisis in Greece, and clearly not stimulated the national economy to the benefit of the Greek population.[10]

B. International Labour Organisation (ILO)

12 The consequences of austerity measures have been widely addressed and examined by the ILO. Most recently the ILO published its report 'World Employment and Social Outlook 2015: The Changing nature of jobs', which analysed data from 63 countries, over the last 20 years, suggesting that lowering protection for workers does not stimulate job growth.[11] It provides also specific information:

> In Greece, the drop in the (nominal) minimum wage in March 2012 directly impacted the basic unemployment benefit, which was equal to 55 per cent of the minimum wage.[12]

13 As regards Greece, the latest ILO report 'Productive Jobs for Greece'[13] finds that 'Greece needs to address risk of a prolonged social crisis'. I.a. it is stated that

> the number of Greeks at risk of poverty more than doubled in five years, rising from just above 20 per cent in 2008 to over 44 per cent in 2013.[14]

14 The ILO has adopted an important corpus of international standards in the areas covered by this complaint. The respective references to the Conventions are in chronological order. Many of those standards have been ratified by Greece.

1. ILO Convention No. 1 (Hours of Work (Industry) Convention, 1919)

15 The first ILO Convention limits the working time in the industry to the eight hours a day and 48 hours a week. It has been ratified by Greece. Indeed, Article 2 of this Convention provides:

> **Article 2**
>
> The working hours of persons employed in any public or private industrial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed, shall not exceed eight in the day and forty-eight in the week, with the exceptions hereinafter provided for:
>
> (a) the provisions of this Convention shall not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity;
>
> (b) where by law, custom, or agreement between employers' and workers' organisations, or, where no such organisations exist, between employers' and workers' representatives, the hours of work on one or more days of the week are less than eight, the limit of eight hours may be exceeded on the remaining days of the week by the sanction of the competent public

[10] "Greek crisis - Human rights should not stop at doors of international institutions, says UN expert (2 June 2015)" http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032&LangID=E

[11] http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_383849/lang--en/index.htm

[12] (ILO/European Commission, forthcoming), http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_368626.pdf, p. 95.

[13] http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_319755.pdf.

[14] http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_321408/lang--en/index.htm.

authority, or by agreement between such organisations or representatives; provided, however, that in no case under the provisions of this paragraph shall the daily limit of eight hours be exceeded by more than one hour;

(c) where persons are employed in shifts it shall be permissible to employ persons in excess of eight hours in any one day and forty-eight hours in any one week, if the average number of hours over a period of three weeks or less does not exceed eight per day and forty-eight per week.

16 In a General Survey,[15] the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) dealt extensively with the issues of working hours. Recently, the CEACR addressed a direct request to Greece concerning this Convention and austerity measures:

> *Articles 2, 5 and 6 of the Convention*. Daily and weekly limits of hours of work – Uneven distribution of hours of work over a period longer than a week – Temporary exceptions – Overtime. The Committee notes section 42 of Act No. 3986/2011 (O.G. A 152) which permits a system of annualized hours, according to which hours of work may be increased by two hours per day in addition to the contractual eight hours over a certain period of time, provided that the hours in excess of the 40-hour working week, or in excess of any reduced contractual weekly working time, are likewise deducted from the working hours of another period, or alternatively, enterprises may designate 256 working hours out of the total working hours within one calendar year to be distributed by increasing the number of working hours over certain periods of time. In addition, the Committee notes section 10(5) of Act No. 3863/2010, which amends Act No. 3382/2005 and entitles employees to overtime pay equal to 80 per cent the normal hourly rate for exceptional overtime. The Committee recalls, in this respect, its previous comment in which it drew the Government's attention to the requirements of the Convention that any exceptions to the normal duration of working hours in national legislation and practice: (1) constitute an "exceptional case" where it is recognized that the eight-hour and 48-hour limits cannot be applied (owing to pressure of work), and (2) be introduced through an agreement between workers' and employers' organizations transformed into regulation by the Government. While noting the Government's explanation that exceptional overtime applies to work that is not in compliance with the formalities and procedures of approval provided for by law and, as such, has no legal limit, the Committee is bound to repeat its earlier comment that there seems to be no mechanism in place for the prior control of circumstances which would justify such overtime. On the contrary, it is the very lack of control (in this case, the lack of compliance with formalities and procedures) which appears to justify the use of overtime and, as such, does not appear to be in compliance with the requirements of the Convention. ***The Committee accordingly requests the Government to take the necessary measures in order to bring its national legislation in line with the requirements of the Convention to authorize overtime in industrial undertakings – either with respect to an annualized system or general weekly system – to exceptional cases of pressure of work.*** The Committee draws the Government's attention in this respect to Part V, as well as to paragraphs 227 and 228 of its General Survey of 2005 on hours of work, which provides further explanations and examples of good practice with respect to the procedures for the authorization of extension of working hours.

[15] *ILO*, International Labour Conference, 93rd Session 2005 - Report III (Part 1B) - General Survey of the reports concerning the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), http://www.ilo.org/public/libdoc/ilo/P/09661/09661%282005-93-1B%29139.pdf.

2. ILO Convention No. 95 (Protection of Wages Convention, 1949)

17 This important Convention on the protection of wages has been ratified by Greece in 1955. In its recent Report 2015 (RCE),[16] the CEACR dealt in detail with the consequences of austerity measures in the application of this Convention:

> *Article 12*. Timely payment of wages. Prompt settlement of wages upon termination of employment. In its previous comment,[17] the Committee urged the Government to continue to take active steps in order to prevent the spread of problems of non-payment or delayed payment of wages. In addition, concerned about the wage cuts in the public sector and the reduction of the national minimum wage, the Committee urged the Government to fully consult the representative employers' and workers' organizations before the adoption of any new austerity measures, to avoid any new curtailment of workers' rights in respect of wage protection, and to seek to restore the purchasing power of workers' wages. It also requested to provide a comprehensive report on all wage-related measures adopted in the context of the financial crisis, any tripartite consultations held prior to their adoption and on the social impact of those measures.
>
> The Committee notes the information provided by the Government in its report concerning ongoing difficulties experienced in the timely payment of wages. In particular, it notes the information on the number of cases of fines, complaints, and labour disputes, as recorded by the labour inspectorate (SEPE) on cases of non-payment or delayed payment of wages between 2011 and April 2013. According to this information, 10.2 per cent of all cases of fines, and 75 per cent of labour disputes, are related to non-payment or delayed payment of wages. The Committee also notes the Government's indication that the cases of non-payment or delayed payment of wages and holiday pay, allowances and bonuses are steadily increasing. In this connection, it notes the report on the results of a survey conducted by the Small Enterprises' Institute (IME) of the Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE). In particular, the findings indicate that 51.4 per cent of the surveyed enterprises face difficulties in the timely payment of wages. 43.2 per cent of the respondent companies owe contributions to the Self-employed Insurance Organisation (OAEE) and 22.6 per cent, to the social security fund. These enterprises are facing difficulties also with meeting tax obligations and payment for public utilities.
>
> The Committee notes the Government's reply referring to various provisions of the Civil Code concerning the protection of workers in case of non-timely payment of wages, but they do not appear to provide for the prevention of, or sanction against, non-payment or delayed payment of wages. Given the current situation described above, the Committee reiterates its ***serious concern*** over the continuation of cases of non-payment or delayed payment of wages. It considers that the current situation continues to pose difficulties for workers and their families whose income has already been substantially decreased through the implementation of austerity measures including reductions of wages and benefits. ***The Committee requests the Government to take all possible measures, legislative or otherwise, to ensure the***

[16] *ILO*, International Labour Conference, 104th Session 2015, Report III (Part 1A) Report of the Committee of Experts on the Application of Conventions and Recommendations, http://www.ilo.org/ilc/ILCSessions/104/reports/reports-to-the-conference/WCMS_343022/lang--en/index.htm.

[17] The "previous comment" referred to can be found in *ILO*, International Labour Conference, 102nd Session 2013, Report III (Part 1A) Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 680-682, http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205472/lang--en/index.htm

payment of wages on time and in full, and to provide information on their results achieved. It also requests the Government to continue to provide information on the development of the situation of non-payment or delayed payment of wages, including, for instance, the amount of wages in arrears and recovered.

With respect to the wage cuts in the public sector, the Committee notes the information provided by the Government that public officers are no longer entitled as from 1 January 2013 to the holiday allowances and Christmas and Easter bonuses by virtue of section 1, paragraph C(C1) of Act No. 4093/2012. This is an additional element to a set of measures already in place and reported previously, which have reduced basic wages and allowances of these public sector workers. In this connection, the Committee understands that the Council of State, the highest administrative court of Greece, ruled in January 2014 that wage cuts implemented in 2012 with respect to the police and armed forces were unconstitutional, and that the workers concerned must be reimbursed. The Committee also understands that under Act No. 4172/2013, some public positions have been abolished and workers occupying these positions have been placed on so-called "non-active" or "mobility" status at reduced wage for a period of up to eight months during which the possibility of employment in another position in the public sector is sought. It also understands that this measure is expected to result in a total of 25,000 public sector workers being placed in the non-active status, and that 5,000 public officers will retire or be dismissed. The Committee observes that these measures, although they are part of efforts to reduce the national budget, have an extensive negative effect over the standard of living of public workers, who will receive reduced wages and allowances and no holiday allowances.

With respect to the national minimum wage, the Committee notes the information provided by the Government in its report on the new mechanism for fixing the national minimum wage rates provided for under Act No. 4172/2013, which, according to the Government, strengthened the role of social partners. The Committee notes, however, the Government's indication that the new mechanism will enter into force after the implementation of the fiscal adjustment programmes, that is, not before 1 January 2017. Until then, the rates prescribed under the Act of the Council of Ministers No. 6 of February 2012 will continue to apply, which reduces the previous rates by 22 per cent for workers of 25 years of age or older and by 32 per cent for workers younger than 25 years of age.

With respect to tripartite consultations on wage-related matters, the Committee notes the Government's references to other activities such as holding tripartite workshops on social dialogue and conclusion of agreements between the Government and the ILO on various projects. While these initiatives are welcome steps in a broader context of achieving job-rich recovery from the current difficult economic situation, they are not specifically related to tripartite consultation prior to the adoption of any new austerity measures.

As the abovementioned measures reported by the Government are yet to be operationalized or to achieve results through specific activities, the Committee requests the Government to contemplate adopting additional measures to avoid further adverse impact on workers in respect of wage protection. The Committee also reiterates its previous request to the Government to ensure that employers' and workers' representatives are fully consulted before the adoption of any new austerity measures. The Government is also requested to continue to provide information on any measures taken or envisaged on these matters and the results achieved.

C. Council of Europe (CoE)

18 Besides the ECSR several other CoE bodies have addressed the serious problem of the impact of austerity measures on human rights in general and fundamental social rights in particular. The following list of material is neither exhaustive nor substantive in the sense that general sources are coupled with relevant quotations.

1. The 'Turin process'

19 This approach is also part of the "Turin process"[18] aimed at reinforcing the Charter and its impact. This is demonstrated by Theme I "The role of the European Social Charter in affirming social rights during the crisis period and the crisis exit phase" of the Turin Conference in October 2014 the results of which are summarised by the General Report, established by *Mr Michele Nicoletti*, Vice-President of the Parliamentary Assembly of the Council of Europe.[19]

20 Moreover, the Conference on the future of the protection of social rights in Europe organised in Brussels, 12-13 February 2015 led to a final document (elaborated by a group of academic experts).[20] This 'Brussels' Document on the Future of the Protection of Social Rights in Europe Brussels', once again addresses austerity measures ("1. Protecting Social Rights in the Time of Crisis").

2. Parliamentary Assembly (PACE)

21 The PACE adopted numerous resolutions and recommendations on the economic crisis, in particular Resolution 1884(2012) Final version – "Austerity measures – a danger for democracy and social rights" (26 June 2012) and more recently Resolution 2032(2015) - "Equality and the crisis" (28 January 2015).

22 More specifically and in the framework of the Turin Conference the Sub-Committee on the European Social Charter stated that many austerity programmes were not in line with European Social Charter.[21]

3. Other bodies

23 The CDDH indirectly considered the question of social rights in its draft feasibility study on "The impact of the economic crisis and austerity measures on human rights in Europe" (CDDH(2014)017, 4 November 2014).

24 Several other monitoring bodies, such as the Committee for the Prevention of Torture (CPT) and the European Commission against Racism and Intolerance (ECRI), have addressed the impact of the economic crisis on human rights within the margins of their specific mandates.

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[18] http://www.coe.int/en/web/turin-process/.

[19] High-Level Conference on the European Social Charter - Turin, 17 - 18 October 2014 - General Report, 2015, pp. 26 ff. http://www.coe.int/T/DGHL/Monitoring/SocialCharter/GENERAL%20REPORT%20FINAL%20EN%20avec%20annexes%20ET%20couverture%20%283%29.pdf

[20] **the 'Brussels' Document'**, http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Doc_Bruxelles_version_EN_FR_DEF.pdf

[21] See Statement by PACE Sub-committee on the European Social Charter

25 The Council of Europe Commissioner for Human Rights has published an Issue Paper on "Safeguarding human rights in times of economic crisis" (November 2013).[22]

D. European Union (EU)

26 The European Union (EU) is bound by human rights standards and fundamental social rights in particular. The ECSR has examined the specific relationship to the Charter thoroughly.[23]

1. The fundamental social rights protection

27 It is well known that the fundamental social rights in the EU are guaranteed above all by the Charter of Fundamental Rights of the EU (CFREU). According to the explanations they are mainly based on the respective rights in the Charter (in both versions). Moreover, EU primary law recognises explicitly the values of fundamental social rights as guaranteed by the Charter (see 5th recital of the Preamble of the Treaty of the EU (TEU) and Article 151§1 of the Treaty on the Functioning of the EU (TFEU)).

28 Additionally it should be recalled that the latter references also apply to the Community Charter of Fundamental Social Rights of Workers (Community Charter) which i.a. provides:

> **Employment and remuneration**
>
> 4. Every individual shall be free to choose and engage in an occupation according to the regulations governing each occupation.
>
> 5. All employment shall be fairly remunerated.
>
> To this effect, in accordance with arrangements applying in each country:
>
> - workers shall be assured of an equitable wage, ie a wage sufficient to enable them to have a decent standard of living;
>
> - workers subject to terms of employment other than an open-ended full-time contract shall receive an equitable reference wage;
>
> - wages may be withheld, seized or transferred only in accordance with the provisions of national law; such provisions should entail measures enabling the worker concerned to continue to enjoy the necessary means of subsistence for himself and his family.
>
> …
>
> **Improvement of living and working conditions**
>
> 7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an

[22] See his Human Rights Comment "Youth human rights at risk during the crisis" (6 March 2014). The CoE Human Rights Commissioner drew attention to the negative impact of the crisis not only on the social and economic rights of young people, but also on "their right to equal treatment, their right to participation, and their place in society, and more broadly, in Europe".

[23] Working document of the European Committee of Social Rights on the "Relationship between European Union law and the European Social Charter" 2014, http://www.coe.int/T/DGHL/Monitoring/SocialCharter/TurinConference/Working%20document%20Relationship%20EU%20law%20_%20Charter%20Final.pdf.

approximation of these conditions while the improvement is being maintained, as regards in particular the duration and organisation of working time and forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work.

The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.

8. Every worker of the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which must be harmonised in accordance with national practices while the improvement is being maintained.

…

2. Specific material concerning austerity measures

29 Most of the austerity measures implemented in Greece are required by two EU institutions (i.e. the European Commission and the European Central Bank, often endorsed by the Council). Only in more recent times other EU institutions and bodies have started to have a more critical look into these measures.

30 In this respect, the European Parliament (EP) plays the most prominent role. Indeed, it has adopted a Resolution on "Employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries"[24] (13 March 2014). In this text, it underlined that the austerity measures represented a threat to the fundamental values of the Union. For 2015 and beyond, the parliamentarians emphasized the priority of the universal application of human rights, focusing on the impact of the financial and economic crisis on the poorest and most vulnerable people. This statement was preceded i.a. by a Resolution on "The impact of the financial and economic crisis on human rights" (18 April 2013). Moreover, the LIBE Committee has commissioned a study which has been published recently.[25]

31 Concerning the Fundamental Rights Agency (FRA), it has published a Report on the EU's role in this respect analysing the different crisis situations.[26]

[24] Resolution (2014/2007(INI)) The EP refers at several occasions in this resolution to the particular situation of Greece and in one of its recommendations (para 37 of the text) it " Invites the Commission to ask the ILO and the Council of Europe to draft reports on possible corrective measures and incentives needed to improve the social situation in these countries, their funding and the sustainability of public finances, and to ensure full compliance with the European Social Charter, with the Protocol thereto and with the ILO's Core Conventions and its Convention 94, since the obligations deriving from these instruments have been affected by the economic and financial crisis and by the budgetary adjustment measures and the structural reforms requested by the Troika"

[25] "The impact of the crisis on fundamental rights across Member States of the EU - Comparative analysis". In chapter 6 the report looks specifically on the impact of austerity measures on the right to work (working time, wages, etc.) in the different member states including Greece. http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU%282015%29510021_EN.pdf .

[26] The European Union as a Community of values: safeguarding fundamental rights in times of crisis.

E. Greek National Commission for Human Rights (GNCHR)

32 The Greek National Commission for Human Rights (GNCHR) is an important actor at national level with impact on the international and European level. This has been recognized by the ECSR in its Conclusions as well as in its decisions.[27] Most recently, the Greek National Commission for Human Rights (GNCHR) has published a (further) "Statement on the impact of the continuing austerity measures on human rights" (15 July 2015).28 This document is all the more relevant as it contains the important references to national and international sources in its Appendix.

III. The law

33 The present complaint raises many important issues in relation to the austerity measures introduced in the last years.

34 The legal situation being very complex, it appears important to focus the ETUC observations on the most important issues raised in the complaint. It therefore addresses the problems raised in the complaint under the headings of the most pertinent provisions of the Charter.

35 This approach should not be considered as meaning that the ETUC would be of the opinion that the other issues would be in line with the Charter. On the contrary, many issues might have to be further developed in the further proceedings.

A. General considerations

1. Introduction

36 To deal with austerity measures in times of crises is not a new challenge for the ECSR. Indeed, it has already concluded and reaffirmed it in its decision GENOPI-DEI and ADEDY that:

> the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.
>
> In addition, doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection.

[27] See amongst others Conclusions XX-3 (in particular on Articles 2§1 and 4§1) and ECSR decisions in collective complaints 65 and 66/2011.

[28] http://www.nchr.gr/images/English_Site/CRISIS/GNCHR_Statement_%20impact_of_austerity_measures_on_HR_2015.pdf

> These general principles … are taken into account in the assessments made by the Committee in the part concerning the alleged violation of the articles of the 1961 Charter.[29]

37 Additionally, in accordance with its previous practice, the ECSR should take account of the different statements, analyses, studies[30] dealing more recently with austerity measures and their impact on fundamental (social) rights in general and in relation to Greece in particular coming from the UN (see above in particular para. 11), the ILO (see above paras. 12 - 13), the Council of Europe (see above paras. 18 ff.), the European Union (see above paras. 26 ff.) and the Greek National Commission for Human Rights (see above para. 32).

2. Protection against regression by Article 31

38 Besides this general approach there is a specific legal issue under Article 31. The ECSR has addressed this problem by denying it the status of an admissible complaint basis. However, the ETUC would, once again, express the opinion that even if this article cannot be raised on its own as admissible it requires nevertheless, on a more concrete basis, an in-depth justification and examination of all restrictions in relation to social rights.[31] Thus, reduction in the already achieved level of protection of social rights with reference to the economic crisis must meet the test of specific justification regarding human rights restrictions (principle of proportionality).

a) The complaint

39 The complaint specifically refers to the principle of proportionality in the following terms:

> 7. Violation of the principle of proportionality
>
> The measures set out in this complaint violate, inter alia, the principle of proportionality lato and strictu sensu, since they were unnecessary and ineffective in dealing with major existing problems. Based upon the above analysis, it is concluded that these measures violate the principle of proportionality since they have exacerbated problems (recession, unemployment, public revenues, mass poverty) while even if we take as a working assumption that the measures were necessary, their devastating effects are disproportionate to their objective.

b) Considerations by the ETUC

40 From the outset, the ETUC would like to recall that the Charter is an instrument for social development. It is therefore a fundamental question to what extent and under which conditions it permits social regression.[32] Before addressing this problem in legal terms, the ETUC would like to emphasise that the austerity measures are an attack on all social

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[29] ECSR, Decision on the merits, 23 May 2012, *GENOP-DEI and ADEDY v Greece*, Complaint No 65/2011; see for an in-depth analysis of the two decisions *C Deliyanni-Dimitrakou*, 'La Charte sociale européenne et les mesures d'austeriré grecques: à propos décisions nos 65 et 66/2012 du Comité européen des droits sociaux fondamentaux' (2013) 7–8 *Revue du Droit du Travail* 457. In its most recent 'General Introduction' to Conclusions 2013 and XX-2 the ECSR again refers to this case law.

[30] See above n 8.

[31] In respect of social rights there is usually a distinction in the terminology between 'restriction' of a right and 'regression' or of a 'fall-back' to an already achieved level of a so-called dynamic (or progressive) right. As argued below, while there might be a difference in the terminology, there should not be difference in the substance.

[32] See *J Marguénaud and J Mouly*, 'Le Comité européen des droits sociaux face of au principe de non-régression en temps de crise économique' (2013) 4 *Droit social* 339ff.

advantages and progressive elements in social policy and legislation which often have been very difficult to achieve, in many cases only after long trade union struggles. Thus they also undermine trade union activity. Taking them altogether they can and in most cases must be seen as an attack on human dignity.

41 In legal terms, Article 31§1 enshrines a protection against retrogressive legislation.[33] Indeed, it requires specific justification of restrictions with regard to all rights guaranteed by the Charter. However, the ECSR holds the view that this provision has no legal value on its own. It justifies this assessment by a reference to the European Convention on Human Rights (ECHR).[34] This Article would correspond to the second paragraph of Articles 8 to 11 ECHR. It therefore could not lead to a violation of the Charter as such.[35]

42 But this assumption does not sufficiently take account the wording of this provision. Comparing the wording of Article 31§1 with paragraphs 2 of Articles 8 to 11 ECHR demonstrates an important difference related to the mentioning of 'effective' realisation or exercise in Article 31§1 ('when effectively realised', 'effective exercise')[36] which does not appear in the aforementioned ECHR provisions. It means that whenever a right guaranteed by the Charter has once been 'effectively realised' (that is, also in cases where the national situation goes beyond the minimum standard required by the specific right at stake) any reduction needs specific justifications to show that this provision is satisfied.

43 In any event, the austerity measures have to be justified against the background of the requirements of Article 31§1. Without direct reference to, but in clear accordance with ECtHR jurisprudence on permissible restrictions, the Digest 2008 describes the conditions in general terms:

> (i) prescribed by law, … means by statutory law or any other text or case-law provided that the text is sufficiently clear, ie that satisfy the requirements of precision and foreseeability implied by the concept of 'prescribed by law';

[33] These Observations do not address any issue under Article 30. Obviously, even the formal requirements have not been fulfilled. In any event, there is no 'war or public emergency' like a natural catastrophe or anything alike.

[34] Decision on the Merits, 7 December 2012, *Federation of Employed Pensioners of Greece (IKA–ETAM) v Greece*, Complaint No 76/2012 § 48: 'However, the Committee recalls that Article 31 of the Charter cannot be directly invoked as such, but only provides a reference for the interpretation of the substantive rights provisions of the Charter, which are at stake in a given complaint (see also the decision on the admissibility of 23 May 2012 in the current complaint, §§ 6–7)'.

[35] Decision on the merits, 15 June 2005, *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v France*, Complaint No 26/2004, § 31.

[36] In English: 'The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals'. In French: 'Les droits et principes énoncés dans la partie I, lorsqu'ils seront effectivement mis en œuvre, et l'exercice effectif de ces droits et principes, tel qu'il est prévu dans la partie II, ne pourront faire l'objet de restrictions ou limitations non spécifiées dans les parties I et II, à l'exception de celles prescrites par la loi et qui sont nécessaires, dans une société démocratique, pour garantir le respect des droits et des libertés d'autrui ou pour protéger l'ordre public, la sécurité nationale, la santé publique ou les bonnes mœurs'.

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(ii) pursue a legitimate purpose, ie the protection of the rights and freedoms of others, of public interest, national security, public health or morals; and

(iii) necessary in a democratic society for the pursuance of these purposes, ie the restriction has to be proportionate to the legitimate aim pursued: there must be a reasonable relationship of proportionality between the restriction on the right and the legitimate aim(s) pursued.[37]

44 This list contains strict conditions requiring, each time, an in-depth examination of permissible restrictions. This applies in particular when they were introduced in order to combat economic crisis. However, looking at the ECSR's assessments in its Conclusions it is rare that it analyses all three elements accurately. For example, it deals with some elements of the substance, such as 'necessary in a democratic society' (referring also to a 'Government's margin of appreciation'),[38] or it refers in a general way to the 'limits set out in Article 31'[39] of the 1961 Charter, or it requests that governments should justify the measures taken.[40]

45 Still lacking clear guidance[41] it appears necessary to develop the conditions in more detail.

(1) Prescribed by Law?

46 The requirements of precision and foreseeability will, in many cases, pose no problems. It is the very aim of most austerity measures that they be included in legislation in the clearest terms possible in order to allow the controlling bodies (such as the Troika) to easily assess whether their conditions have been fully met. Although still the first (important) step in the evaluation of the conformity of austerity measures, the result in many cases will probably be that the measures have been 'prescribed by law'. Nevertheless, the rapidity and the amount of 'austerity' legislation will easily pose the problem of foreseeability and accessibility such as required by the ECtHR.[42]

47 In any event, the two further conditions pose substantial problems and therefore have to be evaluated more in detail.

(2) Legitimate Aim?

48 Economic recovery programmes often have two aims: first, a financial adjustment, in other words redressing the imbalances in public finances and reducing the external debt; and second, restoring competitiveness.[43]

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[37] Council of Europe (ed), Digest of the Case Law of the European Committee of Social Rights (1 September 2008) http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf (Digest 2008), 177.
[38] Conclusions XV-1, Iceland, Article 6§2.
[39] Conclusions XIII-3, Norway, Article 6§2; Conclusions XIII-3, Portugal, Article 6§2; Conclusions XIII-1, Denmark, Article 6§2: 'could not be of a kind authorised by Article 31 of the Charter'.
[40] Conclusions XIII-3, Ireland, Article 6§2; Conclusions XIII-2, Malta, Article 6§2.
[41] Also concerning the principle of strict interpretation of exceptions (see eg, Conclusions 2008, Azerbaijan, Article 20: 'Such exceptions are however subject to strict interpretation'; Conclusions 2005 and XVII-2, Statement of interpretation on Article 11, § 5: 'that any restrictions on this right must not be interpreted in such a way as to impede the effective exercise by these groups of the right to').
[42] See e.g. Case Tymoshenko v. Ukraine, application no. 49872/11, ECtHR final judgement of 30/07/2013, paras. 80-85
[43] See, eg, Memorandum of Understanding – Greece, Appendix III, paras II and III, particularly no 7.

49 Against this background, it has to be evaluated whether these aims are in conformity with Article 31§1 which defines the legitimate aims as follows: 'for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals'. At first, this list of these five grounds is exhaustive. Second, economic or financial aims are not mentioned in this list and can therefore not be considered as legitimate.

50 Nevertheless, two aims mentioned in the list might be advanced for justifying restrictions.

51 The first is the 'public interest'. However, it does not appear possible to include economic or financial reasons in this. This is confirmed by the French version, which uses the term 'l'ordre public'. The ECSR is not very clear on this issue. For instance, concerning one and the same country (Iceland), it has been fairly flexible in recognising state intervention in collective bargaining in a very summary manner, as justified under Article 31§1 by referring, among other things, to 'public interest'.[44] On the other hand, it was very strict in rejecting the government's argument based on 'public interest' in order to justify the restriction on the right not to join a trade union.[45] In any event, measures taken for economic reasons cannot be considered to have been based on a legitimate aim.

52 The second is the 'protection of rights and freedoms of others'. It cannot be considered as justifying austerity measures by the state concerned. Indeed, neither 'financial adjustments' nor 'restoring competitiveness' can amount to fulfilling this condition because they are not rights or freedoms in the sense of the Charter (nor of the ECHR).

(3) Necessary in a Democratic Society?

53 If, nevertheless, the ECSR would recognise a 'legitimate aim', further examination requires an in-depth analysis of the justifications brought forward by the respective government concerning appropriateness and necessity.

54 It is not possible to assess all the possible arguments put forward by the Government. However, it should be recalled that, at the level of individuals, the ECSR has expressly excluded 'losses sustained by individual employers' as justifying restrictions to the right to strike[46] or that restrictions aimed at protecting financial interests of third parties – such as consumers or clients – could be imposed in exceptional cases only.[47]

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[44] Conclusions XV-1, Iceland, Article 6§2: 'For the reasons set out in detail in the Committee's conclusion under Article 6 para 4, it considers that the intervention in collective bargaining resulting from the passing of the Seamen's Wages and Terms Act, No 10/1998 on 27 March 1998 was not in breach of Article 6 para 2 taking into account Article 31 of the Charter. The Committee considers that the intervention falls within the Icelandic Government's margin of appreciation when it comes to deciding what measures were necessary in the specific context in a democratic society for the protection of the rights and freedoms of others and for the protection of public interest'. The description of the facts is more extensive under Article 6§4, but the assessment, using exactly the same words as just quoted, does not contain any further legal argument.

[45] Conclusions XV-1, Iceland, Article 5: 'Providing these general conditions are met, an individual maybe obliged to become a member of an association in the public interest. The *travaux preparatoires* state specifically that this is a general term covering the items listed in Article 11 para 2 of the European Convention on Human Rights. The Committee underlines that the only restrictions to the right to organise, whether in its positive or negative aspects, authorised by the Charter are those provided for in Article 31'.

[46] Conclusions XIV-1, Netherlands, Article 6§4, 554–58.

[47] Conclusions XIII-1, Netherlands, Article 6§4, 157–58.

55 It would appear however, that a reference to the jurisprudence of the ECtHR could be used as argument for the justification that the measures are 'necessary in a democratic society'. Indeed, in *Koufaki and ADEDY v Greece*[48] the ECtHR had accepted the Council of State's jurisprudence in this respect. However, this argument would not be convincing. Most importantly, this case was directly related to the budget of the State (pensions of civil servants) and the Court's argumentation is mainly based on this element. In the present complaint, there is no financial burden on the State.[49] On the contrary, the measures introduced deal mainly with (private) labour law issues. Moreover, the jurisprudence of the Council of State appears to have changed in the sense that it is more critical concerning austerity measures.

56 In general, it should be borne in mind that measures cannot be considered 'necessary' if alternatives are available. For example, it would have to be examined in greater detail whether measures such as eliminating, for example, waste in expenditure, inefficiency in administration and fraud were available. If they had not been sufficiently taken into account and put into practice before reducing social rights in general or social benefits in particular, this situation would amount to a violation of the respective Article.

57 Moreover, it is important to note that the ECSR in former decisions introduced certain procedural requirements by criticising the fact that the government:

- Had not conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess their full impact on vulnerable groups in society in a meaningful manner.

- Had not discussed the available studies with the organisations concerned, despite the fact that they represent the interests of many of the groups most affected by the measures at issue.[50]

58 Finally, the cumulative effect of austerity measures have to be taken into account. This approach was used by the ECSR i.a. in the *IKA–ETAM v Greece*[51] case and led to finding a violation in the respective pension cases.[52]

3. Interim conclusions

59 The principles described and developed above (see III.A.1 and III.A.2.b) will be applied to the measures complainted of and - at least to a certain extent – accordingly assessed alongside with the relevant provisions of the Charter in the following sections.

B. Article 1 (The right to work)

60 The complaint raises several issues under the heading of Article 1. The most relevant appears to be the following:

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[48] ECtHR, Decision 7 May 2013, App nos 57665/12 and 57657/12, *Koufaki and ADEDY v Greece*.

[49] See also K Ewing/J Hendy, International Litigation Possibilities in European Collective Labour Law: ECHR, in: Bruun/Lörcher/Schömann (eds.), The Economic and Financial Crisis and Collective Labour Law in Europe, Hart Publishing, Oxford, 2014, p. 304 (n 68).

[50] *IKA –ETAM v Greece*, above (n 34) § 79.

[51] *IKA –ETAM v Greece*, above (n 34) §§ 78 and 79.

[52] I.e. also in the cases Nos. 77 - 80/2012.

1. The complaint

a) Description

61 Concerning the right to work the complaint refers in particular to Act No. 4254/2014 as follows:

> 6. Meanwhile, law 4254/2014 provides. inter alia. the following: …
>
> Changes have been brought about in the conditions of temporary employment, which tends to become a lasting phenomenon since the law has facilitated greater use of temporary contracts compared to what was already in place. In particular:
>
> A) The current framework of restrictions and prohibitions on the employment of workers with an indirect employer in conditions of temporary agency work encompasses also the case (Law 4052/2012, article 116, par. b) where "the indirect employer had dismissed workers of the same occupational category during the last 6 months for economic and technical reasons or undertook collective dismissals in the same occupation during the last 12 months". Law 4254/2014 restricts the time period from 6 to 3 months for individual redundancies, a change, which removes the prohibition on the use of temporary workers for enterprises dismissing employees for economic and technical reasons or undertaking collective dismissals after 3 months have elapsed since the dismissals took place.
>
> B) The current framework of restrictions and prohibitions on the employment of workers with an indirect employer in conditions of temporary agency work includes also the case (Law 4052/2012, article 116, par. e) where "blue-collar building workers are subject to the special provisions concerning the insurance of construction workers". The draft law restricts the said prohibition since it provides for exemptions (from the prohibition) that apply in the case of blue-collar construction workers employed in projects with an Initial budget of more than 10.000.000 euros that are financed or co-financed from national sources and carried out by subcontracting or public works concession on behalf of the State, legal entities of public law, local authorities of first and second grade, public, municipal and community enterprises of public utility and, in general, enterprises and organizations of the broader public sector. Therefore, blue¬ collar construction workers are allowed to work to all the above-mentioned work projects in conditions of temporary agency work.
>
> C) paragraph 3 of article 122 of Law 4052/2012, which provided that "temporary work is allowed with an indirect employer only for certain reasons justified by temporary, seasonal or exceptional needs" is abolished. This abolition extends the temporary employment regime given that the placement of a worker with an indirect employer will now be able to cover also permanent, fixed and constant needs of the enterprise in breach of the 70/199 Community Directive that prohibits the abuse of fixed-term contracts and requires specific justification for the establishment of a fixed¬ term contract.
>
> D) Paragraph 1 of article 124 of Law '4052/2012 is replaced while no specific reason for the worker's assignment is required to be mentioned in the mandatory content of the employment contract concluded between the temporary work agency (TWA) (direct employer) and the worker. This is compounded by the previous change in legislation, namely the fact that the placement of a worker with an indirect employer is permitted for all types of needs. Moreover, workers who are not employed with an indirect employer, cannot be paid less than the wages set by the statutory minimum salary and wage fixed by law, instead of the current applicable pay levels set by the EGSSE.

E) Par. 3 of article 124 of Law 4052/2012 is replaced while no specific reason for the worker's assignment is required to be mentioned in the mandatory content of the employment contract concluded between the temporary work agency (lWA) and the worker.

b) Conclusions as to the violations of the ESC

62 The complaint arrives at the following conclusions:

The above regulatory provisions of Law 4254/2014, which have widened the grounds for "trafficking of human beings" by means of "lending" workers, violate, Inter alia, the European Social Charter (ESC) and in particular the following articles:

- Article 1 (States have undertaken to effectively ensure on equal footing full employment),
- Article 2 (States have undertaken to effectively ensure just conditions of work),
- Article 4 (States have undertaken to ensure a decent standard of living),
- Article 3, par. 1 of the Additional 1988 Protocol (right of workers to take part in the determination and improvement of their working conditions), 4l 019/024
- Article 30 (possibility to derogate from the ESC regulations only In time of war or other public emergency threatening the life of the nation),
- Article 31 (need to ensure effective implementation of the ESC provisions and introduction of the necessary restrictions and limitations on protected rights only when they necessary for the protection of rights and freedoms of others or for the protection of public interest, national security, public health or morals).

2. Conclusions XX-2 (2013) - Article 1§3

63 In its previous Conclusions XX-2 (2013) on Greece, the ECSR i.a. addresses the issue of temporary agencies as follows:

Paragraph 3 - Free placement services

The Committee takes note of the information contained in the report submitted by Greece.

In its previous conclusion, the Committee took note of the structural changes that had taken place within the public employment services (merger of the manpower and employment office -OAED- with the employment promotion centres, as well as of the number of vacancies registered/placements made by such services (Conclusions 2008).

The present report merely provides information on private job counselling agencies (91 of such agencies operating in 2010, which employed 1,745 persons), and on temporary agencies (which following some legislative amendments are obliged to keep data on contracts and make it available to the Labour Inspectorate. There were 9 of such agencies operating in 2010 which facilitated 19,217 contracts).

The report however fails to provide any information on the public employment services. The Committee therefore asks the next report to include information (for the different years of the reference period) on:

- the number of vacancies notified to the PES;

- the number of placements made by the PES (and the placement rate, measured as a percentage of the total vacancies notified);

- the placements made by the PES as a percentage of total hirings in the labour market.

It also asks what is the number of counselors in the PES involved in placement services, and the ratio of placement staff to registered jobseekers.

The Committee defers its conclusion pending receipt of the above placement figures of the PES, which is needed with a view to assessing the effectiveness of employment services.

64 It arrives at the following conclusions:

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Greece under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

3. Considerations by the ETUC

65 The ETUC would like to underline the importance of the facts described by the complaint. It also supports the GSEE's conclusions in particular in relation to Article 1. Additionally, it would like to provide the ECSR with the following considerations.

a) In relation to (non-)regression (Article 1 in combination with Article 31)

66 In relation to the principles concerning Article 31 mentioned in paras. 46 ff. the following aspects should be taken into account.

67 Even assuming that the measures are 'prescribed by law' there are serious doubts as to the 'legitimate aim'. In any event, this restriction does not appear 'necessary in a democratic society'. First, defining only private elements employment relation (see above para. 55) these measures cannot be justified by reference to the ECtHR's jurisprudence. Second, there is no evidence that widening the permission for temporary employment leads to effective and sustainable reduction of unemployment. Finally, balancing the (reduced) level of protection for temporary workers against (increased) flexibility for employers leads to denying a 'pressing social need' for this reduction.

68 Moreover, the CESCR's General Comment No. 18 on Article 6 ICESCR should be taken into account expressing its opposition, in principle, to retrogressive measures in relation to the right to work:

> As with all other rights in the Covenant, **retrogressive measures should in principle not be taken in relation to the right to work**. If any deliberately retrogressive steps are taken, States parties have the burden of proving that they have been introduced after consideration of all alternatives and that they are duly justified by reference to the totality of the rights

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provided for in the Covenant in the context of the full use of the States parties' maximum available resources.[53] [Emphasis added]

69 In conclusion, there is a violation of Article 1 in combination with Article 31.

b) In relation to the level of protection guaranteed by Article 1

70 As being outside of the reference period, the ECSR was not yet able to assess the situation as regards the Act. No. 4254/2014 in its previous Conclusions. Furthermore, it had deferred its conclusion.

71 More generally, it would appear that the ECSR has not yet dealt in detail with the problem of precarious work in relation to temporary agency work under Article 1.[54] This complaint would therefore require to adapt the interpretation of Article 1 to the present day conditions (living instrument) while referring also to international labour law standards.[55]

72 For the purpose of interpretation of Article 1 it might also be referred to the following relevant international material.

73 In its General Comment No. 18 on Article 6 ICESCR the CESCR explicitly refers to the limits of flexibility measures as regards the right to work in strict terms:

> Specific measures to increase the flexibility of labour markets **must not render work less stable or reduce the social protection** of the worker.[56] [Emphasis added]

74 More generally, the CESCR requires that

> [w]ork as specified in article 6 of the Covenant must be *decent work*. This is work that respects the fundamental rights of the human person as well as the **rights of workers in terms of conditions of work safety and remuneration**. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant.[57] [2nd emphasis added]

75 No. 7 of the Community Charter (see above para. 28) explicitly refers to temporary work(ers) whose level of protection has to be improved:

> The completion of the internal market **must** lead to an **improvement in the living and working conditions of workers** in the European Community. This process **must** result from an approximation of these conditions while the **improvement is being maintained**, as regards in particular … forms of employment other than open-ended contracts, such as … **temporary work** ... [Emphasis added]

c) Interim conclusions

76 In conclusion, there is a violation of Article 1 alone and in combination with Article 31.

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[53] See above n 9, para. 21.
[54] There are references in the case-law in relation to, for example, Article 3§2 (Conclusions XX-2 (2013) Greece).
[55] See above n 8.
[56] See above n 9, para. 25.
[57] See above n 9, para. 7.

C. Article 2 (The right to just conditions of work)

77 The 'right to just conditions of work' (Article 2) is an important fundamental social right. Together with the right to safe and healthy working conditions (Article 3), the right to fair remuneration (Article 4) and the right to protection in cases of termination of employment it forms the essence of the individual employment relationship. The issues raised in the complaint mainly deal with Article 2§1.

1. Legislative texts of Act No. 4093/2012

78 Paragraph IA, Subparagraph IA.10 of Act. No. 4093/2012 reads as follows:[58]

> REGULATIONS TO ENHANCE THE LABOUR MARKET AND PROMOTE EMPLOYMENT – TIME LIMITS FOR THE OPERATION OF SHOPS AND THEIR PERSONNEL
>
> a. Paragraph 1 of article 7 of Legislative Decree 1037/1971 on « Time limits for the operation of shops and their personnel», is being replaced, from the entry into force of this Law, as follows:
>
> > « Article 7
> >
> > Ban on trading in shops
> >
> > Ban on trading in shops outside normal opening hours »
>
> b. Paragraph 2, of article 7 of legislative decree1037/1971, article 7a of legislative decree 1037/1971 added by article 244 of Law 4072/2012 are abolished.
>
> Paragraph 6 of article 42 of Law 1892/1990 shall apply notwithstanding shop opening hours, as laid down in article 1 of legislative decree 1037/1971, as currently provided in combination with paragraph 1 of article 42 of Law1892/1990.

79 Paragraph IA, Subparagraph IA.14 of Act. No. 4093/2012 provides:

> **Working time and abolition of social security contribution to teapyk (Auxiliary Insurance Fund of liquid fuels' service stations)**
>
> 1. From the entry into force of the present, paragraph 4 of article 42 of Law 1892/1990 (A` 101) is replaced as follows:
>
> > «4. Collective agreements can determine the weekly working time of employees in shops for the overall contractual 40-hour working week.»
>
> 2. Article 3 of Presidential decree 88/1999 (A` 94) «Minimum requirements concerning the organization of working time in accordance with Directive 93/104/EK» is replaced as follows:
>
> > «Article 3
> >
> > (Article 3 of the Directive**): Daily rest**
> >
> > Every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.
> >
> > The 24-hour period starts at 00:01 and ends at 24:00 hours.»

[58] All quotations of legislative provisions are (unofficial) translations.

3. Article 8 of Law 549/1977 (A` 55), as regards the part ratified by article 7 of, from 26.1.1977, National General Collective Labour Agreement (EGSSE) (B' 60), which was amended by article 6 of law 3846/2010 (A` 66), is replaced as follows:

> «Article 7: **Dividing annual leave**
>
> i) Exceptionally, leave can be divided into two periods, within the same calendar year, if there is a particularly serious or urgent need on the part of the undertaking or holding. In any case, the first period cannot be less than six (6) working days for a 6-day week and five (5) working days for a 5-day week while in the case of minors it cannot be less than twelve (12) working days.
>
> ii) Leave can be divided in more than two periods whereby one should include at least twelve (12) working days when the undertaking operates a 6-day working week system and ten (10) working days for a 5-day week or for minors twelve (12) working days, upon a written request from the worker to the employer.
>
> In particular, the possibility is given to enterprises that employ regular and seasonal staff, to provide, in cases of work overload, due to the type of their business activity, a part of the annual leave ten (10) working days to the regular personnel working five (5) days a week or 12 for a 6-day week, at any time within the calendar year.
>
> Worker's request and the employer's decision do not need to be approved by the competent office of Labour Inspectorate (SEPE), they are kept in the undertaking for five (5) years and are at the disposal of Labour Inspectorates.
>
> The remaining provisions of this paragraph are governed by laws regulating annual leave.»

2. Complaint

a) Description

80 The complaint describes the essence of Act. No. 4093/2012 concerning working time as follows:

> 4.C. Law 4093/2012 has introduced, inter alia, serious changes in working time arrangements.
>
> Working time arrangements are necessarily correlated with health and safety at work regulated both by national and Community law. Directives 93/104/EC and 2000/34 have been transposed and embodied in national law by Presidential Decree 88/1999, which was then amended by Presidential Decree 76/2005. Greek legislation has taken advantage of the potential of the favourability principle conferred by Community law and has defined minimum daily rest periods of 12 hours instead is specified by the Directive.
>
> Provisions of Law 4093/2012:
>
> - decoupled shops opening hours from the working hours of their staff,
> - opened up the possibility to deviate from the 5-day working week for employees in shops by means of collective labour agreements through working time arrangements on weekly basis,
> - reduced the minimum daily rest period from 12 to 11 hours; gave the possibility to enterprises employing regular and seasonal staff to provide, in cases of work overload, a part of the annual leave (10 working days) for employees working 5 days a week and (12 working days) for those working 6 days a week at any date within the same calendar year,
> - abolished pay for Saturday work (30%).

> The provisions of the said law have significantly reduced the protection level of workers with direct impacts, especially, on workers' health and safety. More precisely, the right to 5-days working week enshrined in the Acquis Communautaire, has been violated. The reduction in the minimum daily rest period to 11 hours and subsequently in workers' leisure time has adverse effects on health and safety at work while working time arrangements within such a short time span (weekly) has led to increasing work intensification.

b) Conclusions as to the violations of the ESC

81 The complaint arrives at the following conclusions:

> These provisions have infringed article 2 of ESC on fair and just working conditions.

3. Conclusions XX-3 (2014)

82 In its most recent Conclusions XX-3 (2014) concerning **Article 2§1** the ECSR stated:

> The Committee notes from the report that there have been amendments to the legislation regulating working time. Namely, in the private sector Law 4093/2012 allows the minimum daily rest period to be reduced to 11 hours. In the public sector Law 3979/2011 has increased the weekly working time from 37 to 40,5 hours for some categories of workers. The Committee notes from the comments of the Greek National Commission for Human Rights that Act 4093/2012 will have an adverse impact on workers' health and safety. The Committee also notes that for shop employees derogations have been allowed from the five-day working week by means of collective agreements.
>
> The Committee observes that with the amendments in the private sector, the daily rest time may be reduced to 11 hours and therefore the daily working hours may be as long as 13 hours. The Committee asks whether in such cases the maximum limit of 60 hours per week is still maintained for all categories of workers, including shop employees.

83 In the same Conclusions the ECSR did not (yet) address the issue of Act No. No. 4093/2012 in relation **to Article 2§5**:

> In the light of the comments by the GNHCR, the Committee furthermore asks the next report to clarify how Act No. 4093/2012 has affected the right to a weekly rest period.

4. Considerations by the ETUC

84 The ETUC would like to underline the importance of the facts described by the complaint. It also supports the GSEE's conclusions in particular in relation to Article 2§1. Additionally, it would like to provide the ECSR with the following considerations.

a) In relation to (non-)regression (Article 2§1 in combination with Article 31)

85 In relation to the principles concerning Article 31 mentioned in paras. 46 ff. the following aspects should be taken into account.

86 Even assuming that the measures are 'prescribed by law' there are serious doubts as to the 'legitimate aim'. In any event, this restriction does not appear 'necessary in a democratic society'. First, defining only private elements employment relation (see above para. 55) these measures cannot be justified by reference to the ECtHR's jurisprudence. Second, there is no evidence that widening the permission longer working hours leads to an important and sustainable reduction of the safety and health of workers. Finally, balancing the (reduced)

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level of protection by unreasonable working hours against (increased) flexibility for employers leads to denying a 'pressing social need' for this possibility of increasing working time.

87 In conclusion, there is a violation of Article 2§1 in combination with Article 31.

b) In relation to the level of protection guaranteed by Article 2§1

88 Article 2§1 contains (at least) two important dimensions. The first relates to the dynamic character of this provision. The second addresses the 'normal' level of protection.

(1) Article 2§1 as dynamic provision

89 It is important to note that the obligation of "progressive reduction" has not come to end but still requires under the specific conditions referred to in para. 1 its effective implementation. This is the dynamic element in para. 1. Unlike most of the Charter's provisions[59] it is not a certain level of protection which once achieved would allow as such for assessing conformity at this level for the future. Therefore there is a continuing obligation to seek for further reduction if the conditions laid down in para. 1 are fulfilled. The dynamic character sets also barriers to regression, i.e. increasing working time instead of reducing it. In several countries there is a trend to again increase working time.[60]

90 Obviously, the permission of increasing working hours is not in harmony with Article 2§1 under the heading of 'progressive reduction' of working time.

(2) Article 2 §§1 and 5

91 In Conclusions XX-3 the ECSR has deferred its assessment concerning **Article 2§1**. However, the information available permits an assessment of non-conformity. Indeed, in particular in the context of austerity measures it is not conceivable that the legislature aims at reducing working hours. Therefore, it would appear usual (at least in practice) that the reduction of minimum rest period is used by employers to its full extent. This will lead to the consideration that the 60 hours per week limit is not secured (73 hours being 'permitted' if the 11 hours limit applies). Therefore, there would be a violation of Article 2§1.

92 Additionally, the ECSR should consider the overall reduction in protection against unreasonable working time arrangements. The general consideration concerning the crisis (see above, in particular, para. 36) should be the starting point and, indeed, represent the main approach. The cumulative effect of the measures described in the complaint should lead to an additional finding of a violation of Article 2§1.

93 Even if there appears to be a small reduction in the actual working hours per year in Greece from 2 111 in 2007 to 2 042 in 2014, there is still an enormous surplus of 242 working hours in relation to the average of 1 770 hours per year in the OECD countries, thus representing

[59] See as another ‚dynamic' provision for example Article 12(3) of the Charter.

[60] Germany, Greece, Ireland, Luxembourg, Portugal, United Kingdom, Russian Federation (see OECD, Dataset: Average annual hours actually worked per worker, 2000 – 2013)

the OECD country with the second highest number of working hours (only exceeded by Mexico with 2 228 hours).[61]

94 Moreover, there are important international standards which require reduction of working time. Most importantly, ILO Convention No. 1 ratified by Greece (see above para. 15) sets out the principle of eight hours a day and 48 hours a week in the industry. In its most recent report the CEACR dealt with Act No. 3863/2010 (see above para. 1516) requesting

> the Government to take the necessary measures in order to bring its national legislation in line with the requirements of the Convention to authorize overtime in industrial undertakings – either with respect to an annualized system or general weekly system – to exceptional cases of pressure of work.

The CEACR was not yet in the position to deal with Act No. 4093/2012 which is at stake here and puts additional burden on the workers concerned.

95 Concerning **Article 2§5** the ECSR asked the Government for further clarification (see para. 83). At least in respect of the possibility to deviate from the 5-day working week for employees in shops by means of collective labour agreements through working time arrangements on weekly basis it would appear that the required weekly rest period is not secured.

96 In this context, account should also be taken of other international material.[62] The ETUC refers to No. 8 of the Community Charter (see above para. 28) providing that

> [e]very worker of the European Community shall have a right to a **weekly rest period** and to annual paid leave, the duration of which must be harmonised in accordance with national practices **while the improvement is being maintained**. [Emphasis added]

c) Interim conclusions

97 In conclusion, there is a violation of Article 2 in particular of §1 alone and in combination with Article 31.

D. Article 4 (The right to a fair remuneration) - Article 4§1 (decent remuneration)

98 The core of the complaint is related to the right to a fair remuneration. The ECSR has dealt with several issues in Conclusions XX-3 (2014) as well as in the decision on the merits on collective complaint 66/2011.[63]

[61] Average annual hours actually worked, http://www.oecd-ilibrary.org/employment/data/hours-worked/average-annual-hours-actually-worked_data-00303-en

[62] See above n 8.

[63] Decision on the merits 23/05/2012 - Complaint No. 66/2011 - *General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece.*

1. Legislative texts

99 Several acts (mentioned in the complaint) are relevant as to the definition of minimum wage. Their content as well as their relationship might pose problems as to the foreseeability and accessibility of legislation.

a) Act No. 4024/2011

100 For the understanding of this Act it is important to note that according to subparagraph C.1. indent 12, Law 4093/2012, FEK A 222/12.11.2012 reads as follows:

> "12. The provisions of Chapter 2 of Law 4024/2011 having regard to the wage and grade scale and status of civil servants referred to in article 4 of the same law, have proportional application, from 1.1.2013, to the personnel of legal persons of private law (NPID) belonging to the State or legal persons of public law (NPDD) or to a local authorities organization (OTA), for the purposes of achieving state, public or local authority objectives, supervising, appointing and controlling the majority of their Administrative Boards, including General and Local Organisations of Land Improvement Schemes, or receiving regular subsidies, according to the provisions in force, by the funds of the above organizations, up to no less than 50% of their annual budget, as well as other public enterprises, organizations and limited liability companies falling within the scope of provisions of Chapter A', Law 3429/2005 (A` 314), as amended by the provisions of par. 1a of article 1, Law 3899/2010 (A`212).
>
> The joint decisions of the Ministers of Finance, Administrative Reform and e-Governance referring back to the coming in effect of the provisions of the present case, can lay down detailed rules for implementing the preceding paragraphs.
>
> Since the entry into force of the provisions of present case, provisions of article 31, Law 4024/2011 will cease to apply for those mentioned above, except as provided in paragraph 2.

101 Article 31 - Proportionate regulations for legal persons of the broader public sector – reads as follows:

> 1. a) To the legal persons under private law (NPID) belonging to the State or to a legal person under public law (NPDD) or to a local authorities organization (OTA), for the purposes of achieving state, public or local authority goals, supervising, appointing and controlling the majority of their Administrative Boards, including General and Local Organisations of Land Improvement Schemes , or receiving regular subsidies, according to the provisions in force, by the funds of the above organizations, up to no less than 50% of their annual budget, as well as other public enterprises, organizations and limited liability companies falling within the scope of provisions of Chapter A' of Law 3429/2005 (A` 314), as amended by the provisions of par. 1a of article 1 of law 3899/2010 (A`212), with the exception of NPID of Law 3864/2010 (A' 119) and article 1 of law 3986/2011 (A' 152, applies an average, per capita, wage ceiling for the personnel , as defined in the next paragraphs. The artistic personnel of the organizations under case c', paragraph 2 of article 34 of the present law are not subject to the provisions of the present article while "research personnel are paid according to 2nd part of law 3205/2003»
>
> *** The sentence in inverted commas " " in the last indent of subpar. a' was added by par.2, article 14 of Law 4111/2013 (FEK A 18/25-01-2013) and applies since the entry into force of Law 4024/2011.

b) The average, per capita, wage ceiling for the personnel shall apply also in public enterprises, organizations and limited liability companies under Chapter B' of Law 3429/2005, as well as in their subsidiaries, if all of the following conditions are met:

«aa) The majority of the Administrative Board members have been appointed or elected by the State or the Hellenic Republic Asset Development Fund (TAIPED) or other legal entities of paragraphs 1,2 and 3 under article 1 of law 3429/2005 (A` 314), acting as shareholders, alone or jointly.

bb) the State, TAIPED or other legal entities under paragraphs 1, 2 and 3 of article 1, Law 3429/ 2005, own the majority of the shares, alone or jointly»

*** *Cases aa´and bb have been replaced as above since the current law entered in force by par. 5 of article 31, Law 4141/2013,FEK A 81/5.4.2013.*

2. The provisions of paragraphs 1,2 and 3 of article 2, Law 3833/2010 (A' 40) apply to the wage ceiling and bonus payments of the administrator or managing director of the organizations mentioned in the preceding paragraph.

3. For those employed in the organizations of subparagraph 1a with an open-ended or fixed-term employment contract , the ceiling of the regular monthly salary for every education level, Compulsory Education, Secondary Education, Technological Education and University Education is equivalent to the corresponding salary ceiling incurred pursuant to the provisions of this Chapter for employees with a similar employment contract (open-ended or fixed-term private law contract) in the State.

For the managerial staff of the above mentioned organizations employed in positions of responsibility, equal to the position of the Head of Department, Director and General Director under this Chapter, the ceiling of the regular monthly salary is equivalent to the corresponding salary ceiling incurred pursuant to the the provisions of this Chapter for those holding the post of the Head of Department, Director or Director General in the State.

"By a joint decision of the Minister of Finance and the competent Minister, branches or specializations in the organizations under subparagraph 1a may be exempted from the monthly salary ceilings provided for in the preceding indents of this paragraph, since, in any event, the average, per capita, cost of any type of salary, benefits, compensation and remuneration, in general, does not exceed the limits laid down in the next paragraph of this article.

*** *Last indent of par.3 was added pursuant to par.3, article 1 of the, from 31.12.2011, Act of Legislative Content (P.N.P0.,FEK A 268/31.12.2011.*

4. The average, per person, cost of any type of salary, benefits, compensation and remuneration in general, excluding employers' contributions, of the organizations under subparagraph 1a of this article, will under no circumstances exceed the amount of 1.900 euro per month.

" If, pursuant to the preceding indent, the resulting average per capita cost of any type of salary, benefits, compensation and remuneration, in general, of any type of personnel of the organization, is less than 65% of the average per capita cost of the organization, as it stood on 31.12.2009, the afore mentioned limit of 65% shall apply."

*** *Last indent of par. 4 was added pursuant to par. 4, article 1 of the, from 31.12.2011 P.N.P, FEK A 268/31.12.2011.*

5. In the enterprises, organizations and companies referred to in subparagraph 1b, the average per person cost of any type of salary, benefits, compensation and remuneration, in general, of any type of personnel shall not exceed 65% of the average per capita corresponding cost of the enterprise, organization or company, as it stood on 31.12.2009.

If, pursuant to the preceding indent, the resulting average per capita cost of any type of salary, benefits, compensation and remuneration in general, excluding employers' contributions, is less than 1,900 euro per month, the limit of 1.900 euro per month shall apply.

6. The organizations referred to in paragraph 1 of this article, are obliged, after the end of each quarter and within 20 days, to submit to the Special Secretariat of the Public Utilities Enterprises and Organizations (DEKO) detailed quantitative data for the control of their compliance with the said limitations. When these limitations are exceeded, the organizations are required to make cutbacks in the next quarter so as to comply with the imposed restrictions on the one hand and repair the breaches occurred in the previous quarter. If the organization receives subsidies from the State budget and in case of non-compliance of the organization with the above mentioned, subsidies to the organization will automatically be interrupted.

The failure of the organization's administrative bodies referred to in paragraph 1 to act so as to restore the breaches of the salary caps set by the provisions of this article, constitutes a tort against the State while the administrative bodies are severally and jointly responsible together with the entire organization of paragraph 1 to remedy the tort.

7. The provisions of the last indent of paragraph 2 of article 29 apply also, mutandis mutandis, to the employees of the organizations falling within the scope of the provisions of this article in the case of a reduction in their full monthly salaries that is greater than the percentage defined in the last indent of par. 2, article 29.

8. The average per capita wage cost of organizations under paragraph 1, as defined by provisions of paragraphs 4 and 5 of this article shall apply during the entire implementation period of the Medium Term Fiscal Strategy Plan.

9. Upon the entry into force of the present Chapter, any general or special provision or clause or term of collective labour agreement , arbitration award or individual employment contract or agreement setting wages and additional salaries or emoluments that exceed, where appropriate, the ceilings set out in previous paragraphs, is abolished.

102 Article 37 - "Regulations on Collective Bargaining" provides:

1. Paragraph 5 of article 3 of Law 1876/1990 (A' 27) is replaced as following:

"5. Firm-level collective agreements shall be concluded in order of priority by the enterprise unions representing all the workers concerned or, in the absence of an enterprise union, by an association of persons, irrespective of their occupational category, job or area of specialization and, in case both don't exist, by the respective first level branch unions and the employer.

The above mentioned association of persons is composed by at least three-fifths 3/5 of the workers in the enterprise, irrespective of the total number of people employed in it while its duration is not subject to any time limits. If, after the creation of the association of persons, the prerequisite for the participation of three-fifths 3/5 of the people employed in the enterprise -which is required for its formation- has ceased to

exist, the association is dissolved without any further formality. As far as the other issues with regard to the association of persons are concerned, point cc' of section a' of paragraph 3, article 1 of Law 1264/1982 (A' 79) remains in force."

2. Paragraph 5A added to article 3 of Law 1876/1990 via the provision of article13, Law 3899/2010 (A' 212) is abolished.

3. Paragraph 1 of article 6 of Law 1876/1990 is replaced as following:

"1. The following shall be legally entitled to conclude collective agreements: a. workers' unions and employers' organizations at all levels within their field of activity as well the associations of persons under the terms and conditions stipulated by par. 5 of article 3 of this Law.

In particular with regard to par. 3, article 3 of the same Law, on behalf of the workers, legally entitled to conclude collective agreements is the most representative trade union organization at the third level. For the other collective agreements under article 3 of this Law, on behalf of the workers, legally entitled to conclude collective agreements is the most representative trade union organization in the field of the activity concerned.

b. Any employer for the workers employed in his enterprise.

c. With regard to the personnel of law offices, notary public offices or other offices, the relevant collective agreement shall be signed, or the arbitration proceedings shall be carried out between the trade union organization and the Public Law Legal Entity to which the employers belong".

4. Par. 3 of article 6 of Law 1876/1990 is replaced as following:

"3.a. The conditions for the accreditation of representatives of workers' organizations shall be specified in the relevant provisions of the said organizations' rules or statutes. b. the conditions for the accreditation of the representatives of the association of persons under point a', of par. 1, shall be specified in the provisions of its founding act."

5. In paragraph 2 of article 10 of Law 1876/1990 the following section is added:

"During the implementation of the Medium-term Fiscal Strategy Plan the firm-level collective agreement prevails in the event of plurality over the branch collective agreement, however, it is not allowed to contain working conditions less favorable to the workers than the conditions set out in the national collective agreements, according to para 2, article 3 of this Law."

6. The application of the provisions under par. 2 and 3 of article 11 of Law 1876/1990 is suspended during the implementation period of the Medium-term Fiscal Strategy Plan.

7. Paragraph 3, article 11 of Law 1876/1990 is replaced as following:

"3. The extension of the scope may be requested by a trade union or employers' organization by submitting an application to that effect to the Minister of Labour and Social Security.

The extension takes effect on the date on which the decision is published in the Government Gazette."

8. The following section b' is added to par. 1 of article 787 of the Code of Civil Proceedings:

"The discussion on the application must take place within ten (10) days, while the Court, by a definitive and immediate ruling, accepts or rejects the application. The Court's decision is published in a public session after the end of the hearing procedure or the latest within 48 hours."

b) Act 6 of 28.2.2012 (FEK A' 38/28.2.2012)

103 For the understanding of this Act it is important to note that the provisions of **paragraphs 1, 2 and 4 of article 3** of this Act were **abolished** by ruling no. 2307/2014 of the Plenary Session of the Council of State.

Regulation of issues for the implementation of par. 6 of article 1 of Law 4046/2012.

THE MINISTERIAL COUNCIL

Mindful of:

1. Paragraph 6 of article 1 of Law 4046/2012 (A' 28).

2. The provisions of Chapter E "Structural Reforms", paragraph 29 of the Memorandum of Economic and Financial Policies and of Chapter 4 "Growth-Enhancing Structural Reforms" paragraph 4.1: "To ensure a rapid adjustment of the labour market and strengthen labour market institutions" of the Memorandum of Understanding on Specific Economic Policy Requirements, the plans for which have been approved by paragraph 2 of article 1 and are appended as Annex V to Law 4046/2012.

3. The fact that the above regulations constitute full rules of law and are immediately applicable, in accordance with the first section of paragraph 6 of article 1 of Law 4046/2012.

4. The need to regulate matters required for the implementation of the above regulations.

5. The need for comprehensive and substantial structural reformsto boost employment and productivity and to increase competitiveness by liberalizing labour markets, as justified by reasons of general interest related to the functioning of the national economy and the need to take emergency measures to protect it.

6 Article 90 of the Legislation Code for the Government and Governmental Bodies (Presidential Decree 62/2005, A' 98).

7. The fact that this Act does not give rise to any expenditure from the State Budget.

8. The Minister of Labour and Social Security's report to the Ministerial Council dated 28.2.2012, which states:

Article 1

1. From 14-2-2012 until the end of the fiscal adjustment programme, the minimum salaries and wages set out in the National General Collective Labour Agreement which has been in effect since 15-7-2010, as were stipulated and as have been in use since 1-1-2012, shall be reduced by 22%.

2. From 14-2-2012 until the end of the fiscal adjustment programme there shall be a 32% reduction to the minimum salaries and wages set out in the National General Collective Labour Agreement which has been in effect since 15-7-2010, as were stipulated and as have been in use since 1-1-2012,for young people aged under 25. The 32% reduction to minimum salaries and wages set out in the last sentence shall also apply to trainees and apprentices as defined in par. 9 of article 74 of Law3863/2010 (A' 115). Par. 8 of article 74 of Law 3863/2010, article 43 of Law 3986/2011 (A' 152), as well as any other regulation which is inconsistent with the provisions of this paragraph, are hereby repealed.

3. The immediate implementation of the reduced minimum salaries and wages, as defined in the preceding paragraph, shall not require the consent of the employees.

4. Parties whose agreements already fall short of the new reduced minimum salaries and wages, as defined in the preceding paragraph, are automatically exempt from this provision.

Article 2

1. Collective Labour Agreements shall henceforth be drawn up for a set period of time, the duration of which may not be less than one (1) year and which may not exceed three (3) years.

2. Collective Labour Agreements which have already been in effect for 24 months or more by 14-2-2012 shall expire on 14-2-2013.

3. Collective Labour Agreements which have been in effect for a period of less than 24 months by 14-2-2012 shall expire on the completion of three (3) years from the date on which they came into force, unless they are terminated earlier pursuant to the provisions of article 12 of Law 1876/1990. The regulatory terms of a Collective Labour Agreement which is to expire or be terminated shall remain effective for three months after their expiration or termination. Regulatory terms of a Collective Agreement which has already expired or been terminated shall remain effective for three months from the date that Law 4046/2012 comes into force. After the three months have lapsed, if no new Collective Labour Agreement has been drawn up, the only regulatory terms which shall remain effective are those which refer to a) the basic salary or basic wage and b) allowances for seniority, children, studies and hazardous work, as long as such allowances were stipulated in the expired or terminated Collective Labour Agreements, whereas any other allowance that may have been stipulated therein shall cease with immediate effect. Adapting contracts to the provisions of the preceding section does not require the employees' prior consent. The terms which are maintained under the third section shall remain in effect until they are superseded by those of a new Collective Labour Agreement or those of a new or amended individual contract.

4. The provisions of paragraphs 1, 4 and 5 of article 9 of Law1876/1990 (A' 27) shall cease to apply.

5. The provisions of this article shall also apply to arbitration decisions.

Article 3

1. From 14-2-2012, recourse to arbitration in accordance with paragraph 1 of article 16 of Law 1876/1990 (A'27), as amended and applicable, shall only take place with the consent of both parties. Paragraph 2 of article 16 of Law1876/1990 (A' 27), as amended by article 14 of Law3899/2010 (A' 212), shall cease to apply. Paragraph 8 of article 16 of Law 1876/1990 (A' 27), as amended by article 14 of Law 3699/2010 (A' 212) shall remain in force.

2. Recourse to arbitration in accordance with the first section of paragraph 3 of article 16 of Law 1876/1990 (A' 27), as amended and applicable, shall be limited exclusively to defining the basic salary and/or basic wage, and may not deal with any other issue or any clauses which maintain the regulatory terms of preceding Collective Labour Agreements or Arbitration Decisions.

3. The details which the arbitrator or Arbitration Committee considers, in accordance with paragraph 5 of article 16 of Law 1876/1990 (A' 27), as amended and applicable, shall include economic and financial details gathered in the course of the arbitration process and, in particular, the economic conditions, the progress in reducing the competitiveness gap, the reduction of unit labour costs during the nation's fiscal adjustment programme and the productivity of the occupational sector associated with the dispute.

****Provisions of paragraphs 1, 2 and 4, of article 3 of the present WERE ABOLISHED by decision no. 2307/2014 of the Council of State (Plenary).*

[*4. Cases which have been referred to OMED [the Organization for Mediation and Arbitration] and for which no arbitration decision has yet been issued shall not be considered and shall be consigned to the archives if they have been referred unilaterally, whereas those which have been referred with the consent of both parties shall be considered in accordance with the provisions of paragraphs 2 and 3 of this article*].

*** **Paragraph 4** was **abolished** by article 4, par.5, Law.4303/2014,FEK A 231/17.10.2014, whose par. 6 stipulates that:

6. This article will enter into force upon its publication in the Official Gazette of the Government.

"For any applications for Mediation submitted to O.ME.D, where an arbitration award has not been issued so far, the provisions of this article shall apply. This is also true for arbitration awards that were notified to the parties after decision no 2307/2014 of the Council of State (plenary session) was published. For the cases set out in the previous indent, the period within which parties can lodge an appeal to the second-level five-member Arbitration Committee starts ten (10) days from the publication of this law".

Article 4

From 14-2-2012, and until the unemployment rate has fallen to under 10%, the provisions of any laws, regulatory acts, Collective Agreements or Arbitration Decisions which confer increases to salaries or wages are to be suspended, including those which refer to increases for seniority if they are based solely on the duration of employment, such as the long service allowance, the work experience allowance, the 3-year allowance and the 5-year allowance. For the purposes of applying this paragraph, the average national unemployment rate over the past four quarters shall be taken into account, as reflected in the Labour Force Survey conducted by ELSTAT [the Hellenic Statistical Authority].

Article 5

1. From 14-2-2012, employment contracts scheduled to end on reaching a particular age or on fulfilling retirement conditions shall be construed as contracts of indefinite duration and, when they are terminated, the provisions of Law 2112/1920, as applicable, shall be implemented. The provisions of the preceding section shall also apply to enterprises, companies or organizations which are, or have been at any time in the past, part of the broader public sector

as defined at any time under the provisions of paragraph 6 of article 1 of Law: 1256/1982 (A' 65) or under the provisions of article 51 of Law1892/1990 (A' 101).

2. As of 14-2-2012, any provisions of laws or regulatory decisions, as well as any terms of Collective Agreements and Arbitration Decisions, Employment Regulations, Personnel Organizations and of administrative decisions by businesses, which establish terms implying permanence or permanence clauses which are at variance with the general rules of employment legislation and/or which call for the implementation, directly or with amendments, of the provisions of the Civil Servants Code, are repealed. The provision of the preceding section shall also apply to enterprises, companies or organizations which are, or have been at any time in the past, part of the broader public sector as defined at any time under the provisions of paragraph 6 of article 1 of Law: 1256/1982 (A' 65) or under the provisions of article 51 of Law 1892/1990 (A' 101).

Article 6

This Act shall come into force when it is published in the Government Gazette, unless stated otherwise in individual provisions.

This Act is to be published in the Government Gazette.

Athens, 28 February 2012

THE PRIME MINISTER

THE MEMBERS OF THE MINISTERIAL COUNCIL"

c) Act No. 4093/2012 - Paragraph IA - Sub-paragraph IA.11

104 Paragraph IA, Subparagraph IA.11 of Act No. 4093/2012 reads as follows:

New system for formulation of a legal minimum salary and minimum wage for workers in the private sector throughout the country (framework provision), legal minimum salary and minimum wage for workers in the private sector throughout the country

1. This provision establishes a new system for formulating a statutory minimum salary for employees and minimum wage for blue collar workers, which will come into force on 1.4.2013. During the first quarter of 2013, an Act of the Ministerial Council shall establish a process for formulating a fixed statutory minimum salary and minimum wage for employees under private law throughout the country, taking into account the situation and prospects of the Greek economy, the labour market (particularly as to the unemployment rate and employment) and after consultation between the government and representatives of social partners and specialist scientific, research and other groups. During the 1st quarter of 2014, this system shall be evaluated as to the simplicity and effectiveness of its implementation, the reduction of unemployment, increased employment, and improved competitiveness.

2a. The first section of paragraph 1 of Article 8 of Law 1876/1990 shall be superseded as follows:

> “National general collective labour agreements shall set minimum non-wage working conditions applicable to employees across the country. Basic salaries, basic wages, any type of supplement to them and all and every other remuneration term shall apply only to workers employed by employers associated to employer organisations, and may not be less than the statutory legal minimum salary or wage.”

b. At the end of paragraph 2 of Article 3 of Law 1876/1990 the words “, in accordance with the terms and conditions of paragraph 1 of Article 8 of the Law” shall be added.

3. Until the end of the fiscal adjustment programme set out in the Memoranda appended to Law 4046/2012 and the subsequent amendments thereof, the legal minimum salary for employees and wage for blue-collar workers shall be defined as follows:

(a) For employees over the age of 25, the minimum salary is set at 586.08 euro; and for blue-collar workers over the age of 25 the minimum daily wage is set at 26.18 euro.

(b) For employees under the age of 25, the minimum salary is set at 510.95 euro; and for blue-collar workers under the age of 25 the minimum daily wage is set at 22.83 euro.

(c) i) The above minimum salary for employees aged over 25 shall be increased by 10% for every three years of prior employment up to a maximum of three three-year periods and a total of 30% for previous service of 9 years or more; and the above minimum wage for blue-collar workers aged over 25 shall be increased by 5% for every three years of prior employment up to a maximum of six three-year periods and a total of 30% for previous service of 18 years or more. ii) The above minimum salary for employees aged under 25 shall be increased by 10% for three years or more of prior employment; and the above minimum wage for blue-collar workers aged under 25 shall be increased by 5% for every three years of prior employment up to two three-year periods and a total of 10% for previous service of 6 years or more. iii) «iii) For the registered unemployed with the national unemployment office, above 25 years of age, who have been continuously unemployed for over 12 months (long-tern unemployment) and are hired as white-collar workers, the minimum wage in case a' of this paragraph is increased by 5% for each 3 year of service and 15% overall for 9 years of seniority and over.»

**** Point iii) of par. c' was added pursuant to first article, subparagraph.IA.7 Law.4254/2014,FEK A 85/7.4.2014.*

d) The above supplements for prior employment shall paid to workers who have had previous employment with any employer and in any capacity after the age of 18 in the case of blue-collar workers or 19 in the case of employees, and applies to the length of employment completed by 14.2.2012.

e) Other than the regular monthly supplement because of length of employment, no other supplement shall be included in the statutory minimum salary or wage.

f) Until the unemployment rate has fallen to under 10%, increases to the statutory minimum salary and wage connected based on the length of employment are to be suspended in relation to employment after 14.2.2012.

g) Individual employment contracts and collective labour agreements of any type may not set regular monthly incomes or full-time wages that are lower than the statutory minimum salary and wage.

4. Any reference in general that existing legislation makes to the minimum salary or minimum wage of the National General Collective Labour Agreement (EGSEE) shall be understood to mean the statutory minimum salary and minimum wage.

d) Act No. 4254/2014 – Paragraph IA, Subparagraph IA.7

105 Paragraph IA, Subparagraph IA.7 Act No. 4254/2014 provides:

Exceptional –emergency measures to support long-term unemployed and facilitate their access to the labour market

1. Point iii) is added in case c' of paragraph 3 of Subparagraph IA 11 of Law 4093/2012 (A` 222) as follows:

> «iii) For the registered unemployed with the national unemployment office, above 25 years of age, who have been continuously unemployed for over 12 months (long-term unemployment) and are hired as white-collar workers, the minimum wage in case a' of

this paragraph is increased by 5% for each 3-year of service and 15% overall for 9 years of seniority and over."

2. Complaint

a) Act No. 4024/2011

(1) Description

106 At first, the complaint addresses Act No. 4024/2011:

> Law 4024/2011 has radically overhauled labour rights and guarantees both in the private and the public sector. Thus, working conditions have become substantially worse and the right to work, as well as the right to a job, have been dramatically affected.
>
> Additionally, Law 4024/2011 (art.31) has imposed the general abolition of collective labour agreements that set out the terms of pay and work in all enterprises of the wider public sector and has set a wage ceiling notwithstanding previous wage cuts. After this illegal and unilaterally imposed provision, workers in these enterprises will be ruled from now on by the narrow public sector pay regime, regardless of their entirely different existing pay systems that were defined by the business or/and production level, profitability or general performance of these enterprises, by workers' occupational or/and educational profile and any specific work conditions (e.g. dangerous or unhealthy work). Collective agreements hitherto in force that have been implemented over the years in the enterprises of the broader public sector and, in particular, in the public utility enterprises listed on the stock exchange, were tailored to their private business and productivity-specific needs and conditions.
>
> Law 3899/2010 has established a new type of collective agreement, the special firm-level agreement (art, 13 of Law 3899/2010), which, in deviation from the protective principle of favorability hitherto in force, take precedence, in case of plurality, over the sectoral collective agreements, even if they contain terms less favourable to the workers. The shift in the actual level of collective bargaining from the branch to the enterprise level, whereby the employer has the final say, was ratified by Law 4024/2011, art. 37, which abolished the special firm-level agreements, established the legal basis to conclude company-level agreements with less favourable terms than those laid down in sectoral collective agreements and extended the right to conclude them to spurious formations such as the "associations of persons", caricature trade union organizations, which have no real bargaining power. In fact, enterprise-level collective agreements have been used as an instrument enabling drastic reductions in wages and the deterioration of working conditions.
>
> Moreover, Art. 37 of law 4024/2011 has suspended/abolished the possibility to extend the scope and binding effect of collective agreements (declared generally binding), which assured sound competition at branch level through the establishment of the uniform wage cost. This abolition can only lead to the full liberalization of the labour market and to establishing a higher degree of wage flexibility -precariousness while the role of wages as a means to protect livelihoods is being undermined. However, it is important to note that, according to official data and the IMF report (July 2014), the Memorandum laws have failed to meet even their stated objectives to boost competitiveness of businesses since not only they have not improved competitiveness, but, on the contrary, have even led to a slowdown."
>
> It should be pointed out that Provisions of art. 31 and 37 of law 4024/2011 have directly affected the core of constitutionally guaranteed fundamental rights and reversed institutional

arrangements enshrined in the Constitution (articles 23, par. 1 and article 221 par. 2) and in a series of international Conventions and Treaties, which by virtue of the Constitution (art.za, par. 1) have overriding legal effect.

(2) Conclusions as to the violations of the ESC

107 The complaint arrives at the following conclusion:

> The violation of the European Social Charter (ESC) is obvious. Provisions of art. 31 and 37 of Law 4024/2011 have violated article 1 of the European Social Charter (ESC) (States have undertaken to effectively ensure on equal footing full employment), art. 4 (States have undertaken to ensure a decent standard of living), art. 30 (provides the possibility to derogate from their obligations under the European Social Charter in time of war or other public emergency threatening the life of the nation) and art. 31 (provides for the need to ensure effective implementation of the ESC provisions and introduce the necessary restrictions and limitations on protected rights only when they are necessary for the protection of rights and freedoms of others or for the protection of public interest, national security, public health or morals).
>
> Even Art. 3, par. 1 of the 1988 Additional Protocol was violated since the power to conclude company-level collective agreements with less favourable terms than the clauses of the relevant sectoral collective agreements contravenes the objective of the Protocol, namely, the improvement of working conditions. Official data from the Ministry of Labour confirm the rapidly increasing number of enterprise-level collective agreements concluded by "associations of persons", which can negotiate and "agree" on wage cuts and on reducing the level of working conditions. Within the scope of art. 3, par. 1 of the 1988 Additional Protocol fall collective agreements reached through collective bargaining between employers and workers' representatives. Collective agreements together with other legislative acts fall under the definition of "national legislation and practice".[4]

b) Act 6/2012

(1) Description

108 As second issue, the complaint addresses Act No 6/2012:

> 2. In the context of the Ministerial Council Act (hereinafter Act) 6/28-2-2012 issued by virtue of the enabling provision of art. 1, par. 6 of Law 4046/2012, a series of key legislative interventions were imposed, inter alia, both on the from 15-7-2010 National General Collective Agreement in force and on law 1876/1990 on "Free Collective Bargaining and other provisions". Specifically, the provisions of the Act:
>
> a) have imposed wage and salary cuts and wage "freezes", notably, labour issues which used to be regulated by the collective labour agreements and arbitration awards already in place. As defined in art. I, par. 1 of Act 6/2012 "From 14-2-2012 and until completion of the fiscal adjustment programme, the daily/monthly minimum wages established by the National General Collective Agreement (NGCA) already in force from 15-7-2010, were slashed by 22% compared to the level of 1 January 2012. From 14-2-2012 and until completion of the fiscal adjustment programme, the daily/monthly minimum wages established by the NGCA already in place since 15-7-2010, were cut by 32% for young workers under 25 years of age as compared to the level of 1 January 2012. The same 32% reduction in the daily/monthly wages of the farmer sub-paragraph applies to those covered by an apprenticeship contract under par.9, art. 74, Law 3863/2010 (A' 115). Paragraph 8 of article 74 of Law 3863/2010,

art. 43 of Law 3986/2011 (A' 152) and any other regulation that is contrary to the provisions of this paragraph, are abolished.

b) entailed the mandatory (ex lege) expiry of collective agreements and arbitration awards already in force,

c) have abolished individual fixed-term contracts defined as expiring upon retirement age, which allowed dismissals only on justified grounds (clause of "tenure") as well as clauses imposing restrictions on the employer's termination right whose exercise is harmonized with the general principle of the prohibition of abuse of rights.

d) after the compulsory (ex lege) expiry of collective agreements and arbitration awards, in the period between May 2012 until, the latest, May 2013, all conditions of work set by previous collective regulations (collective agreement or arbitration award) were abolished. It should be noted that, all conditions of work, under the previous legislation, were incorporated, following the expiry of collective agreements, as simple terms in individual employment contracts (after-effect framework, art. 9, par. 5, law 1876/90). The only exemptions provided for by Act 6/2012 concern the base wage/salary floor and four allowances (seniority, child, studies and hazardous work -when the criteria entitling their payment are fulfilled-). These allowances will continue to apply until modified or replaced by a new collective agreement or individual employment contract. And since it is rather unlikely to reach a collective agreement, the individual employment contract remains the only factor to regulate (through altering, adversely affecting or abolishing) employment terms providing employers with a tool to exercise their power over individual workers. The protective after-effect principle has enabled hard -won terms of pay and work to be progressively built up through a long history and decades of negotiations, unless they are modified by the new collective agreements. It should be added that through the Imposed mandatory ex lege expiry of collective agreements and arbitration awards employers are relieved of any binding obligation they have under collective agreements and arbitration awards. Therefore, the termination of collective agreements and arbitration awards has been transformed from a tool establishing successive collective agreements into a mechanism enabling employers to be released from legally binding commitments and all that as an (inappropriate) means to achieve internal devaluation effected through devastating wage cuts (only).

Moreover, measures taken under Act 6/2012 were even more painful when compared to previous ones: they have delivered the final blow to the heart of both collective autonomy and the arbitration process. In fact, the self-regulation and protection mechanism as a whole, guaranteed by the Greek constitution, art. 22. par. 2 has been dismantled.

Our system, as it worked in practice, has guaranteed the regulation of vital labour issues through both collective agreements and arbitration awards. The provisions under Act 6/2012 are to be seen more as a shift from collective towards individual bargaining level, since, if both sides, workers and employers, fail to reach agreement during negotiations and the labor side cannot compel employers to grant concessions or make a compromise by using the strike weapon, seeking recourse to arbitration does not provide now any specific solution given that the Act has abolished the right to seek arbitration unilaterally. Requests for arbitration are allowed only if both parties consent. Therefore, employers will decline to sign a collective agreement or to agree to take jointly with the worker side recourse to arbitration since the legal gap - resulting from the fact that no collective agreement has been signed or an arbitration award delivered- will be filled by individual bargaining enabling the employer to exercise his power on workers. Meanwhile, according to Law 3899/2010 the arbitration

award was severely restricted to ruling only on cases concerning the determination of basic salary or/and daily wage.

Therefore, Act 6/2012 was not just confined to the intervention in the content and the wage reduction or "freeze" or the elimination of dismissal protection. Moreover, it undertook to dismantle the collective bargaining and arbitration mechanism as a whole. This intervention has reduced workers to passive onlookers in the process of setting terms of pay and work, whose regulation is referred to individual bargaining and individual employment contracts while affecting at the same time the basic trade union tool, namely, collective autonomy and the right to strike. It should be stressed that for all major problems facing workers that constitute demands pursued through strike action, Act 6/2012 has established a whole range of extensive restrictions, in other words, it has rendered all relevant strikes illegal.

The implementation of Act 6/2012 has had a dramatic; effect on the lives of Greek workers. The impact of these measures has meant a sharp drop in living standards while, through the demolition of collective autonomy arising from the abrupt termination of collective agreements in force, the radical changes introduced in the procedures of mediation and arbitration services (OMED) and in the provisions extending the scope of CLA's application, individual bargaining is openly favored with the employer's bargaining position to prevail. This has completed the dilution of minimum standards for the protection of workers leading to the complete deregulation of the already chaotic situation in the labour market and pushing the country into even deeper recession with high unemployment rates being officially recorded.

The dramatic fall of minimum wages brought about by Act 6/2012 compounded by the excess burden of taxation (direct, indirect and levies) on poverty wages have particularly hit wage and salary earners by effectively scrapping their already depleted income. In this respect, the measures introduced by the said Act have entailed the most dramatic drop in the decent standard of living specified both by the Greek Constitution and the Charter In art. 4, par. 1. Especially, as far as Article 4, par. 1 of the ESCis concerned (States have undertaken to ensure a decent standard of living), we should note that the detent standard of living component has set minimum standards in all types of restrictive legislative measures, even those taken under the exceptional circumstances of the fiscal and debt crisis. The same applies to the decision of the Council of state (plenary session) 668/2012, opinion 35. The court that examined, in the light of the Constitution, the measures introducing the salary and pension cuts of the first Memorandum, did not fall to emphasize that the decent standard of living under article 2, par. 1 of the Greek Constitution on the respect and protection of the value of the human being, establishes limitations beyond which any regulatory action of the legislator cannot go. We should note that while the first Memorandum establishing salary and pension cuts has not infringed these standards according to the 668/2012 decision of the Council of State, thereafter provisions of Ministerial Act 6/2012 introducing reductions by 22% and 32% in the minimum wage set by the national general collective agreement in force at that time, have blatantly violated the poverty line.

Official data from the Ministry of Labour reveal a drastic reduction in the number of collective agreements (concluded inside and outside OMED). a process, which culminated especially during the implementation of the Act (from 29-2-2012 onwards). This precisely sums up the destruction of Greece's collective bargaining structures, which were guaranteed by law 1876/90 and safeguarded by the (subsidiary) arbitration services of OMED. Despite the reduction in the number of collective agreements (sectoral and professional), as a result of the new legislation endorsed (Act 6/2012), there has been an unprecedented surge in the number of firm-level agreements with the collective bargaining

system shifting from the "branch" to the "enterprise" level where employers are in a dominant position or gain bargaining power advantages. As seen above, the provisions of law 4024/2011, art. 37, stipulate that, in case of concurrent implementation of collective agreements, firm-level agreements shall prevail over sectoral even if they include less favourable terms of work than those stipulated in sectoral agreements. The only restriction imposed is that enterprise-level agreements are not allowed to set terms of work that are less favourable than those stipulated in the National General Collective Agreements. Official data confirm the tremendous rise in the number of firm-level agreements while with regard to the terms and conditions of pay set by those agreements evidence indicates that, in their great majority, they lead to wage cuts. It is also worth noting that, according to data, the large majority of enterprise-level agreements were concluded between employers and associations of persons. These associations of persons are spurious formations, in fact, mere "caricature" trade union organizations, established by law 1876/1990, art. 3, par. 5 as replaced by art. 31, par. 1 of law 4024/2011 and composed by at least three-fifths 3/5 of the employees in the enterprise. If the prerequisite for the participation of three-fifths 3/5 of the people employed In the enterprise has ceased to exist, the association is dissolved whereas, since the representatives of such an association of persons do not enjoy any trade union rights or the protection available to other trade union members, they are more likely to be Influenced and controlled by the employer. The sharp rise in the number of enterprise- level collective agreements concluded by "associations of persons" confirms, among other things, that these caricature trade union organizations are simply pawns of the employer during negotiations at enterprise level, thus, facilitating the conclusion of collective agreements allowing for wage cuts at sectoral level. This would constitute an immense encroachment on trade union freedom since the creation of associations of persons seriously undermines the role of genuine trade union organizations. The basic concept behind a trade union organization is that of its power to effectively protect and promote the interests of its members. Associations of persons are set up in very small enterprises where a trade union organization could not be established given that a minimum of 20 persons are needed to form a trade union. Associations of persons are created in very small enterprises, even in enterprises with 5 employees, hence, one can easily see that in such small-sized businesses trade unions have no bargaining power at all. It should be added that the associations of persons are now granted by Law (1876/90, article 3, par. 5, as currently in force after being replaced by law 4024/2011 par.37) the capacity to conclude firm-level collective agreements having priority over branch trade unions, hence, the presumably strong trade union organization is excluded from collective bargaining at enterprise level.

In this respect, workers' freedom, Intention and need to join and be members of a trade union have also been affected since such "trade unions" have no considerable bargaining power while playing a shady role in safeguarding and promoting workers' economic, labour and social security interests.

The Implementation of the legislative framework cited above is depicting the profound adverse changes brought about in a system, which -through its internal balance- has guaranteed the conclusion of collective agreements contracted through the process of free collective bargaining and in case of the failure of such, by the subsidiary arbitration mechanism (OMED) supporting and guaranteeing the collective autonomy of the parties.

(2) Decision of the Council of State

109 Additionally, the complaint refers to the Decision of the Council of State

Recently, the Plenary Session of the Council of State announced its long delayed ruling no. 2307/2014 declaring admissible the GSEE application for annulment. The Court annulled as unconstitutional the provisions of Ministerial Act 6/2012 that abolished the right of the parties to unilaterally resort to arbitration and restricted the scope of arbitration to ruling only on basic salary or/and daily wage determination while prohibiting the regulation of all non-wage provisions, even of clauses maintaining these provisions in force (retainability clauses). The Supreme Court ruled that article 3, par. 1 of the Ministerial Act 6/2012, which allows requests for arbitration only if both parties consent, is incompatible with article 22, par. 2 of the Greek Constitution. In accordance with the decision of the Council of State, the letter and spirit of this constitutional provision require the legislature to establish an arbitration system as subsidiary mechanism for resolving collective labour disputes in case of failure of collective bargaining. The activation of this process does not require the consent by both parties of the collective dispute, but, by virtue of the same constitutional provision, the consent of at least one party is sufficient.

The Court also ruled that the restriction of the arbitration competence range to ruling only on basic salary or/and daily wage matters {article 3, par. 2} also infringes article 22, par. 2 of the Constitution, which, in the most explicit words, leaves no room for exclusion of a significant part of the collective dispute process from the regulatory power of the arbitrator. The same reasoning that requires the legislature, according to the court decision, to provide for the unilateral recourse to arbitration, considers necessary to safeguard the possibility for the party involved to have recourse to arbitration on the sum of the collective dispute items so that other important aspects and issues of the collective labour dispute are not left without regulation. Otherwise, the Council of State Plenum rejected as groundless all other claims submitted by the GSEE appeal against the rest of the provisions of Act 6/2012 and are analyzed in our complaint.

(3) Conclusions as to the violations of the ESC

110 The complaint arrives at the following conclusion:

Based on the grounds Indicated in our complaint, Act 6/2012 manifestly violates, inter alia, article 1 of the European Social Charter (ESC) (States have undertaken to effectively ensure on equal footing full employment), article 2 (States have undertaken to ensure just conditions of work), article 4 (States have undertaken to ensure a decent standard of living), article 7 (States have undertaken to ensure the protection of employed children and young persons), article 3, par. 1 of the 1988 Additional Protocol (the right of workers to take part in the determination and improvement of their working conditions and work organization is undermined), article 30 (provides the possibility to derogate from their obligations under the European Social Charter in time of war or other public emergency threatening the life of the nation) and article 31 (provides for the need to ensure effective implementation of the ESC provisions and Introduce the necessary restrictions and limitations on protected rights only when they are necessary for the protection of rights and freedoms of others or for the protection of public interest, national security, public health or morals).

c) Discrimination against young workers under 25 years of age with a 32% reduction in their minimum wage

(1) Description

111 As third issue concerning minimum wages the complaint addresses the issue of discrimination of young workers:

Furthermore, the discrimination against young workers under 25 years of age with a 32% reduction in their minimum wage as provided for by art. 1, par. 2 of the Act, violates, inter alia" article 4, par. 1 of ESC according to the decision of the European Committee of Social Rights. In examining the collective complaint No 66/2011 of the trade union organizations GENOP/DEI and ADEDY, in particular, the issue of discrimination on grounds of age due to the wage cut for young workers, the Committee concluded that the reduction of the minimum wage for young workers under 25 years of age by 32% is disproportionate to the aim in view since wages will fall below the poverty line, therefore, it violates art. 4, par. 1 of the Charter. In addition, the Committee concluded that the provisions excluding young workers in this age group, through apprenticeship contracts, from the scope of labour legislation with regard to granting annual leave. are also violating the Charter.

The drastic reduction by 32% of the minimum wage of young workers violates also the principle of equal pay while, in this case, the invocation of the general social or public interest cannot legitimize the imposition of measures establishing unfair treatment in terms of pay and, consequently, in terms of social security protection, which could hypothetically improve the chances of young people to find a job. Moreover, the reduction already applied by virtue of prior legislation, up to 20% of the minimum wage for young persons under 25 years of age has neither led to unemployment reduction nor increased their employment rates on account of the generalized reduction of workers' wages and salaries and the use of flexible forms of employment in the labour market. Stiff competition between different age groups has eliminated the last bastion of protection secured by labour law. The implementation of Act 6/2012 has severely affected the system of collective bargaining in the country. The vicious circle of unemployment and erosion of the minimum protection standards is sweeping decent work prospects for young people. According to the recent data published by the Greek Statistical Authority (El.STAT) youth unemployment rate rose to over 57.9% in October 2013. Hence, art. 1, par. 2 of Act 6/2012, which leads directly to large wage differentials among young people under 25 years of age as compared to their older colleagues, entails the breach of principle of equal pay. The European Social Charter (article 4) protects the right to equal and fair remuneration such as will give all workers a decent standard of living and obliges States not to authorize violations and refrain from introducing unequal treatment in the statutory terms of pay and work such as establishing discrimination on grounds of age. The latter would be objectively justified only by the legitimate aim of protecting these vulnerable age groups and not reducing the minimum protection level granted by law. In this context, discrimination based on purely fortuitous, irrelevant or short-term factors, which, in any event, are not related to substantial differentiations of individual cases, cannot be tolerated.

In the present case, it is self-evident that discrimination arises from unjustified and random differential treatment of workers, who are discriminated against on grounds of their age- a conjunctural factor and of purely formal character- and not in connection with the nature of job and the quality and quantity of the work they carry out.

(2) Conclusions as to the violations of the ESC

112 The complaint arrives at the following conclusion:

The deregulation of the existing protective institutional framework on young persons up to 25 years of age and the lack of compensatory measures and guarantees for the protection of young workers (e.g. from hazardous professions and abusive practices) in combination with the lack of an effective control and inspection mechanism, has, in addition to the drastic: reduction of their wages, multiple spill-over onerous side-effects to the detriment of

the new entrants in the labour market rendering them more vulnerable to economic exploitation and, therefore, to social marginalization. In this respect, the foregoing is in violation of article 7 of ESC (States have undertaken to ensure the protection of employed children and young persons).

d) Act No. 4093/2012 – Paragraph IA, Sub-Paragraph IA.11

(1) Description

113 Moreover, the complaint addresses Act No. 4093/2012 - Sub-Paragraph IA.11 and summarises its content as follows:

- a new system of minimum wage-setting enacted on 1-4-2013 was established,
- after replacing art. 8, par. 1 of law 1876/90, the National General Collective Agreements determine non-wage issues applying to all employees across the country. They can also address wage-related issues, basic wages and allowances (e.g. marriage allowance) that cannot be less than those stipulated by state provisions and are binding only for employees of enterprises affiliated to the Signatory employer organizations,
- the minimum wage for all white-collar workers over 25 years is set at 586,08 euro while the basic daily wage for blue-collar workers over 25 years is 26,18' euro. For white-collar worker's under 25 years of age basic wage is 510,95 while for blue-collar workers under 25 years of age the basic daily wage is set at 22,83 euros,
- This minimum wage may be increased only through reduced seniority allowances granted every 3 years (with the marriage allowance being abolished). Nevertheless, age discrimination against workers has been maintained.

In particular:

- The minimum wage for white-collar workers over 25 years of age increases by 10% for every 3 years of seniority and up to 3 three years of seniority (30% overall) for 9 years of prior service and over
- The minimum wage for blue-collar workers over 25 years old increases by 5% for every 3 years of seniority and up to 6 three years of seniority (30% overall) for 18 years of prior service and over
- The minimum wage for white-collar workers under 25 years of age increases by 10% for 1 three years of service for three years of prior service and over
- The minimum wage for blue-collar workers under 25 years old increases by 5% for every 3 years of service up to 2 three years (10% overall) for a prior service of s years and over
- Pay increases based on seniority are granted to workers with seniority within different employers and irrespective of their occupational category, for blue-collar workers after reaching 18 years of age and for white-collar workers after reaching 19 years of age and are payable for service completed until 14 February 2012
- It is further provided that until the unemployment rate falls below 10% the increase of the statutory minimum salary and wage fixed by law for prior service (seniority) completed after 14 February 2012 is suspended.

This unprecedented intervention in collective autonomy through the adoption of the said Law regulating the statutory minimum wage legislated by the State has violently deprived trade unions (even high-level trade union organizations) of the power to set standar.ds of payment and work, which are now left to the state legislator to regulate. This results in breach of article 22, par. 2 of the Constitution on the subsidiarity of state regulation. The legislator enjoys essentially a predominant role in setting the minimum wage since most important trade union organizations are substantially disempowered by depriving them of the means to conclude the national general collective agreement.

The possibility to set, through the NGCA, higher minimum wage levels than those determined by law, which, however, are not universally binding and applicable and will commit only members of the signatory parties, annihilates ab initio any solid basis for social partners to engage in the collective bargaining process. In this light, the employers' organization that will finally accept to sign such a NGCA, must face the risk that its member organizations could leave and opt-out from the binding effect of the NGCA in question.

Legislation introduced by Law 4093/2012 fully diminishes the role and the function of the NGCA in ensuring a minimum general protection level with binding effect on all workers who are not subject to any other more favourable regulation. The institutional role and standing of the Greek General Confederation of labour (GSEE) as the supreme trade union organization, is, therefore, undermined since the main expression of collective autonomy, namely, the conclusion of the NGCA, is null and void.

Furthermore, the above-mentioned regulations continue to discriminate against young people under 25 years of age (notably, by means of the increases granted every 3 years'of service).

(2) Conclusions as to the violations of the ESC

114 The complaint arrives at the following conclusion:

The above mentioned provisions of Law 4093/2012 violate, inter alia, the European Social Charter (ESC) and in particular the following articles:

- Article 1 (States have undertaken to effectively ensure on equal footing full employment),
- Article 2 (States have undertaken to effectively ensure just conditions of work),
- Article 4 (States have undertaken to ensure a decent standard of living),
- Article 7 (States have undertaken to ensure the protection of employed children and young persons),
- Article 3, par. 1 of the Additional 1988 Protocol (right of workers to take part in the determination and improvement of their working conditions),
- Article 30 (possibility to derogate from the ESC regulations only in time of war or other public emergency threatening the life of the nation),
- Article 31 (need to ensure effective Implementation of the ESC provisions and introduction of the necessary restrictions and limitations on protected rights only when they necessary for the protection of rights and freedoms of others or for the protection of public interest, national security, public health or morals).

e) Act. No 4254/2014

115 Finally in part 6, the complaint addresses also Act No. 4254/2014 and summarises its content in relation to minimum wages as follows:

> 6. Meanwhile, law 4254/2014 provides. inter alia the following:
>
> - a provision was added to Law 4093/2012 stipulating that for the registered unemployed with the national unemployment office, over 25 years old, who have been continuously unemployed for over 12 months (long-term unemployment) and are hired as white-collar workers, the minimum wage is increased by 5% for each 3 years of service and 15% overall for 9 years of seniority and over, namely, the increase by 10% for 3-year seniority of white-collar workers and up to 3 three years as well as the increase by 5% and up to 6 three years for blue-collar workers is abolished). Recent law 4254/2014 discriminates anew even against persons of the same age group (over the age of 25) at the expense of the long-term unemployed, thus, dealing a blow (reduction) in the minimum statutory wage, through curtailing increases granted every three years of service. In this way, workers are categorized according to the statutory wage cost while employers have the possibility to get the most out of a "dirty" competition among workers' groups.
>
> - It was provided that the State will determine as of 1-1-2017 the statutory minimum wage by means of abolishing increases due to seniority (seniority allowances granted every 3 years) since it has been stipulated that the minimum wage "is taken as the only reference value (amount)".

3. Conclusions XX-3 (2014) – Article 4§1

116 In its most recent Conclusions XX-3 (2014), the ECSR examined the situation in Greece concerning the fair remuneration:

a) General

117 First, it addressed the general situation by dealing with several issues:

> Act No. 4024/2011 of 27 October 2011 on pension schemes, workers' remuneration and other provisions for the implementation of the medium-term fiscal strategic plan 2012-2016 (the Strategic Plan) increased the reductions applicable to tenured civil servants and contractual staff in the civil service as from 1 November 2011 and indexed the starting wage in each category to the gross minimum wage for the "compulsory education" category. It also reformed the benefits and allowances system and maintained the extension of the measures to contractual staff in the civil service by setting aside the collective agreements in force. The Joint Ministerial Order No. 2/13917/0022 of 17 February 2012 set the minimum wage for the "compulsory education" category at €780.00 (€9 360.00 over 12 months), and that of tenured civil servants governed by Act No. 3205/2003 (judges, physicians, university lecturers, members of the armed and police forces) at €1 138.72 (€13 364.64 over 12 months).

(1) [Article 37]

> With regard to the private sector, section 37 of Act No. 4024/2011 authorised, with effect from 1 November 2011, the conclusion of company agreements taking precedence over the collective agreements in force, until the completion of the Strategic Plan, including agreements which contained less favourable conditions. Such agreements may, however, not stipulate less favourable conditions than those included in the National General Collective

Labour Agreement (NGCA).
Section 1, paragraph 1 of Council of Ministers Act No. 6/2012 of 28 February 2012 implementing section 6, paragraph 1 of Act No. 4046/2012 reduced the minimum wage determined by the NGCA by 22%, as from 14 February 2012. It also reduced the minimum wage for employees under the age of 25 and for trainees covered by section 74, paragraph 9 of Act No. 3863/2010 by 32%. Circular No. 4601/304 of 12 March 2012 sets the minimum gross monthly wage of unmarried workers over 25 years of age at €586.08 over 14 months (€8 205.12 over 12 months) and of those workers under 25 years of age at €510.95 over 14 months (€7 153.30 over 12 months). Section 1, paragraph IA, sub-paragraph 11, case 2a of Act No. 4093/2012 of 12 November 2012 approving the Medium-term Fiscal Strategic Plan 2013-2016, implementing measures of Act No. 4046/2012 and the Medium-term Fiscal Strategy Framework 2013-2016 provides that the general minimum wage will henceforth be determined by the NGCA, which applies solely to the staff of employers who are members of the signatory employer organisations. Circular No. 26352/839 of 28 November 2012 confirms the minimum wages laid down by Circular No. 4601/304.

…

The Committee reiterates that, to comply with Article 4§1 of the 1961 Charter, a decent wage must exceed the minimum threshold, set at 50% of the national net average wage. This is the case when the net minimum wage exceeds 60% of the national net average wage. Where the net minimum wage is between 50% and 60% of the national net average wage, it is for the State Party to establish that this wage makes it possible to ensure a decent standard of living (Conclusions XIV-2 (1998), statement of interpretation on Article 4§1). It notes in the present case that, after deduction of social security contributions and income tax, which has been applicable since the reduction in the tax-free threshold under Act No. 4024/2011, the minimum wage for all single workers in the private sector is below the minimum threshold.

(2) [civil service]

It also observes that, while the wages of tenured civil servants governed by Act No. 3205/2003 are in conformity with Article 4§1 of the 1961 Charter, the minimum wage for contractual staff in the civil service is less than the minimum threshold and accordingly does not permit a decent standard of living.

(3) [New developments]

The Committee notes from the GNHCR's comments that, subsequent to the reference period, a regime for employees on fixed-term contracts in community service programmes was instituted under section 1, paragraph ID, sub-paragraph 1 of the Act No. 4152/2013 of 9 May 2013 on implementing measures for emergency Acts No. 4046/2012, 4093/2012 and 4127/2013 and Joint Ministerial Order No. 3/24541/Oik/3/1574/2013, providing for gross monthly wages of €490.00 for employees over 25 years of age and €427.00 for those under 25 years of age which are below the minimum wage. It also notes the introduction of a 5% increase in wages every three years reserved for long-term unemployed persons over 25 years of age hired as employees under section 1, paragraph IA, sub-paragraph 7 of Act No. 4254/2014 of 7 April 2014 on measures of support for and development of the Greek economy in the application of Act No. 4046/2012 and other provisions. It notes that the Council of Ministers Act No. 6/2012 was partially invalidated by the decision of the Council of State (Plenary) No. 2307/2014. The Committee asks that the next report provide detailed information on these measures and their usefulness to reinstate decent remuneration in the private and public sectors as well as their conformity with Article 4§1 of the 1961 Charter.

b) Follow-up given to collective complaint No. 66/2011 General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, decision on the merits of 23 May 2012

118 Moreover, the ECSR examined the follow-up of the previous complaints:

> The Committee refers to its decision on the merits of collective complaint No. 66/2011 in which it held that:
>
> - The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 are not in conformity with Article 4§1 of the 1961 Charter in that they provide for the payment of a minimum wage to all workers under the age of 25 which is below the poverty level;
>
> - The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 are not in conformity with Article 4§1 of the 1961 Charter in the light of the non-discrimination clause of the Preamble to the 1961 Charter.
>
> The Committee also refers to Resolution ResChS(2013)2 adopted by the Committee of Ministers on 5 February 2013. It notes that the Government informed the Committee of Ministers that section 74, paragraph 8 of Act No. 3863/2010 and section 1, paragraph 1 of Council of Ministers Act No. 6/2012 were of a provisional nature and would be revoked as soon as the country's economic situation allowed. The report contains no information on this matter.
>
> The Committee notes that, since the publication of the decision on the merits, section 1, paragraph IA, sub-paragraph 11, case 2a of Act No. 4093/2012 has been passed, stipulating that the general minimum wage will be determined by the NGCA, applying solely to the staff of employers which are members of the signatory employer organisations. Circular No. 26352/839 has confirmed the minimum earnings laid down by Circular No. 4601/304. The Committee considers that the amendments introduced by section 1, paragraph IA, sub-paragraph 11, case 2a of Act No. 4093/2012 have not redressed the breaches of Article 4§1 of the 1961 Charter and concludes that the follow-up given by Greece to collective complaint No. 66/2011 is inadequate. It asks that the next report contain information on measures taken to remedy the situation.

c) Conclusions

119 Finally, the ECSR arrived at the following conclusion:

> The Committee concludes that the situation in Greece is not in conformity with Article 4§1 of the 1961 Charter on the grounds that:
>
> - The minimum wage applicable to contractual staff in the civil service is not sufficient to ensure a decent standard of living;
>
> - The minimum wage applicable to private sector workers is not sufficient to ensure a decent standard of living;
>
> - The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 provide for the payment of a minimum wage to all workers under the age of 25 which is below the poverty level;

- The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 discriminate against workers under the age of 25.

4. Considerations by the ETUC

120 The ETUC would like to underline the importance of the facts described by the complaint. It also supports the GSEE's conclusions in particular in relation to Article 4§1. Additionally, it would like to provide the ECSR with the following considerations.

a) In relation to (non-)regression (Article 4§1 in combination with Article 31)

121 In relation to the principles concerning Article 31 mentioned in paras. 46 ff. the following aspects should be taken into account.

122 Even assuming that the measures are 'prescribed by law' there are serious doubts as to the 'legitimate aim'. In any event, this restriction does not appear 'necessary in a democratic society'. First, defining mainly private elements employment relation (see above para. 55) these measures cannot be justified by reference to the ECtHR's jurisprudence. Second, there is no evidence that reducing the minimum wage (in particular to such an important and sustainable extent) would lead to any sort of reducing the crisis. On the contrary, the crisis and its consequences are aggravated. Finally, balancing the (reduced) level of protection for fair remuneration against (increased) flexibility for employers leads to denying a 'pressing social need' for this possibility of increasing working time.

123 In conclusion, there is a violation of Article 4§1 in combination with Article 31.

b) In relation to the level of protection guaranteed by Article 4§1

124 Besides the violation of Article 4§1 in combination with Article 31 there are several issues which are not in conformity with Article 4§1 alone.

125 As a starting point, the protection of workers and their families by guaranteeing a decent remuneration is of utmost importance. The ECSR should reconsider the thresholds it has developed in relation to Article 4§1 by giving the wording of this provision its full weight ('remuneration such as will give them and their families a decent standard of living') instead of looking at the 'poverty level'.

126 This approach as well as the interpretation and application of this important provision to the situation in Greece appears to be even more required by referring to relevant international standards.[64] In particular Article 7(a)(ii) ICESCR defines the threshold for a just and favourable remuneration as guaranteeing '[a] decent living for themselves and their families in accordance with the provisions of the present Covenant' (see above para. 9). Moreover, in applying ILO Convention No. 95 to Greece (see above para. 17) and

> concerned about the wage cuts in the public sector and the reduction of the national minimum wage, the Committee urged the Government to fully consult the representative employers' and workers' organizations before the adoption of any new austerity measures, to avoid any new curtailment of workers' rights in respect of wage protection, and to **seek to restore the purchasing power of workers' wages**. [Emphasis added]

[64] See above n 8.

127 This appears all the more important as the reduction of minimum wages has direct impact on the amount of social security benefits (see above para. 12).

128 Independently of these considerations, the four issues which the ECSR in Conclusions XX-3 (2014) has found to be violating Article 4§1 are still not solved and therefore continue to be cases of non-conformity:

- The minimum wage applicable to contractual staff in the civil service is not sufficient to ensure a decent standard of living;
- The minimum wage applicable to private sector workers is not sufficient to ensure a decent standard of living;
- The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 provide for the payment of a minimum wage to all workers under the age of 25 which is below the poverty level;
- The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 discriminate against workers under the age of 25.

129 Moreover, the ECSR has not yet had the opportunity to look into the Act No. 4254/2014 which discriminates anew even against persons of the same age group (over the age of 25) at the expense of the long-term unemployed. In this respect, there is also a violation of Article 4§1.

c) Interim conclusions

130 In conclusion, there is a violation of Article 4§1 alone (in particular in relation to the four issues raised in Conclusions XX-3 (2014) and Act. No. 4254/2014) and in combination with Article 31.

E. Article 4 (The right to a fair remuneration) - Article 4§4 (Reasonable notice of termination of employment)

1. Legislative text – Act No. 4093/2012 - Paragraph IA - Sub-paragraph IA.12

131 Act No. 4093/2012 - Paragraph IA - Sub-paragraph IA.12 provides:

> **Severance pay of private sector employees with dependent open-ended employment contracts.**
>
> 1. From the publication of this law, provision of article 1 of Law 2112/1920 (A` 67), as amended and being in force and indent B` of paragraph 2 of article 74 of Law 3863/2010 (A` 115), as amended by indent b' of par. 5, article 17 του of Law 3899/2010 (A` 212) are replaced as follows:
>
> > «1. 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, and comes into effect from the day following its notification to the employee under the following conditions:

a) For employees having performed from twelve (12) “completed” years to two (2) years of service, one (1) month advance notice is required.

b) For employees having performed from two (2) completed years to five (5) years of service, two (2) month advance notice is required.

c) For employees having performed from five (5) completed years to ten (10) years of service, three (3) month advance notice is required.

d) For employees having performed from ten (10) completed years and over, a four (4) month advance notice is required.

The employer who provides a written notice to his employees according to the above mentioned, pays half of the severance pay set out in the next indent.

2. From the date of entry into force of the said law, paragraph 1 of article 3 of Law 2112/1920, as amended and being in force, is replaced as follows:

«3.1. An employer who neglects the obligation to notify the termination of an open-ended employment contract of a private sector employee must pay the dismissed employee severance pay as follows, unless higher severance pay must be paid based on the employment contract or practices in use today:

TABLE OF SEVERANCE PAYMENTS

Time of service with the same employer Amount of severance pay

1 completed year to 4 years 2 months

4 completed years to 6 years 3 months

6 completed years to 8 years 4 months

8 completed years to 10 years 5 months

10 completed years 6 months

11 completed years 7 months

12 completed years 8 months

13 completed years 9 months

14 completed years 10 months

15 completed years 11 months

16 completed years and over 12 months»

Calculation of the above severance pay is based on the last month’s regular salary under full-time employment. The second indent of paragraph 1 of article 5 of Law 3198/1955 (A` 98) shall continue to apply.

3. Private sector employees with open-ended employment contract, already at work, with seniority of more than 17 years with the same employer, are entitled “to additional severance pay beyond that provided for in the preceding paragraph.”

*** *The above sentence of case 3 between inverted commas " " was replaced as above by par. 10 of article 34 of Law 4111/2013 FEK A 18/25-01-2013 entering into force from 19/11/2012 as stipulated in par. 3, article 49 of this Law.*

For 17 completed years of service 1 month severance pay

For 18 completed years of service 2 months severance pay

For 19 completed years of service 3 months severance pay

For 20 completed years of service 4 months severance pay

For 21 completed years of service 5 months severance pay

For 22 completed years of service 6 months severance pay

For 23 completed years of service 7 months severance pay

For 24 completed years of service 8 months severance pay

For 25 completed years of service 9 months severance pay

For 26 completed years of service 10 months severance pay

For 27 completed years of service 11 months severance pay

For 28 years of service and over 12 months severance pay

The severance pay calculated as indicated above takes into account:

i) the years of service completed by the employee upon the publication of the present law notwithstanding the time of his dismissal,

ii) the regular salary of last month under full-time employment that does not exceed the amount of two thousand (2.000) euro.

When the conditions laid down in the second indent of article 8 of Law 3198/1955 are fulfilled, as amended, the regular salary of last month under full-time employment is taken into account in the above calculation without prejudice to the second indent of paragraph 1, of article 5, Law. 3198/1955.

4. From the entry into force of the present, any provision that is more favourable than those laid down in cases 2 and 3 of the present subparagraph, is adjusted to the levels provided for by them.

2. Complaint

a) In relation to Act No. 3899/2010 – dismissals without notice and severance pay

132 In part 5 the complaint addresses the issue of severance pay in the following terms:

(1) Description

5. Dismissal of workers employed for a period up to one (1) year without notice and without severance pay

Law 3899/2010 (article 17, par. 5) stipulates that "employment contracts of indefinite duration are considered probationary employment period for the first 12 months from the date of entry into force, which can be terminated without notice and severance pay unless otherwise agreed by the parties".

This excessively prolonged probationary period (12 months instead of 2 months hitherto in force) most obviously aims to circumvent the rules on the termination of an employment contract, thus, releasing employers from the obligation to pay the statutory severance payment by facilitating dismissals within the first 12 months and replacing dismissed workers by others, etc. This is confirmed by the legislator's intention in enacting Law 4093/2012, which stipulates (subpar. IA.12.1)that ((*the termination of the employment contract of indefinite duration of a private sector employee exceeding 1Z months cannot occur without prior written*

notice from the employer.....". As it is clearly indicated in the 24th Greek Report (November 2012), Law 4093/2012 "aims to promote flexibility in the labour market with a view to improving competitiveness of enterprises and removing barriers to workers' mobility.....".

(2) Conclusions as to the violations of the ESC

133 The complaint arrives at the following conclusion:

> The European Social Charter recognizes in article 4, par. 4 the right of all workers to a reasonable period of notice for termination of employment, with the duration of notice period not being fixed. Therefore, it should be explored on a case by case basis whether sufficient notice is given.
>
> The Committee, taking into consideration the collective complaint No 65/2011 of the trade union organizations ADEDY and GENOP/DIE against Greece, examined whether the extension of the probationary period (during which dismissals are free) is violating the Charter.
>
> The Committee concluded, in accordance with its case-law as regards the said provision, that it is legitimate for the concept of probationary period to apply to enable employers to check the qualifications of the employees they hire, however, the concept should not be so broadly interpreted that guarantees concerning notice and severance pay are rendered ineffective. In this context, the Committee confirmed that there has been a violation of Article 4, par. 4 of the Charter and concluded that the right of all workers to a reasonable period of notice for termination of employment applies to all categories of employees, independently of their status/grade, including those employed on a non-standard basis. It also applies during the probationary period. National law must be broad enough to ensure that no workers are left unprotected. The main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before his or her current employment ends, while he or she is still receiving wages. In this respect, the less than one month's period of notice is not in conformity with the Charter.
>
> The repeated non-compliance by the Greek legislator with the obligations under article 4, par. 4 of the Charter is asserted by the fact that Law 4093/2012 was adopted after the above decision of the Committee concluding non conformity was made public.

b) In relation to Act No. 4093/2012

(1) Description

134 In part 4.B. the complaint addresses the issue of severance pay:

> 4.B. Furthermore, Law 4093/2012 has amended the provisions on the determination of the amount of severance pay of employees with dependent employment contracts of indefinite duration
>
> The Law:
>
> - reduces the period of notice by setting a maximum notice period of 4 months instead of 6 months,
>
> - for an employee with up to 16 years of seniority, severance pay is equal to the salaries of 12 months (the 12-month ceiling remained unchanged even in the event of dismissals occurred after publication of the law. Employees with seniority of more than 17 - 25

years with the same employer upon the publication of law, receive for every year of this prior service one additional salary,

It should be emphasized that these additional salaries are calculated on the basis of the regular salary of last month under full-time employment, which does not exceed 2000 Euro.

Employees with more than 17 years of completed service with the same employer are entitled, pursuant to the said Law, to additional severance pay, beyond that provided for in the preceding paragraph, regardless of the termination date of their contracts, subject, however, to a ceiling of 2.000 euro. Shorter notice periods as well as the drastic wage cuts that were unlawfully imposed on the grounds detailed in our complaint entail a further reduction in severance payments. As a result of the cumulative effect of the legislative measures at issue here, severance payments suffered a 5-fold reduction when compared to the provisions applicable before the adoption of the said legislative framework.

(2) Conclusions as to the violations of the ESC

135 The complaint arrives at the following conclusion:

The provisions introduced by the said Law that substantially infringe article 4, par. 1, 3 and 4 of the ESC have the following consequences:

- A significant part of the risk of job loss is passed on to the worker given that severance pay intends to mitigate the effects of dismissals and secure livelihood support of the employees until they find another job. Moreover, severance payments are wages in a broad sense (late sensu), in other words, they are a form of accrued income that increases proportionally with job tenure in an enterprise. In this respect, wages, in the broader sense, have also been affected by the legislative measures in question. Severance pay reductions combined with the situation in the labour market and high unemployment rates not only are unjustified but also fail to serve the purposes of the regulation,

- In breach of the principle of equal pay, "multi- speed" workers have emerged in the labour market depending on the wholly fortuitous criterion of the date of hire. Employees hired from now on as well as those at work who, however, have not completed 16 years of service with the same employer, will receive reduced severance pay with a 12-month salary ceiling. Employees who have completed 17-28 years of service, upon the publication of law 4093/2012, will be entitled for each additional year of service to one (1) salary with a 2.000 euro ceiling.

3. Conclusions XX-3 (2014) – Article 4§4 - Reasonable notice of termination of employment

136 In its recent Conclusions XX-3 (2014) the ECSR addressed this issue as follows:

a) General description

137 The ECSR started its assessment by describing the situation as follows:

The Committee takes note of the information contained in the report submitted by Greece. It also takes note of the information contained in the comments by the Greek General Confederation of Labour (GSEE) of 15 January 2014 and in those of the Greek National Commission for Human Rights (GNHCR) of 9 October and 1 December 2014.

It previously concluded (Conclusions XIX-3 (2010)) that the situation was not in conformity with Article 4§4 of the 1961 Charter on the ground that manual workers with fewer than 20 years of service were not entitled to an adequate severance pay.

The report gives details of the laws and regulations adopted during the reference period. The notice period is now set out in Act No. 4093/2012 of 12 November 2012 approving the Medium- Term Fiscal Strategic Plan 2013-2016, implementing measures of Act No. 4046/2012 and of the Medium-Term Fiscal Strategy Framework 2013-2016.

Under section 1, paragraph IA, sub-paragraph 12, case No. 1, of Act No. 4093/2012, private-sector employees on a permanent contract who are dismissed after more than twelve months are entitled to a period of notice plus severance pay amounting to 50% of their salary of:

- One month for between one and two years of service;
- Two months for between two and five years of service;
- Three months for between five and ten years of service;
- Four months for more than ten years of service.

Under case No. 2 of the aforementioned sub-paragraph, employees may be dismissed without notice provided that they are paid severance pay equivalent to 100% of their salary for:

- Two months for between one and four years of service;
- Three months for between four and six years of service;
- Four months for between six and eight years of service;
- Five months for between eight and ten years of service;
- Six months for more than ten years of service;
- One additional month for every additional year of service up to 15 years;
- 12 months for 16 years of service or more.

Under case No. 3 of the aforementioned sub-paragraph, private-sector employees with 17 years of service or more are entitled, in addition to severance pay, to a supplementary payment amounting to 100% of their salary for:

- One month for every additional year of service over 16 years;
- 12 months for 28 years of service or more.

Under case No. 4 of the aforementioned sub-paragraph, the first 12 months of a permanent contract are a probationary period within the meaning of section 17, paragraph 5a of Act No. 3899/2010 of 17 December 2010 on urgent measures for the implementation of the assistance programme for the Greek economy. During this period, contracts may be terminated without notice and without severance pay, and these rules apply to all employees including manual workers.

Manual workers (worker-technicians) are still governed by the rules in section 1, paragraph 1 of the Royal Decree of 16-18 July 1920 extending Act No. 2112/1920 to workers, technicians and servants and section 1 of Act No. 3198/1955 of 9 April 1955 amending and completing provisions on termination of employment. These provisions provide for the payment of severance pay amounting to:

- seven days' wages for between one and two years of service;
- 15 days' wages for between two and five years of service;
- 30 days' wages for between five and ten years of service;

- 60 days' wages for between ten and 15 years of service;
- 100 days' wages for between 15 and 20 years of service.

The Committee notes from the comments of the GSEE that Act No. 4093/2012 considerably reduces notice periods, restricts severance pay to 12 months' salary and imposes a ceiling of €2 000 on supplementary payments. Acording to the comments of the GNHCR, notice period and severance pay reductions jeopardise the notice's purpose, which is to support the worker during search for new employment, and the allowance of supplementary payment to workers with more than 16 years of service creates discrimination in the termination of employment and remuneration on the criterion of hire.

The Committee further refers to the GNHCR Recommendation of 8 December 2011 on the imperative need to reverse the sharp decline in civil liberties and social rights, in particular to the call to take the fiscal measures' impact on social protection and security into account and to undertake action so that every measure of economic governance be adopted and implemented with due respect for, and in a manner that safeguards, civil liberties and social rights.

The Committee takes note of this information. It points out that by accepting Article 4§4 of the 1961 Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice of termination of employment, the reasonable nature of the period being determined mainly in accordance with the length of service (Conclusions XIII-4 (1996), Belgium). While it is accepted that the period of notice may be replaced by severance pay, such pay should be as a minimum equivalent to the wages that would have been paid during the corresponding period of notice. The Committee considers that in the present case, the periods of notice combined with severance pay are reasonable with regard to Article 4§4 of the 1961 Charter in the cases of termination of employment provided for in section 1, paragraph IA, sub- paragraph 12, cases Nos. 1 to 3 of Act No. 4093/2012, and that severance pay for manual workers provided for under section 1, paragraph 1 of Royal Decree of 16-18 July 1920 and section 1 of Act No. 3198/1955 is not reasonable. It therefore concludes that the situation in Greece is not in conformity with Article 4§4 of the 1961 Charter on this issue.

b) Follow-up to the collective complaint General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, Decision on the merits of 23 May 2012

138 Additionally, the ECSR addressed the follow-up to the respective collective complaint No. 65/2011 as follows:

The Committee refers to its decision on the merits of Collective Complaint No. 65/2011 in which it held that section 17, paragraph 5 of Act No. 3899/2010 constituted a violation of Article 4§4 of the 1961 Charter on the ground that it made no provision for notice periods or severance pay in cases in which an employment contract, which qualified as "permanent" under that Act, was terminated during the probationary period. It also refers to Resolution ResChS(2013)2 of the Committee of Ministers of 5 February 2013.

It notes the statement by the Government to the Committee of Ministers according to which section 17, paragraph 5 of Act No. 3899/2010 was a provisional measure, which would be withdrawn once the country's economic situation so permitted. The report does not provide any information on this matter. The Committee notes that section 17, paragraph 5 of Act No.

3899/2010 was amended after publication of the decision on the merits, by section 1, paragraph IA, sub-paragraph 12, case No. 4 of Act No. 4093/2012, without the violation of Article 4§4 of the 1961 Charter being remedied.

The Committee asks for the next report to provide information on the period of notice applicable to employees on fixed-term contracts, employees of small and medium-sized enterprises, tenured civil servants, contractual staff in the civil service, as well as on other causes of termination of employment such as bankruptcy, invalidity or the death of the employer who is a natural person.

c) Conclusion

139 Finally, the ECSR arrived at the following conclusion:

The Committee concludes that the situation in Greece is not in conformity with Article 4§4 of the 1961 Charter on the grounds that:

- The severance pay granted to manual workers is inadequate;
- There are no periods of notice or severance pay in case of termination of employment during the probationary period and the violation noted by the decision on the merits of Collective Complaint No. 65/2011 has not been remedied.

4. Considerations by the ETUC

140 The ETUC would like to underline the importance of the facts described by the complaint. It also supports the GSEE's conclusions in particular in relation to Article 4§4. Additionally, it would like to provide the ECSR with the following considerations.

a) In relation to (non-)regression (Article 4§4 in combination with Article 31)

141 In relation to the principles concerning Article 31 mentioned in paras. 46 ff. the following aspects should be taken into account.

142 Even assuming that the measures are 'prescribed by law' there are serious doubts as to the 'legitimate aim'. In any event, this restriction does not appear 'necessary in a democratic society'. First, defining only private elements employment relation (see above para. 55) these measures cannot be justified by reference to the ECtHR's jurisprudence. Second, there is no evidence that reducing periods of notice and severance pay would lead to any sort of reducing the crisis. Finally, balancing the (reduced) level of minimum protection in case of a dismissal (increased) flexibility for employers leads to denying a 'pressing social need' for these additional possibilities of depriving workers of their protection in case of a dismissal.

143 In conclusion, there is a violation of Article 4§4 in combination with Article 31.

b) In relation to the level of protection guaranteed by Article 4§4

144 In its recent Conclusions XX-3 (2014) (partly based on the information provided by the GSEE in its observations to the Greek Government report) the ECSR has found violations as to Article 4§4 concerning the following two issues:

- The severance pay granted to manual workers is inadequate;

- There are no periods of notice or severance pay in case of termination of employment during the probationary period and the violation noted by the decision on the merits of Collective Complaint No. 65/2011 has not been remedied.

145 Obviously, this situation has not been remedied ever since. Therefore, these two violations still exist.

c) Interim conclusions

146 In conclusion, there is a violation of Article 4§1 alone (in particular in relation to the two issues raised in Conclusions XX-3 (2014)) and in combination with Article 31.

F. Conclusions

147 The ETUC is of the opinion that the present complaint is well founded in particular as to the violation of

- Article 1 in combination with Article 31 (see above para. 69),
- Article 2 in particular of §1 alone and in combination with Article 31 (see above para. 97),
- Article 4§1 alone (in particular in relation to the four issues raised in Conclusions XX-3 (2014) and Act. No. 4254/2014) and in combination with Article 31 (see above para. 130),
- Article 4§1 alone (in particular in relation to the two issues raised in Conclusions XX-3 (2014)) and in combination with Article 31 (see above para. 146).

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