

*HELLENIC REPUBLIC*

**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

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**Observations on the 24<sup>th</sup> Greek Report on the application of the European Social Charter and on the 9<sup>th</sup> Greek Report on the application of the Additional Protocol to the European Social Charter  
(Reference Period 1.1.2009-12.31.2012)\***

**Introduction**

The Greek National Commission for Human Rights (hereinafter GNCHR) has already, in the past, expressed its concern regarding issues falling in the scope of application of the European Social Charter (hereinafter the ESC) and its Additional Protocol and has addressed relevant opinions and recommendations to the competent Ministries. It has also submitted comments on a previous (21<sup>st</sup>) Greek Report on the application of the ESC with a view to its examination by the European Committee of Social Rights (hereinafter ECSR).

The Ministry of Labour, Social Security and Welfare (Directorate of International Relations) forwarded a copy of the two Reports (the 24<sup>th</sup> Report on the application of the ESC and the 9<sup>th</sup> Report on the application of the Additional Protocol to the ESC), to the GNCHR for its information, after having sent them to the ECSR. It did not send the draft of the aforementioned Reports to the GNCHR so as to enable it to formulate observations. Therefore, the GNCHR is directly sending its comments to the ECSR.

The GNCHR attaches hereto its recommendations regarding the prevention and the reversal of the particularly adverse effects of the financial crisis and the austerity measures on fundamental rights, which it has formulated since 2011 and subsequently repeated and updated. These recommendations are mostly referred to in the present observations. The GNCHR expresses in particular its deep concern about the following facts:

- there has been no progress regarding the respect for the rights guaranteed by the ESC; in particular, the violations found by the ECSR in its recent seven decisions have not been remedied;

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\* *Adopted unanimously by the Plenary of the GNCHR at its session of 9 October 2014. Rapporteurs Sophia Koukoulis-Spiliotopoulos, Representative of the Greek League for Women's Rights and Elli Varchalama, Representative of Greek General Confederation of Labour, 2<sup>nd</sup> GNCHR Vice-President, Roxani Fragkou and Aikaterini Tsampi, legal officers of the GNCHR.*

- the avalanche of unpredictable, complicated, conflicting and constantly modified “austerity measures” of immediate and often retroactive effect, which exacerbate the general feeling of insecurity, as deplored by the GNCHR in its hereto attached Recommendation since 8.12.2011, is continuing and constantly growing; therefore, the Greek legislation does not have the “*quality*” required by the European Convention on Human Rights (hereinafter ECHR).

The GNCHR would like to extend its deepest gratitude to the ECSR for quoting the GNCHR 2011 Recommendation “On the imperative need to reverse the sharp decline in civil liberties and social rights” in seven decisions finding violations of the ESC by Greece<sup>1</sup>. The ECSR’s example was followed by other European and international bodies, such as the Council of Europe (hereinafter CoE) Committee of Ministers<sup>2</sup>, the CoE Commissioner for Human Rights<sup>3</sup>, the ILO Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR)<sup>4</sup> and the UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Mr. Cephias Lumina<sup>5</sup>.

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<sup>1</sup> ECSR 23.05.2012, Complaints Nos. 65/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece* and 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*, as well as ECSR 07.12.2012, Complaints Nos. 76/2012, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, 77/2012, *Panhellenic Federation of Public Service Pensioners (POPS) v. Greece*, 78/2012, *Pensioners’ Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*, 79/2012, *Panhellenic Federation of pensioners of the Public Electricity Corporation (POS-DEI) v. Greece*, 80/2012, *Pensioners’ Union of the Agricultural Bank of Greece (ATE) v. Greece*.

<sup>2</sup> Council of Europe, Committee of Ministers, *Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012)*, adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers’ Deputies, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS\(2013\)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS(2013)21&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

<sup>3</sup> Council of Europe, Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, November 2013, p. 52, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&instranetImage=2530030&SecMode=1&DocId=2144886&Usage=2>.

<sup>4</sup> CEACR, in Reports to the International Labour Conference (ILC) 2013 finding violations of ILO Conventions Nos. 95 (protection of wages) and 102 (social security *minimum* standards) by Greece.

<sup>5</sup> UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, in his Report *Mission to Greece (22–27 April 2013)*, to the UN Human Rights Council 25<sup>th</sup> Session, 11 March 2014 (A/HRC/25/50/Add.1).

Let us recall that the measures condemned by the ECSR and other treaty bodies were imposed by “Memoranda of Understanding” (hereinafter MoU) signed by the European Commission, acting on behalf of the Euro-area Member States, and the Hellenic Republic, as conditions for the disbursement of loan installments. The implementation of the MoU is monitored by the “Troika” (representatives of the International Monetary Fund (IMF), the European Commission and the European Central Bank (ECB)).

We also note that the European Network of National Human Rights Institutions (ENNHRI) sent, in January 2014, open letters to Mr. J.-M. Barroso and Mr. M. Draghi “On the upcoming Troika visit to Greece”, to which the above GNCHR Recommendation was *inter alia* attached. In these letters, ENNHRI, also invoking the ECSR decisions regarding Greece, drew attention to the adverse effects of the crisis and austerity measures on the enjoyment of human rights in our country. It recalled that the EU Member States are bound by human rights obligations and that both EU Member States and EU institutions are bound by the EU Charter of Fundamental Rights (hereinafter the EU Charter). It stressed that “only by connecting macro-economic decision-making processes and human rights can we decelerate, perhaps even invert, the transformation of the financial crisis into a humanitarian crisis” and called on the European Commission and the ECB to carry out a systematic *ex ante* human rights impact assessment of all austerity measures; to make sure they do not lead to human rights violations; and to integrate human rights institutions and experts in the process of macro-economic decision-making<sup>6</sup>.

## I. The need to ratify the Revised European Social Charter

The GNCHR emphasizes that the ratification of the Revised European Social Charter (hereinafter the RESC), which it is constantly recommending<sup>7</sup>, constitutes a very important and necessary step towards achieving social progress in the present financial and political conjuncture and expresses its deep concern for the fact that it has not yet been ratified by Greece. The GNCHR agrees in this respect, with the Plenum of the CoE Parliamentary Assembly, which in its Recommendation of 12 June 2012 called on all Member States of the CoE to sign and ratify the RESC<sup>8</sup>. The GNCHR is convinced that, despite the

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<sup>6</sup> The ENNHRI open letters and the attachments thereto are available at: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

<sup>7</sup> A Bill drafted for the ratification of the Revised ESC was not adopted. See GNCHR, *Observations and proposals concerning the Bill on the «Ratification of the Revised European Social Charter»*, available at: [http://www.nchr.gr/images/pdf/apofaseis/protaseis\\_epti\\_nomoth\\_keimenwn/EEDA\\_RevSoCCharter.pdf](http://www.nchr.gr/images/pdf/apofaseis/protaseis_epti_nomoth_keimenwn/EEDA_RevSoCCharter.pdf).

<sup>8</sup> Council of Europe, Parliamentary Assembly, *Austerity measures – a danger for democracy and social rights*, Resolution 1884 (2012), 26.6.2012, par. 10.3, available at: <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18916&lang=EN>.

financial crisis which afflicts the country and the wider financial crisis that afflicts other EU countries as well, the application of the RESC can contribute to the safeguard of social rights at a time when the welfare state is being dismantled<sup>9</sup>.

## **II. The non-compliance with the ECSR decisions and the deterioration of the situation in Greece**

The GNCHR, in its capacity as an independent advisory body to the Greek State, is following with particular attention and concern the impact of austerity measures on fundamental, especially social, rights. It is also highlighting the European and international monitoring bodies' observations regarding the violation of international norms on the protection of human rights and the international concern as expressed in the decisions and recommendations of these bodies, which, contrary to the Greek State, take GNCHR's Recommendations into consideration.

With respect to the seven aforementioned ESRC decisions, the GNCHR observes that none of the provisions found incompatible with the ESC has been modified or repealed.

Moreover, apart from the ECSR, the CEACR has found in its Report to the 103<sup>rd</sup> International Labour Conference (hereinafter ILC) 2014 on the application of ILO Convention No 102 by Greece that its observations made in previous reports were not followed, with the result that the situation has considerably deteriorated. The same conclusion was reached by the CoE Committee of Ministers in a Resolution finding violations of the European Code of Social Security by Greece<sup>10</sup>.

The CEACR stresses in particular, referring to the ECSR, that "austerity policies led the country to an economic and humanitarian catastrophe unprecedented in peacetime: a 25% shrinking of GDP – more than at the time of the Great Depression in the United States; over 27% unemployment – the highest level in any western industrialized country during the last 30 years; 40% reduction of household disposable incomes; a third of the population below the poverty threshold; and over 1 million people or 17.5% of the population living in households with no income at all. These consequences are substantially related to the economic adjustment program Greece had to accept from the group of

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<sup>9</sup> See Greek Economic and Social Committee (OKE), *Opinion concerning the Bill on the "Ratification of the Revised European Social Charter"*, 4.2.2011, available at: [http://www.oke.gr/opinion/op\\_242.pdf](http://www.oke.gr/opinion/op_242.pdf).

<sup>10</sup> Council of Europe, Committee of Ministers, *Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012)*, adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies, *op. cit.*

international institutions known as “the Troika” [...], to ensure repayment of its sovereign debt”<sup>11</sup>.

The Greek National Confederation of Labour (hereinafter GSEE) has recently submitted a complaint to the ECSR, regarding the violation of a great number of workers’ social rights guaranteed by the ESC in the last four years<sup>12</sup>.

The complete deregulation of labour relations, the dramatic salary reductions and the dismantling of the welfare state do not only concern the workers, the unemployed and the pensioners in Greece; they are features of fiscal and social policies which are widespread in Europe.

It is in the light of the above that the GNCHR's more specific observations on the respect for the rights dealt with in the Greek Reports under examination must be read.

### **III. Matters affecting all the rights examined**

The GNCHR considers it crucial to mention at least three matters which affect all the rights examined here: the restrictions to the scope of social rights (A), the dismantling of collective bargaining as a factor exacerbating the violations of social rights (B) and the increasing impediments to access to justice of individuals whose rights are being violated (C).

#### **A. The limitation of the scope of social rights**

The GNCHR has repeatedly complained about Article 84 of Act 3386/2005, which prohibits the provision of medical care to undocumented migrants, making doctors who contravene this prohibition liable to criminal and disciplinary sanctions. It has underlined that this leads to inhuman and degrading treatment of these persons and violates their right to social aid and healthcare, whilst endangering public health. According to this provision, hospitals and clinics are only allowed to provide their services to undocumented minors, and to undocumented adults in cases of emergency only. As the doctors, respecting the Hippocratic oath and human rights, defy this prohibition, an urgent Circular of the Ministry of Health and Social Solidarity recalled the above provisions and strongly underlined the relevant obligations and the liability of doctors<sup>13</sup>.

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<sup>11</sup> Observations (CEACR) adopted 2013, published 103<sup>rd</sup> ILC session (2014), *Social Security (Minimum Standards) Convention*, 1952 (No. 102), p. 516, Greece, available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3150771](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3150771).

<sup>12</sup> General Confederation of Greek Workers (GSEE), *Press Release-GSEE's Application to the Council of Europe*, 29.9.2014, available at: [http://www.gsee.gr/news/news\\_view.php?id=2325](http://www.gsee.gr/news/news_view.php?id=2325).

<sup>13</sup> Circular Y4α/οικ.45610/02/05/2012. See GNCHR, *Observations on Act 3386/2005 «Entrance, residence and social integration of third countries' nationals in Greece»*, as



## **B. The dismantling of collective bargaining as a factor exacerbating the violations of social rights**

The GNCHR is constantly deploring<sup>14</sup> that the sweeping reforms which dismantled the system of collective bargaining and collective agreements (hereinafter CAs), as introduced by a series of legislative provisions (in particular Acts 3845/2010, 3863/2010, 3899/2010, 4024/2011, 4093/2012, Ministerial Council Act 6/28.2.2012 implementing Article 1(6) of Act 2046/2012), have a direct impact on labour issues of broader social interest regulated by CAs. This is because the shrinking of the normative content of the CAs weakens significantly the ability of these crucial collective instruments not only to regulate labour relations, but also to function constructively for the eradication of dangerous stereotypes in the workplace and the protection of vulnerable groups and women from social exclusion and misery<sup>15</sup>.

## **C. The mounting barriers to access to Justice and judicial protection**

The GNCHR avails itself of the opportunity to remind its positions regarding the drastic increase in litigation costs for lodging legal remedies, and to once again emphasize how inappropriate this choice is as a means to resolve the problem of the excessive length of proceedings. The GNCHR, invoking ECtHR case-law, has emphasized that such measures severely violate the right of a great number of individuals to access to Justice and judicial protection. This is the more so as a large and dramatically increasing part of the Greek population is exposed to poverty and social exclusion.

It is an undeniable fact that the economic crisis in Greece is unprecedented in intensity and duration<sup>16</sup>. According to Eurostat, in 2013 the Gross Domestic Product (GDP) of Greece had shrunk by 20.6% in comparison to 2009 (or even by

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well as GNCHR, *Press Release*, « *Cruel and Degrading Treatment of Our Fellow People: Responsibility of the State*», 25.5.2012, available at: [www.nchr.gr](http://www.nchr.gr).

<sup>14</sup> See GNCHR, *Recommendation on the imperative need to reverse the sharp decline in civil liberties and social right*, 8.12.2011, available at: [http://www.nchr.gr/images/English\\_Site/CRISIS/nchr\\_crisis.pdf](http://www.nchr.gr/images/English_Site/CRISIS/nchr_crisis.pdf) and *Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards*, 27.6.2013, available at: [http://www.nchr.gr/images/English\\_Site/AusterityMeasuresHR/gnchr.austeritymeasures\\_2013.pdf](http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/gnchr.austeritymeasures_2013.pdf)

<sup>15</sup> GNCHR, *Protection of the rights of people living with HIV/AIDS*, available at: [http://www.nchr.gr/images/English\\_Site/YGEIA/NCHR%20Report%20on%20the%20rights%20of%20people%20living%20with%20HIV%20\\_2\\_.pdf](http://www.nchr.gr/images/English_Site/YGEIA/NCHR%20Report%20on%20the%20rights%20of%20people%20living%20with%20HIV%20_2_.pdf).

<sup>16</sup> See Athens University of Economics, Analysis Group for Public Policy, *Dimension of poverty in Greece of the crisis*, Newsletter 1/2012, M. Matsaganis, Ch. Leventi, E. Kanavitsa (dir.), available at: [http://www.paru.gr/files/newsletters/NewsLetter\\_01.pdf](http://www.paru.gr/files/newsletters/NewsLetter_01.pdf); and *The anatomy of poverty in Greece in 2013*, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.), p. 3-4: [http://www.paru.gr/files/newsletters/NewsLetter\\_05.pdf](http://www.paru.gr/files/newsletters/NewsLetter_05.pdf).

23.2% in comparison to 2007)<sup>17</sup>, while the Group of Analysis of Public Policy of the Athens' University of Economics notes that the poverty threshold based on a fixed rate has sharply risen, to 39% in 2012 and 44% in 2013<sup>18</sup>. According to the Greek Statistical Authority (hereinafter ELSTAT), in 2012, 34.6% of the population (now obviously more) were at risk of poverty and social exclusion<sup>19</sup>.

Moreover, pursuant to the 2<sup>nd</sup> MoU, the *minimum* wages under the National General CA of 15.7.2010 were reduced by 22% for all employees, except for those under the age of 25, for whom the *minimum* wages were reduced by 32%. Thus, the *minimum* monthly salary has reached 586.08 Euros and for the workers under the age of 25, 510.95 Euros, while the poverty threshold is 580 Euros<sup>20</sup>. The ECSR found that this reduction of the young workers' salary constitutes a violation of the ESC. Indeed, in a period, of turbulence of growing intensity in the labour and social security field and of restrictions and deprivation of fundamental social rights, when a greater number of people than ever need effective judicial protection, the mounting barriers to access to Justice constitute a human rights violation of particular gravity.

For this reason and in order not to restrict access to Justice for individuals only, since it is only they who pay litigation costs, the GNCHR has recommended that, in case a legal remedy lodged by the State or legal persons governed by public law is dismissed, considerably increased litigation costs and pecuniary penalties be imposed, which will have a deterrent effect<sup>21</sup>. As it is mainly the unjustified legal remedies lodged by the State and other public entities which burden the system of Justice, this is a way to reduce the courts' backlog without creating a problem of inequality of the parties.

The GNCHR, in its comments concerning the Bill which became Act 4055/2012, invoked a specific opinion formulated in Opinion No. 4/2010 of the Administrative Plenary of the Council of State (Supreme Administrative Court), according to which "it is absolutely impossible to achieve an important reduction of the length of proceedings before the Council of State without drastically

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<sup>17</sup>Available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tec00115>.

<sup>18</sup> See Athens University of Economics, Analysis Group for Public Policy, *The anatomy of poverty in Greece in 2013*, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.): [http://www.paru.gr/files/newsletters/NewsLetter\\_05.pdf](http://www.paru.gr/files/newsletters/NewsLetter_05.pdf).

<sup>19</sup> ELSTAT *Living conditions in Greece* July 2014, Labour market, Table 8, Poverty-inequality, Table 6: [http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p\\_param=A0101&r\\_param=SJO01&y\\_param=TS&mytabs=0](http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs=0).

<sup>20</sup> ECSR 23.05.2012, 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*.

<sup>21</sup> GNCHR, *Comments on the Bill of the Ministry of Justice titled "Acceleration of proceedings in administrative courts and other provisions"*, Report 2010, p. 123: [http://www.nchr.gr/images/English\\_Site/DIKAIHDIKH/2010\\_Dioikhtikh\\_Dikh.pdf](http://www.nchr.gr/images/English_Site/DIKAIHDIKH/2010_Dioikhtikh_Dikh.pdf).

reducing the number of cases brought before it. This reduction cannot of course be achieved by legislative measures which would annihilate or seriously impede the right of individuals, as guaranteed by the Constitution and the ECHR, to seek the annulment of illegal acts or omissions of the Administration. Consequently, the only measure available to the legislator for achieving a significant reduction of the cases brought before the Council of State, is the drastic reduction of the legal remedies lodged by the State and legal persons governed by public law, which, as they exercise public power, do not have a right to judicial protection, the latter being only guaranteed to individuals”<sup>22</sup>.

Moreover, the GNCHR has recommended as a measure of support to those heavily afflicted by unemployment, job insecurity and the weakening of CAs, in line with Articles 21, 22(1) and (5), and 25 of the Constitution, that litigation costs be abolished at least for employment and social security cases and be drastically reduced for the other cases. At the same time, the legal aid system, which is inadequate mainly due to the very strict conditions subject to which it is available, must be reorganised and extended<sup>23</sup>. These recommendations are also in line with the recommendations of ILO bodies for the taking of support measures in favour of workers in the framework of the crisis, as these recommendations have been formulated following complaints of GSEE<sup>24</sup>.

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<sup>22</sup> Minutes of the Administrative Plenary of the Council of State No. 4/2010, specific opinion regarding the provision that became Article 12 of the Bill. This opinion invokes the decisions made by the ECtHR, *Radio France v. France* 23.9.2003, par. 26 (on the admissibility), *Monasteries v. Greece*, 9.12.1994, par. 49, and *Commercial, Industrial and Rural Chamber of Timisoara v. Romania*, 16.07.2009, par. 15. To these decisions we add those of the ECtHR *Section de Commune d’Antilly v. France*, 23.11.1999 (on the admissibility), and *Danderyds Kommun v. Sweden*, 7.06.2001 (on the admissibility).

<sup>23</sup> Act 3226/2004.

<sup>24</sup> ILO, Committee on the Application of Standards, 2013 Report (102<sup>nd</sup> ILC), [http://www.ilo.org/ilc/ILCSessions/102/reports/committee-reports/WCMS\\_216456/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/102/reports/committee-reports/WCMS_216456/lang-en/index.htm); Committee on Freedom of Association, 365<sup>th</sup> Report of the Committee on Freedom of Association (November 2012), case 2820, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_193260.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf); Committee on the Application of Standards 2011 Report (100<sup>th</sup> ILC), [http://www.ilo.org/global/standards/WCMS\\_165970/lang-en/index.htm](http://www.ilo.org/global/standards/WCMS_165970/lang-en/index.htm). See also ILO, Committee of Experts on the Application of Conventions and Recommendations, 2013 Report, [http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS\\_205472/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205472/lang-en/index.htm); 2012 Report, [http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS\\_174843/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174843/lang-en/index.htm); 2011 Report, [http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS\\_151556/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS_151556/lang-en/index.htm) and ILO’s High Level Mission to Greece, Report (November 2011), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/missionreport/wcms\\_170433.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/missionreport/wcms_170433.pdf).



#### IV. Specific Observations on the implementation of the European Social Charter and the Additional Protocol to the European Social Charter

##### Article 2 of the ESC – The right to just conditions of work

Act 4093/2012 has *inter alia* introduced important modifications to working time provisions, which are closely related to workers' health and safety under European and international law. Directive 93/104/EC, which lays down *minimum* safety and health requirements for the organisation of working time, as amended by Directive 2000/34/EC, was transposed by Presidential Decree 88/1999, as amended by Presidential Decree 76/2005. Directive 2003/88/EC has repealed and replaced the above Directives.

The EU directives explicitly provide that they set out *minimum* standards, and do not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements which are more favourable to the protection of the safety and health of workers; moreover, they stipulate that their implementation shall not constitute valid grounds for reducing the general level of protection afforded to workers (Articles 15 and 23 of Directive 2003/88/EC). The directives thus express the favourability principle. Greek legislation which transposed the above directives had taken advantage of this principle in order to provide for *minimum* daily rest periods of 12 hours instead of 11 hours provided by the directives.

However, Act 4093/2012 has adversely affected working conditions reducing the level of workers' protection, in particular regarding working time, as follows:

- by disconnecting the opening hours of shops from the working hours of their personnel;
- by allowing derogations from the five-day working week for shop employees by means of CAs through working time arrangements on a weekly basis;
- by reducing the *minimum* daily rest period from 12 to 11 hours;
- by allowing undertakings employing regular and seasonal personnel to provide, in case of work overload, part of the annual leave (10 working days) for employees working five days a week and (12 working days) for those working six days a week, at any time in the same calendar year;
- by abolishing Saturday work pay increase (30%).

These provisions have significantly reduced the protection level of workers with an adverse impact on workers' health and safety, which working time standards are meant under the ESC and EU law to ensure. In particular, the reduction in the *minimum* daily rest period from 12 to 11 hours has adverse effects on workers' health and safety, while working time arrangements within a

shorter time span (weekly) has led to increasing work intensification. Therefore, these provisions violate Article 2 of the ESC on fair and just working conditions.

***Paragraph 3 - The right to just conditions of work: a minimum of three weeks annual holiday with pay***

The ECSR has unanimously found violations of a number of articles of the 1961 ESC in the case of the “special apprenticeship contracts” between employers and workers aged 15 to 18 years who are not granted paid annual holiday<sup>25</sup>. More particularly, the deprivation of the annual holiday violates Art. 7 (7) of the 1961 ESC, which requires a paid annual holiday of no less than three weeks. The GNCHR observes that the relevant provisions have not been modified, and as a consequence Greek legislation is still incompatible with the ESC in this respect.

Besides, the deprivation of the annual holiday violates a fundamental principle of EU law, enshrined in Article 31 (2) of the EU Charter (fair and just working conditions) and expressed in Directive 2003/88/EC<sup>26</sup> which provides for the right of every worker to paid annual leave of at least four weeks<sup>27</sup>. As a consequence, the aforementioned provisions also conflict with relevant EU law norms, which exceed the ESC *minimum* and therefore prevail.

The GNCHR also expresses its concern about the contracts of employment in community service programs, within the framework of which it is uncertain whether employees are entitled to paid leave, since their contracts are considered special purpose contracts. The obligations of the body which is competent for the execution of these programs are limited to ensuring health and safety conditions in the workplace, while it has no obligation to pay any other benefits to the employees beyond those expressly specified in Article 89 (A) (1) of Act 3996/2011.

**Article 4 of the ESC – The right to a fair remuneration**

***Paragraph 1 – The right of workers to a remuneration such as will give them and their families a decent standard of living***

The GNCHR expresses its concern for the imposed wage cuts and wage “freezes”, employment issues which used to be regulated by CAs and arbitration decisions already in effect. These measures were provided by Ministerial Council Act 6/28.2.2012, which was issued by virtue of the enabling provision of Article 1(6) of Act 4046/2012 repeating clauses of the 2<sup>nd</sup> MoU.

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<sup>25</sup> ECSR 23.05.2012, Complaint 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*.

<sup>26</sup> Directive 2003/88/EC OJ L 299/9, 4.11.2003 concerning certain aspects of the organisation of working time, OJ 2999/9, 18.11.2003.

<sup>27</sup> CEU Cases C-173/99 *BECTU*, [2001] ECR I-4881; C-579/12 *RX-II, Strack*, EU:C:2013:570; C-78/11 *ANGED*, EU:C:2012:372.

These measures have entailed the most dramatic drop in the standard of living guaranteed by the ESC and the Greek Constitution.

Furthermore, the GNCHR expresses its concern about the 32% reduction to the *minimum* wage for all workers under 25 years of age, which has been found by the ECSR to be in breach of Article 4 ESC. The relevant provisions have not been repealed or modified. Moreover, their impact has never been evaluated, as the ECSR has ascertained, and they have not led to the reduction of the unemployment of the young, while the use of flexible forms of employment for them is increasing.

According to the latest data of ELSTAT, in June 2014 (which, it must be noted, is a month of seasonal employment), the unemployed were 1.303.884 and the unemployment rate was 27% (men: 23.8%, women 31.1%, 15-24 age group: 51.5%)<sup>28</sup>. Long-term unemployment (over 12 months) was 71.4% of total unemployment in the first quarter of 2014<sup>29</sup>.

Only 9% of the unemployed registered with OAED (the Manpower Employment Organization) (the number of whom is lower than the total number of unemployed reported by ELSTAT: 993.118), are entitled to unemployment benefits, in principle for a maximum of 12 months. As a consequence, long-term unemployment is not covered. The beneficiaries are entitled to 360 Euros per month, plus 36 Euros for every dependent family member. This amount is much lower than the poverty threshold (580 Euros, as found by the ECSR). The long-term unemployed may receive a personal allowance of 200 Euros, for a maximum of 12 months more, albeit subject to a very strict means-test<sup>30</sup>.

The GNCHR also notes that by its recent judgment No. 2307/2014, the Council of State Plenum, partly upheld a petition of GSEE for the annulment of Ministerial Council Act 6/2012<sup>31</sup>. It annulled as unconstitutional the provisions of this Ministerial Act to the extent that they abolished the right of the parties to unilaterally resort to arbitration and restricted the scope of arbitration to basic salary or/and daily wage determination, while prohibiting the regulation of all non-wage matters, and even the adoption of clauses maintaining such provisions in force (retainability clauses). However, in this same judgment, the Council of State avoided to examine the compatibility of this Ministerial Act with the ESC, considering that “this international convention merely contains recommendations

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<sup>28</sup> ELSTAT Press release September 11 for June 2014: [http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101\\_SJO02\\_DT\\_MM\\_06\\_2014\\_01\\_F\\_EN.pdf](http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO02_DT_MM_06_2014_01_F_EN.pdf).

<sup>29</sup> ELSTAT, Table 6: [http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p\\_param=A0101&r\\_param=SJO01&y\\_param=TS&mytabs](http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs).

<sup>30</sup> OAED (Manpower Employment Organization): <http://www.oaed.gr>.

<sup>31</sup> See *supra*, III.B.

to the States-parties, mainly regarding the right to strike, free collective bargaining and trade union rights in general”<sup>32</sup>.

***Paragraph 3 – The right of men and women workers to equal pay for work of equal value***

The GNCHR observes that the Greek Report under examination merely presents the legislation in force. The GNCHR has made, in the recent past, various observations on the implementation of the right of men and women to equal pay for work of equal value in Greece<sup>33</sup>. Since no progress has been made ever since, the GNCHR repeats the following remarks:

The GNCHR welcomed the adoption of Act 3896/2010, which transposed Directive 2002/73/EC on equal treatment of men and women in employment and the fact that several of its observations regarding the relevant Bill were taken into account. It noted, however that this Act is inadequate in certain respects. Firstly, the definition it provides for “vocational training” is neither clear nor consistent with EU law, something which undermines legal certainty.

Moreover, Article 19 on “Positive Measures” does not comply with Article 116(2) of the Greek Constitution which introduces an obligation for all state organs<sup>34</sup>. According to well-established jurisprudence of the Council of State, this constitutional provision “obliges the legislator and all other state authorities to adopt in all fields the positive measures in favour of women that are appropriate and necessary for achieving the best possible result” with a view to minimising inequalities and with the ultimate goal to achieve substantive gender equality<sup>35</sup>. Furthermore, Article 116(2) of the Greek Constitution stipulates that the positive measures should aim to eradicate “inequalities” (which is a boarder term than the term «*discrimination*» of Article 19 of Act 3896/2010)<sup>36</sup>.

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<sup>32</sup> Par. 40 of the judgment.

<sup>33</sup> GNCHR, *Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)*, 5.12.2013, p. 26-29: [http://www.nchr.gr/images/pdf/apofaseis/ellinikes\\_ektheseis\\_en\\_ell\\_org/OHE/dsapd.pdf](http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/OHE/dsapd.pdf).

<sup>34</sup> Article 116 (2): “*Adoption of positive measures for promoting equality between men and women does not constitute discrimination on grounds of sex. The State shall take measures for the elimination of inequalities actually existing, in particular to the detriment of women*”.

<sup>35</sup> Council of State, decisions Nos 2831/2003, 2832-2833/2003, 3027-3028/2003, 3185, 3187-3189/2003 and 192/2004.

<sup>36</sup> See as noted by the GNCHR in *Comments on Bill titled “Application of the Principle of Equal Treatment Irrespective of Racial or Ethnic Origin, Religious or Other Beliefs, Disability, Age or Sexual Orientation”*, 2003: The Greek Constitution, Article 4(2), guarantees substantive gender equality (Council of State judgment No. 1933/1998). On the occasion of the constitutional revision of 2001, the provision of Article 116(2) allowing derogations was repealed and replaced with a provision which requires positive measures as a means for achieving gender equality and the abolishment of all

Furthermore, the GNCHR noted, in its observations on the Bill for the transposition of Directive 2002/73/EC (which became Act 3488/2006), that there is no autonomous personal right to parental leave for both male and female workers<sup>37</sup> and that Article 3(4) of this Act regarding the protection of maternity does not comply with the provisions of Article 21(1) and (5) of the Greek Constitution, which guarantee the effective protection of maternity<sup>38</sup>.

Especially in the private sector, women undergo unfavourable treatment during the hiring and negotiation process, not only when they are pregnant or have just given birth to a baby, but also when they have young children or are married and at child-bearing age<sup>39</sup>.

The GNCHR has also underlined that the legal framework (Act 3488/2006 and Act 3896/2010, which transpose Directives 2002/73/EC and 2006/54/EC, respectively)<sup>40</sup> is inadequate for ensuring effective judicial protection to victims of discrimination, most of whom are women. Legal entities are not granted standing

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inequalities in practice, especially those affecting women. Consequently, as of the entry into force of the revised Constitution (18.4.2001), all provisions allowing derogations were null and void, while any provision introducing derogations in the future shall be invalid. This is why neither Act 3488/2006 transposing Directive 2002/73/EC nor Act 3896/2010 transposing Directive 2006/54/EC, allow derogations from gender equality in employment. Besides, both these Directives allow member States to introduce or maintain national provisions more favourable than their own and do not allow the reduction in the level of protection of workers in the areas which they cover. The GNCHR underlined that “according to fundamental principles of international and European law as well as to the explicit provisions of the Directives, the provisions of Article 116(2) of the Greek Constitution prevail as more protective”.

<sup>37</sup> GNCHR, *Resolution on the Reconciliation between Professional and Family Life in view of the transposition of EU Directive 2002/73/EC into Greek law*, 2005: [http://www.nchr.gr/images/English\\_Site/NomothetikesProtaseis/NationalLegislation/Professional\\_family\\_life%202006.pdf](http://www.nchr.gr/images/English_Site/NomothetikesProtaseis/NationalLegislation/Professional_family_life%202006.pdf).

<sup>38</sup> Article 21(1): “*The family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State*” and Article 21(5): “*Planning and implementing a demographic policy, as well as taking of all necessary measures, is an obligation of the State*”.

<sup>39</sup> GNCHR, *Resolution concerning the Reconciliation between Professional and Family Life in view of the Incorporation of EU Directive 73/2002/EC into Greek Legislation*, 2005, available at: [http://www.nchr.gr/images/English\\_Site/NomothetikesProtaseis/NationalLegislation/Professional\\_family\\_life%202006.pdf](http://www.nchr.gr/images/English_Site/NomothetikesProtaseis/NationalLegislation/Professional_family_life%202006.pdf).

<sup>40</sup> GNCHR, “Comments on the Bill “Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonization of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006”, available at: [http://www.nchr.gr/images/pdf/apofaseis/isothta\\_fullwn/EEDA\\_YpErgasias\\_2006.54\\_201\\_0.pdf](http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/EEDA_YpErgasias_2006.54_201_0.pdf) and [http://www.nchr.gr/images/pdf/apofaseis/isothta\\_fullwn/paratiriseis\\_sx.Nomou\\_2006\\_54.pdf](http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/paratiriseis_sx.Nomou_2006_54.pdf).



to engage in their own name in legal proceedings for the protection of the rights of the victims.

The GNCHR is constantly repeating a general observation, regarding the provisions transposing the EU gender equality Directives: the procedural provisions (mainly regarding the standing of legal entities and the burden of proof) are not incorporated into the relevant Codes of Procedure. As a consequence, they remain unknown to judges, lawyers and the persons concerned. Therefore, the transposition of the EU Directives is inadequate, since it does not establish the required legal certainty and transparency which would allow the victims of discrimination to be aware of their rights and to claim them before the courts and other competent authorities.

Despite the adoption of Act 3896/2010 and the measures mentioned in the Greek Report under examination, the deregulation of employment relations due to the growing financial crisis and the successive austerity measures continue to aggravate the position of women in the labour market, rendering them even more vulnerable. Taking into account the recent concluding observations of the UN Committee on the Elimination of Discrimination against Women<sup>41</sup>, the GNCHR expresses its concern for the marginalization of women in the labour market as reflected *inter alia* in the high female unemployment rates. The application of Act 4042/2011 and the severe pension cuts regarding widows and other categories of women have also had a negative effect.

Furthermore, the reversal of the hierarchy of CAs and the weakening of the National General CA and the sectoral CAs affect women in particular, mainly regarding equality in pay, and thus lead to the widening of the pay gap, as CAs used to be the best means to promote and protect uniform pay and employment conditions, without any discrimination.

Another source of concern is the continuous reduction of the (already insufficient) day-care structures for children and dependent persons as well as other social structures, which limit women's ability to take up employment or keep them in jobs with reduced rights, at the same time perpetuating gender stereotypes, as men are not encouraged to participate in such care. The harmonisation of family professional life should be a matter for both men and women. There is also a disturbing rise in discriminatory practices, especially on multiple grounds, to the detriment of women employed within the framework of sub-contracting or temporary employment. In such cases, women are especially targeted if they are engaged in trade union activity<sup>42</sup>.

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<sup>41</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Greece*, CEDAW/C/GRC/CO/7 (26.4.2013), par. 28.

<sup>42</sup> GNCHR, *Workers' rights and conditions of work in the framework of sub-contracting*, available at:

The CEACR expresses its concern at the “disproportionate impact” of the crisis and austerity measures on women and the widening of the pay gap to their detriment. The CEACR stresses in particular that “the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures adversely affected the negotiating power of women, and would lead to their over-representation in precarious low-paid jobs”. The CEACR, with reference to the information received from the Greek Ombudsman, (hereinafter the Ombudsman) observes that since the vast majority of employees in the wider public sector are women, the measures of “labour reserve” and those introduced by Act 4024/2011 (a new public service statute, a new job classification and a new harmonized wage scale resulting in wage cuts of up to 50 per cent in certain cases) is likely to have an impact on female unemployment. The CoE Commissioner for Human Rights has also emphasized the serious impact of the crisis and austerities measures on women<sup>43</sup>.

In the private sector, the rapid growth of **flexible forms of employment** as well as the replacement of contracts of indefinite duration by fixed term contracts lead to a significant reduction in wages. The CEACR stresses, referring to the Ombudsman, that flexible forms of employment, mainly part-time and rotation work, are more often offered to women, especially during pregnancy and upon return from maternity leave, reducing their levels of pay, while layoffs due to pregnancy, maternity and sexual harassment increase. "Flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced"<sup>44</sup>.

In fact, unemployment, especially among women and young people, is especially high and as the CEACR notes, “a large number of women have joined the ranks of the ‘discouraged’ workers who are not accounted for in the statistics”, while "small and medium-sized enterprises, which are an important source of employment for women and young people, close down massively"<sup>45</sup>.

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[http://www.nchr.gr/images/pdf/apofaseis/ergasia/fin\\_EEDA\\_ergolavikes\\_anatheseis\\_ioul\\_09.pdf](http://www.nchr.gr/images/pdf/apofaseis/ergasia/fin_EEDA_ergolavikes_anatheseis_ioul_09.pdf).

<sup>43</sup> Council of Europe, Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, November 2013, *op. cit.*, p. 23, and *Protect women’s rights during the crisis*: [www.commissioner.coe.int](http://www.commissioner.coe.int).

<sup>44</sup> Observation (CEACR) - adopted 2011, published 101<sup>st</sup> ILC session (2012), *Equal Remuneration Convention, 1951 (No. 100)*, Greece (Ratification: 1975): [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2699054](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054).

<sup>45</sup> Observation (CEACR) - adopted 2011, published 101<sup>st</sup> ILC session (2012), *Equal Remuneration Convention, 1951 (No. 100)*, Greece (Ratification: 1975): [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2699054](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054). See also Observation (CEACR) - adopted 2012, published 102<sup>nd</sup> ILC session (2013)

Moreover, fiscal consolidation decisions and austerity measures are taken **without any *ex ante* or even *ex post* impact assessment**, as the ECSR and other treaty-bodies are deploring<sup>46</sup>.

Also, "recalling that CAs have been a principal source of determination of pay rates, the Committee refers to its comments on Convention No. 98 and calls upon the Government to bear in mind that **collective bargaining** is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex"<sup>47</sup>.

To the abovementioned observations the GNCHR adds the need to strengthen the Labour Inspectorate (SEPE) and the Ombudsman, something crucial at a time when both bodies are suffering major budget cuts. This is all the more so as the number of workers who cannot afford recourse to the courts for financial reasons is in constant increase, stressed hereabove.

More generally, the GNCHR shares the Ombudsman's fear that **any progress** achieved so far in employment and gender equality **may be reversed**, something which would result in failure to draw on valuable human resources, as well as in violation of the rule of law and democratic principles<sup>48</sup>. The insufficiency of policy measures aiming at combating high female unemployment, the failure to encourage men's participation in family care, the gender pay gap to the detriment of women and the so-called "glass ceiling" on women's professional evolution indeed constitute problems of human rights and democracy.

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*Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* – Greece: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3084473](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473).

<sup>46</sup> See GNCHR, "Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards (2013)", GNCHR, *NCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights (2011)* and GNCHR, *The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis (2010)*, *op. cit.*

<sup>47</sup> Observation (CEACR) - adopted 2011, published 101<sup>st</sup> ILC session (2012), *Equal Remuneration Convention, 1951 (No. 100)*, Greece (Ratification: 1975), available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2699054](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054). See also Observation (CEACR) - adopted 2012, published 102<sup>nd</sup> ILC session (2013)

*Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* – Greece, available: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3084473](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473).

<sup>48</sup> Ombudsman, Special Report 2012, "Gender and labour relations", available at: <http://www.synigoros.gr/resources/docs/11eidikes-fylo-2.pdf>.

***Paragraph 4 – The right of all workers to a reasonable period of notice for the termination of employment***

Article 74 (2) (A'), of Act 3863/2010, as amended by Article 17 (5) (a), of Act 3899/2010, which aims to increase the flexibility of labour relations, in compliance with the first update of the MoU, reads as follows: "*The first twelve months of employment on a permanent contract from the date it becomes operative shall be deemed to be a trial period and the employment may be terminated without notice and with no severance pay unless both parties agree otherwise.*"

As the ECSR has held, the above provision violates Article 4 (4), of the ESC. However, this provision has not been amended or repealed. On the contrary, dismissals have been further facilitated by Act 4093/2012 in breach of Article 4 (1), (3) and (4) of the ESC, with 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 constitute wages in a broad sense<sup>49</sup>; 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. Severance pay reductions, in the framework of the current situation in the labour market and in conjunction with high unemployment rates are not only unjustified but also fail to serve the purpose of severance pay.

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 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 Act 4093/2012, will be entitled for each additional year of service to one salary with a 2,000 Euros ceiling.

Moreover, as compensation constitutes "pay" in EU law as well and the above provision introduced discriminatory treatment related to dismissal and conditions of pay of employees who are most likely to be mainly young, a violation of Directive 2000/78/EC and Articles 21 (Non-discrimination) and 30 (protection in the event of unjustified dismissal) of the EU Charter is very likely. According to the CJEU and to the ECSR, notice and compensation aim at supporting the worker until he/she finds a new job. However, this measure deprives workers from their income, while at the same time it violates their right to work. This is

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<sup>49</sup> Cf. *infra*, regarding EU law.

all the more so as employment prospects are increasingly limited due to soaring unemployment, particularly among young people<sup>50</sup>.

### **Article 3 of the Additional Protocol – The right to take part in the determination and improvement of the working conditions and working environment**

Along with the CEACR, the GNCHR observes that “the industrial relations framework has been destabilized as the managerial prerogatives have been reinforced in a disproportionate and excessive manner: employers were allowed to unilaterally impose rotation work and suspension of work for 9 months and 3 months respectively within a year. The easing of rules on collective dismissals have led to their drastic increase. In the public sector, the labour reserve was being introduced in order to effectively dismiss thousands of workers in some 150 public agencies. Dismissals had been generally facilitated by reducing severance pay and facilitating its payment in bimonthly installments”. The CEACR particularly deplores the massive dismissals in the wider public sector without consultation with the competent trade unions<sup>51</sup>.

The GNCHR has already expressed its concern at the facilitation of dismissals<sup>52</sup>. It notes that “the [ILO] High Level Mission [in Greece] echoes the concern expressed to it by many parties that overall, the changes being introduced to the industrial relations system in the current circumstances are likely to have a spillover effect on collective bargaining as a whole, to the detriment of social peace and society at large. The High Level Mission refers in this regard to the obligation of Greece under ratified Conventions to promote the practice of collective bargaining in general. It takes special note of the desire expressed by all social partners to evaluate the impact of the reforms introduced in the framework of the support mechanism on the industrial relations system and social dialogue more generally”<sup>53</sup>.

### **Final observations**

By seven decisions, the ECSR found violations of the ESC by Greece. None of the provisions which the ECSR considered contrary to the ESC has been repealed or

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<sup>50</sup> S. Koukoulis-Spiliotopoulos, “Austerity measures v. Human Rights and EU foundational values”, attached to the open letters of ENNHRI to Mr. J.-M. Barroso and Mr. M. Draghi (see Introduction above *if.*), available at: [http://www.nchr.gr/images/English\\_Site/NEWS/ StrengtheningFRGNCHRfinal.pdf](http://www.nchr.gr/images/English_Site/NEWS/ StrengtheningFRGNCHRfinal.pdf).

<sup>51</sup> ILO High Level Mission to Greece, Report (November 2011), *op. cit.*, par. 126; ILO, Application of International Labour Standards 2014 (I), *Report of the CEACR*, International Labour Conference, 103rd Session, 2014, p. 111-112, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_235054.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf).

<sup>52</sup> GNCHR, *NCHR Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights (2011)*, *op. cit.* p. 1.

<sup>53</sup> *Idem*, par. 307.



modified. There are also further violations of the ESC which are pointed out in the present observations. The GNCHR avails itself of this opportunity to recall that the ECSR has repeatedly drawn attention to the justiciability of ESC provisions and rights and to the duty of national courts to ensure the protection of these rights. This is crucial for restoring justice and social peace and ensuring the smooth functioning of democratic institutions.

Athens, 9 October 2014

## Update

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The GNCHR respectfully requests that the Committee also take into consideration the following additional observations. May we also draw the attention of the Committee to the fact that the Greek legislation is very frequently amended, by virtue of very long and tortuous statutes, which contain provisions unrelated to one another and to the title of the statute ('omnibus laws'). Therefore, as the GNCHR underlined in its 2011 Recommendation (see p. 1-2 above), there is an "*avalanche of unpredictable, complicated, conflicting, and constantly modified 'austerity measures' of immediate and often retroactive effect, which exacerbate the general sense of insecurity*", while great legal uncertainty is created, so that the Greek legislation does not have the "*quality*" required by the ECHR.

### **Article 4 of the ESC – Right to a fair remuneration**

As we have pointed out above (p. 10), the provisions of Act 3863/2010 and Ministerial Council Act No. 6 of 28.2.2012 introducing sub-minima for young workers, which the Committee found contrary to Article 4 alone and in light of the non-discrimination clause of the Preamble to the ESC (discrimination on grounds of age) (Complaint No. 66/2011), have not been repealed or modified. On the same page, we have also expressed our concern about the contracts of employment in community service programs, under which the employer's obligations are limited by law.

We would now like to draw the Committee's attention to the fact that discrimination on grounds of age continues and is even intensified, in particular by virtue of provisions of Act 4093/2012, as amended by subsequent legislation. Examples:

#### ***I. Sub-minima for young workers***

- The sub-minima for workers under 25 years of age which were fixed by the provisions condemned by the Committee are explicitly reaffirmed. Thus by virtue of Act 4093/2012, the minimum monthly salary of white collar workers over 25 years of age is fixed at EUR 586,08 and the minimum daily salary of the blue collar workers over 25 years at EUR 22,73. For white collar workers below 25

years the minimum monthly salary is fixed at EUR 510,95, and the daily salary for blue collar workers below 25 at EUR 22,83.

- The minimum wage is increased by 10% for each three year period of employment, for blue collar workers over 18 years of age and for white collar workers over 19 years of age only, not for those under these ages.

- When long-term registered unemployed over 25 years of age are hired as white collar employees, their minimum wage is increased by 5% for each three year period of employment. This increase is not provided for blue collar workers of any age, nor for any workers under 25 years of age.<sup>54</sup>

- For workers hired by local authorities under fixed term contracts of employment in community service programs, the wages are even lower than the above legal wages provided by Act 4093/2012: EUR 490 monthly for those over 25 years of age and EUR 427 for those below 25 years.<sup>55</sup>

## ***II. Discrimination on grounds of age regarding unemployment allowances***

The long-term unemployed receive an employment allowance of EUR 200 (far below the poverty threshold, which is EUR 580 (see p. 7 above) for a maximum of 12 months, subject to a strict means-test. Those entitled to it must be over 20 years and below 66 years of age. This is clearly discrimination on grounds of age, which for workers above 66 years of age is also contrary to Article 12 of the ESC and Article 4 of the Additional Protocol (1988).

## **Article 16 of the ESC – Right to family protection; Article 34 of the ESC – territorial scope of the ESC, as interpreted by the Committee**

### ***Discrimination on grounds of nationality regarding child allowances***

A monthly allowance of EUR 40,00 is granted, subject to a strict means-test, for each dependent child under the age of 18, or 19 if the child is attending high school, or 24 if the child is attending a university or other post-high school educational establishment. The allowance is granted to parents who are permanent residents in Greece, even if they are EU citizens. This constitutes indirect discrimination against families on grounds of EU nationality, according to well-established CJEU case law, which is also contrary to Article 16 and to Article 34 of the ESC as interpreted by the Committee.

If the parents are citizens of other (including European) countries, they must be legally and permanently residents in Greece and their children must be Greek citizens. This constitutes direct discrimination against families on grounds of

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<sup>54</sup> Article First, Paragraph IA, Sub-paragraph IA.11 (3), of Act 4093/2012, as amended by Article First, Paragraph IA, Sub-paragraph IA.7, of Act 4254/2014.

<sup>55</sup> Article First, Paragraph 1D, Sub-paragraph ID.1 of Act 4152/2013; Joint Ministerial Decision 3.24641/Oik/3.1574/2013, OJ B, 2091/27.8.2013 and subsequent Ministerial Decisions.

nationality, which is contrary to Article 16 and to Article 34 of the ESC as interpreted by the Committee.<sup>56</sup>

**Article 8 of the ESC- Right of female workers to protection, Article 16 of the ESC – Right to family protection**

***III. Discrimination against female employees of the State and public legal entities employed on a fixed-term contract***

The Civil Servants Code (CSC)<sup>57</sup> as a whole covers civil servants and permanent employees of legal persons governed by public law. The CSC provisions regarding leaves, including maternity and parental leaves, also apply to permanent employees of local authorities<sup>58</sup>, as well as to persons employed by the State, legal persons governed by public law and local authorities under a contract of indefinite duration.<sup>59</sup> They do not apply to persons employed by these same employers under a fixed-term contract. These persons receive the leaves provided for the private sector, which are less advantageous.

In the private sector maternity leave is seventeen weeks in total: eight weeks before and nine weeks after childbirth. It is thus shorter than the CSC leave. In the private sector, the employer pays part of the woman's wages during maternity leave (one month in case of employment of at least one year after the coming into effect of the contract of employment; fifteen days in case of shorter employment), provided that she has worked for at least ten days for the same employer.<sup>60</sup> By contrast, women covered by the CSC receive their full wages throughout the maternity leave without any requirement of previous service.

In the private sector, the wages during maternity leave are in principle supplemented, by an allowance paid by the woman's social security scheme<sup>61</sup> and an allowance paid by a scheme run by OAED (Agency for Manpower Employment).<sup>62</sup> However, in order to receive the social security allowance, female employees must have completed 200 working days during the two years preceding the commencement of maternity leave. By contrast, the payment of a sickness allowance by the same social security scheme is subject to 100 working days in the year preceding the notification of the sickness.<sup>63</sup> Therefore, the

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<sup>56</sup> Article First, Sub-paragraph IA.11 (3), of Act 4093/2012, as amended by Article 38 of Act 4144/2013.

<sup>57</sup> CSC (Act 3528/2007, OJ A, 26 of 09 February 2007), as amended.

<sup>58</sup> This is provided by Article Second of the CSC.

<sup>59</sup> Article 4(5) of Act 2839/2000.

<sup>60</sup> Articles 657-658 Civil Code (absence due to a serious reason, such as sickness or maternity leave).

<sup>61</sup> Article 11 of Act 2874/2000, which sanctions Clause 7 of the national general collective agreement for 2000; Article 39 of Act 1846/1951 (on IKA, the main social security scheme for workers under a private law employment relationship).

<sup>62</sup> [http://www.oaed.gr/Pages/SN\\_46.pg](http://www.oaed.gr/Pages/SN_46.pg).

<sup>63</sup> Article 35(1) of Act 1846/1951, as amended, lastly by Article 178(3) of Act 4261/2014.

payment of the maternity allowance is subject to stricter conditions than the payment of the sickness allowance, in breach of the requirements of Article 11(3) of Directive 92/85/EEC.

The above constitute less favourable treatment of women employed on a fixed term contract in comparison with employees covered by the CSC and permanent employees of local authorities and persons employed by the State, legal persons governed by public law and local authorities under a contract of indefinite duration, although the women under a fixed term contract are employed by the same employers. This situation conflicts with Articles 8 and 16 of the ESC, also in the light of the non-discrimination clause of the Preamble to the ESC. These violations of the ESC are of particular importance, in view of the growing practice of the State and public entities to hire employees on fixed term contracts.

Thank you very much for your kind attention.

Athens, 1<sup>st</sup> December 2014.