

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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**The NCHR Recommendation and decisions of international bodies on the conformity
of austerity measures to international human rights standards^{*}**

I. The NCHR Recommendation

1. The NCHR, in its institutional capacity as an advisory body to the Greek State for the protection of Human Rights, adopted, in December 2011, by unanimous decision of its Plenary, a Recommendation *“On the imperative need to reverse the sharp decline in civil liberties and social rights”*.
2. The Recommendation deplores *“the rapid deterioration of living standards”* in Greece, *“coupled with the dismantling of the Welfare State”*, which *“are rendering a significant part of the population destitute, widening the social divide, disrupting the social fabric, strengthening extremist and intolerant elements and undermining democratic institutions”*.
3. At the same time, the Recommendation recalls that, according to its Court of Justice, the European Union (EU) *“is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek constant improvement of the living and working conditions of the peoples of Europe, as is emphasized in the Preamble to the Treaty”*¹. The Recommendation also recalls that, according to the EU Treaty, *civil liberties and social rights are fundamental values* of the EU; their promotion is the first aim of the EU; the EU social objectives (including *social inclusion, social justice and protection and social progress*) are inextricably linked to its economic objectives and are a condition for the effectiveness of the latter. Moreover, the Recommendation recalls that the Charter of Fundamental Rights, which is binding upon the EU and its Member-States, guarantees indivisible civil liberties and social rights and proclaims that the EU *“places the individual at the heart of its activities”*.
4. The Recommendation underlines that the ILO Committee on the Application of Conventions and Recommendations (CEACR) requested that the Greek Government intensify its efforts and proceed to a thorough and frank dialogue with the social partners, in order to review the austerity measures taken or planned, while reconsidering their impact on the workers and ensuring the living standards of the latter.²

^{*} *Adopted unanimously by the Plenary of the NCHR at its session of 27.06.2013. Rapporteurs Ms. Sophia Koukoulis-Spiliotopoulos, Representative of the Greek League for Women’s Rights and Ms. Elli Varchalama, Representative of Greek General Confederation of Labour, 2nd NCHR Vice-President. Translated by Ms. Vassiliki Karzis, stagiaire at the NCHR.*

¹ CJEU Cases C-50/96 *Schröder* [2000] ECR I-774 and C-270/97 *Sievers* [2000] ECR I-933.

² CEACR, Report to ILC, 102nd (2013) Session, C.102 (minimum standards), p. 764-6.

5. Finally, the Recommendation stresses that *“it is obvious that there is no way out of the socio-economic and political crisis which plagues Europe as a whole, nor any future for the Union, if fundamental civil liberties and social rights are not guaranteed, and that immediate joint mobilization of all European forces is required if it is to save the values on which the European civilization is founded”*, *“sounds the alarm and calls upon the Greek Government and the Greek Parliament:*

- *to take into consideration the fiscal measures’ impact on social protection and security, which they are bound to safeguard, and*
- *to undertake common action with the governments and parliaments of other Member States and with the European Parliament, so that every measure of "economic governance" as well as the planned amendments to the EU Treaty be adopted and implemented with due respect for and in a manner that safeguards fundamental civil liberties and social rights.”*

II. The NCHR Recommendation is quoted by European and international monitoring bodies³

6. The NCHR Recommendation has had a significant effect. The European Committee of Social Rights (ECSR) and the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO Committee of Experts) quote this Recommendation in their decisions and reports regarding Greece.

a) The European Committee of Social Rights

7. The ECSR – a *quasi* judicial body of the Council of Europe (CoE) – quotes the NCHR Recommendation in seven decisions on collective complaints by Greek trade unions against Greece, by which it finds that austerity measures are violating labour and social security rights guaranteed by the 1961 European Social Charter (ESC) ratified by Greece.⁴

8. In all these decisions, the ECSR recalls basic principles: *“The increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline. However, by acceding to the 1961 Charter, the Parties have accepted to pursue by all appropriate means the attainment of conditions in which certain rights may be effectively*

³ On the issues dealt with in this report see more particularly: S. Koukoulis-Spiliotopoulos, ‘Austerity measures: decisions of international and European bodies, EU law and Greek case law’ (in Greek), Social Security Law Review (EDKA) 2013, p. 505 et s.

⁴ The 1961 ESC was sanctioned by Act 1426/1984. The 1995 Additional Protocol, which expands the protection of social rights, and the 1988 Additional Protocol, which establishes the “mechanism of collective complaints” to the ECSR, were sanctioned by Act 2595/1998.

realised.” “The economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, 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 most need the protection.”

9. *“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.”*

i) The first ECSR Decision

10. The first ECSR decision⁵ concerns a probation period in an open-ended contract and the special enterprise collective agreements. Regarding the first issue, the Greek legislation stipulates that: “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”⁶. The ECSR unanimously finds that this provision violates Art. 4 (4) of the 1961 Charter (“*right of all workers to a reasonable period of notice for termination of employment*”).

11. Regarding the abolition of the principle of the favourability of collective agreement clauses and the possibility for enterprise collective agreements to contain terms less favourable than those laid down in the relevant sectoral collective agreements, the ECSR found by 14 votes to 1 that it cannot examine the issue, as the right to collective bargaining falls within the scope of Arts. 5 and 6 of the 1961 ESC, which Greece has not accepted.

12. In his dissenting opinion, Professor Petros Stangos, maintains that the collective bargaining comes within the scope of Art. 3 (1) (a) of the 1988 Protocol. He especially highlights that the essential requirement for this provision to be upheld is that a collective agreement should in all circumstances allow the participation and contribution of the workers, or of their representatives, in determining and cumulatively improving the working conditions, organisation and environment. Therefore, their participation in the worsening of working conditions conflicts with Art. 3 (1) (a) of the Additional Protocol. This is confirmed by the Appendix and the Explanatory Report to the Additional Protocol, as well as by the purpose of Art. 3 (1) (a). Consequently, the legislative intervention (Art. 13 Act 3899/2010)

⁵ ECSR 23.05.2012, Complaint 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.*

⁶ Art. 74 (2) section A, Act 3863/2010, as amended by Art. 17(5a) Act 3899/2010.

in the system of collective labour agreements until then in effect (Act 1876/1990), which “*granted trade unions in an undertaking the power to make the working conditions less favourable for the employees of the undertaking than those laid down in the sectoral agreements, outlaws participation and contribution by workers’ representatives where motivated by a contradictive aim [...] which is peremptorily stipulated by the operative part of Art. 3 (1) (a) of the Protocol.*” “*The infringement of this provision thus committed by Greece is corroborated by the fact that the practice of concluding collective agreements at enterprise level, as sanctioned by the Act of 2010, is assigned the purpose of serving first and foremost to reduce the proportion made up by the cost of labour in the production cost of firms, with the ultimate aim of increasing their competitiveness.*”

ii) The second ECSR decision

13. The second ECSR decision⁷ concerns the “special apprenticeship contracts” between employers and workers aged 15 to 18 years. These workers are not covered by Labour Law, with the exception of the provisions on the health and safety of workers. Therefore, they are not granted paid annual holiday, whilst their wage is reduced by 32% of the minimum wage provided by the national general collective agreement (NGCA) of 15.7.2010 and they have reduced social-security coverage.⁸ The ECSR unanimously found violations of a number of articles of the 1961 Charter.

14. More particularly, the deprivation of annual holiday violates Art. 7 (2) of the 1961 Charter, which requires a holiday of no less than three weeks. The inadequate character of the “apprenticeship”, as well as the wage reduction, violate Art. 10 § 2 of the 1961 Charter (“*right of young people to vocational training*”).

15. The social security coverage of apprentices is limited. According to the ECSR, this “*appears to establish a distinct category of workers with qualified entitlement to social security*”. The ECSR asked the Government for “*the reasons given for the special conditions of social security applied to apprenticeship contracts, the necessity of these conditions as well as the results obtained by their implementation; the existence of measures of social assistance for those who find themselves in a situation of need as a result of the implementation of the above-mentioned conditions*”. The Government gave no reply.

16. According to the ECSR, “*any changes to a social security system must maintain in place a sufficiently extensive system of compulsory social security and refrain from excluding*

⁷ 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*.

⁸ Art. 74 (9) Act 3863/2010, Art. 1 (1) Ministerial Council Act 6/2012.

entire categories of worker from the social protection offered by this system. Financial consolidation measures which fail to respect these limits constitute retrogressive steps which cannot be deemed to be in conformity with Article 12§3." The ECSR ruled that the aforementioned provisions violate Art. 12 (3) of the 1961 Charter ("*right to social security*") which requires that the social security system be raised progressively to a higher level.

17. The second ECSR decision also concerns the general reduction of the minimum wages of all workers by 22%, and by 32% for workers under 25 years of age and apprentices, in relation to the minimum wages fixed by the NGCA of 15.7.2010.⁹ According to the ECSR, in order for the reduction to be considered "*fair*" within the meaning of Art. 4 (1) of the 1961 Charter ("*right to fair remuneration*"), the remuneration has to be "*above the poverty line in a given country*". Younger persons may be paid a lower minimum wage in certain circumstances (e.g. when they are engaged in (genuine) vocational training). Such a reduction may promote their access to the labour market, but the minimum wage should not fall below the poverty level of the country concerned. After explaining how the poverty level is defined, the ECSR mentions that, according to EUROSTAT data, this level is €580 per month in Greece and notes that the minimum wages of workers under the age of 25 are below this limit. Consequently, it finds a violation of Art. 4 (1) of the 1961 Charter.

18. The ECSR also finds that "*the extent of the reduction in the minimum wage, and the manner in which it is applied to all workers under the age of 25, is disproportionate even when taking into account the particular economic circumstances in question.*" Therefore, the relevant provisions also violate Art. 4 (1) of the 1961 Charter, in light of the non-discrimination clause of its Preamble.

19. It should be noted that the source of the wage reductions provided by Ministerial Council Act 6/2012 (see No. 17 above) is the Second Memorandum of Understanding, which is annexed to Act 4046/2012 and which contains three more specific Memoranda. According to Art. 1 (6) of Act 4046/2012, certain clauses of the first of these specific Memoranda (the Memorandum on Economic and Financial Policy) "*constitute rules of direct application*". Among these rules is para. 29 of this Memorandum, which provides for the above reductions. Therefore, the ECSR found in essence that the Memorandum clause conflicts with the 1961 Charter. General minimum wages have subsequently been removed from the ambit of the NGCA. They are now fixed by statute at the aforementioned reduced levels: for those above 25 years of age, the monthly wage is €586,08 and the daily wage is €26,18; for those below 25 years of age, the monthly wage is €510,95 and the daily wage €22,83.

⁹ Article 74 (8) of Act 3863/2010, and subsequently Government Act 6/2012.

iii) The next five ECSR decisions and their references to international and Greek bodies

20. The next five ECSR decisions¹⁰ concern successive amendments to social security schemes,¹¹ in particular the reduction of pensions and Christmas, Easter and holiday bonuse. In each decision the ECSR makes reference, firstly, to decisions of other national and international bodies. More particularly:

21. The ECSR refers to the CoE Committee of Ministers, which, when assessing the application of the European Code of Social Security by Greece, observes that “*the principles of social solidarity and justice become particularly important when times are bad*”. “*The social security system would not fulfil its role if the benefits it provided were so low as to push the workers below the poverty line*”. The Committee of Ministers urges the Government to consult with the relevant stakeholders, “*to assess, together with all the parties to the financial support mechanism, the spreading of poverty in Greece*” and to coordinate its social security policies with those concerning taxation, wages and employment.

22. The ECSR quotes the 2011 ILO Committee of Experts’ Report (see below), which also invokes the Report of the ILO High-Level Mission which visited Greece in September 2011. The Government indicated that approximately 20% of the population was (then) facing the risk of poverty, but that “*it did not have an opportunity, in meetings with the Troika, to discuss the impact of the social security reforms on the spread of poverty*”, nor “*the opportunity to discuss the impact that policies in the areas of taxation, wages and employment would have on the sustainability of the social security system*”. The Government stated that it was encouraged by the fact that these issues were on the agenda of an international organisation and hoped that the ILO would be in a position to convey these issues to the Troika.

23. All these ECSR decisions contain a paragraph entitled “*The Greek National Commission for Human Rights*” referring to the NCHR Recommendation which “*expressed great concern in relation to the ongoing drastic reductions in even the lower salaries and pensions*”.

24. The ECSR deduces from the European Court of Human Rights (ECtHR) case law that social security benefits constitute property, in the sense of Art. 1 of Protocol No.1 (P1).¹²

¹⁰ 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*.

¹¹ Namely by Acts 3845/2010, 3847/2010, 3863/2010, 3865/2010, 3896/2010, 4024/2011.

¹² ECtHR cases cited: *Stec and Others v the United Kingdom*, [GC], (dec.) no. 65731/01 and 65900/01, ECHR 2006-; *Rasmussen v. Poland*, no. 38886/05, judgment of 28 April 2009; *Kjartan Asmundsson v. Iceland*, application no. 60669/00, judgment of 12 October 2004; *Gaygusuz v. Austria*, judgment of 16 September 1996,

However, this rule does not create a right to acquire property nor does it restrict the Contracting States' freedom to decide whether or not to have any form of social security system in place, or to choose the type or amount of benefits to provide under any such scheme. Nonetheless, where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit, that legislation must be regarded as generating a proprietary interest for persons satisfying its requirements. Art. 1 of P1 cannot be interpreted as entitling a person to a pension of a particular amount. Legislative interventions must be justified by compelling reasons relating to the general interest, but should not be permitted to impose an excessive and disproportionate burden on people which affects the essence or core of the social security right.

25. The ECSR further refers to the CoE Parliamentary Assembly Resolution “*Austerity measures – a danger for democracy and social rights*”, which calls on CoE Member States to closely assess current austerity programmes from the view-point of their short- and long-term impact on democratic decision-making processes and social rights standards, social security systems and social services. The Parliamentary Assembly “*is concerned that the restrictive approaches currently pursued, predominantly based on budgetary cuts in social expenditure, may not reach their objective of consolidating public budgets, but risk further deepening the crisis.*” Furthermore, “*the implementation of austerity measures is often linked to bodies whose character raises questions of democratic control and legitimisation, such as the so-called ‘troika’*”. The Resolution also refers to the Explanatory Memorandum of the Resolution, which invokes reports of international organisations and bodies, such as the UN Conference on Trade and Development (UNCTAD), the Organisation for Economic Cooperation and Development (OECD) and the UN Independent Expert on the foreign debt and human rights, on the negative social effects of austerity measures, their disproportionate effect on women and their ineffectiveness, with particular references to Greece.¹³

26. The Greek Government argued that the rights were restricted in compliance with obligations imposed through agreements made with the EU and IMF bodies. The ECSR replies that such obligations do not absolve of obligations emanating from the 1961 Charter.

Reports of Judgments and Decisions 1996-IV, p. 1142; *Styk v. Poland* (dec.), no. 28356/95, 16 April 1998; *Szumilas v. Poland* (dec.), no. 35187/97, 1 July 1998; *Bieńkowski v. Poland* (dec.), no. 33889/97, 9 September 1998; *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999 V; *Ichtigiaroglou v. Greece*, application no.12045/06, judgment of 19 June 2008; *Tsoukalas v. Greece*, application no. 12286/08, judgment of 22 July 2010; *Kokkinis v. Greece*, application no. 45769/06, judgment of 6 November 2008; *Reveliotis v. Greece*, application no. 48775/06, judgment of 4 December 2008.

¹³ Resolution 1884 (2012), 26 June 2012, “*Austerity measures – a danger for democracy and social rights*”: <http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=18916&Language=EN>.

27. According to the ECSR, the compatibility of the restrictions with the 1961 Charter is examined on the basis of the nature of the reforms, their justification, the socio-economic framework, their extent, necessity and appropriateness, the existence of social assistance for those who find themselves in a situation of need as a result of the changes made, and the results obtained. Art. 4 (1) (a) of the 1988 Additional Protocol, in particular, establishes the right of elderly persons to adequate resources enabling them to lead a decent life.

28. The ECSR also recalls that Art. 31 of the 1961 Charter requires that the State demonstrate that the restrictions are necessary in a democratic society for the protection of the rights and liberties of others, public interest, national security, public health or morals.

29. The ECSR notes that the contested restrictions do not constitute, on their own, violations to the 1961 Charter. Their *“cumulative effect”*, however, *“is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned”*. As the Government neglected to conduct research and analysis into the effects of such far-reaching measures and to discuss with the organisations concerned, *“it has not been discovered whether other measures could have been put in place which may have limited [these cumulative effects]”*.

30. Any decisions made in respect of pension entitlements *“must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits”*. This did not happen with the measures at stake. The ECSR recalls also the possibility to address individual complaints to other mechanisms and the significant role of domestic courts.

31. In all these cases, the ECSR finds that *“due to the cumulative effect of the restrictive measures and the procedures adopted to put them into place, these measures constitute a violation of Article 12 (3) of the 1961 Charter”*.

b) International Labour Organisation Bodies

32. Since 2011, ILO bodies have made a significant contribution to the evaluation of the compliance of Greece with fundamental social rights through the monitoring of the implementation of ratified ILO Conventions¹⁴.

¹⁴ The ILO monitoring mechanism was first activated through complaints lodged in July 2010 by the Greek General Confederation of Labour (GSEE) with the Committee on Freedom of Association (CFA) and the Committee on the Application of Standards and the relevant Reports regarding deficient application of the core ILO Conventions. As the reports of ILO bodies show, the texts of the initial Complaint and the Reports were constantly updated until the beginning of 2013. Specific measures of a permanent character adversely affecting the enjoyment of social rights (labour and social security) in Greece, as a result of the international loan mechanism and the accompanying Memorandum commitments, were the cutting edge of these complaints.

33. From March 2011 until today, the ILO monitoring bodies¹⁵ have found constant, multiple and serious violations of core ILO Conventions, as it is shown in particular in the following documents:

- i) Three Reports (2011, 2012, 2013) by the Committee of Experts on the Application of Conventions and Recommendations (CEACR);¹⁶
- ii) Report (365th/2012) of the Committee on Freedom of Association (CFA) case 2820);¹⁷
- iii) Reports (2011, 2013) of the Committee on the Application of Standards;¹⁸

Also very important for the application of ILO Conventions, is the information provided in the Report of an ILO High-Level Mission¹⁹, which following a decision of the International Labour Conference (ILC) (June 2011), visited Greece in September 2011 (see No. 22 above).

34. The ILO Conventions which were violated according to the ILO monitoring bodies are the following:

- C. 98 (1949) right to organise and collective bargaining [CFA (2012), Committee on the Application of Standards of the ILC (2011), CEACR (2011, 2012, 2013)];
- C. 87 (1948), freedom of association and protection of the right to organize [CEACR (2011, 2012, 2013)];
- C. 154 (1981), collective bargaining [CEACR (2011, 2012, 2013)];
- C. 81 (1947), Labour Inspection [CEACR 2011, 2012, 2013)];
- C. 95 (1949), protection of wages [CEACR (2011, 2012, 2013)];
- C. 100 (1951), equal remuneration [CEACR (2011, 2012, 2013)];
- C. 111 (1958), discrimination in employment and occupation [CEACR (2011, 2012, 2013)];
- C. 122 (1964), employment policy [CEACR (2011,2012,2013)];
- C. 138 (1973), minimum age (admission to employment) [CEACR (2011,2012,2013)];
- C. 150 (1978), labour administration [CEACR (2011, 2012, 2013)];
- C. 156 (1981), workers with family responsibilities [CEACR (2011, 2012, 2013)],
- C. 102 (1952), minimum standards of social security [CEACR (2011, 2012, 2013)].

¹⁵ Committee on Freedom of Association (CFA), Committee on the Application of Standards, Committee of Experts on the Application of Conventions and Recommendations (CEACR).

¹⁶ Report 2013: http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205472/lang--en/index.htm. Report 2012: http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174843/lang--en/index.htm. Report 2011: http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS_151556/lang--en/index.htm

¹⁷ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf

¹⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_165970.pdf

¹⁹ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/missionreport/wcms_170433.pdf

35. The ILO monitoring bodies make detailed references to the constant and extended state interference with fundamental rights and freedoms, including the freedom of association (freedom of association, freedom of collective bargaining and respect of its results and of the binding power of collective agreements, political motivation for breaking strikes). Extensive reference is also made to the consecutive austerity measures that have been imposed as loan conditionalities in the framework of the international loan mechanism, with heavy consequences for the enjoyment of other internationally guaranteed fundamental rights, such as the right to social security and the right to work in equal conditions. In order to solve such problems, the Committee demands the cooperation of the Greek Government with social partners and the Greek Ombudsman and highlights the responsibility of all the parties to the “*support mechanism*”.

36. The Conclusions of the Committee on the Application of Standards at its 102nd Session (June 2013)²⁰, issued after the hearing of Greece, in the framework of the monitoring process regarding the application of ILO Convention No. 98²¹, mention that “*the outstanding issues in this case concerned numerous interventions in collective agreements and allegations*” by which “*collective bargaining was seriously weakened and the autonomy of the bargaining partners violated*”. The Committee requests the Government “*to review the impact of austerity measures and the measures to be taken in times of crisis*” and “*to intensify its efforts, with ILO technical assistance, to establish a functioning model of social dialogue on all issues of concern with a view to promoting collective bargaining, social cohesion and social peace in full conformity with the Convention.*”

37. The Committee on the Application of Standards “*urged*” the Government “*to take steps to create a space for the social partners that would enable them to be fully involved in the determination of any further alterations that touched upon aspects going to the heart of labour relations and social dialogue*” and invited it “*to provide additional detailed information to the [CEACR] on the matters raised and on the impact of the abovementioned measures on the application of the Convention*”.

38. Furthermore, after examining the complaints against Greece and in accordance with ILO Conventions, the ILO Constitution and their own well-established jurisprudence, the ILO monitoring bodies concluded as follows²²:

²⁰ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_216456.pdf

²¹ ILO C. 98 (Right to organise and collective bargaining), sanctioned by Act 4205/1961, OJ A 174)

²² CFA 365th Report (November 2012), Case 2820, Conclusions paras. 950-1003; CEACR Reports Part II – Observations and Information Concerning Particular Countries, 100th (2011), 101st (2012) and 102nd (2013) ILC Sessions, Greece; Committee on the Application of Standards, Report Part II – Observations and Information

39. These bodies recall the well-established jurisprudence of the ILO monitoring bodies regarding countries devastated by the financial crisis: when applying their policies, the Governments must respect the fundamental principle that restrictions to the enjoyment of social rights may only be imposed, within the framework of a stabilization policy, as an exceptional measure, for a limited period of time, and they must be accompanied by adequate guarantees for the protection of living standards.²³

40. They find that the handling of the crisis raises “*concerns for social solidarity, justice and equity*” and has created a “*widespread feeling of social injustice*”.²⁴ They, moreover, stress that “*the Greek State has shifted the balance between its social responsibility towards its people and the fiscal responsibility towards its creditors in favour of the latter*”²⁵. In fact there is grave concern for the effectiveness of the enacted measures and it is stressed that “*while there is a feeling of social injustice*” *the sacrifices that the workers will have to undergo will be “unfair and unequal” “and will not lead to an exit from the crisis, but instead to a vicious circle and deeper into recession”*.²⁶

41. Reference is also made to the imposition of labour and social-security measures of “*programmed impoverishment*” of the beneficiaries, without any visible prospect for economic recovery. It is, furthermore, underlined that “*there is no concept of a subsistence wage in Greece, and that the minimum pension is set well below the poverty threshold.*” “*In a country where large segments of the population live below the poverty threshold, wages and benefits should be linked to indicators of the physical subsistence of the population determined in terms of the basic needs and the minimum consumer basket*”.²⁷

42. The CEACR “*notes with regret that the evolution of the situation in Greece confirms its previous conclusion that applying exclusively financial solutions to the economic and social crisis could eventually lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest*”. The CEACR refers to data which show the loss of income, unemployment, inequality and poverty in Greece. In particular, it notes that “*in 2010, 27.7% of Greek citizens or more than 3*

Concerning Particular Countries, 100th ILC Session (June 2011), 102nd Session (June 2013), Greece; ILO High Level Mission to Greece (Athens, 19-23 September 2011) Report, Conclusions paras. 297-356; ILO Governing Body, Digest of decisions and principles on the Freedom of Association, 5th (revised) ed. 2006.

²³ CEACR, Report to ILC, 101st (2012) Session, C102 (minimum standards), p. 766 and Report III (Part 1B), para. 220. See also CFA, 365th Report (November 2012), para. 990.

²⁴ CEACR, Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 102 (social security minimum standards).

²⁵ CEACR, Report to ILC 102nd (2013) Sessions, C. 102.

²⁶ CEACR, Report to ILC 102nd (2013), Session, C. 102; CFA 365th Report (November 2012), Case 2820, Conclusions paras. 963.

²⁷ CEACR, Report to ILC 102nd (2013) Session, C. 102.

million persons were at risk of poverty or social exclusion".²⁸ It is also finds that the current minimum wage, also due to tax retentions, leads many workers below the poverty threshold, while growing and extensive delays in wage payments, in conjunction with the increasingly drastic pay cuts, have severe repercussions on the workers' standard of living.²⁹

43. The Government is requested to create "*the most rapid scenarios of undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level*", and "*to indicate what measures were taken to increase contribution to the country's efforts by the most fortunate contributors – individuals, banks, companies, industries, civil and religious organizations, and other bodies able to contribute to the social welfare system through taxes or earmarked contributions*".³⁰

44. It is pointed out that repeated and extensive State interventions, through permanent measures, in the system of collective bargaining established by Act 1876/1990, only proves harmful and destabilizes labour relations, as it deprives workers of a fundamental right and means of furthering and defending their economic and social interests. Such an unlawful intervention was made in the institution, procedure and content of the national general collective agreement (which establishes minimum standards of wage protection and working conditions for all workers throughout the country) and, in general, in the collective autonomy of employers and workers to establish, without state interference and after free collective bargaining, agreed standards of terms and conditions of work. Thus, through the detailed mention of the imposed measures, the stifling framework, within which collective labour rights are trapped, is outlined.³¹ Moreover, the CEACR notes that the favourability principle was abolished and that 'associations of persons', which do not enjoy the guarantees of democratic vote and independence ensured to trade unions, were given the possibility to conclude collective agreements in small enterprises, which may prevail over sectoral collective agreements. It consequently deplores that "*given the prevalence of small enterprises in the Greek labour market (approximately 90% of the workforce), the facilitation of association of persons combined with the abolition of the favourability principle will have a severely detrimental impact upon the entire foundation of collective bargaining in the country*". The CEACR "*urges the Government to review with [the social partners] all the above measures with a view to limiting their impact and their duration and ensuring adequate safeguards to protect workers' living standards*". Furthermore, the Greek

²⁸ CEACR, Report to ILC 102nd (2012) Session, C. 102.

²⁹ CEACR, Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 95 (protection of wages).

³⁰ CEACR, Report to ILC 102nd (2013) Session, C. 102.

³¹ CEACR, Report to ILC 102nd (2013) Session, C. 98 (organise and collective bargaining).

State is requested to refrain, not only from interventions and obstruction of the procedure for the independent arbitral settlement of collective disputes (such as the prohibition to solve remuneration matters), but also to restore the orderly function of the Organisation for Mediation and Arbitration (OMED).³²

45. The CFA and the CEACR note “*with concern*” the closure of the Workers’ Housing Organization (OEK) and the Workers’ Social Fund (OEE) which “*were crucial to trade union social work and funding workers’ housing and provided an indispensable social function*” (e.g. nurseries, summer camps for children, social tourism for low-income workers, cultural activities) which “*did not burden the state budget, being financed exclusively from employers’ and workers’ contributions*”. Moreover, the OEE “*secured minimum financing for trade unions’ operating needs and was the main source of OMED financing, enabling it to preserve its autonomy vis-à-vis the State*”. The CFA and the CEACR requested the Government “*to provide detailed observations on this matter, including indications of measures taken to ensure that the closing of the OEE in particular has not led to a grave interference in the functioning of the GSEE or of OMED*” and to indicate “*any measure taken or envisaged to ensure the continuation of OEK and OEE projects*”.³³

46. The CEACR underlines the harmful consequences of the measures for gender equality at various levels, to the detriment of women.³⁴ The CEACR particularly stresses “*the disproportionate impact of the legislative measures regarding flexible forms of employment on women’s levels of pay*”, and the overall “*disproportionate impact of the crisis on women*”, which “*is exacerbated by the stance of the SEPE [Labour Inspectorate] which seems reluctant or unable to play a role in gender discrimination cases, e.g. by imposing fines*”,³⁵ and it indicates factors which lead to indirect discrimination in wages and widen the gender pay gap. It mentions information from the Greek Ombudsman on the dramatic increase in dismissals due to pregnancy, maternity leave and sexual harassment, along with soaring unemployment, especially of women and young people; moreover, “*a large number of women have joined the ranks of the discouraged workers who are not accounted for in the statistics*”, while “*SMEs (Small and Medium Enterprises) which constitute an important source of female and youth employment have been closing down on a massive scale*”. It is furthermore underlined that in the public sector, the employment-restrictive measures, the

³² CEACR Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 98 (right to organise and collective bargaining).

³³ CFA 365th Report (November 2012), Case 2820, Conclusions; CEACR Report to ILC 102nd (2013) Session, C. 87 (freedom of association and protection of the right to organize), C. 150 (labour administration).

³⁴ CEACR Report to ILC 102nd (2013) Session, C. 111 (discrimination)

³⁵ CEACR Reports 101st (2012) and 102nd (2013) ILO Sessions C.100, C. 111, C. 81 (Labour Inspection).

dismissal of thousands of workers, the new grading system and the single pay-scale, that substantially cut wages, will severely affect women who constitute in that area the vast majority, and will severely increase their already very high unemployment rate.³⁶

47. The CEACR deplores the rapid increase of flexible forms of employment in the private sector and the replacement of contracts of indefinite duration by fixed-term contracts, which are causing a substantial reduction of wages. Overwhelming evidence is drawn from Labour Inspectorate data: for example, in 2011 part-time employment increased by 73.25%, agreed rotation work by 193% and imposed rotation work by 631,89% as compared to 2010 figures. Nevertheless, *“flexibility was introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced”*. According to the Ombudsman, women, especially pregnant women and mothers, were strongly affected by the flexibilisation of labour relations, which lead in particular to the reduction of their wages.³⁷

48. The CEACR *“urges the Government to fully consult the representative organizations of employers and workers before the adoption of any new austerity measures and to make every possible effort to avoid any new curtailment of workers’ rights in respect of wage protection in either the public or the private sector and to seek to restore the purchasing power of the wages that has been drastically diminished”*³⁸. It also asks the Government to *“review the measures and policies adopted according to the results achieved in pursuit of the objectives of full, productive and freely chosen employment”*, since *“an active employment policy should be pursued as a major goal”*, and to provide *“information on the results of the measures adopted in order to overcome the impact of the debt crisis on the labour market, and information on the number of programme beneficiaries obtaining lasting employment”*.³⁹

49. The aforementioned Reports of the ILO monitoring bodies refer to the fact that Greece has not responded to its obligation to provide information requested for more than two years regarding the consequences of austerity measures on the quality of working and living conditions and the income of workers throughout the country, while at the same time, the State has been repeatedly and in vain requested to review the measures imposed, in order to protect the enjoyment of fundamental labour rights. On the other hand, the official position of the Greek Government is that *“the weakening of the quality of labour rights”* was done *“in*

³⁶ CEACR Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 100 (equal remuneration) and C. 111 (discrimination).

³⁷ CEACR Reports to ILC 101st (2012) and 102nd (2013) Sessions, C. 100 and C. 111.

³⁸ CEACR Report to ILC 102nd Session (2013), C. 95 (protection of wages).

³⁹ CEACR Report to ILC 102nd Session (2013), C. 122 (employment policy).

order to strengthen the competitiveness”, within the framework of implementing the terms of the country’s international loan mechanism.⁴⁰

50. Finally, in 2013,⁴¹ the CEACR “*notes with regret*”⁴² that the evolution of the situation in Greece confirms its previous conclusion that applying exclusively financial solutions to the economic and social crisis could eventually lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest.” “The Committee reminds all the constituent powers of the State of their collective obligation to ensure that the policy of fiscal and financial consolidation does not undermine the fulfilment of the social and human objectives of Convention 102 at least at the level permitting to maintain the protected population ‘in health and decency’”. And “requests the Government to explore and provide information on the most rapid scenarios of undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level, which at least prevents the “programmed” impoverishment of the beneficiaries”.

III. The European Court of Human Rights: *I. Koufakis and ADEDY v. Greece*

51. On 13 May 2013, the ECtHR gave its judgment in the cases *I. Koufakis and ADEDY v. Greece*.⁴³ Based on its well-established case law, to which the ECSR had also referred (see No. 24 above), the ECtHR declared the complaints inadmissible, because manifestly ill-founded. The complaints were brought before the Court, after having being lodged with the Greek Council of the State (the Supreme Administrative Court (CS)) (judgment No. 668/2012), which had dismissed petitions for the annulment of administrative acts by which, pursuant to Acts 3833/2010, 3845/2010 and 3847/2010, the remuneration of the first applicant and the remuneration and pensions of the members of the second had been reduced. The applicants invoked violations of Article 1 of the First Protocol to the ECHR (P1). The second applicant also invoked violations of Articles 6 (1), 8, 13, 14 and 17 of the ECHR.

52. Regarding Art. 1, P1, the ECtHR, recalled that, according to its well-established case law, Member-States enjoy a broad margin of appreciation in shaping their social policy. National authorities, as a rule, are in a better position than an international court to determine

⁴⁰ CEACR, Report to ILC 102nd (2013) Session, C. 098 (right to organise and collective bargaining), p. 107 and C.102 (minimum standards), p.764; CFA, 365th Report (November 2012), Case 2820, para. 948. See also ILO, Report on the High Level Mission to Greece (2011), paras. 12-13 and CEACR, Report to ILC 101st (2012) Session, C.098 (organise and collective bargaining) and C.154 (collective bargaining), p. 160.

⁴¹ CEACR Report to ILC 102nd Session (2013), C. 102 (social security, minimum standards).

⁴² Emphasis in the CEACR text.

⁴³ ECtHR Case No. 57665/12 and 57657/12. The judgment is published in French, with a summary in English: <http://hudoc.echr.coe.int>.

the most appropriate measures for achieving a balance between the expenditures and revenues of the State. This margin is even broader when the disputed measures are related to the determination of priorities for the distribution of the State's limited revenues. Article 1, P1, requires mainly that state interference in the enjoyment of the right to the respect of property should be provided by law and should pursue a legitimate aim of general interest, while being proportionate to this legitimate aim; in other words, a fair balance between the demands of the general interest and the requirement to protect individual fundamental rights should be ensured. This balance is not achieved when an excessive burden is placed on the individual. Besides, Article 1, P1, does not confer a right to a salary or a pension of a certain amount.

53. The ECtHR found that the measures introduced by the disputed legal instruments did not constitute a "*deprivation of property*", as alleged by the applicants, but an "*interference with the peaceful enjoyment of their possessions*", under the first sentence of paragraph 1, Article 1, P1. It noted that the interference was prescribed by law. The disputed measures were justified by the exceptional and unprecedented crisis in Greece. The reductions in wages and social-security benefits were part of a broader programme for the fiscal adjustment and structural reform of the Greek economy, which was aimed at meeting urgent needs. These aims were of general interest and coincided with those sought by the Euro-area Member-States, in view of their obligation to observe budgetary discipline and preserve the stability of the area, with a view to the immediate reduction of public expenses.

54. The ECtHR, recalled that the national legislature enjoys a broad margin of appreciation in implementing economic and social policies, unless its judgment is manifestly proved to lack reasonable basis. Therefore, the disputed reductions served the general interest.

55. The ECtHR also examined whether the proportionality principle was observed, that is to say, whether a fair balance had been achieved between the demands of the general interest and the obligation to protect fundamental rights. It noted that the measures introduced by Act 3845/2010 were considered necessary, because those previously adopted under Act 3833/2010 had proved insufficient to resolve the country's dire economic predicament. It also referred to the reasoning on the basis of which the CS rejected the arguments regarding the violation of the proportionality principle by the disputed measures, as well as to the observation of the CS that the claimants (applicants in the instant case) did not invoke specifically before the CS that the impugned measures had deteriorated their situation to such an extent that their very subsistence was in jeopardy. Furthermore, the ECtHR noted that the reduction of the first applicant's salary was not such that it risked exposing her to subsistence

difficulties. It also noted that, as regards the second applicant, measures to off-set the removal of the 13th and 14th months' pension and of the 13th and 14th monthly salaries were taken. Since the national legislature did not overstep the limits of its margin of appreciation, it was not for the ECtHR to say whether the legislature had chosen the best means of addressing the problems or whether it could have used its power differently.

56. After rejecting the allegations of breach of Article 1 P1, the ECtHR moved on to reject further allegations of violation of other articles of the ECHR.

57. From the aforementioned judgment one can deduce that the implementation of national economic and social policies belongs to the State, subject, however, to a review of their conformity with fundamental rights. The cases brought before the ECtHR were not such that they could allow the ECtHR to find that the State had overstepped the limits of its power. However, the reasoning of the decision clearly shows these limits.

Some conclusions and recommendations

58. The NCHR, within the framework of its institutional capacity as an advisory body to the Greek State for the protection of Human Rights, observes with great concern the impact of the austerity measures on fundamental Human Rights, and more particularly social rights, irrespective of whether they are linked to financial benefits provided by the State. The NCHR draws attention to the findings of international monitoring bodies, regarding breaches of international human rights protection standards, as well as to the international concerns reflected in the decisions and recommendations of such bodies. These findings correspond to the findings and concerns regarding the legal and factual situation in Greece formulated by the NCHR Recommendation of December 2011, which international bodies frequently quote.

59. The NCHR recalls the observation made by the CEACR that “*the NCHR Recommendation has not been followed by the Government*”; nor has the opinion issued, one year later, by the Greek Court of Auditors (which reviews bills before they are submitted to Parliament) been followed. The latter considered that “*recurrent cuts in pensions were contrary to Articles 2, 4, 22 and 25 of the Constitution as they conflicted with the constitutional obligation to respect and protect human dignity, the principles of equality, proportionality and work protection*”.⁴⁴

60. It results from the texts of the international bodies that international human rights law sets limits to national economic and social policy. Austerity measures that lead to the degradation of living standards of a big part of the population, leading many under the

⁴⁴ CEACR Report to 102nd ILC Session (2013), C. 102 (social security, minimum standards): http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:NO:13100:P13100_COMMENT_ID:3088061:NO

poverty threshold and causing a general feeling of insecurity, constitute breaches of international human rights standards and make the measures ineffective (see in particular Nos. 9, 25, 40 above).

61. The NCHR recalls that the ILO Committee of Experts (CEACR) “*notes with regret*”⁴⁵ *that the evolution of the situation in Greece confirms its previous conclusion that applying exclusively financial solutions to the economic and social crisis could eventually lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic recession and social unrest.*” The CEACR “*requests the Government to explore and provide information on the most rapid scenarios of undoing certain austerity measures and returning disproportionately cut benefits to the socially acceptable level, which at least prevents the ‘programmed’ impoverishment of the beneficiaries*”.⁴⁶ The CEACR findings converge with those of the European Committee of Social Rights (ECSR) which deplores that “*the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population*”.⁴⁷

62. The NCHR highlights the findings of international bodies regarding the disproportionate impact of the crisis and austerity measures on women (see Nos. 25, 46-47 above) and the systematic discrimination against young people in the area of employment (see Nos. 13-19 above).

63. The NCHR also recalls the findings of international monitoring bodies that since the adoption of the austerity measures, within the framework of the “*financial support mechanism*”, and until this very day, no assessment of their social impact has been carried out, in consultation with interested organizations, nor have there been sufficient protection measures for those affected by these measures, as required by international law, whereas some Memoranda clauses directly breach international norms (see Nos. 19, 22, 25, 27, 29, 36, 37 above).

64. The NCHR, in its Recommendation, and the international monitoring bodies underline that both the Government and all the other parties involved in the “*financial support mechanism*” are accountable for this situation and that immediate corrective measures are required, for the unhindered enjoyment of fundamental rights, in particular labour and social security rights (see Nos. 21, 26, 35 above).

65. Evaluating the exacerbation of labour inequality and the extensive breaches of fundamental international labour law standards, in conjunction with breaches of national

⁴⁵ Emphasis in the CEACR text.

⁴⁶ CEACR Report to 102nd ILC Session (2013), C. 102 (minimum standards).

⁴⁷ ECSR 07.12.2012, Complaints Nos. 76-80/2012.

labour law, which lead to the overexpansion of the informal sector of the economy and the emergence of situations of lawlessness and violence, the NCHR stresses the need for immediate restoration of the system of collective bargaining and collective agreements introduced by Act 1876/1990. Within this framework, the re-establishment of the procedure for concluding national general collective agreements (NGCAs) and of their content and scope should be an immediate priority, with a view to maintaining the NGCA status as an institutional instrument serving the general interest and the interest of workers in particular, through the establishment of general minimum standards of wages and working conditions for all workers throughout Greece. Besides, in the post-junta era, the content of the NGCAs was not merely financial.⁴⁸ In order to effectively reverse the heavy consequences affecting a large part of society, this re-establishment should be combined with the repeal of the legislative suspension of the application of crucial principles that govern the minimum standards of collective labour protection; including the principle of favourability and the extension of the scope of collective agreements (art. 37 §§ 5-6 of Act 4024/2011).

66. Besides, the NCHR reiterates its statements that any labour protection policy will be ineffective, unless the Labour Inspectorate is adequately staffed and appropriately strengthened.

67. The NCHR calls upon the State to implement, without delay the decisions and recommendations of the international monitoring bodies, by repealing the provisions which violate human rights and effectively controlling the respect of human rights in practice. In particular, in cooperation with all competent authorities (including the Court of Auditors, the National Actuarial Authority, the General Accounting Office) urgent and effective measures must be taken for achieving the guarantee of social security by the State and the constant assessment of the adverse consequences of the multiple austerity measures on the employment and social security rights of large segments of the population. Effective plans must be elaborated for the achievement of the full enjoyment of these rights, e.g. through restoring healthcare and welfare, unemployment and disability benefits and services, on the basis of social justice and social solidarity; by stopping the flexibilisation of employment relationships in the private and the public sectors.

⁴⁸ The NGCA was, through its normative content and in terms of equality, a fundamental instrument for the promotion of fundamental rights, often before the State had guaranteed them, and for the improvement of already existing rules (regarding e.g. equal pay for men and women, reconciliation of professional and family life, respect for national, religious and cultural particularities of employees by their employers, protection of employees with disabilities and adaptation of their working conditions, measures for employees affected by HIV-AIDS, protection of employees participating in rehabilitation programs, promotion of employment along with environmental protection etc).

68. The NCHR recalls the universality, indivisibility and interdependence of human rights, which is reaffirmed in the EU Charter of Fundamental Rights and recalled in the NCHR Recommendation. Social rights are also a prerequisite for the substantive and effective exercise of civil and political rights. This is why their decline affects all human rights and democratic institutions.

69. Finally, in light of the findings of international bodies (Nos. 62-63 above), the NCHR stresses that the commitments of Greece, and other States facing a debt crisis, towards their international creditors, cannot serve as an argument for restricting human rights guaranteed by ratified International Treaties, which set minimum universal standards of protection. Memoranda concluded within the framework of international loan mechanisms cannot override international human rights standards, especially when these standards also bind State-Parties to these mechanisms, such as EU Member-States.

70. The NCHR recalls the concerns expressed in its Recommendation, that *“the rapid deterioration of living standards coupled with the dismantling of the Welfare State and the adoption of measures incompatible with social justice” “are rendering a significant part of the population destitute, widening the social divide, disrupting the social fabric, strengthening extremist and intolerant elements and undermining democratic institutions.”* These concerns are shared by international human rights organisations and bodies, in particular by the Council of Europe Commissioner for Human Rights.⁴⁹

71. The NCHR also reiterates that *“immediate joint mobilization of all European forces is required if it is to save the values on which the European civilization is founded”*. Consequently, it calls again on the Greek Government and the Greek Parliament:

- *“to take into consideration the impact of fiscal measures on social protection and security, which they are bound to safeguard”;*
- *“to undertake common action with the governments and parliaments of other Member States and with the European Parliament, so that every measure of ‘economic governance’ as well as the planned amendments to the EU Treaty be adopted and implemented with due respect for and in a manner that safeguards fundamental civil liberties and social rights”*.

⁴⁹ See Nils Muižnieks, Council of Europe Commissioner for Human Rights, Report following his visit to Greece, from 28 January to 1 February 2013. Strasbourg, 16 April 2013, CommDH(2013)6.