

**DECISION ON THE MERITS**

**Adoption: 23 March 2017**

**Notification: 10 April 2017**

**Publicity: 5 July 2017**

**Greek General Confederation of Labour (GSEE) v. Greece**

Complaint No. 111/2014

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 291<sup>st</sup> session in the following composition:

Giuseppe PALMISANO, President  
Monika SCHLACHTER, Vice-President  
Karin LUKAS, Vice-President  
Eliane CHEMLA, General Rapporteur  
Birgitta NYSTRÖM  
Petros STANGOS  
József HAJDU  
Marcin WUJCZYK  
Krassimira SREDKOVA  
Raul CANOSA USERA  
Marit FROGNER  
François VANDAMME

Assisted by Régis BRILLAT, Executive Secretary

Having deliberated on 18 October 2016, 6 December 2016, 24 January 2017 and 21 and 23 March 2017,

On the basis of the report presented by Eliane CHEMLA,

Delivers the following decision, adopted on that date:

## **PROCEDURE**

1. The complaint lodged by the Greek General Confederation of Labour (GSEE) was registered on 26 September 2014. It was notified to the Government of Greece (“the Government”) on 30 September 2014.

2. The GSEE alleges that the situation in Greece is in breach of Articles 1, 2, 4, 7, 30 and 31 of the 1961 Charter and of the first paragraph of Article 3 of the 1988 Additional Protocol to the 1961 Charter (“the 1988 Additional Protocol”) because the legislation enacted between 2010 and 2014 in response to the economic and financial crisis:

- deregulates working conditions by destroying the protective legal framework, resulting in extreme forms of labour flexibility and high levels of job insecurity;
- freezes or reduces workers’ wages and pensions;
- reduces notice periods and severance pay;
- deregulates working hours;
- increases the length of probationary periods without notice or severance pay;
- increases recourse to agency work.

3. On 19 May 2015, the Committee declared the complaint admissible. On 1 June 2015 the admissibility decision was notified to the parties, and the Government was simultaneously invited to make written submissions on the merits of the complaint by 7 September 2015.

4. On 4 June 2015, referring to Article 7§1 of the Protocol providing for a system of collective complaints (“the Protocol”), the Committee invited the States Parties to the Protocol and the States that had made a declaration in accordance with Article D§2 of the Charter, to submit any observations they might wish to make on the merits of the complaint by 7 September 2015.

5. No such observations were received.

6. On 18 June 2015, referring to Rule 32A of the Rules of the Committee (“the Rules”), the President of the Committee invited the European Union (EU) to submit any observations it might wish to make by 11 December 2015.

7. The observations of the European Trade Union Confederation (ETUC) were registered on 4 September 2015.

8. The observations of the International Organisation of Employers (IOE) were registered on 7 September 2015.

9. On 4 September and 3 November 2015, the Government asked for an extension to the deadline for submitting its observations on the merits. The President of the Committee extended this deadline until 20 November 2015.

10. The Government's submissions on the merits were registered on 19 November 2015.

11. In accordance with Article 31§2 of the Rules, the President of the Committee invited the GSEE to reply to the Government's submissions by 29 January 2016.

12. The observations of the European Commission ("the Commission") were registered on 26 January 2016.

13. The GSEE's response, in which, in accordance with Article 7§4 of the Protocol, it asked for a hearing to be held, was registered on 28 January 2016.

14. The Committee agreed to this request on 8 July 2016 and set 20 October 2016 as the date for the hearing.

15. On 23 August 2016, pursuant to Rule 33§4 of the Rules, the IOE and the ETUC were invited to participate in the hearing. EU was also invited to participate.

16. On 16 September 2016 a list of questions was sent to the parties indicating the points that the Committee wished to be elaborated on during the hearing.

17. The hearing took place on 20 October 2016 at the Human Rights Building in Strasbourg. The following participants appeared:

a) for the GSEE

- Mr Yannis Panagopoulos, President;
- Mr Aris Kazakos, Professor of labour law, Aristotle University, Thessaloniki;
- Ms Sofia Kazakou, Legal adviser;
- Ms Ellie Varchalama, Legal adviser.

b) for the Government

- Mr George Katrougalos, Minister of Labour, Social Security and Social Solidarity;
- Ms Daphne Akoumaniaki, Legal Advisor to the Minister;
- Mr Spyros Roussakis, Legal Advisor to the Minister;
- Ms Panagiota Margaroni, Administrator, International Relations Department, Ministry of Labour, Social Security and Social Solidarity; Government Agent before the European Committee of Social Rights.

c) for the IOE

- Ms Alessandra Assenza, Adviser ;
- Mr Harry Kyriazis, Executive Vice Chairman, SEV ;
- Mr Antonio Vayas.

d) for the ETUC

- Ms Esther Lynch, Confederal Secretary;
- Mr Klaus Lörcher, Human Rights Advisor, ETUC Representative in the Steering Committee on Human Rights (CDDH);
- Mr Stefan Clauwaert, Senior Researcher at the European Trade Union Institute (ETUI), ETUC representative in the Governmental Committee.

e) for the EU

Mr Benjamin Bollendorff, Deputy to the Head of the European Union Delegation to the Council of Europe

18. The Committee heard statements by Mr Panagopoulos, Mr Kazakos and Ms Kazakou for the GSEE and by Mr Katrougalos for the Government. It also heard statements by Ms Assenza and Mr Kyriazis for the IOE, by Ms Lynch for the ETUC and by Mr Bollendorf for the EU.

19. The Committee fixed 7 November 2016 as the deadline before which the parties could submit supplementary information.

20. On 7 November 2016 supplementary information was submitted by the GSEE and by the IOE. On 8 November 2016 supplementary information was submitted by the Government.

## **SUBMISSIONS OF THE PARTIES**

### **A – The complainant organisation**

21. The GSEE asks the Committee to rule that the legislation enacted between 2010 and 2014 in response to the economic and financial crisis is in breach of Articles 1, 2, 4, 7, 30 and 31 of the 1961 Charter and Article 3 of the 1988 Additional Protocol.

### **B – The respondent Government**

22. The Government does not dispute the merits of the complaint.

23. It asserts its commitment to comply with Greece's international obligations and to respect social rights, particularly through the provision of humanitarian assistance to the most vulnerable members of society, by establishing social safety nets, regulating employment and re-establishing employees' rights in collective and individual bargaining.

## **OBSERVATIONS BY EMPLOYERS' AND WORKERS' ORGANISATIONS**

### **A - The International Organisation of Employers**

#### *Written observations*

24. The IOE does not deny that the disputed legislation affected the human rights guaranteed under the 1961 Charter, but considers that it reflects the conditions laid down by the International Monetary Fund (IMF), the Commission and the European Central Bank (ECB) (the "Troika"), and that it has enabled Greece to remain in the Eurozone. It contends that controlling public expenditure is the best and only way of improving companies' competitiveness and, in the longer term, protecting social rights.

25. The IOE argues that the complainant organisation criticises the steps taken to respond to the crisis while glossing over the level of protection provided in the past. The complainant organisation also wrongly implies that the law must continue to provide an increasing measure of protection for social rights, without allowing for possible variations to take account of changing economic conditions that might adversely affect the sustainability of these rights. The 1961 Charter, in contrast, specifically provides for adaptation of the protection granted by these rights to take account of changing economic conditions.

26. The IOE calls for such flexibility to be applied in this case. It states that, when the issues raised in this complaint were referred to the International Labour Organisation's (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) and its Committee on Freedom of Association (CFA), their assessment took account of the need to reduce public expenditure. The 2011 report of the ILO high level mission to Greece also identified no violations of international labour standards.

27. The IOE notes that, in its judgment No. 668/2012 of 20 February 2012, the Greek supreme administrative court (*Symvoulío tis Epikrateias*) found that the reduction in the pay and pensions of public officials provided for in Acts Nos. 2847/2010, 3833/2010 and 3845/2010 was justified by the general interest and met the proportionality requirement. Similarly, in its judgment No. 2307/2014 of 27 June 2014, the court also found that the reform of the collective bargaining system under the Council of Ministers Act No. 6/2012 and Acts Nos. 4046/2012 and 4293/2012 was compatible with the right to work, the right to fair pay, freedom of association and the legal minimum wage.

*Oral observations*

28. At the hearing the IOE pointed out that if the State were to go bankrupt and leave the Eurozone there would be no further imports until a new currency was introduced and exports resumed. A shortage of foodstuffs, medicines and fuel would have repercussions on transport, heating and the production of electricity, thereby quickly paralysing manufacturing and trade. According to the IOE, it was in order to avoid this risk that successive governments had undertaken to carry out the reforms called for by the Troika.

29. The IOE also stated that the economic and financial crisis was caused by an obsolete economic environment which was not subject to timely reforms. Although the budgetary deficit is now being managed, efforts are still under way to reduce bureaucracy, eliminate privileges and modernise the economic environment, and companies' lack of competitiveness has not been resolved. According to the IOE, employers suffer from the current situation as much as workers, as the 25% decrease in salaries goes hand in hand with a similar decline in gross domestic product (GDP) and the closure of 30% of companies.

30. With regard to the complaint, the IOE explained that a minimum salary does not necessarily have to be determined through a collective agreement, and underlined that most States Parties adopt administrative or regulatory measures. According to the IOE, the social partners remain free to negotiate higher salaries, as the Ministry of Labour's data show that new branch collective agreements (14 in 2013; 14 in 2014; 12 in 2015) and company-wide agreements (489 in 2013; 286 in 2014; 263 in 2015) have been entered into.

31. The IOE stressed that "associations of persons" have existed since Act No. 1264/1982 of 30 June 1982 on the democratisation of the trade union movement and the protection of the rights of trade union representatives, which confers on them representative powers and the right to strike, in order to enable social dialogue in companies which do not have the 20 members necessary for creating a trade union.

32. Lastly, the IOE pointed out that examination of Article 3 of the 1988 Additional Protocol had been ruled out (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§39-40) on the ground that the issue raised fell within the scope of Articles 5 and 6 of the 1961 Charter, which Greece has not accepted. The IOE considers that the same applies to Articles 31 and 37 of Act No. 4024/2011 and Article 2 of Council of Ministers Act No. 6/2012.

*Supplementary written information submitted after the hearing*

33. The IOE provides information on the context of the labour market reforms introduced in Greece and specific observations relating to questions and comments made during the hearing as well as a number of technical observations which could not be presented during the hearing due to time constraints.

34. The IOE states that labour market reforms were necessary to bring the Greek economy on a path of sustainable growth and points to certain rigidities in the previous legal framework such as forbidding employees to work outside the opening hours of shops where they were employed. In this respect it points out that the changes made to the working time regime such as reducing the daily rest period to eleven hours are fully compatible with the EU legal framework. With respect to the minimum wage the IOE states that Greece is under no international obligation to fix this wage by collective agreement. Moreover, the IOE submits that there is nothing to prevent the social partners to conclude a national agreement setting a higher basic salary.

35. With respect to extension of collective agreements the IOE underlines that neither the Charter nor any ILO conventions or recommendations impose such extension. As regards unilateral recourse to compulsory arbitration the IOE is of the view that this is contrary to both ILO standards and to Article 6§3 of the Charter as interpreted by the Committee. Finally, it submits that temporary work is widespread across Europe and has helped reduce unemployment and helped business to adapt to operational needs.

36. The IOE concludes that all the various labour market reform measures lie within the general perimeter of regulations and practices which can be found in other European countries and it maintains that Greece is in compliance with the invoked provisions of the Charter.

## **B - The European Trade Union Confederation**

*Written observations*

37. The ETUC argues that the adjustment mechanisms imposed by the international, European and national institutions concerned have created a major social and humanitarian crisis, in violation of the social rights embodied in the 1961 Charter.

38. The ETUC considers that, in contrast to the provisions of the European Convention on Human Rights, the reference in Articles 30 and 31 of the 1961 Charter to the effective realisation or exercise of the rights set forth establishes a requirement that any subsequent restriction of statutory social rights necessitates a specific justification with regard to the rights in question. The grounds cited in this case must therefore be subjected to in-depth and detailed analysis in the light of the conditions laid down in Article 31§1 of the 1961 Charter, namely that restrictions must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society for the pursuit of that aim:

- The ETUC considers that, in this case, the prescribed-by-law requirement has been met, except with regard to the foreseeability and accessibility of the legislation, as required by the case-law of the European Court of Human Rights (“the Court”);
- With regard to the pursuit of a legitimate aim, objectives of an economic or financial nature cannot be considered valid from the standpoint of either the public interest or protection of the rights and freedoms of others;
- As to whether the pursuit of this aim is necessary in a democratic society, the ETUC refers to Conclusions XX-3 (2014) and cases GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, op. cit.; General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012; Federation Of Employed Pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012; Panhellenic Federation of Public Service Pensioners (POPS) v. Greece, Complaint No. 77/2012, decision on the merits of 7 December 2012; Pensioners’ Union of the Athens-Piraeus Electric Railways (ISAP) v. Greece, Complaint No. 78/2012, decision on the merits of 7 December 2012; Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI) v. Greece, Complaint No. 79/2012, decision on the merits of 7 December 2012; and Pensioners’ union of the Agricultural Bank of Greece (ATE) v. Greece; Complaint No. 80/2012, decision on the merits of 7 December 2012. Moreover, unlike the measures that gave rise to the applications (*Koufaki and ADEDY v. Greece*, Nos. 57665/12 and 57657/12) that were declared inadmissible by the Court on 7 May 2013, the measures challenged in this case have no direct impact on the state budget. Besides, the ETUC pledges that the necessity cannot be adduced when there are alternative measures available, such as combating waste of public funds, administrative inefficiency or fraud, which the Government appears not to have considered.

39. The ETUC considers Act No. 4254/2014 to be in breach of Article 1§§1 and 2 of the 1961 Charter, because it has not been established that it pursues a legitimate aim and is necessary in a democratic society, within the meaning of Article 31§1 of the 1961 Charter. It maintains that there is neither evidence that greater recourse to temporary employment will necessarily bring about an effective, lasting reduction in unemployment; nor that the measure is necessary, since the limits placed on the protection of temporary employees are disproportionate when set against the increased flexibility granted to employers.

40. The ETUC submits that Act No. 4093/2012 is in breach of Article 2§§1 and 5 of the 1961 Charter for similar reasons. The introduction of greater flexibility in determining working hours and rest periods is incompatible with the obligation in Article 2§1 of the 1961 Charter to secure a progressive reduction in working hours. In addition, the lack of legal protection against certain working time arrangements could explain why, in practice, working hours are considerably longer in Greece than the average for OECD states. Moreover, the authorised exemption from the five-day working week requirement could constitute a violation of Article 2§5 of the 1961 Charter.

41. The ETUC considers that Acts Nos. 4024/2011 and 4093/2012, the Council of Ministers Act No. 6/2012 and Act No. 4254/2014 are in breach of Article 4§1 of the 1961 Charter for similar reasons. The ETUC further notes the inadequacy of the notice periods and/or the severance pay provided for under Acts Nos. 3899/2010 and 4093/2012 with regard to Article 4§4 of the 1961 Charter.

42. The ETUC finally notes that Conclusions XX-3 (2014) and the above quoted decisions of the Committee have already recognised these violations and yet no steps have been taken to bring the situation in line with the 1961 Charter.

#### *Oral observations*

43. At the hearing the ETUC urged the Committee to join the United Nations, ILO and Council of Europe bodies dealing with human rights which have unanimously condemned the impact of austerity measures on the enjoyment of social rights in Europe and have called on national and European actors to take the corrective measures necessary to reinstate these rights.

44. The ETUC stated that there can be no derogation from social rights and that the economic and financial crisis cannot be used to negotiate or circumvent respect for these rights. Therefore, international and European organisations providing financial support cannot override the obligations incumbent on national governments and parliaments or European institutions in accordance with international and European law, insofar as these organisations have no responsibility for the impact of their demands on society as a whole, nor for their failure.

45. The ETUC requested clarifications regarding the purpose of Article 31 of the 1961 Charter and the conditions under which a decline in the protection of social rights may be permitted. It considers that these conditions must be strict since the economic and financial crisis has a social and humanitarian dimension; the legislative measures in question undermine social rights and advances, along with human dignity; in view of Article 31 of the 1961 Charter, economic and financial goals cannot justify a decline in social rights; and the 1961 Charter is an instrument of social development. Recalling that the 1961 Charter is a living instrument, dedicated to certain values which inspired it: dignity, autonomy, equality and solidarity [...] and that it must be interpreted so as to give life and meaning to social rights (International Federation of Human Rights (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§27-29), it invited the Committee to apply its general observations (Conclusions 2009, Observations on the application of the Charter in the context of the global economic crisis) to the present case.

46. As the right to organise and the right to bargain collectively have been particularly under threat since the beginning of the economic and financial crisis, the ETUC called on the Government to bring its legislation in line with Articles 5 and 6 of the Revised European Social Charter (CETS No. 163), which were accepted on 18 March 2016.

## **OTHER OBSERVATIONS**

### **A. The European Commission**

#### *Written observations*

47. In its reply to the invitation submitted to the EU, the Commission states that it is aware of the social situation in Greece, that in the negotiations with institutional creditors it stressed the need for measures to alleviate this situation and that social fairness criteria were incorporated into the adjustment measures that Greece has implemented since 2010.

48. The Commission affirms its respect for the principles embodied in the EU's Charter of Fundamental Rights and the 1961 Charter, as set out in Article 151 of the Treaty on the Functioning of the European Union (TFEU). It also notes that the applications *ADEDY and Koufaki v. Greece* quoted above were declared inadmissible by the Court.

49. It maintains that the social situation in Greece is the consequence of serious imbalances of earlier origin. The legislation introduced between 2010 and 2014 is intended to stimulate growth and job creation, based on sound public finances, a stable financial system and a more competitive economy; it has enabled Greece to remain in the Eurozone, improve the functioning of its labour market and prevent a much more severe adjustment process.

50. The Commission states that, on 19 August 2015, the Board of Governors of the European Stability Mechanism (ESM) approved a new stability support programme for Greece, co-signed by the Greek authorities (the Minister for the Economy and the Governor of the Bank of Greece) and the Commission. The conditions attached to the financial assistance are set out in "memorandum of understanding" (Memorandum) III. The Commission asserts that it paid particular attention to ensuring that the programme was designed to take account of social fairness, a fair division of the burden of the adjustment and protection for the most vulnerable. For example, a working document entitled "Assessment of the Social Impact of the new Stability Support Programme for Greece" considers how the burden of adjustment is spread across society and identifies the reform measures

that will have a positive direct impact on the social situation and those that will help to mitigate social hardships.

51. According to the document, after the first signs of a recovery up to the summer of 2014, the Greek economy fell back into recession, with a further deterioration in the social situation. At the same time, unemployment has risen significantly: overall unemployment from 7.8% in 2008 to 26.5% in 2014, long-term unemployment from 3.7% in 2008 to 19.5% in 2014 and youth unemployment from 21.9% in 2008 to 52.4% in 2014. Forecast growth in gross domestic product (GDP) has been revised down: -2.3% instead of +2.9% in 2015; then -1.3% in 2016, +2.7% in 2017 and +3.1% in 2018.

52. The document also states that social fairness measures have been introduced or strengthened in Memorandum III, including support of the most vulnerable, the introduction of universal health care, the phasing in of a guaranteed minimum income, linking of the efforts required to income levels, taxation of savings in areas that do not directly affect the disposable income of ordinary citizens, challenging vested interests, supporting the role of the social partners and the modernisation of the collective bargaining system, fighting corruption and tax evasion, and enhancing transparency and efficiency of the public service.

53. In addition, the document indicates that a number of measures based on the work of a group of independent experts in cooperation with international organisations are envisaged with a view to reforming the legal frameworks pertaining to collective bargaining and collective action, collective dismissals and wage determination. If these reforms were to be implemented fully and in a timely manner they would contribute to Greece regaining stability and sustainable and inclusive growth.

#### *Oral observations*

54. The Commission did not provide any additional elements during the hearing.

## **RELEVANT DOMESTIC LAW AND PRACTICE**

### **I. Law**

55. Act No. 3863/2010 of 15 July 2010 on a new social security system and provisions on industrial relations reads as follows:

#### **Article 74 - Regulating matters of industrial relations\_**

[...]

Special apprenticeship contracts of up to one (1) year for the purpose of skills acquisition may be agreed between employers and persons aged 15 to 18 years old. The apprentices in question shall receive seventy per cent (70%) of the minimum daily wage or salary in the National General Collective Labour Agreement (NGCLA) and be insured with health insurance in kind at one per cent (1%) against the risk of accident. For those over 16 years of age the apprenticeship may not exceed eight (8) hours a day and forty (40) hours a week. Those under 16 years of age, as well as those studying at any high school, college or state-

recognised public or private technical vocational school may not undertake apprenticeships for more than six (6) hours a day and thirty (30) hours a week. Apprenticeships must not be carried out between the hours of 22:00 and 06:00 the following day. These persons shall not be subject to the provisions of labour law, save for the provisions on health and safety of workers.

[...]"

56. Act No. 3899/2010 of 17 December 2010 on emergency measures for the implementation of the assistance programme for the Greek economy reads as follows:

**Section 17 - Regulation of part-time, job rotation, the probationary period, and simplification of procedures implementing the labour law**

« [...]

5 a) In Section 74§2 of Act No. 3863/2010, a sub-section shall be added, i.e. Sub-section A, as follows:

"A. 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."

b) The first sub-section of Section 74§2 of Act No. 3863/2010 shall become Section B'; point "a" of paragraph 2 shall be amended as follows:

"B. The permanent contract of an employee with more than twelve (12) months of service may be terminated on the basis of prior written notice by the employer, as follows: a) in the case of employees who have worked from 12 (twelve) months to 2 (two) years, 1 (one) month's notice prior to dismissal".

57. Act No. 4024/2011 of 27 October 2011 on pension schemes, workers' remuneration and other provisions for the implementation of the medium-term fiscal strategic plan 2012-2016 (the Strategic Plan) reads as follows:

**Section 31 - Proportionate regulations for legal persons of the broader public sector**

1. a) To the legal persons under private law (NPID) belonging to the State or to a legal person under public law (NPDD) or to a local authorities organization (OTA), for the purposes of achieving state, public or local authority goals, supervising, appointing and controlling the majority of their Administrative Boards, including General and Local Organisations of Land Improvement Schemes, or receiving regular subsidies, according to the provisions in force, by the funds of the above organizations, up to no less than 50% of their annual budget, as well as other public enterprises, organizations and limited liability companies falling within the scope of provisions of Chapter A' of Act No. 3429/2005 (FEK A 314), as amended by the provisions of paragraph 1a of Section 1 of Act No. 3899/2010 (FEK A 212), with the exception of NPID of Act No. 3864/2010 (FEK A 119) and Section 1 of Act No. 3986/2011 (FEK A 152), applies an average, per capita, wage ceiling for the personnel, as defined in the next paragraphs. The artistic personnel of the organizations under case c', paragraph 2 of Section 34 of the present law are not subject to the provisions of the present Section while [research personnel are paid according to 2nd part of Act No. 3205/2003.]

*N.B. The sentence in [ ] was added by paragraph 2, Section 14 of Act No. 4111/2013 (FEK A 18/25-01-2013) and applies since the entry into force of Act No. 4024/2011.*

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

[aa) The majority of the Administrative Board members have been appointed or elected by the State or the Hellenic Republic Asset Development Fund (TAIPED) or other legal entities of paragraphs 1,2 and 3 under Section 1 of Act No. 3429/2005 (A` 314), acting as shareholders, alone or jointly.

bb) the State, TAIPED or other legal entities under paragraphs 1, 2 and 3 of Section 1 of Act No. 3429/2005, own the majority of the shares, alone or jointly.]

*N.B. Cases aa and bb in [ ] have been replaced as above by paragraph 5 of Section 31, Act No. 4141/2013 (FEK A 81/05-04-2013).*

2. The provisions of paragraphs 1, 2 and 3 of Section 2, Act No. 3833/2010 (FEK A 40) apply to the wage ceiling and bonus payments of the administrator or managing director of the organizations mentioned in the preceding paragraph.

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

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

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

*N.B. Last indent of paragraph 3 was added pursuant to paragraph 3, Section 1 of the P.N.P0. law (FEK A 268/31-12-2011).*

4. The average, per person, cost of any type of salary, benefits, compensation and remuneration in general, excluding employers' contributions, of the organizations under subparagraph 1a of this Section, will under no circumstances exceed the amount of 1,900 euro per month.

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

*N.B. Last indent of paragraph 4 was added pursuant to paragraph 4, Section 1 of the P.N.P0. law (FEK A 268/31-12-2011).*

5. In the enterprises, organizations and companies referred to in subparagraph 1b, the average per person cost of any type of salary, benefits, compensation and remuneration, in general, of any type of personnel shall not exceed 65% of the average per capita corresponding cost of the enterprise, organization or company, as it stood on 31 December 2009.

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

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

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

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

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

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

[...]

### **Section 37 - Regulations on Collective Bargaining**

1. Paragraph 5 of Section 3 of Act No. 1876/1990 (FEK A 27) is replaced as following:

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

The above mentioned association of persons is composed by at least three-fifths 3/5 of the workers in the enterprise, irrespective of the total number of people employed in it while its duration is not subject to any time limits. If, after the creation of the association of persons, the prerequisite for the participation of three-fifths 3/5 of the people employed in the enterprise - which is required for its formation - has ceased to exist, the association is dissolved without any further formality. As far as the other issues with regard to the association of persons are concerned, point cc' of section a' of paragraph 3, Section 1 of Act No. 1264/1982 (FEK A 79) remains in force."

[...]

5. In paragraph 2 of Section 10 of Act No. 1876/1990 the following section is added:

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

6. The application of the provisions under paragraphs 2 and 3 of Section 11 of Act No. 1876/1990 is suspended during the implementation period of the Medium-term Fiscal Strategy Plan.

[...]

58. Council of Ministers Act No. 6/2012 of 28 February 2012 implementing section 6, paragraph 1 of Act No. 4046/2012 reads as follows:

### **Section 1**

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

2. From 14-2-2012 until the end of the fiscal adjustment programme there shall be a 32% reduction to the minimum salaries and wages set out in the National General Collective Labour Agreement which has been in effect since 15-7-2010, as were stipulated and as have been in use since 1-1-2012, for young people aged under 25. The 32% reduction to minimum salaries and wages set out in the last sentence shall also apply to trainees and apprentices as defined in par. 9 of Section 74 of Act No. 3863/2010 (FEK A 115). Paragraph 8 of Section 74 of Act No. 3863/2010, Section 43 of Act No. 3986/2011 (FEK A 152), as well as any other regulation which is inconsistent with the provisions of this paragraph, are hereby repealed.

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

[...]

### **Section 2**

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

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

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

require the employees' prior consent. The terms which are maintained under the third section shall remain in effect until they are superseded by those of a new Collective Labour Agreement or those of a new or amended individual contract.

4. The provisions of paragraphs 1, 4 and 5 of Section 9 of Act No. 1876/1990 (FEK A 27) shall cease to apply.

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

[...]

## **Section 5**

1. From 14-2-2012, employment contracts scheduled to end on reaching a particular age or on fulfilling retirement conditions shall be construed as contracts of indefinite duration and, when they are terminated, the provisions of Act No. 2112/1920, as applicable, shall be implemented. The provisions of the preceding section shall also apply to enterprises, companies or organizations which are, or have been at any time in the past, part of the broader public sector as defined at any time under the provisions of paragraph 6 of Section 1 of Act No. 1256/1982 (FEK A 65) or under the provisions of Section 51 of Act No. 1892/1990 (FEK A 101).

2. As of 14-2-2012, any provisions of laws or regulatory decisions, as well as any terms of Collective Agreements and Arbitration Decisions, Employment Regulations, Personnel Organizations and of administrative decisions by businesses, which establish terms implying permanence or permanence clauses which are at variance with the general rules of employment legislation and/or which call for the implementation, directly or with amendments, of the provisions of the Civil Servants Code, are repealed. The provision of the preceding section shall also apply to enterprises, companies or organizations which are, or have been at any time in the past, part of the broader public sector as defined at any time under the provisions of paragraph 6 of Section 1 of Act No. 1256/1982 (FEK A 65) or under the provisions of Section 51 of Act No. 1892/1990 (FEK A 101).

[...]"

59. Act No. 4093/2012 of 12 November 2012 ratifying the Medium-term Fiscal Strategy 2013-2016 – emergency regulations to implement Act No. 4046/2012 and the Medium-term Fiscal Strategy 2013-2016 reads as follows:

### **Section IA, paragraph IA**

"[...]

#### **10. Regulations to enhance the labour market and promote employment - Time limits for the operation of shops and their personnel**

a. Paragraph 1 of Section 7 of Legislative Decree No. 1037/1971 on time limits for the operation of shops and their personnel is being replaced, from the entry into force of this Law, as follows:

"Section 7

Ban on trading in shops outside normal opening hours."

b. Paragraph 2 of Section 7 of Legislative Decree No. 1037/1971, Section 7A of Legislative Decree No. 1037/1971 added by Section 244 of Act No. 4072/2012, are abolished.

Paragraph 6 of Section 42 of Act No. 1892/1990 shall apply notwithstanding shop opening hours, as laid down in Section 1 of Legislative Decree No. 1037/1971, as currently provided in combination with paragraph 1 of Section 42 of Act No. 1892/1990.

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

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

2a. The first section of paragraph 1 of Section 8 of Act No. 1876/1990 shall be superseded as follows:

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

b. At the end of paragraph 2 of Section 3 of Act No. 1876/1990 the words “, in accordance with the terms and conditions of paragraph 1 of Section 8 of the Law” shall be added.

3. Until the end of the fiscal adjustment programme set out in the Memoranda appended to Act No. 4046/2012 and the subsequent amendments thereof, the legal minimum salary for employees and wage for blue-collar workers shall be defined as follows:

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

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

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

*N.B. Point iii) of paragraph c' in [ ] was added pursuant to first Section, subparagraph IA.7, first indent of Act No. 4254/2014 (FEK A 85/07-04-2014).*

d) The above supplements for prior employment shall be paid to workers who have had previous employment with any employer and in any capacity after the age of 18 in the case of blue-collar workers or 19 in the case of employees, and applies to the length of employment completed by 14 February 2012.

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

f) Until the unemployment rate has fallen to under 10%, increases to the statutory minimum salary and wage connected based on the length of employment are to be suspended in relation to employment after 14 February 2012.

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

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

**12. Severance pay of private sector employees with dependent open-ended employment contracts.**

1. From the publication of this law, provision of Section 1 of Act No. 2112/1920 (FEK A 67), as amended and being in force and indent b) of paragraph 2 of Section 74 of Act No. 3863/2010 (FEK A 115), as amended by indent b) of paragraph 5, Section 17 of Act No. 3899/2010 (FEK A 212) are replaced as follows:

“1. The termination of the open-ended employment contract of a private sector employee exceeding twelve (12) months cannot occur without prior written notice from the employer, and comes into effect from the day following its notification to the employee under the following conditions:

- a) For employees having performed from twelve (12) “completed” years to two (2) years of service, one (1) month advance notice is required.
- b) For employees having performed from two (2) completed years to five (5) years of service, two (2) month advance notice is required.
- c) For employees having performed from five (5) completed years to ten (10) years of service, three (3) month advance notice is required.
- d) For employees having performed from ten (10) completed years and over, a four (4) month advance notice is required.

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

2. From the date of entry into force of the said law, paragraph 1 of Section 3 of Act No. 2112/1920, as amended and being in force, is replaced as follows:

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

**TABLE OF SEVERANCE PAYMENTS**

Time of service with the same employer / Amount of severance pay:

- 1 completed year to 4 years: 2 months
- 4 completed years to 6 years: 3 months
- 6 completed years to 8 years: 4 months
- 8 completed years to 10 years: 5 months
- 10 completed years: 6 months
- 11 completed years: 7 months
- 12 completed years: 8 months

13 completed years: 9 months  
14 completed years: 10 months  
15 completed years: 11 months  
16 completed years and over: 12 months

Calculation of the above severance pay is based on the last month's regular salary under full-time employment. The second indent of paragraph 1 of Section 5 of Act No. 3198/1955 (FEK A 98) shall continue to apply."

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

*N.B. The above sentence of case 3 in [ ] was replaced as above by paragraph 10 of Section 34 of Act No. 4111/2013 (FEK A 18/25-01-2013) that entered into force on 19 November 2012.*

For 17 completed years of service: 1 month severance pay  
For 18 completed years of service: 2 months severance pay  
For 19 completed years of service: 3 months severance pay  
For 20 completed years of service: 4 months severance pay  
For 21 completed years of service: 5 months severance pay  
For 22 completed years of service: 6 months severance pay  
For 23 completed years of service: 7 months severance pay  
For 24 completed years of service: 8 months severance pay  
For 25 completed years of service: 9 months severance pay  
For 26 completed years of service: 10 months severance pay  
For 27 completed years of service: 11 months severance pay  
For 28 years of service and over: 12 months severance pay

The severance pay calculated as indicated above takes into account:

- i) the years of service completed by the employee upon the publication of the present law notwithstanding the time of his dismissal,
- ii) the regular salary of last month under full-time employment that does not exceed the amount of two thousand (2,000) euro.

When the conditions laid down in the second indent of Section 8 of Act No. 3198/1955 are fulfilled, as amended, the regular salary of last month under full-time employment is taken into account in the above calculation without prejudice to the second indent of paragraph 1, of Section 5, Act No. 3198/1955.

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

[...]

#### **14. Working time and abolition of social security contribution to *teapyk* (Auxiliary Insurance Fund of liquid fuels' service stations)**

1. From the entry into force of the present, paragraph 4 of Section 42 of Act No. 1892/1990 (FEK A 101) is replaced as follows:

"4. Collective agreements can determine the weekly working time of employees in shops for the overall contractual 40-hour working week."

2. Section 3 of Presidential Decree No. 88/1999 (FEK A 94) on “minimum requirements concerning the organization of working time in accordance with Directive 93/104/EK” is replaced as follows:

“Section 3 (Article 3 of the Directive): Daily rest

Every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.

The 24-hour period starts at 00:01 and ends at 24:00 hours.”

3. Section 8 of Act No. 549/1977 (FEK A 55), as regards the part ratified by Section 7 of, from 26 January 1977, National General Collective Labour Agreement (EGSEE) (FEK B 60), which was amended by Section 6 of Act No. 3846/2010 (FEK A 66), is replaced as follows:

“Section 7: Dividing annual leave

i) Exceptionally, leave can be divided into two periods, within the same calendar year, if there is a particularly serious or urgent need on the part of the undertaking or holding. In any case, the first period cannot be less than six (6) working days for a 6-day week and five (5) working days for a 5-day week while in the case of minors it cannot be less than twelve (12) working days.

ii) Leave can be divided in more than two periods whereby one should include at least twelve (12) working days when the undertaking operates a 6-day working week system and ten (10) working days for a 5-day week or for minors twelve (12) working days, upon a written request from the worker to the employer.

In particular, the possibility is given to enterprises that employ regular and seasonal staff, to provide, in cases of work overload, due to the type of their business activity, a part of the annual leave ten (10) working days to the regular personnel working five (5) days a week or 12 for a 6-day week, at any time within the calendar year.

Worker's request and the employer's decision do not need to be approved by the competent office of Labour Inspectorate (SEPE), they are kept in the undertaking for five (5) years and are at the disposal of Labour Inspectorates.

The remaining provisions of this paragraph are governed by laws regulating annual leave.”

### **Section IA, paragraph C1**

“[...]

12. The provisions of Chapter 2 of Act No. 4024/2011 having regard to the wage and grade scale and status of civil servants referred to in Section 4 of the same law, have proportional application, from 1.1.2013, to the personnel of legal persons of private law (NPID) belonging to the State or legal persons of public law (NPDD) or to a local authorities organization (OTA), for the purposes of achieving state, public or local authority objectives, supervising, appointing and controlling the majority of their Administrative Boards, including General and Local Organisations of Land Improvement Schemes, or receiving regular subsidies, according to the provisions in force, by the funds of the above organizations, up to no less than 50% of their annual budget, as well as other public enterprises, organizations and limited liability companies falling within the scope of provisions of Chapter A<sup>1</sup>, Act No. 3429/2005 (FEK A 314), as amended by the provisions of paragraph 1a of Section 1, Act No. 3899/2010 (FEK A 212).

The joint decisions of the Ministers of Finance, Administrative Reform and e-Governance referring back to the coming in effect of the provisions of the present case, can lay down detailed rules for implementing the preceding paragraphs.

Since the entry into force of the provisions of present case, provisions of Section 31, Act No. 4024/2011 will cease to apply for those mentioned above, except as provided in paragraph 2.”

60. Act No. 4254/2014 of 7 April 2014 on support and development measures for the Greek economy implementing Act No. 4046/2012 and other provisions reads as follows:

**Section IA, subparagraph IA**

“[...]”

**4. Temporary work agencies**

1. Eventuality β in Section 116 of Act No. 4052/2012 (FEK A 41) shall be replaced as follows:

“β) when the indirect employer had in the previous quarter dismissed workers in the same specialism for feasibility reasons, or made mass dismissals in the same specialism in the previous six month period.”

2. Eventuality ε in Section 116 of Act No. 4052/2012 (FEK A 41) shall be replaced as follows:

“ε) when the employee is subject to special provisions regarding the insurance of technical builders, save for technical builders employed on projects with an initial budget of 10,000,000.00 euros or more, which are funded or co-funded by state resources and conducted on a grant or contract on behalf of the State, public legal entity, 1st or 2nd degree local government organisation, public, municipal or community enterprises for municipal or public utility and generally enterprises and organisations in the wider public sector, as it is defined by the law in force at the time. For builders employed by an indirect employer on a temporary employment contract, the Temporary Work Agency (TWA) must submit Detailed Periodic Statements (DPS) and pay the corresponding insurance contributions to the usual social insurance bodies.”

3. Paragraph 3 of Section 122 of Act No. 4052/2012 shall be repealed.

4. Paragraph 1 of Section 124 of Act No. 4052/2012 (FEK A 41) shall be replaced as follows:

“1. For the provision of labour in the form of temporary employment, a fixed term or open-ended labour contract must be written in advance. The contract shall be concluded between the TWA (direct employer) and the wage earner, and reference must be made therein to the terms and duration of labour, the terms of providing labour to an indirect employer/ indirect employers, the terms of remuneration and insurance of the wage earner, as well as any other detail which according to good faith and in the circumstances the wage earner needs to know concerning the provision of his labour.

The earnings of a wage earner who is not providing labour to an indirect employer may not be lower than the legally prescribed minimum wage and minimum daily wage defined at the time for workers in private law in the country as a whole.

If in the course of agreeing this contract it is not possible to refer to the specific indirect employer or to determine the period of time for which s/he will provide his/her labour thereto, reference must be made in the contract to the framework of terms and conditions for the provision of labour to an indirect employer.”

5. Paragraph 3 of Section 124 of Act No. 4052/2012 shall be replaced as follows:

"3. The contract to be concluded in writing between the TWA and the indirect employer shall specifically define the method of payment and insurance of the worker for the period that the wage earner offers his/her services to the indirect employer. The indirect employer must specify, before the worker is put at its disposal on the contract, the professional qualifications or abilities required, specialist medical care and its particular features covering the position. It must also indicate the greatest or particular risks relating to the actual position. The TWA must inform wage earners of these details."

[...]

### **7. Exceptional/emergency measures to support long-term unemployed and facilitate their access to the labour market**

1. Point iii) is added to Section IA, subparagraph IA.11, paragraph 3, case c) of Act No. 4093/2012 (FEK A 222) as follows:

“iii) For the registered unemployed with the national unemployment office, above 25 years of age, who have been continuously unemployed for over 12 months (long-term unemployment) and are hired as white-collar workers, the minimum wage in case a’ of this paragraph is increased by 5% for each 3-year of service and 15% overall for 9 years of seniority and over.”

## **II. Practice**

61. The Statement of the National Commission for Human Rights (GNCHR) of 15 July 2015 on the impact of the continuing austerity measures on human rights reads as follows:

[...]

### **I. Recalling**

1. the judgments of the national supreme courts as well as the decisions and reports issued by national, European and international monitoring bodies concerning the continuing violation of a significant number of human rights in Greece, due to the financial crisis and the implementation of austerity measures,

### **II. Reaffirms that**

2. austerity measures undermine fundamental constitutional principles and violate constitutionally guaranteed human rights such as the principle of equality (Article 4(1) of the Greek Constitution, hereinafter “the Constitution”) and its more specific expression, namely the contribution of citizens to public charges in proportion to their means (Article 4(5) of the Constitution), the right of equal access to education (Article 16(2) of the Constitution), the right to property (Article 17 of the Constitution), the right to health (Article 21(3) and Article 5(5) of the Constitution), the right to work (Article 22(1) of the Constitution), the right to social security (Article 22(5) of the Constitution), freedom of association (Article 23 of the Constitution), the principle of proportionality (Article 25(1) of the Constitution), the principle of social solidarity (Article 25(4) of the Constitution) as well as the principle of protected public trust towards State

Institutions; moreover, austerity measures undermine the value of the human being, the respect and protection of which constitute the primary obligation of the State (Article 2 of the Constitution), seriously hinder the development of all persons (Article 5 of the Constitution), compromise the rule of law and the welfare State (Article 25(1) of the Constitution) and undermine the economic development of the country (Article 106 of the Constitution);

3. austerity measures violate rules of international and European human rights law, as affirmed by competent international and European monitoring bodies; and moreover the financing rules of International Financial Institutions (IFIs), namely of the International Monetary Fund or of other international or European mechanisms relating to the economic or financial support of a State, cannot circumvent the obligation to respect international and European human rights law, especially as these rules are also binding on all States participating in these mechanisms;

[...]"

## **RELEVANT INTERNATIONAL MATERIALS**

### **I. Council of Europe**

#### **1. Parliamentary Assembly**

62. Resolution 1884(2012) of 26 June 2012, "Austerity measures – a danger for democracy and social rights" reads as follows:

"[...]

9. With regard to the protection of human rights (including social rights), the revised European Social Charter (ETS No. 163) remains the main reference, while the Strategy for Innovation and Good Governance at Local Level containing 12 principles of good democratic governance, drafted by the Council of Europe in 2007, should be further promoted as an important reference for modern democracies.

[...]"

#### **2. European Court of Human Rights**

63. The Court's decision of 7 May 2013 in *ADEDY and Koufaki v. Greece*, applications Nos. 57657/12 and 57665/12, declared those applications to be inadmissible.

#### **3. Commissioner for Human Rights**

64. In Issue Paper (2013)<sup>2</sup> "Safeguarding human rights in times of economic crisis" (Strasbourg: Council of Europe 2014), the Commissioner for Human Rights makes the following recommendations:

"In order to ensure the effective and equal enjoyment of all human rights – civil, political, economic, social and cultural – in times of economic crisis and fiscal austerity, the Commissioner for Human Rights calls on Council of Europe member states to:

1. Institutionalise transparency, participation and public accountability throughout the economic and social policy cycle. [...]
2. Conduct systematic human rights and equality impact assessments of social and economic policies and budgets. [...]

3. Promote equality and combat discrimination and racism. [...]
4. Ensure social protection floors for all. [...]
5. Guarantee the right to decent work. [...]
6. Regulate the financial sector in the interest of human rights. [...]
7. Work in concert to realise human rights through economic co-operation and assistance. [...]
8. Engage and support an active civil society. [...]
9. Guarantee access to justice for all. [...]
10. Ratify European and international human rights instruments in the field of economic and social rights. [...]
11. Systematise work for human rights. [...]
12. Engage and empower national human rights structures in responses to the economic crisis. [...]"

## **II. United Nations**

65. On 24 June 2016, at its 58<sup>th</sup> session, the United Nations Committee on Economic, Social and Cultural Rights adopted the statement on “public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights” (Doc. E/C.12/2016/1).

## **III. International Labour Organisation**

66. The Report on the ILO High Level Mission to Greece (Athens, 19-23 September 2011) presented conclusions regarding the changes introduced to Greek labour market institutions. These conclusions are extensively referenced in IKA-ETAM v. Greece, Complaint No. 76/2012, op. cit., §§34-37.

## **IV. European Union**

67. The Treaty on the European Union (TEU) of 7 February 1992 (OJ C326/13) reads as follows:

### **Preamble**

“[...]

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

[...]”

68. The Treaty on the Functioning of the European Union (TFEU) of 25 March 1957 (OJ C326/47) reads as follows:

### **Article 151**

“The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social

protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.”

### **Article 153**

« 1. En vue de réaliser les objectifs visés à l'article 151, l'Union soutient et complète l'action des États membres dans les domaines suivants:

[...]

(j) the combating of social exclusion ;

[...]“

## **THE LAW**

### **PRELIMINARY CONSIDERATIONS**

69. In its decision on admissibility (GSEE v. Greece, Complaint No. 111/2014, decision on admissibility of 19 May 2015, §§4 and 11), the Committee considered that the complaint was confined in substance to allegations of violations of Articles 1, 2, 4 and 7 of the 1961 Charter, as well as of Article 3 of the 1988 Additional Protocol to the 1961 Charter, whose provisions were in force when the facts occurred and when the complaint was lodged.

#### *Subject of the complaint*

70. The Committee notes that the complaint is directed against the legislation adopted between 2010 and 2014 in response to the economic and financial crisis on account of its:

- excluding the application of the collective agreements and arbitration awards in force, in restricting their duration and scope, and assigning them a subsidiary role;
- dismantling the existing collective bargaining arrangements, favouring company agreements to the detriment of collective agreements and advocating the representation of workers' interests by “associations of persons”;
- shifting the regulation of employment, pay and working conditions from branch level to company level or even down to the individual worker;
- favouring in this connection a balance of power that allows employers to downgrade recruitment, pay and working conditions.

71. The Committee recalls that the exercise of the right to organise and the right to collective bargaining involve rights that are paramount to the system of values, fundamental principles and rights enshrined in the 1961 Charter to guarantee the autonomy of trade unions and protect the employment conditions of workers (Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits of 3 July 2013, §120).

72. However, it was not until the ratification of the Revised European Social Charter on 18 March 2016 that Greece undertook to guarantee protection for Articles 5 (the right to organise) and 6§§1 to 4 (the right to bargain collectively). Having regard to the principle of non-retroactivity of treaties, the Committee has no legal basis for examining the situation prior to the above date with respect to these newly accepted provisions and it therefore limits its examination on this point to Article 3 of the 1988 Additional Protocol.

73. The Committee also notes that the complaint does not express any grievances or arguments specific to certain aspects of Article 1 (employment services; vocational guidance, training and rehabilitation); Article 2 (public holidays with pay, annual holiday with pay; compensation for employment in dangerous occupations); Article 4 (pay for overtime work; equal pay for male and female workers; deductions from wages); Article 7 (minimum age of admission to employment; employment of children subject to compulsory education; limitation on the working hours of persons under the age of 16; fair pay for young workers and apprentices; inclusion of vocational training for young persons during normal working hours; ban on workers under the age of 18 years being employed in night work; regular medical checks for workers under the age of 18; special protection against physical and moral dangers to which children and young persons are exposed) of the 1961 Charter, cited on a general basis. From among these articles, it is therefore only called upon to examine the situation with regard to Articles 1§§1 and 2; 2§§1 and 5; 4§§1 and 4; 7§§5 and 7 of the 1961 Charter, and Article 3 of the 1988 Additional Protocol.

74. The Committee furthermore notes that, with regard to the legislation adopted between 2010 and 2014 in response to the economic and financial crisis, the arguments developed in the complaint and the reply to the Government's observations are limited to the following statutory acts:

- Act No. 3863/2010 of 15 July 2010 on a new social security system and provisions on industrial relations;
- Act No. 3899/2010 of 17 December 2010 on emergency measures for the implementation of the assistance programme for the Greek economy;
- Act No. 4024/2011 of 27 October 2011 on pension schemes, workers' remuneration and other provisions for the implementation of the medium-term fiscal strategic plan 2012-2016 (the Strategic Plan);
- Council of Ministers Act No. 6/2012 of 28 February 2011 implementing section 6, paragraph 1 of Act No. 4046/2012;
- Act No. 4093/2012 of 12 November 2012 ratifying the Medium-term Fiscal Strategy 2013-2016 – emergency regulations to implement Act No. 4046/2012 and the Medium-term Fiscal Strategy 2013-2016;

- Act No. 4254/2014 of 7 April 2014 on support and development measures for the Greek economy implementing Act No. 4046/2012 and other provisions.

75. The Committee is therefore not called to rule on other legislative acts. This also applies with regard to the reform of the social security system, introduced by Act No. 4336/2015 in accordance with Memorandum III, which the complaint mentions purely as a means of illustrating current developments.

*Articles 30 and 31 of the 1961 Charter*

76. Articles 30 and 31 of the 1961 Charter read as follows:

**Article 30 –Derogations in time of war or public emergency**

1. In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any Contracting Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

3. The Secretary General shall in turn inform other Contracting Parties and the Director General of the International Labour Office of all communications received in accordance with paragraph 2 of this article.

**Article 31 –Restrictions**

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

77. The Committee notes that in its complaint, the GSEE refutes in advance a possible defense by the Government, which referring to the invoked legislative measures having been adopted in response to the economic and financial crisis and at the request of the “Troika”, could avail itself of the possibilities opened up by Articles 30 and 31 of the 1961 Charter with respect to restrictions on the rights protected by the Charter.

78. In its decision on admissibility (GSEE v. Greece, Complaint No. 111/2014, op.cit, §§9-10), the Committee pointed out that, while it could not examine a situation with regard to Articles 30 or 31 of the 1961 Charter as such, these provisions could nevertheless be taken into account when assessing the merits of the complaint with regard to a substantive article of the 1961 Charter.

79. With regard to Article 30 of the 1961 Charter, the complaint was lodged at a time when Greece, as it had not availed itself of the right of derogation, was fully bound by its obligations under the 1961 Charter, and the Committee is therefore not called to rule on derogations permitted under certain conditions in time of war or public emergency.

80. The Government has not referred to Article 31 in its defense, but in their observations, the European Commission and the IOE do not dispute that the legislation adopted between 2010 and 2014 in response to the economic and financial crisis has affected the rights guaranteed by the 1961 Charter, but state that:

- this legislation reflects the conditions laid down by the "Troika";
- this legislation has enabled Greece to remain within the Eurozone;
- controlling public expenditure is the best and only way to improve the competitiveness of businesses and protect social human rights;
- the level of protection guaranteed by the previous legislation was high and that it must be possible to adapt the protection guaranteed by the relevant rights to changing economic conditions;
- the adjustment measures, especially Memorandum III, provide for measures promoting social fairness, a fair distribution of the adjustment and protection for the most vulnerable.

81. The Committee observes that the Government without explicitly invoking Article 31 accepts that the rights protected by the Charter have been restricted by the contested provisions while referring to the constraints to which it was subjected due to Memorandums I and II which were signed with the European and international creditor institutions (the Troika).

82. For its part, the IOE in its observations considers that, in view of the development of economic conditions which may affect the sustainability of the rights protected by the Charter, Article 31 makes it possible to adapt the protection guaranteed by these rights to changes in economic conditions (see §25). GSEE emphasizes that under Article 31 it is for the Member States to allow restrictions and limitations on protected rights only where they are necessary to guarantee the rights and freedoms of others or to protect the rights of others, public interest, national security, public health or morality. As for the ETUC, it submits that the justifying reasons under Article 31 must be examined in detail in the present complaint in accordance with the conditions laid down in that provision (see §38).

83. The Committee recalls that Article 31 indeed opens up a possibility for States to restrict rights enshrined in the Charter. Given the severity of the consequences of a restriction of these rights, especially for society's most vulnerable members, Article 31 lays down specific preconditions for applying such restrictions. Furthermore, as an exception applicable only under extreme circumstances, restrictions under Article 31 must be interpreted narrowly. Restrictive measures must have a clear basis in law, i.e. they must have been agreed upon by the democratic legislature, and need to pursue one of the legitimate aims defined in Article 31§1. Additionally, restrictive measures must be "necessary in a democratic society", they must be adopted only in response to a "pressing social need" (Conclusions XIII-1, Netherlands, Article 6§4,

see also European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, §207 and seq.).

84. In the current context, all the invoked measures taken by the Government are based on legislative acts. The provisions limiting regulations of working time, pay levels, dismissal protection, etc., are obviously not concerned with protection of the rights and freedoms of others, national security, public health or morals. This is why from among the legitimate aims defined by Article 31§1, only the notion of "public interest" is pertinent, given the State's dependency on financial aid provided by European and international creditor institutions imposing strict austerity measures.

85. While, in a democratic society, it is in principle for the legislature to legitimize and define the public interest by striking a fair balance between the needs of all members of society, and while it from the point of view of the Charter has a margin of appreciation in doing so, this does not imply that the legislature is totally free of any constraints in its decision-making. Under public international law, States having ratified human rights treaties such as the 1961 Charter are bound to respect the obligations thereby undertaken including when defining the public interest. More particularly, obligations undertaken cannot be abandoned without appropriate guarantees of a level of protection which is still adequate to meeting basic social needs. It is for the national legislature to balance the concerns for the public purse with the imperative of adequately protecting social rights.

86. In the present case, the Committee notes that the pressure of the creditor institutions was considerable by prescribing in such detail measures which affected notably the right to work, the minimum wage and working time for both adult and young workers, dismissal protection, information and consultation in the workplace and collective bargaining and which have resulted in a dismantling of important parts of labour law and the employment system in Greece.

87. Nevertheless, the Committee considers that States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions (see *mutatis mutandis* IKA-ETAM v. Greece, Complaint No. 76/2012, op.cit., §§50-52). In transposing restrictive measures into national law, legal acts must ensure proportionality between the goals pursued and their negative consequences for the enjoyment of social rights. Consequently, even under extreme circumstances the restrictive measures put in place must be appropriate for reaching the goal pursued, they may not go beyond what is necessary to reach such goal, they may only be applied for the purpose for which they were intended, and they must maintain a level of protection which is adequate.

88. Having regard to the context of economic crisis, the Committee recalls that ensuring the effective enjoyment of equal, inalienable and universal human rights cannot be subordinated to changes in the political, economic or fiscal environment. The Committee has previously stated that "the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most." (General introduction to Conclusions XIX-2, (2009)). The Committee subsequently reiterated this analysis and stated that "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 [...]." (GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, op.cit., §18).

89. The Committee considers that, in the light of the objectives of the Charter, the protection of public interest as envisaged by Article 31 could justify the taking of measures relating to labour law which restrict rights protected by the Charter to the extent that, in a context of crisis endangering the exercise of these rights, these measures would make it possible to adequately protect all beneficiaries, in particular employees and the most socially vulnerable. In other words, the dramatic shrinkage of the Greek economy and the very high rate of unemployment represented a pressing social need which could have necessitated the adoption of measures restricting or limiting the rights guaranteed by the Charter on condition that these measures could be regarded as the most suitable for responding to the difficulties encountered and as the least restrictive for workers' rights.

90. The Committee has found no evidence, especially from the side of the Government, that a thorough balancing analysis of the effects of the legislative measures has been conducted by the authorities, notably of their possible impact on the most vulnerable groups in the labour market nor are there any indications that a genuine consultation has been carried out with those most affected by the measures. It follows that there has been no real examination or consideration of possible alternative and less restrictive measures (see *mutatis mutandis* IKA-ETAM v. Greece, Complaint No. 76/2012, op.cit., §79-80).

91. In conclusion, while the invoked legislative measures could in principle be regarded as pursuing a legitimate public interest, the Committee is unable to consider that there are sufficient elements in the material before it to justify restrictions to the Charter rights at stake as being proportionate and thus in conformity with what is permitted by Article 31 of the Charter.

92. In addition, even if any given measure cannot be assessed exclusively on the basis of the results it produces, the Committee notes that the legislative measures in the present case, if construed as aimed at restoring the economic and financial situation of Greece and of the labour market, did not achieve any of these objectives. The information produced by the Government itself shows that over a period of six

years unemployment has increased by 26%, poverty by 27%, while the gross domestic product (GDP) has fallen by more than 25% and the measures adopted have not made it possible either to restore the labour market or sustainable growth or to achieve the main objective of the support programmes since during the same period public debt increased from 109% to 175% of GDP.

93. On this basis, the Committee concludes that the restrictions to social rights which it may identify in the present decision cannot be regarded as permitted under Article 31 of the 1961 Charter.

## **ALLEGED VIOLATION OF ARTICLE 1§§1 AND 2 OF THE 1961 CHARTER**

94. Article 1 of the 1961 Charter reads as follows:

### **Article 1 – The right to work**

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

[...]”

## **A – Arguments of the parties**

### **1. The complainant organisation**

#### *Written observations*

95. The GSEE firstly submits that Section 31 of Act No. 4024/2011 now extends the restrictive public sector pay scheme to staff working in public establishments and enterprises in the broad sense of the term. Section 37 of that Act allows company agreements introduced by Section 13 of Act No. 3899/2010 to be entered into by “associations of persons” comprising at least three fifths of a company’s employees, without any legal or real independence in relation to the employer. These agreements take precedence over the branch collective agreements in force, even when they specify less favourable conditions for workers. Section 37 of that Act also excludes the compulsory enforcement of universally applicable collective agreements.

96. Furthermore, Section 1 of Council of Ministers Act No. 6/2012 reduces from 14 February 2012 until the end of the fiscal adjustment programme the minimum wages set by the National General Collective Agreement (EGSEE) and applicable

since 15 July 2010 by 22% in relation to the level on 1 January 2012 and by 32% in relation to that level for persons under the age of 25. Section 5 of that Council of Ministers Act turns into open-ended contracts fixed-term contracts expiring on a person's retirement age and annuls legal, regulatory, agreement or arbitration clauses which restrict the employer's right of termination. These provisions apply to the private sector and to companies in the public sector in the broad sense of the term. Section 2 of that Council of Ministers Act terminates collective agreements and arbitration awards in force from 14 February 2013 to 14 February 2015. It also repeals Section 9, paragraphs 1, 4 and 5, of Act No. 1876/1990 of 7 March 1990 on the right to organise, collective bargaining and employment relations, as well as the inclusion in employment contracts, as originally provided for in these provisions, of clauses concerning working conditions set out in expired collective agreements and arbitration awards. The clauses relating to basic wages and benefits (seniority allowance, child benefit, study grant or dangerous work allowance) are, nevertheless, exempted here.

97. Lastly, Section IA, paragraph C1, subparagraph 12 of Act No. 4093/2012 extends even further the public sector pay scheme, already extended in accordance with Section 31 of Act No. 4024/2011. Section IA, paragraph IA, subparagraph 11 of that Act introduces, from 1 April 2013 until the end of the fiscal adjustment programme set out by Memorandums I and II appended to Act No. 4046/2012, a new method of determining the minimum wage by law. The minimum is set at EUR 586.08 per month for white-collar workers and at a daily rate of €26.18 for blue-collar workers. The amount for white-collar and blue-collar workers under the age of 25 is set at €510.95 per month and €22.83 per day, respectively. The text provides for a 10% increase in the wages of white-collar workers every three years, up to a ceiling of 30% after nine years (5% every three years for blue-collar workers, up to a ceiling of 30% after 18 years). It suspends increases based on years of service acquired after 14 February 2012 until the unemployment rate drops below 10%. This text also replaces Section 8, paragraph 1 of Act No. 1876/1990 in order to exclude pay from the General National Collective Agreements, with any clauses relating to pay only applying to workers employed by companies affiliated to a signatory employers' organisation. In the GSEE's view, this mechanism acts as a deterrent, as employers' organisations which signed agreements including clauses such as these would be likely to lose their members, who are then exempted from complying with them.

98. The GSEE maintains that the aforementioned provisions dismantle the existing employment regulations, that were mainly based on the negotiations between the social partners, as governed by Act No. 1876/1990. The abolition of the collective agreements and arbitration awards in force has therefore led to employers being discharged from their obligations under these instruments. It has also allowed them to downgrade recruitment and pay terms, as well as working conditions, while leading to employment regulations being shifted from branch level to the level of the company or even the individual worker, where the balance of power is weighted towards the employer. According to the GSEE, data from the Ministry of Labour show a substantial decrease in the number of collective agreements signed since Council of Ministers Act No. 6/2012 came into force on 29 February 2012, accompanied by a significant rise in the number of company agreements. These agreements are often entered into with "associations of persons" whose independence is debatable and

whose representatives, in the absence of any trade-union protection, are at the mercy of the employer's wishes.

99. Furthermore, given that the employment contract is now used as the main instrument governing pay, working conditions and the terms of dismissal, the aforementioned provisions have reduced the role of workers to that of mere spectators in the employment relationship. Referring to an IMF report (July 2014), the GSEE states that, instead of boosting business competitiveness, this deregulation of employment has had the opposite effect, resulting in competition based on labour costs and a rise in unemployment.

100. In particular, due to the general drop in wages and the widespread practice of offering flexible jobs, the 32% cut in the minimum wage for workers under the age of 25 has resulted neither in a reduction in unemployment nor in an improvement in the job situation for young workers. Referring to data from the Hellenic Statistical Authority (ELSTAT), according to which the unemployment rate among young workers exceeded 57.9% in October 2013, the GSEE considers that employment deregulation has had a particular impact on the prospects of young workers finding a decent job.

101. Consequently, the aforementioned provisions are contrary to Article 1 of the 1961 Charter.

102. The GSEE secondly submits that Section IA, subparagraph IA.4 of Act No. 4254/2014 now makes it easier for employers to resort to temporary employment:

- by reducing from six to three months the period during which employers cannot take on temporary staff after dismissing for economic or technical reasons employees belonging to the same occupational category or after collective dismissals within the same occupation (amendment to Section 116, paragraph b) of Act No. 4052/2012);
- by lifting the ban on taking on temporary staff in the construction sector in the case of construction projects whose initial budget is in excess of €10 million and which are financed or co-financed with public funds and implemented by subcontractors or companies which have obtained public works concessions from the State, local authorities or public sector enterprises in the broad sense of the term, etc. (amendment to Section 116, paragraph e) of Act No. 4052/2012);
- by repealing Section 122, paragraph 3 of Act No. 4052/2012, which restricted the use of "temporary staff [to] certain reasons, justified by temporary, seasonal or exceptional needs" and allowing such staff to be used to deal with permanent, fixed and long-term needs;
- by repealing Section 124, paragraph 1 of Act No. 4052/2012, thereby removing the obligation to state the reasons for the assignments in the employment contracts between temporary work agencies and temporary workers and replacing the minimum wages stipulated under the EGSEE by the statutory minimum wage.

103. The GSEE maintains that insofar as they permit the use of temporary employment to meet all kinds of needs, these provisions in Act No. 4254/2012 are contrary to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by the ETUC, UNICE and CEEP and are in breach of Article 1 of the 1961 Charter.

104. The GSEE finally submits that, on a general basis, the aforementioned measures are not necessary in the meaning of Article 31 of the Charter. Even assuming that they were, they are not efficient in as much as the figures provided by the Commission (AMECO), EUROSTAT and OECD demonstrate that they do not:

- foster growth: between 2009 and 2015, GDP diminished by 25%, private sector consumption by 20% and private sector investment by 59.7%;
- improve the competitiveness of enterprises: between 2009 and 2015, Greece dropped from 69<sup>th</sup> to 92<sup>nd</sup> place on the World Economic Forum competitiveness ranking
- remedy the problems linked to recession and unemployment: between 2009 and 2015, the employment rate fell from 75% to 60%, in 2013 the youth unemployment rate was 65% and the long-term unemployment rate was 70%, the massive and recent increase in part-time employment reinforces employment insecurity.

105. The negative effects of the aforementioned measures on employment are also disproportionate with regard to the goal pursued. Consequently, the restrictions or limitations which these measures impose on the rights guaranteed by the 1961 Charter do not meet the requirements set out in Article 31 of the 1961 Charter.

106. The GSEE points out in its response to the Government's submissions that Section E2, paragraph 4 of Act No. 4336/2015 has removed – on the basis of the structural changes made in the area of the labour market and human capital to enhance competitiveness and growth provided for in Memorandum III of 19 August 2015 – Section 72, paragraph 1 of Act No. 4331/2015, which extended the validity of expired collective agreements or arbitration awards by six months. Moreover, Memorandum III provides for consultations aimed at amending certain existing labour market frameworks, including employment policy, with the possible return to previous conditions having already been declared incompatible with the goals of promoting sustainable and inclusive growth. In the GSEE's view, these changes will exacerbate rather than eliminate the violation of the rights guaranteed by the 1961 Charter.

#### *Oral observations*

107. At the hearing the GSEE pointed out that the fiscal adjustment programme defined by Memoranda I and II is based on the hypothesis that reducing public spending would lead to an increase in private investment and that reducing the unit cost of labour would improve companies' competitiveness, notably as concerns exports. However, this hypothesis disregards the pre-existing economic structure and therefore cannot produce the expected results. On the other hand, minimum salaries set at below the poverty line, the increase in unemployment and the reduction in the unit cost of labour resulted in 22% of the population living below the poverty line in

2015. The lack of purchasing power, which has reduced demand in an economy structured around the internal market, also explains the high number of bankruptcies.

108. The GSEE also argued that, even if the measures were temporary according to Memoranda I and II, the breach of social rights by the legislation which was adopted pursuant to these texts persists. Moreover, the legislation challenged in this complaint comes on top of the pre-existing measures, which have already been found to breach Articles 4§4, 7§7, 10§2, 12§3 and 4§1 of the 1961 Charter in the light of the non-discrimination clause contained in the Preamble (GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, op. cit. ; GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit.; IKA-ETAM v. Greece, Complaint No. 76/2012, op. cit.; POPS v. Greece, Complaint No. 77/2012, op. cit.; I.S.A.P. v. Greece, Complaint No. 78/2012, op. cit.; POS-DEI v. Greece, Complaint No. 79/2012, op. cit.; ATE v. Greece, Complaint No. 80/2012, op. cit.).

109. The GSEE stressed the fact that there is absolutely no framework for protecting employment and lamented the deactivation of the public employment administration and of social dialogue. During the renegotiation provided for by Memorandum III, it hopes to succeed in smoothing working relations, ruling out the regulation of employment solely through the work contract, restoring social dialogue, and re-determining, through collective bargaining, wages which ensure a decent standard of living.

*Supplementary written information submitted after the hearing*

110. In the supplementary written information, the GSEE reiterates and explicates its allegations responding to the written questions sent to the parties prior to the hearing and providing additional and up-dated information on the impact of the reforms on the economy, on employment and on living conditions of the population, including on the basis of statistical information from Eurostat. It also provides a compilation of findings of European and international institutions on the state of fundamental labour rights implementation in Greece.

111. As regards labour market developments, the GSEE notes marginal improvements with the unemployment rate declining from 24.9% in June 2015 to 23.4% in June 2016. By age category the 15-24 years age category is the most affected with an unemployment rate of 49.1% while the long-term unemployed account for 72.2% of all unemployed. According to a study quoted by the GSEE the marginal reduction of overall unemployment was achieved through creation of temporary or part-time employment, since full-time employment is still declining.

112. The GSEE provides data on average annual wages which have declined by 22.7% since 2010, while the minimum wage which was already below the poverty threshold in 2004 before the crisis is now significantly below that threshold. According to Eurostat Greece has recorded the highest increase among EU member states in the at-risk-of-poverty rate during the period 2008-2015 (from 28.1% in 2008 to 35.7% in 2015). The amount of four-person households facing the risk of poverty increased by 31% between 2010 and 2012. The GSEE also states, again quoting Eurostat, that income inequality has increased considerably since 2011 with the Gini coefficient of equivalised disposable income before social transfers reaching 0.607 in 2015.

113. With respect to the further reduction of the minimum wage for workers under the age of 25 years introduced by Council of Ministers Act No. 6/2012, the GSEE considers that it entails discrimination in employment contrary to the Charter and notably to its Article 1§2.

114. In conclusion, the GSEE states that the legislative measures taken under the Memoranda have resulted in a deterioration of all economic and social indicators, including massive shut-downs of enterprises, monstrous unemployment and pauperisation of Greek citizens. Moreover, the measures whose nature is permanent and irreversible have been adopted without any assessment of their social impact. According to the GSEE this constitutes a flagrant breach of the Charter, including its Articles 1§1 and 1§2.

## **2. The respondent Government**

### *Written submissions*

115. The Government in its written submissions does not address the allegations concerning the specific Charter provisions invoked by the complainant, including Articles 1§1 and 1§2. Instead it observes that the Greek economy is still suffering from the devastating effects of harsh neoliberal policies, which have created immense levels of unemployment and poverty while failing to promote sustainable and inclusive growth.

116. The Government further states that it has made enormous efforts to replace the austerity programmes with expansionary economic policies and to distribute fairly the financial burden across the social spectrum. It has also endeavoured to halt the systematic deregulation of the labour market, including the deterioration of the bargaining position of employees at both collective and individual levels and to remedy the ongoing humanitarian crisis. Finally, the Government underlines its determination to respect its international obligations, such as those arising from the European Social Charter.

### *Oral observations*

117. At the hearing the Government stressed the fact that the first law which was enacted by the current legislature introduced a pre-paid card for access to foodstuffs; free basic healthcare; connection to mains electricity for 350 000 households; and universal medical coverage for 1,500,000 persons. With regard to Memoranda I and II, it is trying to counter the harmful effects by introducing a scheme for a new lump sum retirement benefit set at 60% of the median income. This legislation, which was preceded by a social impact assessment, should enable a number of unemployed persons and workers employed on an atypical basis to receive a pension. However, its entry into force requires the agreement of the institutional creditors pursuant to Memorandum III.

118. The Government also claimed that the material conditions under which Memoranda I and II were negotiated with the institutional creditors amount to coercion exerted by threats or the use of force within the meaning of Article 52 of the Vienna Convention on the Law of Treaties. Despite these constraints, Greece accepted Articles 5 and 6 of the Revised European Social Charter on 18 March 2016 and secured a debate on the disputed legislation at the level of the Council of EU Employment Ministers (not just the Council of Finance Ministers of the Eurogroup) and the renegotiation of the adjustment measures. Memorandum III provides for a renegotiation on the basis of the recommendations made by the Expert Group for the Review of Greek Labour Market Institutions, published on 27 September 2016 (see also below). To that end, the Government calls for a definition of the lawfulness threshold, in the light of the 1961 Charter, beyond which practices are not negotiable.

119. The Government further indicated that it asked the social partners to draw up a single joint declaration, adopted in the summer of 2015, which *inter alia* emphasised the fact that collective bargaining and social dialogue are essential. According to the Government, as the current situation is openly in breach of Articles 5 and 6 of the Charter, abiding by them must be included in the renegotiation, and the complaint must also be examined in the light of these provisions.

120. The Government pointed out that although the EU Court of Justice (CJEU) initially considered that Memoranda I and II were public international law instruments, it henceforth recognises the applicability of Community law to Memorandum III and to the European Stability Mechanism (ESM).

121. The Government called for an end to the growth in inequalities, to the dismantling of the European social model safeguarded by the 1961 Charter and the Charter of Fundamental Rights enshrined in Article 151 of the TFEU, as well as the principles of the welfare state. Lastly, it pleaded for the defence of a Europe in which democracy and social cohesion are not given over to market forces. It expressed its conviction that the decision handed down will reflect the face of Europe to come.

*Supplementary written information submitted after the hearing*

122. The Government provided the full text of the intervention made at the hearing as well as the report of the Expert Group for the Review of Greek Labour Market Institutions. The Expert Group had been set up pursuant to Memorandum III to review a number of existing labour market frameworks, including collective dismissal, industrial action and collective bargaining, taking into account best practices internationally and in Europe. The report contains several recommendations in the above-mentioned areas.

123. In addition, the Government provides information on a joint declaration made by GSEE, the Hellenic Federation of Enterprises (SEV), the Hellenic Confederation of Professionals, Craftsmen & Merchants (GSEVEE), the Hellenic Confederation of Commerce and Entrepreneurship (ESEE) and the Unions of Tourism Enterprises (SETE) dated 19 July 2016. The declaration states, *inter alia*, that there can be no

question of reducing the minimum wage or of abolishing the 13<sup>th</sup> and 14<sup>th</sup> salaries and it stresses the need for social dialogue with the minimum legal wage to be agreed under the National General Collective Agreement and with general and universal application (*erga omnes*) to all employees.

## **B – Assessment of the Committee**

### **1. As regards the alleged violation of Article 1§1 of the 1961 Charter**

124. The Committee notes that a violation of Article 1§1 of the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph CI, subparagraph 12; Section IA, paragraph IA, subparagraph 11, indents 1 to 4);
- Act No. 4254/2014 (Section IA, subparagraph IA.4, indents 1 to 4).

125. The Committee recalls that Article 1§1 is concerned with the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment. For this purpose States must adopt and follow an economic policy which is conducive to creating and preserving jobs and they must take adequate measures to assist the unemployed in finding and/or qualifying for a job. The efforts made by States to reach the goal of full employment must be adequate in the light of the national economic situation and the level of unemployment.

126. On the other hand, Article 1§1 as interpreted by the Committee is not concerned with collective bargaining frameworks, arbitration, information and consultation in the enterprise, working time regimes, remuneration levels and other forms of protection afforded by labour and/or social security law (see, *mutatis mutandis*, GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., §20). Unless they have a direct and demonstrable impact on the attainment of full employment such forms of protection are more appropriately examined and assessed under other specific provisions of the Charter.

127. While it is undisputed that high and stable employment has not been achieved and maintained in Greece – on the contrary unemployment has reached dramatic levels since 2008 significantly impacting the living standard of the population – the Committee does not consider it demonstrated that the specific legislative measures invoked by the complainant constitute the direct cause of the employment and unemployment situation in Greece and that this situation is not the result of other factors. In other words, taken by themselves the invoked measures do not necessarily rule out the attainment of full employment, although they might violate against other provisions of the Charter.

128. The Committee recalls that in the context of the reporting procedure in its assessment of the application of Article 1§1 by Greece it concluded that the situation was not in conformity with Article 1§1 of the 1961 Charter on the ground that the employment policy during the reference period (2011-2014) had not been adequate in combatting unemployment and promoting job creation (Conclusions XXI-1 (2016), Greece, Article 1§1). However, this assessment made in the context of the reporting procedure does not suffice to show that the measures invoked before the Committee in the present complaint are the cause of the situation.

129. In view of the above, the Committee holds that the invoked legislative measures do not violate Article 1§1 of the 1961 Charter.

## **2. As regards the alleged violation of Article 1§2 of the 1961 Charter**

130. The Committee notes that a violation of Article 1§2 of the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph CI, subparagraph 12; Section IA, paragraph IA, subparagraph 11, indents 1 to 4);
- Act No. 4254/2014 (Section IA, subparagraph IA.4, indents 1 to 4);

131. The Committee recalls that Article 1§2 covers three different issue areas: firstly the prohibition of all forms of discrimination in employment, secondly the prohibition of forced labour and thirdly the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon (Conclusions II (1971), Statement of interpretation on Article 1§2 and Conclusions XVI-1 (2002), Statement of interpretation on Article 1§2).

132. Having regard to the arguments adduced by the complainant which pertain to matters such as collective bargaining frameworks, arbitration, information and consultation in the enterprise, working time regimes, remuneration levels and other forms of protection afforded by labour and/or social security law, the Committee considers that the only measure which is relevant to Article 1§2 is the reduction of the minimum wage of workers under 25 years following from the provisions of the Council of Ministers Act No. 6/2012 as this measure gives rise to an issue of discrimination on grounds of age.

133. In this respect the Committee recalls that the discriminatory acts and provisions prohibited by Article 1§2 are ones that may occur in connection with recruitment or with employment conditions, including remuneration, training, promotion, transfer and dismissal or other detrimental action (Conclusions XVI-1, Austria). Article 1§2 requires States to prohibit any discrimination in employment, *inter alia* on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

134. The Committee therefore considers that the measure providing for the payment of a lower minimum wage to workers below the age of 25 must be examined from the perspective of Article 1§2 of the 1961 Charter.

135. For this purpose, the Committee refers to its decision in GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., where the situation was examined only from the angle of Article 4§1 and reiterates that while the less favourable treatment of younger workers at issue may be designed to give effect to a legitimate aim of employment policy, namely to integrate younger workers into the labour market in a time of serious economic crisis, 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 (GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., §68). For the same reasons, the Committee finds that the invoked measure is incompatible with Article 1§2 of the 1961 Charter.

136. The Committee notes that it examined the follow-up given to the above-mentioned decision in Findings 2015 in which it concluded that the situation had not yet been brought into conformity (Findings 2015, Greece, published in January 2016).

137. It is not disputed by the Government that the situation persists.

138. For these reasons, the Committee holds that there is a violation of Article 1§2 of the 1961 Charter.

## **ALLEGED VIOLATION OF ARTICLE 2§§1 AND 5 OF THE 1961 CHARTER**

139. Article 2 of the 1961 Charter reads as follows:

### **Article 2 – The right to just conditions of work**

Part I: “All workers have the right to just conditions of work.”

Part II: “With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

[...]

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.“

## **A – Arguments of the parties**

### **1. The complainant organisation**

#### *Written observations*

140. Firstly, the GSEE reiterates that the mechanisms introduced by the aforementioned provisions (Sections 31 and 37 of Act No. 4024/2011; Sections 1 to 5 of Council of Ministers Act No. 6/2012; Section IA, paragraph IA, subparagraph 11 of Act No. 4093/2012) have also had the effect of destroying the existing regulations concerning working conditions, that was based mainly on the collective agreements and arbitration awards in force. The abolition of these instruments, combined with an increase in the number of company agreements signed under the conditions described above, has therefore resulted in the regulation of working conditions being shifted to the level of the company or even the individual worker, where the employer enjoys a dominant position. In the GSEE's view, these mechanisms allow employers to downgrade working conditions, yet without boosting companies' competitiveness. They have produced the opposite effect and led to an economic slowdown, thereby increasing unemployment, particularly among young workers, and destroying their prospects of finding a decent job. Consequently, the aforementioned provisions are in breach of Article 2 of the 1961 Charter.

141. Secondly, the GSEE considers that the same applies to the amendments made to Act No. 4052/2012 by Act No. 4254/2014 aimed at facilitating the use of temporary employment.

142. Thirdly, the GSEE states that Section IA, paragraphs 10 and 14 of Act No. 4093/2012 makes particularly serious changes to the current arrangements for working time:

- by removing the link between businesses' opening hours and staff's working hours;
- by extending to staff in the retail sector the option of moving away from the five-day working week by means of weekly working time arrangements provided for by the collective agreements;
- by reducing the minimum daily rest period from 12 to 11 hours;
- by providing employers with the option, in the case of excessive workloads, to make staff take part of their annual leave (10 calendar days for those working five days a week and 12 calendar days for those working six days a week) at another date.

143. The GSEE alleges that abolishing the five-day working week is in breach of Article 5 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of 22 June 2000 of the European Parliament and of the Council. Furthermore, reducing the rest period to 11 hours significantly undermines the protection of workers, whose health and safety are made vulnerable, and this, combined with the weekly pattern of working time arrangements, has resulted in increased work intensity. Consequently, the aforementioned provisions are contrary to Article 2 of the 1961 Charter.

144. Fourthly, the GSEE reiterates on a general basis that the aforementioned measures are neither necessary, nor effective, as well as being disproportionate with regard to the goal pursued. Consequently, the restrictions or limitations which these measures impose on the rights guaranteed by the 1961 Charter do not meet the requirements set out in Article 31 of the 1961 Charter.

145. The GSEE indicates in its response to the Government's submissions that, under Memorandum III, Section 72, paragraph 1 of Act No. 4331/2015, which extended the validity of expired collective agreements or arbitration awards by six months, has been repealed by Act No. 4336/2015. In the GSEE's view, the changes planned in application of Memorandum III will exacerbate rather than eliminate the violation of the rights guaranteed by the 1961 Charter.

*Oral observations*

146. At the hearing the GSEE listed the reasons why, in its opinion, the fiscal adjustment programme, as defined in Memoranda I and II, is doomed to fail. It also claimed that even if the measures are taken on a temporary basis according to these Memoranda, the violation of social rights by the legislation adopted in accordance with these texts subsists and comes on top of the violation of the 1961 Charter through the pre-existing measures, which has already been recognised.

*Supplementary written information submitted after the hearing*

147. The GSEE emphasises that the legislative changes brought about by Act No. 4093/2012 violate Article 2 of the 1961 Charter both separately and by virtue of their cumulative result. The fragmentation and stretching of working hours and the possibility of deviating from the five-day working week within a short time-span produce knock-on effects on working conditions resulting in displacement, less free time and labour intensification with consequences for the health and safety of workers. In particular, these working-time related measures should be seen in the context of wage reductions, the disintegration of the collective bargaining system, the skyrocketing unemployment, precarious employment and resulting poverty.

## **2. The respondent Government**

*Written submissions*

148. The Government in its written submissions does not address the allegations concerning the specific Charter provisions invoked by the complainant, including Article 2§§1 and 5. The Government's arguments are presented above (see §§ 115-123).

*Oral observations*

149. During the hearing the Government did not make any specific observations relating to Article 2 of the 1961 Charter.

*Supplementary written information submitted after the hearing*

150. The Government did not provide any supplementary information relating to Article 2 of the 1961 Charter.

**B – Assessment of the Committee**

**1. As regards the alleged violation of Article 2§1 of the 1961 Charter**

151. The Committee notes that a violation of Article 2§1 of the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph IA, subparagraph 10 a) and b), sub, and subparagraph 14, indents 1 to 3);

152. In order to be deemed to be in conformity with the 1961 Charter, legislation or regulations relating to hours of work must satisfy three criteria:

- prevent daily or weekly working hours from being unreasonable;
- be established by a legal framework providing for adequate safeguards;
- provide for reference periods of a reasonable duration for the calculation of the average working time.

153. The Committee observes that Section IA, paragraph 1A, paragraphs 10 and 14 of Act No. 4093/2012 provides for the right to a daily rest period of 11 hours. There are no exceptions to this limit. Therefore, whatever the circumstances, for any of the days worked during the year, the employees concerned will not be required to work more than 13 hours per day. The daily limit thus laid down is in conformity with Article 2§1 of the 1961 Charter.

154. It observes, moreover, that if the abolition of the rules relating to the 5-day week is not in itself contrary to Article 2§1, no rule sets an upper limit on weekly hours of work nor is a minimum weekly rest period provided for. The Committee acknowledges in this respect that Greece has transposed the EU working time directive (Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time) providing for an upper limit of 48 hours per week including overtime on average calculated over a four-month reference period. However, this rule does not preclude working time longer than 48 hours in individual weeks during the reference period. It follows that even assuming that a weekly rest day is systematically granted, the employees concerned could be required to work up to 78 hours per week. The Committee considers that such a period is clearly too long to qualify as reasonable within the meaning of Article 2§1 of the 1961 Charter (see *Confédération générale du*

*travail* (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010).

155. The Committee notes that the above finding is supported by data from the Organization for Economic Co-operation and Development (OECD) which highlight the unsuitability of anti-crisis measures which target only the intensification of work without concern for the multitude of other factors that determine labour productivity (training of workers, respect for private and family life, the psychological health of the persons concerned, wage rewards, etc.), which according to this source remains very low.

156. In effect, according to statistics compiled by the OECD (see <https://stats.oecd.org/Index.aspx?DataSetCode=ANHRS>), in 2015 Greek employees were at the top of the list with respect to average hours worked at pan-European level (2,042 hours yearly) followed by employees in Russia (1,978 hours yearly), Poland (1,963 hours yearly), Latvia (1,893 hours yearly) and Iceland (1,880 hours yearly). There was a significant gap between Greek employees and their counterparts in the developed countries of the European area, notably German employees (1,371 hours yearly) followed by Dutch employees (1,419 hours yearly), Norwegian employees (1,424 hours yearly), Danish employees (1,457 hours yearly), French employees (1,482 hours yearly) and Belgian employees (1,541 hours yearly). There was a considerable gap separating Greek employees from the employees of the EU member states which have been hit hard by the effects of the economic and financial crisis (Spain: 1,691 hours yearly, Italy: 1,725 hours yearly, Portugal: 1,868 hours yearly).

157. In order to be considered to be in conformity with the Charter, the maximum duration of work must also operate within a precise legal framework which clearly delimits the scope left to employers and employees to modify, by collective agreement, working time.

158. In the present case, the law itself does not define the scope available to the negotiating parties. Moreover, the national collective agreements which alone determined the arrangements in this field have been terminated in application, *inter alia*, of Council of Ministers Act No. 6/2012. It is not foreseen that the agreements that will henceforth be concluded for a company or directly between the employee and the employer to determine the working conditions will have to respect a maximum weekly working time. In addition, there are no specific guarantees relating to the application of these agreements.

159. The Committee considers that the legal framework does not clearly define the scope left to collective and individual negotiations and consequently does not offer sufficient guarantees for compliance with Article 2§1.

160. The Committee accordingly holds that the situation of employees with respect to working time is in violation of Article 2§1 of the 1961 Charter on account of the excessive length of weekly work authorized and the lack of sufficient collective bargaining guarantees.

## **2. As regards the alleged violation of Article 2§5 of the 1961 Charter**

161. The Committee notes that a violation of Article 2§5 of the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph CI, subparagraph 12; Section IA, paragraph IA, subparagraph 10 a) and b), subparagraph 11, indents 1 to 4, and subparagraph 14, indents 1 to 3);
- Act No. 4254/2014 (Section IA, subparagraph IA.4, indents 1 to 4).

162. The Committee notes that the legislation challenged by the GSEE has the effect, on the one hand, of authorising derogations from the previous rules providing for the 5-day week and, on the other hand, of terminating the general collective agreements by which the rules on working conditions were determined in order to replace them by company agreements. It recalls that Article 2§5 guarantees employees the right to a weekly rest period of at least one day which can be carried over to the following week only to the extent that a minimum of two days' rest is granted per period of twelve days of consecutive work.

163. The Committee observes that the new rules on working time introduced in particular by Section 14 of Act No. 4093/2012, while no longer imposing a 5-day week, do not provide for exceeding a weekly working time of 6 days. The GSEE in its observations and in the supplementary information communicated to the Committee limits itself to highlighting the negative effect of these rules for employees, including in terms of risks to their health, which the possibility of employers to derogate from maximum weekly working time by company agreement, may have. However, it provides no evidence to show that the right to weekly rest is effectively violated by these new rules.

164. On the basis of the information at its disposal, the Committee holds that there is no violation of Article 2§5.

## **ALLEGED VIOLATION OF ARTICLE 4§§1 AND 4 OF THE 1961 CHARTER**

165. Article 4 of the 1961 Charter reads as follows :

### **Article 4 – The right to a fair remuneration**

Part I: "All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families."

Part II: "With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

[...]

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

[...]

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”

## **A – Arguments of the parties**

### **1. The complainant organisation**

#### *Written observations*

166. Firstly, the GSEE reiterates that the mechanisms introduced by the aforementioned provisions (Sections 31 and 37 of Act No. 4024/2011; Sections 1 to 5 of Council of Ministers Act No. 6/2012; Section IA, paragraph IA, subparagraph 11 of Act No. 4093/2012) have also had the effect of dismantling the existing regulations concerning pay, that was based mainly on the collective agreements and arbitration awards in force. In particular, Act No. 4024/2011 extends the public sector pay scheme to staff working in public establishments and enterprises in the broad sense of the term (Section 31, paragraph 1), and sets a cap on remuneration excluding allowances of €1,900 or 65% of the average per capita labour cost on 31 December 2009 (Section 31, paragraph 4). In the private sector, the abolition of the collective agreements and arbitration awards in force, combined with an increase in the number of company agreements signed under the conditions described above, has therefore resulted in the regulation of pay being shifted to the level of the company or even the individual worker, where the employer enjoys a dominant position. In the GSEE's view, these mechanisms have allowed employers to make the terms of pay worse, yet without boosting companies' competitiveness. They have produced the opposite effect and led to competition based on labour costs, thereby increasing unemployment, particularly among young workers, and destroying their prospects of finding a decent job. Consequently, the aforementioned provisions are in breach of Article 4 of the 1961 Charter.

167. The GSEE indicates that, in terms of offering sufficient pay to provide workers and their families with a decent standard of living, guaranteed by Article 4§1 of the 1961 Charter, the wages determined in this way do not meet the accepted limit for a decent standard of living:

- the reduction in the minimum wage set by the National General Collective Agreement (EGSEE), amounting to 22% of the level as of 1 January 2012 and to 32% of that level for workers under the age of 25 (Section 1 of the aforementioned Council of Ministers Act), does not meet the accepted limit for a decent standard of living. According to the GSEE, the minimum wages determined in this way disregard Decision No. 668/2012 of the Council of State, which provided with regard to the measures adopted under Memorandum I that Article 2§1 of the Greek Constitution imposes limits in terms of respect for and the protection of human dignity, which neither Parliament nor regulatory authorities may ignore;

- the statutory minimum wage applicable from 1 April 2013 (Section IA, paragraph IA, subparagraph 11 of Act No. 4093/2012) is lower than the accepted limit for a decent standard of living;
- increases in the statutory minimum wage based on years of service acquired after 14 February 2012 are frozen (Section IA, paragraph IA, subparagraph 11 of Act No. 4093/2012) until the unemployment rate drops below 10%;
- with regard to unregulated wages, although the clauses relating to the basic wages and allowances (seniority allowance, child benefit, study grant or dangerous work allowance) are not affected by the ending of the inclusion in employment contracts of the provisions of expired collective agreements and arbitration awards (Section 2 of the aforementioned Council of Ministers Act), the abolition of the collective agreements and arbitration awards in force and the fact that company agreements are taking precedence over new branch collective agreements (Section 37 of Act No. 4024/2011), the exclusion of pay from the scope of general national collective agreements and the restriction of clauses relating to pay to workers employed by companies affiliated to an organisation of signatory employers (Section IA, paragraph IA, subparagraph 11 of Act No. 4093/2012) all shift the setting of pay to the new branch collective agreements and company agreements which, according to the GSEE, overwhelmingly provide for wage cuts to levels at least partially lower than the accepted limit for a decent standard of living;
- the consequences of these reductions in pay have a particularly adverse impact on workers due to the accompanying rise in social contributions and taxes.

168. In addition, Section IA, subparagraph IA.7 of Act No. 4254/2014 introduces a reduced increase (5% every three years, up to a ceiling of 15% after nine years) in the minimum wage for employees over the age of 25 who have been long-term unemployed. According to the GSEE, this measure reduces the minimum wage for this category of workers, causes discrimination against them based on their age and triggers competition among employees over the age of 25 based on wage dumping.

169. Furthermore, the reduction in the minimum wage for workers under the age of 25, set by the EGSEE, amounting to 32% compared to the level as of 1 January 2012, comes on top of the 20% or so reduction in the minimum wage for young workers brought into force by previous legislation. In the GSEE's view, this measure is contrary to the principle of equal pay, as it could not be justified as being in the general interest to impose measures giving rise to unfair treatment in terms of pay, with the aim of increasing young workers' prospects of finding a job. This measure may also only be justified objectively if it pursues a legitimate objective of providing protection and does not reduce the minimum level of protection guaranteed by law, whereas it introduces discrimination based on age without any link to the type of job or the quality or quantity of work performed. Finally, due to the general drop in wages and the widespread practice of offering flexible jobs, this measure has resulted

neither in a reduction in unemployment nor in an improvement in the job situation for young workers. Its application to workers aged between 15 and 18 employed on apprenticeship contracts defined by Section 74, paragraph 9 of Act No. 3863/2010 has made this group of young workers particularly vulnerable to economic exploitation in the absence of compensatory guarantees and protection measures.

170. There has also been a failure to remedy the breach of Article 4§1 of the 1961 Charter found on the ground that Section 1 of the aforementioned Council of Ministers Act provides for the payment of a minimum wage to all workers under the age of 25 which is below the poverty threshold (GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., §§57-65). In light of the non-discrimination clause contained in the Preamble to the 1961 Charter, this measure is also a form of age discrimination because the size of the reduction in the minimum wage and the manner in which it has been applied to all workers under the age of 25 is disproportionate, even with regard to the particular economic circumstances in question (*ibid*, §§66-70).

171. The GSEE also submits, with regard to the right to a reasonable period of notice for termination of employment, guaranteed by Article 4§4 of the 1961 Charter, that Section 17, paragraph 5 a) of Act No. 3899/2010 provides for a trial period of 12 months during which open-ended contracts may be terminated at any time without any reasons being given. The GSEE believes that the trial period in this provision is excessive and allows employers to bypass the regulations concerning notice of dismissal set out in Section IA, paragraph IA, subparagraph 12 of Act No. 4093/2012 by resorting to a succession of open-ended contracts terminated during the trial period.

172. There has also been a failure to remedy the breach of Article 4§4 of the 1961 Charter by this provision (GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, op. cit., §§25-28).

173. Furthermore, Section IA, paragraph IA, subparagraph 12 of Act No. 4093/2012 amends the period of notice applicable to the termination of employment in the case of employees on open-ended contracts:

- by restricting the maximum period of notice to four months instead of six;
- by granting a redundancy payment of two to 12 months' wages for 16 years' service;
- by granting an additional redundancy payment ranging from one to 12 months' wages for employees with 17 to 28 years' service at the time when the act came into force, based on the wage paid and up to a ceiling of €2,000 during the final month of full-time employment.

174. Combined with the reduced redundancy payments, the shortened notice periods are, in the GSEE's view, inadequate with regard to Article 4§4 of the 1961 Charter. Calculating redundancy payments on the basis of the wage paid during the final month of full-time employment, combined with a general reduction in wages on the job market, has had the effect of dividing the amount of these payments by five in relation to what they amounted to under the terms of the previous legislation. As a

result of the high rate of unemployment and the decrease in unemployment benefits, the risk of termination of employment is, in practical terms, shifted to employees, thereby undermining the purpose of the notice period, which is to ensure that they have some means of subsistence in case of loss of employment.

175. The GSEE also believes that introducing an additional allowance creates discrimination among employees based on the date of recruitment, to the detriment of those with 16 years' service or less at the time when Act No. 4093/2012 came into force.

176. Secondly, the GSEE reiterates that the aforementioned measures are neither necessary on a general basis, nor effective, as well as being disproportionate with regard to the goal pursued. Consequently, the restrictions or limitations which these measures impose on the rights guaranteed by the 1961 Charter do not meet the requirements set out in Article 31 of the 1961 Charter.

177. The GSEE indicates in its response to the Government's submissions that, under Memorandum III, the changes planned in application of Memorandum III will exacerbate rather than eliminate the violation of the rights guaranteed by the 1961 Charter.

#### *Oral observations*

178. At the hearing the GSEE listed the reasons why, in its opinion, the fiscal adjustment programme, as defined in Memoranda I and II, is doomed to fail. It also claimed that even if the measures are taken on a temporary basis according to these Memoranda, the violation of social rights by the legislation adopted in accordance with these texts subsists and comes on top of the violation of the 1961 Charter through the pre-existing measures, which has already been recognised.

#### *Supplementary written information submitted after the hearing*

179. The GSEE provided information on the annual average wage as well as on the monthly minimum wage, both nominally and at constant 2010 prices. The average annual wage amounted to € 17,462 in 2015 while the monthly minimum wage amounted to € 683.76 in 2015 (a level which includes Christmas, Easter and summer vacation bonuses adding up to two months additional wages and which remained unchanged in the first two quarters of 2016). According to the Kaitz Index quoted by the GSEE the minimum wage falls under the poverty threshold (the index value in 2014 was 0.46 with the poverty threshold value being set at 0.50).

180. GSEE states that the statutory gross monthly minimum wage stands at € 586.08 in 2016 and the minimum wage for workers aged under 25 years at € 510.95. The GSEE reiterates that the reduced minimum wage for workers under 25 years in addition to being of an unfair level is also discriminatory on grounds of age. The GSEE points out that Greece is the only EU country in which the statutory minimum wage has been drastically cut during the crisis period and it notes that the minimum wage in Greece is now lower than that of Spain, Malta and Slovenia, it is approximately equal to that of Poland and the gap to the minimum wages of Hungary, Croatia and Slovakia has been bridged significantly.

## **2. The respondent Government**

### *Written submissions*

181. The Government in its written submissions does not address the allegations concerning the specific Charter provisions invoked by the complainant, including Article 4§§1 and 4. The Government's arguments are presented above (see §§ 115-123).

### *Oral observations*

182. During the hearing the Government did not make any specific observations relating to Article 4 of the 1961 Charter.

### *Supplementary written information submitted after the hearing*

183. The report of the Expert Group for the Review of Greek Labour Market Institutions submitted by the Government as supplementary information in its Recommendation 6 recommends that the youth sub-minimum wage be replaced by a sub-minimum experience rate of 90% (of the minimum wage) in the first year of work and 95% in the second year with apprentices and students in internships of up to three months to be exempted. This would entail an increase of the youth minimum wage from the current € 510.95 per month to € 527.40 in the first year of work and to € 556.78 in the second year.

184. The Expert Group refers to the Committee's decision in GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., regarding Article 4§1 of the 1961 Charter and states that the social partners will have to bear in mind that Article 4§1 of the 1961 Charter has to be respected even in defining the wages of inexperienced workers.

## **B – Assessment of the Committee**

### **1. As regards the alleged violation of Article 4§1 of the 1961 Charter**

185. The Committee notes that a violation of Article 4§1 of the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph CI, subparagraph 12; Section IA, paragraph IA, subparagraph 10 a) and b), subparagraph 11, indents 1 to 4, and subparagraph 14, indents 1 to 3);
- Act No. 4254/2014 (Section IA, subparagraph IA.7, indent 1).

186. Having examined the arguments adduced by the parties, the Committee considers that two questions are at stake, which it decides to examine separately:

firstly the question of fair remuneration and secondly the question of age discrimination.

*Fair remuneration*

187. The Committee recalls that to be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the States Parties concerned to conduct the needed enquiries or to provide estimates.

188. The net national average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in such cases where this is not possible, with reference to a representative sector, such as the manufacturing industry. When a statutory national minimum wage exists, its net value is used as a basis for comparison with the net average wage. Otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid.

189. The Committee notes that it examined the follow-up given to the decision in GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., regarding Article 4§1 of the 1961 Charter in Findings 2015 in which it concluded that the situation had not yet been brought into conformity (Findings 2015, Greece, published in January 2016).

190. While neither the complainant nor the Government have provided information on the net value of the average and minimum wages, the gross figures provided are sufficiently indicative for the Committee to conclude that the statutory minimum wage and *a fortiori* the reduced minimum wage for workers under 25 years as determined by Council of Ministers Act No. 6/2012 and by Act No. 4093/2012 are manifestly unfair in the meaning of Article 4§1 of the 1961 Charter.

191. In this respect the Committee notes that the gross minimum wage including bonuses corresponds to approximately 46% of gross average wage and the reduced minimum wage of workers under 25 years to only about 41% of gross average wage, which is far below the thresholds established by the Committee.

192. In addition, the Committee notes that the reduced seniority increase of the minimum wage for workers over 25 years who have been long-term unemployed pursuant to Section IA, sub-paragraph IA.7 of Act No. 4254/2014 contains a discriminatory element and further aggravates the situation of this group of workers.

193. Consequently, the Committee holds that there is a violation of Article 4§1 of the 1961 Charter as fair remuneration is not guaranteed.

### *Age discrimination*

194. As in its decision in GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., §66, the Committee considers that the complainant's arguments amount to an allegation of a violation of Article 4§1 read in the light of the Preamble to the 1961 Charter, which in respect of discrimination reads as follows:

"[...] Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin; [...]"

195. The Committee notes that it examined the follow-up given to the decision in GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., regarding Article 4§1 of the 1961 Charter in Findings 2015 in which it concluded that the situation had not yet been brought into conformity (Findings 2015, Greece, published in January 2016).

196. The Committee notes that the situation in respect of the minimum wage for workers aged under 25 years has not changed and it therefore reiterates 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.

197. The Committee holds that there is a violation of Article 4§1 in the light of the non-discrimination clause of the Preamble of the 1961 Charter as the reduction of the minimum wage for workers under 25 years is excessive and constitutes discrimination on grounds of age.

### **2. As regards the alleged violation of Article 4§4 of the 1961 Charter**

198. The Committee notes that a violation of Article 4§4 of the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 3899/2010 (Section 17, paragraph 5);
- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph CI, subparagraph 12; Section IA, paragraph IA, subparagraph 11, indents 1 to 4, and subparagraph 12, indents 1 to 4);
- Act No. 4254/2014 (Section IA, subparagraph IA.7, indent 1);

199. The Committee recalls that under Article 4§4 the right to reasonable notice of termination of employment applies to all categories of workers independently of their status, including those in non-standard employment, such as fixed-term, temporary, part-time, intermittent, seasonal or complementary employment. It applies to civil servants and contractual staff in the civil service, to manual workers and in all sectors of activity. It also applies during the probationary period and upon early termination of fixed-term contracts. Domestic law must be broad enough to ensure that no workers are left unprotected.

200. When a decision to terminate employment on grounds other than disciplinary is subject to certain procedures being followed, the period of notice shall start only after the decision has been taken. The period of notice for part-time workers is calculated on the basis of length of service and not of the effective weekly working time. That of workers with consecutive fixed-term contracts is calculated on the basis of length of service accrued on all consecutive contracts. Any reduction of the legal period of notice by collective agreement is allowed only insofar as a reasonable period of notice is maintained. The period of notice applied in the probationary period may be shorter provided that it remains reasonable in relation to the authorised maximum length of the probationary period (Conclusions 2014, Estonia).

201. The Committee refers to its decision in *GENOP-DEI and ADEDY v. Greece*, Complaint No. 65/2011, *op. cit.*, in which it noted that Section 17§5 of Act No. 3899 of 17 December 2010 makes no provision for notice periods or severance pay in cases where an employment contract, which qualify as '*permanent*' under the said law, is terminated during the probationary period set at one year by the same law. The Committee concluded that the absence of provision of a notice period or severance pay during the probationary period of one year constituted a violation of Article 4§4 of the 1961 Charter.

202. The Committee further refers to its examination of the follow-up given to the above-mentioned decision regarding Article 4§4 of the 1961 Charter in Findings 2015 in which it concluded that the situation had not yet been brought into conformity (Findings 2015, Greece, published in January 2016).

203. It follows from the submissions of the complainant that the situation as regards Section 17§5 of Act No. 3899 of 17 December 2010 has not changed – and this is not disputed by the Government – and the Committee therefore holds that there is a violation of Article 4§4 of the 1961 Charter.

204. With respect to the maximum notice period provided for by Section IA, paragraph IA, subparagraph 12 of Act No. 4093/2012 the Committee has previously considered that the maximum notice period of four months for employees having completed ten or more years of service combined with 50% of ordinary severance pay corresponding to a maximum of 6 monthly salaries for employees having completed 16 or more years of service is compatible with Article 4§4 of the 1961 Charter (see Conclusions XX-3 (2014), Greece). On the basis of the information at its disposal, it finds no reason to alter this assessment.

205. The Committee holds that there is a violation of Article 4§4 of the 1961 Charter due to the absence of periods of notice or severance pay in case of termination of employment during the probationary period.

## **ALLEGED VIOLATION OF ARTICLE 7§§5 AND 7 OF THE 1961 CHARTER**

206. Article 7 of the 1961 Charter reads as follows :

### **Article 7 – The right of children and young persons to protection**

Part I: “Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.”

Part II: “With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

[...]

5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

[...]

7. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;

[...]”

## **A – Arguments of the parties**

### **1. The complainant organisation**

#### *Written observations*

207. Firstly, the GSEE reiterates that the mechanisms introduced by Sections 31 and 37 of Act No. 4024/2011, Sections 1 to 5 of Council of Ministers Act No. 6/2012 and Section IA, paragraph IA, subparagraph 11 of Act No. 4093/2012 have also had the effect of removing the existing protection for children and young persons, that was based mainly on the collective agreements and arbitration awards in force. The abolition of these instruments, followed by the increase in the number of company agreements signed under the conditions described above, has therefore resulted in the regulation of the protection of children and young persons being shifted to the level of the company or even the individual worker, where the employer enjoys a dominant position. In the GSEE's view, these mechanisms allow employers to downgrade working conditions, yet without boosting companies' competitiveness. They have produced the opposite effect and led to an economic slowdown, thereby increasing unemployment, particularly among young workers, and destroying their prospects of working in decent conditions. Deregulation of the protection for young workers under the age of 25, especially those aged between 15 and 18 employed on apprenticeship contracts governed by Section 74, paragraph 9 of Act No. 3863/2010 makes the new entrants to the job market particularly vulnerable to economic exploitation. Consequently, the aforementioned provisions are in breach of Article 7 of the 1961 Charter.

208. There has also been a failure to remedy the breach of Article 7§7 of the 1961 Charter found on the ground that the provisions of Section 74, paragraph 9 of Act No. 3863/2010 exclude the application of labour legislation to workers aged 15 to 18

years employed on apprenticeship contracts, yet without granting them the right to three weeks' annual paid leave (GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., §§30-32).

209. Secondly, the GSEE reiterates that the aforementioned measures are neither necessary on a general basis, nor effective, as well as being disproportionate with regard to the goal pursued. Consequently, the restrictions or limitations which these measures impose on the rights guaranteed by the 1961 Charter do not meet the requirements set out in Article 31 of the 1961 Charter.

210. The GSEE indicates in its response to the Governments' submissions that the changes planned in application of Memorandum III will exacerbate rather than eliminate the violation of the rights guaranteed by the 1961 Charter.

*Oral observations*

211. At the hearing the GSEE listed the reasons why, in its opinion, the fiscal adjustment programme, as defined in Memoranda I and II, is doomed to fail. It also claimed that even if the measures are taken on a temporary basis according to these Memoranda, the violation of social rights by the legislation adopted in accordance with these texts subsists and comes on top of the violation of the 1961 Charter through the pre-existing measures, which has already been recognised.

*Supplementary written information submitted after the hearing*

212. The GSEE provided no specific supplementary information relating to Article 7 of the 1961 Charter.

## **2. The respondent Government**

*Written submissions*

213. The Government in its written submissions does not address the allegations concerning the specific Charter provisions invoked by the complainant, including Article 7§§5 and 7. The Government's arguments are presented above (see §§ 115-123).

*Oral observations*

214. During the hearing the Government did not make any specific observations relating to Article 7 of the 1961 Charter.

*Supplementary written information submitted after the hearing*

215. The Government provided no specific supplementary information relating to Article 7 of the 1961 Charter.

## **B – Assessment of the Committee**

### **1. As regards the alleged violation of Article 7§5 of the 1961 Charter**

216. The Committee notes that a violation of Article 7§5 of the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 3863/2010 (Section 74, paragraph 9);
- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph CI, subparagraph 12; Section IA, paragraph IA, subparagraph 11, indents 1 to 4).

217. In application of Article 7§5 of the 1961 Charter, domestic law must provide for the right of young workers to a fair wage and for the right of apprentices to appropriate allowances. This right may result from statutory law, collective agreements or other means. The “fair” or “appropriate” character of the wage is assessed by comparing young workers’ remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above).

218. The young worker’s wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%.

219. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair.

220. Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.

221. Firstly, with respect to young workers aged 15-18 years the Committee understands that they are in principle entitled to the minimum wage for workers under 25 years as provided by Council of Ministers Act No. 6/2012 and by Act No. 4093/2012. It refers to its decision above on Article 4§1 of the 1961 Charter and in view of the extent to which this minimum wage falls below the established threshold for adult workers, the Committee considers that it cannot be deemed to be fair in the meaning of Article 7§5 of the 1961 Charter either.

222. Secondly, as regards apprentices the Committee notes the complainant's allegation about the deregulation of protection for those aged between 15 and 18 years employed on apprenticeship contracts governed by Section 74, paragraph 9 of Act No. 3863/2010. The complainant provides neither specific figures on the allowances of apprentices nor any other arguments relating to the specific situation of apprentices, but the Committee has in a previous decision noted that the minimum wage for workers under 25 years also apply at a rate of 70% to the apprentices referred to in Section 74, paragraph 9 of Act No. 3863/2010 (GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, op. cit., §39).

223. Nevertheless, as under Article 7§5 of the 1961 apprentice allowances may at the beginning of the apprenticeship be as low as one-third of the adult starting wage or minimum wage and as the complainant has provided no specific figures or arguments, the Committee considers on the basis of the information at its disposal that the situation in this respect is compatible with the 1961 Charter.

224. The Committee holds that there is a violation of Article 7§5 of the 1961 Charter as the minimum wage of young workers aged 15 to 18 years is not fair.

## **2. As regards the alleged violation of Article 7§7 of the 1961 Charter**

225. The Committee notes that a violation of Article 7§7 of the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 3863/2010 (Section 74, paragraph 9);
- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph CI, subparagraph 12; Section IA, paragraph IA, subparagraph 11, indents 1 to 4).

226. In application of Article 7§7 of the 1961 Charter, young persons under eighteen years of age must be given at least four weeks' annual holiday with pay.

227. The Committee refers to its decision in GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, op.cit., in which it noted that apprentices under the terms of Section 74, paragraph 9 of Act No. 3863/2010 are excluded from the scope of the labour legislation and are not entitled to three weeks' annual holiday with pay. On this basis the Committee held that there was a violation of Article 7§7 of the 1961 Charter.

228. The Committee further refers to its examination of the follow-up given to the above-mentioned decision regarding Article 7§7 of the 1961 Charter in Findings 2015 in which it concluded that the situation had not yet been brought into conformity (Findings 2015, Greece, published in January 2016).

229. It follows from the submissions of the complainant that the situation as regards Section 74, paragraph 9 of Act No. 3863/2010 has not changed. This is not disputed by the Government.

230. The Committee holds that there is a violation of Article 7§7 of the 1961 Charter.

## **ALLEGED VIOLATION OF ARTICLE 3 OF THE 1988 ADDITIONAL PROTOCOL**

231. The first paragraph of Article 3 of the 1988 Additional Protocol to the 1961 Charter reads as follows:

### **Article 3 – Right to take part in the determination and improvement of the working conditions and working environment**

Part I: “Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.”

Part II: “1. With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a. to the determination and the improvement of the working conditions, work organisation and working environment;
- b. to the protection of health and safety within the undertaking;
- c. to the organisation of social and socio-cultural services and facilities within the undertaking;
- d. to the supervision of the observance of regulations on these matters. “

## **A – Arguments of the parties**

### **1. The complainant organisation**

#### *Written observations*

232. Firstly, the GSEE reiterates that the mechanisms introduced by Sections 31 and 37 of Act No. 4024/2011, Sections 1 to 5 of Council of Ministers Act No. 6/2012 and Section IA, paragraph IA, subparagraph 11 of Act No. 4093/2012 also hinder workers’ participation in determining and improving working conditions and the working environment, that was based on the collective agreements and arbitration awards in force. The abolition of these instruments, combined with an increase in the number of company agreements signed under the conditions described above, has therefore resulted in the regulation of working conditions being shifted to the level of the company or even the individual worker, where the employer enjoys a dominant position. In the GSEE’s view, these mechanisms allow employers to downgrade working conditions, yet without boosting companies’ competitiveness. They have produced the opposite effect and led to an economic slowdown, thereby increasing unemployment, particularly among young workers, and destroying their prospects of finding a decent job. Consequently, the aforementioned provisions are in breach of Article 3 of the 1988 Additional Protocol to the 1961 Charter.

233. In particular, the aforementioned legal provisions and the company agreements recently entered into do not make provision for workers being informed, consulted or involved regarding changes in the conditions in terms of employment, work, pay or protection for children and young persons which they lay down. Given that collective agreements fall within the scope of Article 3 of the 1988 Additional Protocol, permission to enter into company agreements providing for less favourable conditions than the branch collective agreements also contravenes the purpose of this provision, which is to improve working conditions and the working environment.

234. Secondly, the GSEE maintains that the amendments made to Act No. 4052/2012 by Act No. 4254/2014 aimed at facilitating the use of temporary employment are also in breach of Article 3 of the 1988 Additional Protocol.

235. Thirdly, the GSEE reiterates that the aforementioned measures are neither necessary on a general basis, nor effective, as well as being disproportionate with regard to the goal pursued. Consequently, the restrictions or limitations which these measures impose on the rights guaranteed by the 1988 Additional Protocol do not meet the requirements set out in Article 31 of the 1961 Charter applicable under Article 8§2 of the 1988 Additional Protocol.

236. The GSEE indicates in its response to the Government's submissions that the changes planned in application of Memorandum III will exacerbate rather than eliminate the violation of the rights guaranteed by the 1988 Additional Protocol.

#### *Oral observations*

237. At the hearing the GSEE listed the reasons why, in its opinion, the fiscal adjustment programme, as defined in Memoranda I and II, is doomed to fail. It also claimed that even if the measures are taken on a temporary basis according to these Memoranda, the violation of social rights by the legislation adopted in accordance with these texts subsists and comes on top of the violation of the 1961 Charter through the pre-existing measures, which has already been recognised.

#### *Supplementary written information submitted after the hearing*

238. The GSEE states that minimum wage setting has been transferred to the authority of the State, thus excluding regulation through the national collective agreement and arbitration awards.

## **2. The respondent Government**

#### *Written submissions*

239. The Government in its written submissions does not address the allegations concerning the specific Charter provisions invoked by the complainant, including Article 3 of the 1988 Additional Protocol. The Government's arguments are presented above (see §§ 115-123).

*Oral observations*

240. During the hearing the Government did not make any specific observations relating to Article 3 of the 1988 Additional Protocol.

*Supplementary written information submitted after the hearing*

241. The Government provided no specific supplementary information relating to Article 3 of the 1988 Additional Protocol.

**B – Assessment of the Committee**

242. The Committee notes that a violation of Article 3 of the 1988 Additional Protocol to the 1961 Charter is alleged to result from a series of legislative adjustment measures, in particular the following laws:

- Act No. 4024/2011 (Section 31, paragraphs 1 to 9 and Section 37, paragraphs 1, 5 and 6);
- Council of Ministers Act No. 6/2012 (Section 1, paragraphs 1 to 3; Section 2, paragraphs 2, 3 and 5; Section 5, paragraphs 1 and 2);
- Act No. 4093/2012 (Section IA, paragraph CI, subparagraph 12; Section IA, paragraph IA, subparagraph 11, indents 1 to 4);
- Act No. 4254/2014 (Section IA, subparagraph IA.4, indents 1 to 4)

243. Under Article 3 of the 1988 Additional Protocol workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision. The Committee has consistently held that Article 3 of the 1988 Additional Protocol does not apply to collective bargaining (see *inter alia* GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, op.cit., §39). The Committee notes that even if, as a result of the reforms carried out, there is no longer any general legislative framework or branch-level collective bargaining in Greece which could be deemed to provide a general framework for labour relations, it is not possible to examine the GSEE's allegations relating to collective bargaining in general and, in particular, the way in which such bargaining can deal with specific matters (wage fixing, arbitration, extension of collective agreements), since these matters fall within the scope of Articles 5 and 6 of the 1961 Charter which Greece had not accepted at the time of registration of this complaint.

244. The provisions of Article 3 of the 1988 Additional Protocol nevertheless oblige a State to ensure that procedures other than those referred to in Articles 5 and 6 are implemented with a view to ensuring the effective exercise of the right of workers to participate in the determination and improvement of working conditions. However, the texts invoked by the complainant organization which abolish the previously applicable collective bargaining system do not substitute for it any measures to ensure that this obligation is fulfilled.

245. The Committee holds that there is a violation of Article 3 of the 1988 Additional Protocol to the 1961 Charter.

## **FINAL OBSERVATIONS**

246. Following the examination of the allegations of the complainant organisation and in the light of its findings of violation, the Committee draws attention to the exceptional features of the situation giving rise to this complaint.

247. While taking due account of the scale and severity of the economic and financial crisis of which the population of Greece, especially workers, are victims, the Committee considers that the violations of the 1961 Charter revealed by the examination of the current complaint are particularly serious due to:

- a) the large number of provisions concerned and the effects for persons protected by the rights violated;
- b) the number of victims of these violations, affecting a significant part of the population;
- c) the persistent nature of some of these violations, already identified in the examination of previous complaints.

248. The Committee recalls that the aim of the Charter, and its own role under the terms of the Protocol on the collective complaints system, are not to defend abstract values, but to protect practical and effective rights.

249. It underlines that the legislature's inaction, under strong pressure from the creditor institutions, with respect to amending the laws for a period from April 2012 until September 2015 despite the violations of the Charter to which they gave rise, has led to a worsening of the situation over the years, contrary to the obligation for States Parties to undertake both legal and practical measures that will allow the full exercise of the rights recognised by the Charter.

250. The Committee insists that these violations do not simply concern the persons protected by the rights which have been infringed or their relationship with the respondent state. They also pose a challenge to the interests of the wider community and to the shared fundamental standards of all the Council of Europe's member states, namely those of human rights, democracy and the rule of law.

251. In view of the situation described and considering that it requires urgent attention from all the Council of Europe member states, the Committee invites the Committee of Ministers to publish the present decision on the merits as soon as it has been notified.

## CONCLUSION

For these reasons, the Committee concludes:

- by 9 votes to 3 that there is no violation of Article 1§1 of the 1961 Charter;
- unanimously that there is a violation of Article 1§2 of the 1961 Charter;
- unanimously that there is a violation of Article 2§1 of the 1961 Charter;
- unanimously that there is no violation of Article 2§5 of the 1961 Charter;
- unanimously that there is a violation of Article 4§1 of the 1961 Charter on the grounds that
  - a) fair remuneration is not guaranteed;
  - b) the reduction of the minimum wage for workers under 25 years is excessive and constitutes discrimination on grounds of age;
- unanimously that there is a violation of Article 4§4 of the 1961 Charter;
- unanimously that there is a violation of Article 7§5 of the 1961 Charter on the grounds that the minimum wage of young workers aged 15 to 18 years is not fair;
- unanimously that there is a violation of Article 7§7 of the 1961 Charter;
- by 9 votes to 3 that there is a violation of Article 3 of the 1988 Additional Protocol.



Eliane CHEMLA  
Rapporteur



Giuseppe PALMISANO  
President



Régis BRILLAT  
Executive Secretary

In accordance with Rule 35§1 of the Rules a separate dissenting opinion by Petros STANGOS is appended to this decision.

## **SEPARATE DISSENTING OPINION OF PETROS STANGOS**

I voted against the finding that Greece was not in breach of Article 1§1 of the 1961 Charter, as I neither understood nor agreed with the argument, put forward by a majority of the Committee members, that the national legislation in question, consisting in a deregulation of employment conditions to increase business competitiveness, was not the cause of the deterioration of the employment situation and increase in unemployment in Greece and that this could be attributed to other factors (which moreover the Committee fails to identify) (see § 127 of the decision).

I consider that the complainant trade union makes a credible case, based in particular on EUROSTAT and OECD studies, that the huge increase in unemployment between 2009 and 2015 (decrease in the employment rate from 75 to 60% ; see § 104 above), however varied the causes might have been, was nonetheless related more or less directly to three phenomena: the dismantling of the legislation on temporary employment, which was completely separate from collective bargaining, working hours, pay levels or social security and had the effect of limiting recruitment, if only on fixed-term contracts; the wide-scale collapse of purchasing power, drastically reducing domestic demand, particularly for everyday products and thus resulting in numerous bankruptcies and staff redundancies (see § 114); the dismissals that having clearly been made easier by the new legislation.

As the Committee points out in paragraph 128 of the decision, during the supervision cycle regarding the application by Greece of Article 1§1 over the period from 2011 to 2014, unemployment had already reached alarming levels as the result of measures taken pursuant to the financial obligations entered into with the country's creditors; the measures taken by the government of the time, consisting in the integration of young people and vulnerable groups into the labour market, support for business initiatives and financial support for the sectors most seriously affected by the financial crisis were deemed insufficient by the Committee to remedy the difficult employment situation in the country.

The respondent Government, which was in power from the parliamentary elections of January 2015 up to the point when the Committee adopted its decision on the merits of the complaint, does not present the Committee with any specific examples of employment policy of the type which the Committee recognizes as contributing to efforts to encourage unemployed people to take up work again (guidance, training, activities of public interest). Worse still, its argument against the complainant's allegations with regard to the violation of Article 1§1 of the Charter consists solely in stating that the first law adopted by the legislature in January 2015 introduced a pre-paid card for access to foodstuffs, free basic healthcare, connection to mains electricity for 350 000 households and universal medical coverage for 1,500,000 persons (see § 117 above).

None of these domestic measures referred to by the respondent Government fall within the scope of Article 1§1 of the 1961 Charter and therefore they are not capable of ensuring the effective exercise of the right to work through a policy for the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment.

The respondent Government adds that it tried to counter the harmful effects of Memoranda I and II (of 2010 and 2012 respectively) by introducing a scheme for a new lump sum retirement benefit set at 60% of the median income (see above, *ibid.*). According to the respondent Government, this legislation, which was preceded by a social impact assessment, should enable a number of unemployed persons and workers employed on an atypical basis to receive a pension. However, its entry into force requires the agreement of the institutional creditors pursuant to Memorandum III, which was negotiated by the respondent Government in July 2015. On the day that the Committee's decision on the merits was adopted, the creditors' agreement had not yet been obtained. However, the country's creditors agreed tacitly in December 2016 that the respondent Government would grant an additional, lump-sum allowance to all pensioners, regardless of the level of the pension that they received, while the aforementioned measures intended to assist unemployed persons were delayed indefinitely under the respondent Government's responsibility.

In addition, at the hearing, the Government retorted, in response to the allegation of a violation of Article 1§1, that it had made substantial efforts in its negotiations with Greece's creditors to replace the impugned measures by policies to stimulate the economy in order to distribute the financial burden fairly and restore social rights. It also called, before the Committee, for an end to the growth in inequalities and the dismantling of the European social model, arguing for the defence of a Europe in which democracy and social cohesion were not given over to market forces and expressing its conviction that the Committee's decision would reflect the face of Europe to come (see §§ 116 and 121 above).

I consider that these statements, made before the Committee, clearly overlook the fact that the aim and purpose of the Charter, and the task of the Committee under the terms of the Protocol providing for a system of collective complaints is not an abstract process of promoting values but one of protecting practical and effective rights (*Fédération européenne des Associations nationales travaillant avec les Sans-abri (FEANTSA) v. Slovenia*, Complaint No. 53/2008, decision on the merits of 8 September 2009, §28).

The measures that the respondent Government states that it actually took, which were not connected with the policy required by Article 1§1 of the Charter, combined with the measures it announced but never put into practice and its rhetoric in favour of the fight against social inequalities and for the European social model are signs of the continued violation by Greece of Article 1§1 because of domestic policies giving rise to unemployment defended on the ground of the need to bail the country out and noted at the end of the last supervision cycle regarding national reports (December 2014) preceding the date on which the Committee's decision on the merits of this complaint was taken.

The Greek authorities' inertia, as noted both in the amendment and in the abolition of laws which, through their effect on employment, enter into the field of application of Article 1§1 of the 1961 Charter, lasting for a long period, from April 2012 (date of Memorandum II) to the day of the Committee's decision on the merits of this complaint, breaches the obligation under Article 1§1 for States Parties to take not just the legislative measures but – according to the Committee's established case-law – the practical steps required to enable the full exercise of the right to work enshrined in the Charter.

Ultimately, I consider that this inertia on the part of the Greek authorities, spread over a period of five years in total, has become a deliberate political choice, given the political nature – as put forward by the respondent Government – of the procedures put in place for Greece to recover from the economic and financial crisis (i.e. political negotiations with its creditors).