

**DECISION ON ADMISSIBILITY**

**19 May 2015**

**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 278<sup>th</sup> session attended by:

Giuseppe PALMISANO, President  
Monika SCHLACHTER, Vice-President  
Petros STANGOS, Vice-President  
Lauri LEPPIK, General Rapporteur  
Colm O’CINNEIDE  
Birgitta NYSTRÖM  
Elena MACHULSKAYA  
Karin LUKAS  
Eliane CHEMLA  
József HAJDU  
Marcin WUJCZYK  
Krassimira SREDKOVA  
Raul CANOSA USERA  
Marit FROGNER  
François VANDAMME

Assisted by Régis Brillat, Executive Secretary

Having regard to the complaint dated 25 September 2014, registered on 26 September 2014 as No. 111/2014, lodged by the Greek General Confederation of Labour (GSEE), and signed by its President, Yannis Panagopoulos, and its Secretary General, Nikolaos Kioutsioukis, requesting the Committee to find that the situation in Greece is not in conformity with Articles 1, 2, 4, 7, 30 and 31 of the European Social Charter (“the 1961 Charter”) and with Article 3§1 of the 1988 Additional Protocol to the 1961 Charter (“the 1988 Additional Protocol”);

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Greece (“the Government”) on admissibility, registered on 15 April 2015;

Having regard to the 1961 Charter and in particular to Articles 1, 2, 4, 7, 30 and 31, which read 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;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.”

#### **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;
2. to provide for public holidays with pay;
3. to provide for a minimum of two weeks annual holiday with pay;
4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;
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.”

#### **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;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. 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.”

#### **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:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
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;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.”

### **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.”

Having regard to Article 3§1 of the 1988 Additional Protocol, which reads:

### **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. “

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee adopted on 29 March 2004 at its 201<sup>st</sup> session and last revised on 9 September 2014 at its 273<sup>th</sup> session (“the Rules”);

Having deliberated on 19 May 2015;

Delivers the following decision adopted on this date:

1. 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 Article 3§1 of the 1988 Additional Protocol because of the legislation adopted between 2010 and 2014 in response to the economic and financial crisis:

- Act No. 3833/2010 of 15 March 2010 on the protection of the national economy – emergency measures to address the fiscal crisis;
- Act No. 3845/2010 of 6 May 2010 on measures for the implementation of the support mechanism for the Greek economy by Eurozone member states and the International Monetary Fund;
- Act No. 3846/2010 of 11 May 2010 on guarantees for job security and other provisions;
- Act No. 3863/2010 of 15 July 2010 on a new social security system and provisions on industrial relations;
- Act No. 3871/2010 of 17 August 2010 on fiscal management and liability;
- Act No. 3891/2010 of 4 November 2010 on restructuring, consolidation and development of the CIU TRAINOSE group and other provisions for the railway sector;
- Act No. 3899/2010 of 17 December 2010 on emergency measures for the implementation of the assistance programme for the Greek economy;
- Act No. 3920/2011 of 3 March 2011 on restructuring and development of urban transport in the Region of Attica and other provisions;
- 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);
- Act No. 4046/2012 of 14 February 2012 approving the Plans for Credit Facilitation Agreements between the European Financial Stability Facility (EFSF), the Hellenic Republic and the Bank of Greece, the Draft Memorandum of Understanding between the Hellenic Republic, the European Commission and the Bank of Greece and other urgent provisions for reduction of public debt and recovery of the national economy;
- Ministerial Council Act No. 6/28-2-2012 of 28 February 2012 implementing section 6, paragraph 1 of Act No. 4046/2012;
- Act No. 4052/2012 of 1 March 2012 implementing 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.

2. The GSEE submits that this legislation:

- 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 temporary contracts.

3. In its observations, the Government acknowledges that the GSEE is a national organisation representing workers and hence has legal capacity to lodge collective complaints. It also considers that the complaint meets the requirements for admissibility set out in Articles 1§b [sic] and 4 of the Protocol. It objects, however, that GSEE may not allege a violation of Article 31 of the 1961 Charter as this provision describes conditions in which restrictions may be imposed on the enjoyment of the rights enshrined in the 1961 Charter and cannot be the subject of a violation as such (*Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005, §31).

## THE LAW

4. The Committee notes that in accordance with Article 4 of the Protocol, which was ratified by Greece on 18 June 1998 and entered into force for this state on 18 August 1998, the complaint has been submitted in writing and concerns Articles 1, 2, 4 and 7 of the 1961 Charter, provisions accepted by Greece when it ratified this treaty on 6 June 1984 and by which it has been bound since its entry into force on 8 July 1984. The complaint also relates to Article 3§1 of the 1988 Additional Protocol, which was accepted by Greece when it ratified this Protocol on 18 June 1998 and by which it has been bound since its entry into force on 17 July 1998.

5. The complaint also refers to Articles 30 and 31 of the 1961 Charter.

6. Moreover, the grounds for the complaint are indicated.

7. The Committee notes that the GSEE is a third-level trade union organisation within the meaning of Law No. 1264/1982 of 1 July 1982 on freedom of association, collective bargaining and industrial relations, bringing together second-level trade union organisations which all salaried workers in Greece are authorised to join. It is entered in the register of trade unions of the Court of First Instance of Piraeus by decision No. 148, 663/1918 and operates according to the version of its statutes approved by decision No. 1888/2003 of the Court of First Instance of Athens. It is entitled to negotiate and conclude collective agreements, take collective action, and have legal standing. Making an overall assessment of the information in its possession (see *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, complaint No. 74/2011, decision on admissibility of 23 May 2012, §20), the Committee holds that

the GSEE is a trade union within the jurisdiction of Greece and is representative within the meaning of Article 1§c of the Protocol.

8. Moreover, the complaint is signed by Yannis Panagopoulos and Nikolaos Kioutsioukis, respectively President and General Secretary of GSEE who, according to Articles 25 and 26 of the trade Union's statute, are entitled to represent the complainant organisation. The Committee, therefore, considers that the condition provided for in Rule 23 of the Rules is fulfilled.

9. As to the violation of Article 31 of the 1961 Charter alleged by the GSEE, the Committee points out that this provision sets out the conditions under which restrictions on the enjoyment of rights provided for by the 1961 Charter are permitted and cannot lead to a violation as such (*Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, complaint No. 26/2004, decision on the merits of 15 June 2005, §31; *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, complaint No. 76/2012, decision on admissibility of 23 May 2012, §§5-7). Article 31 of the 1961 Charter may, however, provide a reference for the interpretation of the substantive rights provisions of the 1961 Charter which are at stake in a given complaint (*Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, complaint cited above, decision on the merits of 7 December 2012, §48).

10. The Committee considers that, in view of the functional similarities between Article 31 of the 1961 Charter and Article 30 on derogations in time of war or public emergency, the above rules apply *mutatis mutandis* to Article 30 of the 1961 Charter.

11. The Committee holds therefore that the complainant's allegations are confined in substance to violations of Articles 1, 2, 4 and 7 of the 1961 Charter and Article 3§1 of the 1988 Additional Protocol.

12. On these grounds, the Committee, on the basis of the report presented by Elena MACHULSKAYA and without prejudice to its decision on the merits of the complaint,

## **DECLARES THE COMPLAINT ADMISSIBLE**

Pursuant to Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the revised Charter, and to publish it on the Council of Europe's Internet site;

Invites the Government to make written submissions on the merits of the complaint by 7 September 2015;

Invites the GSEE to submit a response to the Government's submissions by a deadline which it shall determine;

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the revised Charter to make comments by 7 September 2015, should they so wish;

Pursuant to Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 7 September 2015.



Elena MACHULSKAYA  
Rapporteur



Giuseppe PALMISANO  
President



Régis BRILLAT  
Executive Secretary