

**THE MISADVENTURES OF THE EUROPEAN SOCIAL CHARTER
IN GREECE**

***LAS DESVENTURAS DE LA CARTA SOCIAL EUROPEA EN
GRECIA***

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ABSTRACT

Greece has signed and ratified the ESC and all its amending and additional protocols. Nevertheless, the implementation of the Charter rights was found to be on a rough path. Specifically in the era of the tripartite creditors' administration (*“the Troika”*) of the country's economic affairs (2010-2019) Parliament was forced to pass measures, so called *austerity measures*, in overt violation of many fundamental employment rights enshrined in the Charter. This led to the delivery of decisions of non-conformity by the ECSR on relevant collective complaints filed by representative domestic trade unions against the Greek State. The latter could not escape the negative outcome of the proceedings, by asserting that the Government had not acted of its own free will but that they were forced to enact such measures under the creditors' threat of the country's going bankrupt. In 2016 the country ratified the rev. ESC. Nevertheless, as shown in the case of implementation of article 24 on the principle of *dismissal only with a valid reason*, the Greek legal practice, even after the Troika had left the country, could not absorb the function and the scope of values underlying social rights, mainly due to the unreadiness of the involved legal circles, but also on the account of the recently dominant neoliberal shift in the country.

KEYWORDS: European Social Charter, Revised European Social Charter, Article 24, valid reason, reinstatement, compensation, severance indemnity.

RESUMEN

Grecia ha firmado y ratificado la Carta Social Europea y todos sus protocolos -de enmienda y adicional. Sin embargo, la aplicación de los derechos de la Carta ha resultado ser un camino difícil. El Parlamento se vio obligado a aprobar medidas de austeridad, en la época de la llamada ‘Troika’, la administración tripartita de los acreedores de asuntos económicos del país (2010-2019). Estas violaban abiertamente muchos derechos laborales fundamentales consagrados en la Carta. Esto condujo a la emisión de decisiones de fondo de no conformidad por parte del CEDS sobre las reclamaciones colectivas oportunamente presentadas por los sindicatos nacionales representativos contra el Estado griego. Este último no pudo eludir el resultado negativo de los procedimientos, a pesar de afirmar que el Gobierno no había actuado por voluntad propia puesto que se vio obligado a promulgar tales medidas ante la amenaza de los acreedores de que el país entrara en quiebra. En 2016 el país ratificó la versión revisada de la CSE. No obstante lo anterior, como demuestra el caso de la aplicación del artículo 24, relativo al derecho de todos los trabajadores a no ser despedidos sin que existan razones válidas, la práctica jurídica griega, incluso después de que la Troika haya abandonado el país, no pudo absorber la función y el alcance de los valores que subyacen a los derechos sociales, principalmente debido a la falta de preparación de los operadores jurídicos involucrados, pero también a causa del cambio neoliberal recientemente dominante en el país.

PALABRAS CLAVE: Carta Social Europea, Carta Social Europea Revisada, Artículo 24, razones justificadas, reinsertión laboral, compensación, indemnización por despido.

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I. Background

1. Greece integrates the Charter into its legal order

Greece signed the ESC/1961 on 18 October 1961 and ratified it on 6 June 1984. But it had not accepted articles 5 and 6 (on the right to organise and to bargain collectively) and had therefore accepted 67 from 72 paragraphs.

The Additional Protocol 1988 was signed on 5 May 1988 and was ratified on 18 June 1998. The Amending Protocol was signed on 29 November 1991 and was ratified on 12 June 1996. The Collective Complaints Protocol was signed on 18 June 1998 and was ratified on the same day. Finally, the Revised ESC was signed on 3 May 1996 and was ratified on 18 March 2016.

Greece has not made a declaration that enables the national NGOs to file a complaint.

As an international Treaty formally ratified, the Charter is fully binding on Greece, as in the Greek legal system, where the monistic implementation model of the International Treaties is accepted, international instruments are automatically incorporated into the domestic legal order upon their ratification by statute. Indeed, article 28 para 1 of the country's Constitution provides:

“The generally recognised principles of international law as well as international conventions as of the time they are ratified by statute and become operative to their respective conditions, shall be an integral part of domestic Greek Law and they shall have primacy over any conflicting provision of domestic legislation”.

In view of this constitutional provision, and since the ESC has been properly ratified by statute¹, all accepted rights and paragraphs have become an integral part of the Greek Legislation and in case there is a conflict with any other provisions or normative instruments whatsoever (established by statute, Acts of Parliament or the Executive, Collective Labour Agreements, etc.), the Charter rights shall prevail. Moreover, those provisions which are sufficiently clear and unconditional (e.g., article 24 lit. a of the rev. ESC) are directly applicable (self-executive) and can be invoked horizontally in disputes between private parties². In any case, the Greek State is bound to comply with all 67 accepted provisions of the Charter, and—following the well-known and widely accepted triptych in the context of human and fundamental rights—Greece is obliged to respect, protect and fulfill these rights.

As to the decisions of the ECSR adopted in the procedure of collective complaints, these are not directly enforceable, but the interpretation of the Charter rights provided in the said procedure by the Committee is considered by many scholars as very weighty, if not authoritative.

It should be added however, that integration is not necessarily implementation.

2. Greece under the domination of the “Memoranda”

As in the end of 2009 Greece experienced an extensive and coordinated speculation on the financial markets and, as the cost of borrowing had become prohibitive, the Country called for financial assistance from the IMF and the Euro-zone countries on 23 April 2010. Thereafter, all the Euro countries decided on 2 May 2010 to provide stability support to Greece through a *loan facility agreement*. A loan of 80 billion Euros was granted in an intergovernmental framework via pooled bilateral loans and in conjunction with the funding from the International Monetary Fund (the IMF) under a stand-by arrangement. It was also decided that measures concerning the coordination and surveillance of the budgetary discipline and setting out economic policy guidelines for

¹ Act 1426/1884 regarding the 1961 Charter and Act 4359/20.1.2016 regarding the rev. ESC.

² The interpersonal effect of human rights is guaranteed in the Greek Constitution. Indeed, Art. 25 para 1 provides that human rights also apply to the relations between individuals wherever appropriate (C. *Deliyanni-Dimitrakou / C. Akrivopoulou*, *Fundamental Rights and Private Relations in Greek and European Law*, Sakkoulas Publications / L.G.D.J., 2015, p. 51 et. seq).

Greece would be defined in a Council Decision on the basis of articles 129(9) and 136 of the TFEU.

The support granted to Greece was made dependent on compliance with measures laid down in a “*Memorandum of Economic and Financial Policies*”, signed originally on 3 May 2010 by the Commission after approval by all the Euro Area Member States (except Greece), by the Borrower (Greece), and the Central Bank of Greece. The said Memorandum of Understanding (MoU) could be amended and/or supplemented from time to time.

The disbursements of the loans were made conditional³ on adoption of fiscal consolidation measures entailing 30 million Euros cuts in public spending for the period 2010-2014, and what is more, the release of Loans subsequent to the first one should be conditional upon surveyors’ confirmation that the economic policy of the Greek State accords with the adjustment programme and the conditions laid down in the Council decision and the MoU.

Two Economic adjustment programmes were drafted by the Commission to identify and detail the so-called *austerity measures* in order to restore the fiscal balance of Greece, promote privatization of state property, and —what interests us more in this contribution— endorse extensive *structural reforms* to make the labour market more flexible as a means to enhance competition.

To note, common to all adjustment programmes was the use of strict conditionality. The so-called *Troika* (a network made up by the European Commission, the European Central Bank and the international Monetary Fund) purportedly negotiated but actually imposed standardized neoliberal macroeconomic programmes containing the conditions of financial support, detailed in Memoranda of Understanding (MoU), included in relevant Council Decisions. Interestingly, the European Parliament had never been asked for approval.

Besides, the European Commission was entrusted by the euro area member-states to act as manager and coordinator of the pooled bilateral loans, which shows the far-reaching engagement of the EU in the whole process.

On the basis of this strict conditionality, detailed also and enhanced in subsequent *agreements*⁴ and further Memoranda (concluded in 2012 and 2015), new institutions were established⁵, and complex legal instruments were drawn up to consolidate and reinforce austerity and make conditionality stricter, always *under the auspices* of the EU. Greece was then forced to amend its legislation, among many other domains also in the labour

³ This practically means that the payment of the loan disbursements would not take place (and the country would suffer an immediate bail in and default effect) unless Greece had shown full conformity with the conditions laid down.

⁴ E.g., a second loan facility agreement concluded in 2012. Also, further MoU on specific economic policy Conditionality (Greece) 6.8.2010 and MoU on specific economic policy Conditionality (Greece) 9.2.2012.

⁵ E.g., the Treaty for a European Stability Mechanism 2012 provides in its preamble para 6: “*The ESM may therefore provide stability support on the basis of a strict conditionality, appropriate to the financial assistance instrument chosen if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States*” (emphasis added).

and employment field, in a way which severely dismantled labour law and social policy and bitterly affected fundamental social rights⁶.

In the course of this contribution, I will try to show some few yet characteristic illustrations of this shocking intervention of the *Troika*, found as encroachments of many ESC rights in decisions of the European Committee of Social Rights adopted from 2011 to 2017 on an equal number of collective complaints lodged against Greece in the period 2011-2014 by representative trade unions. All the complaints were based on the 1961 Social Charter, as Greece ratified the rev. ESC no sooner than in March 2016.

The European Committee of Social Rights upheld the greatest part of the allegations raised and exerted sharp critique against the measures applied (all of them by legislation) and subsequently found encroachments upon many Charter Rights.

It is apparent however that such measures were not enacted by the Greek Parliament following an independent and autonomous decision-making political process, but had been coerced on Greece⁷ and the Greek Parliament succumbed in order to implement the commitments included in the Memoranda in compliance with the strict conditionality laid down in them in a genuinely undemocratic and despotic manner.

II. The ECSR ascertains extensive encroachments on fundamental labour rights in Greece

Below, six characteristic violation cases of significant Charter rights, as found by the ECSR, are indicated.

1. Unrestricted dismissal without notice and severance pay during the first year of employment

Article 4 para 4 of ESC reads: “ *[With a view to ensuring the effective exercise of the right to fair remuneration the Parties undertake] to recognise the right of all workers to a reasonable period of notice for termination of employment*”.

This Charter provision makes part of the right “to a fair remuneration”, and the main purpose of reasonable notice is to give the person concerned time to look for work before his/her current employment ends. All categories of workers are covered, and the provision applies not solely to dismissals, but also to any case of termination⁸ and to those working on probation. Wages in lieu of notice are permissible⁹. Immediate dismissal is possible

⁶ See the Report of 28 February 2014 of the European Parliament Committee on economic and Monetary Affairs, on the enquiry, the role and the operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries (2013/2277 (INI).

⁷ The Greek Government overtly stated in its defense against collective complaint 111/2014 that the material conditions under which Memoranda I and II were negotiated with the institutional creditors amount to coercion exerted by threat or the use of threat within the meaning of Article 53 of the Vienna Convention on the Law of Treaties (reproduced by the European Committee of Social Rights in its decision on the same complaint, adopted on 23 March 2017, para. 118).

⁸ Conclusions XIV-2 (1998), Spain.

⁹ European Social Charter - Short guide, Council of Europe publishing, 2000, p. 133.

only in cases of serious misconduct¹⁰. The reasonableness of the notice period has not been defined by the European Committee of Social Rights in general terms, but it depends mainly on the employees' length of service¹¹.

On the other hand, the Troika demanded amendment of article 1 of the old but still applicable Law 2112/1920, which provided that dismissal without notice and severance compensation was possible only during *the first two months after hiring*. The Greek Government complied with the ultimatum, and made the Parliament warrant the amendment, and the free-of-notice period of two months was extended to twelve months. Thus s. 17 para 2a of Law No 3899/2010 (Dec. 2010) stipulated that "*the first twelve months of employment of a permanent [open ended] contract from the date it becomes operative shall be deemed to be a trial period and the employment may be terminated without notice and without severance pay unless both parties agree otherwise*". Needless to say, that this provision constitutes implementation of the "*structural reforms*" imposed on the Greek Government by the European institutions and IMF by virtue of the 1st Economic Adjustment Programme for Greece of May 2010¹².

The above legislative intervention was brought to the assessment of the Committee of Social Rights twice. First, by two major Greek Trade Unions¹³ on 21 February 2011, and the Committee found non conformity. But since the contravention persisted and Greece had not complied with the decision of the ECSR, the same issue was raised for a second time by the Top Trade Union Confederation of the whole Country, the Greek General Confederation of Labour (GSEE) on 20 September 2014. All complainant Trade Unions argued that the amendments to L. 2112/1920 were in breach of para 4 article 4 of the 1961 ESC.

The ECSR adopted its first decision on 23 May 2012, and the second on 23 March 2017. Both times the Committee upheld the complaints and found that the amendments at issue were not in conformity with the right of workers to a reasonable period of notice for termination, as established in para 4 of article 4 of the ESC/1961¹⁴.

Besides, the Committee exerted sharp critique against the abolition of any notice period, in the following terms:

¹⁰ Appendix to article 4 para 4: «*The provision shall be so understood as not to prohibit immediate dismissal for any serious offence*».

¹¹ Z. Adams / S. Deakin, in N. Bruun / K. Lörcher / I. Schömann / S. Clauwärt (eds), *The European Social Charter and the Employment Relation*, Hart Publishing 2017, p. 214 et seq. *Reasonable period of notice or compensation in lieu of notice* is also provided for dismissed workers in article 11 of the ILO Convention 158/1982 on Termination of Employment at the Initiative of the Employer, unless they are guilty of misconduct (J.-M. Servais, *International Labour Law*, Kluwer, 2014, p. 164).

¹² For a detailed presentation of the issue see M. Yannakourou / C. Tsimpoukis, *Flexibility without Security and Deconstruction of Collective Bargaining: The new Paradigm of Labour Law in Greece*, *Comparative Labor Law & Policy Journal* 35, spring 2014, p. 331 et seq.

¹³ *The General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and the Confederation of Greek Civil Servants' Trade Unions (ADEDY)*.

¹⁴ In the Appendix to article 24 of the rev. ESC guaranteeing the right to protection in case of termination of employment, it is also provided that a period of probation as a requirement for qualification of a worker to be protected under this article is valid only if it is reasonable.

“The Committee considers that a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations. The establishment and maintenance of such rights in the two fields cited above is indeed one of the aims the Charter. In addition, doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection»”¹⁵.

And further on:

“The right to reasonable notice of termination of employment applies to all categories of employees, independently of their status/grade, including those employed on a non-standard basis. It also applies during the probationary period. National law must be broad enough to ensure that no workers are left unprotected; the main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before his or her current employment ends, i.e. while he or she is still receiving wages. In this respect, receipt of wages in lieu of notice is acceptable, provided that the sum paid is equivalent to that which the worker would have earned during the corresponding period of notice. The only acceptable justification for immediate dismissal is serious misconduct”¹⁶.

In its second Decision on the same issue, the European Committee of Social Rights, as it was expected, not only reaffirmed the violation, but also criticized the Government’s inertia¹⁷ with regard to its obligation to bring the situation into conformity with the requirements of the breached provisions of article 4 para 4, found in complaint No 65/2011. The Committee underpinned:

“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 Law 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. - 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,

¹⁵ Para 18 of the complaint No 65/2011.

¹⁶ Para 25 of the complaint No 65/2011.

¹⁷ As a matter of fact, the Government could not bring any amendment without the consent of the surveying inspectors of the Troika.

published in January 2016). It follows from the submissions of the complainant that the situation as regards Section 17§5 of Law 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. [...]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”¹⁸.

Nevertheless, this situation still persists, and the reversed 12-month free dismissal regulation is widely applied.

2. Economic exploitation of children

Article 7 para 5 of the ESC reads: “[The Parties undertake] to recognise the right of young workers and apprentices to a fair wage or other appropriate allowance.”¹⁹

Article 7 para 7 of the ESC reads: “[The Parties undertake] to provide that employed persons under eighteen years of age shall be entitled to no less than three weeks annual holiday with pay”.

The rubric-article 7 provides for the protection of children and adolescents (particularly vulnerable categories and therefore in need of special protection) and extends this protection to a number of fields, including the right to annual holidays with pay, “in order to protect both their physical and their mental health, at a time where they are still growing and could be experiencing psychological difficulties that are an acknowledged feature of adolescence.”²⁰

Article 10 para 2 requires the Parties “to provide or promote a system of apprenticeship or other systematic arrangements for training young boys and girls in their various employments”.

Article 10 recognizes the right to vocational training. The Charter was the first international Treaty to include the right to vocational training as such²¹.

In the first supervision cycle, the Committee interpreted the system of apprenticeship in the following terms: “The apprentice facilities referred to in the Charter should not be purely empirical or aim solely at manual training duty but should be conceived in broad terms and comprise full, coordinated and systematic training”²².

¹⁸ See paras 201-205 in the collective complaint No 111/2017.

¹⁹ This provision was invoked by GSEE in its complaint No 111/2014. The others were filed by the same Trade Unions, which lodged the complaint No 65/2011.

²⁰ Third report on certain provisions of the Charter which have not been accepted. Reference is made by L. Samuel, Fundamental Social Rights – Case law of the European Social Charter, Council of Europe Publishing, 2002, p. 196.

²¹ L. Samuel, *ibid.* p. 243.

²² Conclusion I, p. 57.

Following article 12 para 3: *The Parties undertake “to endeavor to raise progressively the system of social security to a higher level”*²³.

Article 12 protects the right to social security and therefore highlights its character as a human right, and consequently its wide scope, encompassing every worker, including the apprentices. Para 3 requires the States to improve progressively their social security systems.

The Greek legislator, again implementing an adjustment programme’s commitment, granted in June 2010 the possibility to employers²⁴ —on the pretext of the so-called *special apprenticeship contracts*— to employ children aged 15 to 18 on subminimum wages, and placed these *special* contracts practically outside the ambit and beyond the safeguards of the protective labour and social security legislation.

This provision reads as follows:

“Special apprenticeship contracts of up to one year’s duration may be concluded between employers and persons between 15 and 18 years of age, so that the latter may acquire skills. The said apprentices shall be paid at a rate of 70% of the minimum wage or daily wage provided for by the National General Labour Collective Agreement (E.G.S.E.E.). They shall enjoy sickness insurance coverage in kind as well as coverage against accident risk at a rate of 1%. [...]. The provisions of labour law, excluding those concerning health and safety at work, shall not apply to the said persons”.

The ECSR was given the opportunity to judge on this regulation twice. Once on collective complaint No 66/2012²⁵, where it found violation of all above-mentioned articles, and, since the Government did not remove the overruled provision, once more on collective complaint No 111/2014, where it found violation of article 7 para 5 (fair wages for apprentices) and 7 (minimum 3 weeks annual holiday)²⁶.

Below, some quotations will show that the Committee has followed its established jurisprudence in the relevant issues:

i) On the real nature of the apprenticeship contracts: *“Except for the length of the apprenticeship contracts (one year) and the matter of remuneration (70% of the minimum wage or daily wage set by the National General Collective Agreement), Section 74§9 does not regulate the other key aspects listed above of an apprenticeship relationship: it merely states that such contracts are to be concluded to enable the young persons concerned to acquire vocational skills. In this respect, the Government points out that apprenticeship contracts provided for by Section 74§9 aim exclusively at acquiring work experience*

²³ As a matter of fact, the complainants also invoked articles 7 para 2 (higher minimum age in dangerous or unhealthy occupations) and 7 para 9 (regular medical control for young workers under 18), but the Committee unanimously found no violations thereon.

²⁴ Section 74 para 9, Act 3863/2010, which was later reaffirmed by art. 1 of Cabinet Act 6/2012.

²⁵ Decision on the merits adopted on 18 June 2012.

²⁶ Decision on the merits adopted on 23 March 2017.

through employment and irrespective of whether or not the persons concerned attend some educational programme”²⁷.

ii) On the exemption from social security coverage: “Article 12§3 requires state parties to “endeavour to raise progressively the system of social security to a higher level”. In this respect, the Committee recognises that it may be necessary to introduce measures to consolidate public finances in times of economic crisis, in order to ensure the maintenance and sustainability of the existing social security system. However, any such measures should not undermine the core framework of a national social security system or deny individuals the opportunity to enjoy the protection it offers against serious social and economic risk. Therefore, any changes to a social security system must maintain in place a sufficiently extensive system of compulsory social security and refrain from excluding entire categories of worker from the social protection offered by this system) (Conclusions XVI-1, Interpretative statement of article 12, p. 11). The Committee considers that financial consolidation measures which fail to respect these limits constitute retrogressive steps which cannot be deemed to be in conformity with article 12§3”²⁸.

So, Greece received a harsh condemnation from the ECSR on the ground of violation of three rights enshrined in the Charter: of article 7 para 7, which establishes the right of children aged under 18 to a minimum of three weeks annual holiday with pay, of article 10 para 2, obliging the states to provide a [true] system of apprenticeship for young boys and girls, and of article 12 para 3, requiring full social security.

3. Age discrimination (subminimum wages) against young workers aged below 25

In the 1961 ESC the issue of *prohibition of all forms of discrimination in Employment* emerges (however without special reference to age) in the preamble and in article 1 para 2. The preamble states that “*the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin*”.

Article 1 para 2, on the other hand, which protects the right of the worker to earn his/her living in an occupation freely entered upon, has been interpreted by the ECSR as prohibiting discrimination in employment on any unjustified ground (therefore including age²⁹).

The issue of age discrimination in Greece was submitted to the judgment of the European Committee of Social Rights twice.

First in the collective complaint No 66/2011, where the complainant trade unions invoked the provision of Section 74§8 of Law No 3863 of 15 July 2010 (imposed by the creditors). This provided that employers can hire young new entrants to the labour market up to the

²⁷ Para 37. Collective complaint No 66.

²⁸ Para 47. Collective complaint No 66.

²⁹ The explanatory report to article E of the revised Charter includes age in the protected grounds of prohibited discrimination (S. 136).

age of 25 and pay them 84% of the minimum wage or daily wage each time as provided for by the National General Collective Agreement.

The ECSR found the situation in Greece to be in violation of article 4 para 1 of the ESC, which protects the (general) right to a fair remuneration. But as this also marked a difference in treatment due to age, the Committee made also express reference to the equal treatment principle of the Preamble³⁰.

For a second time the still persisting issue of age discrimination came to the fore in the framework of the GSEE collective complaint No 111/2014. This time the top-level Trade Union appealed to the new provision of Cabinet Act 6/2012, which abrogated the aforementioned initial discriminatory stipulation, and replaced it by a new one, providing even lower wages for the workers below 25 while extending its scope to cover every worker below 25 and not only the new entrants in the labour market.

The ECSR, judging on the new complaint, reiterated its earlier non-conformity finding on discrimination, but this time it rested directly on the provisions of Charter article 1 para 2 and made no reference to the Preamble. Below, an interesting rationale is reproduced:

“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 question³¹.

“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 conformity³².

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

“For these reasons, the Committee holds that there is a violation of article 1§2 of the 1961 Charter”.

4. Manifestly unfair minimum wages

Article 4, one of the core articles of the Charter, recognises the right to a fair (minimum) remuneration for all workers.

Para 1 of the same article guarantees *“a remuneration such as will give the workers and their families a decent standard of living”.*

³⁰ Paras 67-69 of the Decision in complaint No 66/2012.

³¹ *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.

³² Findings 2015, Greece, published in January 2016.

The ECSR has determined compliance with article 4 para 1 by comparing the net statutory minimum wage with the net (of tax and social security contributions) average wage of a full-time wage-earner³³. Following this methodological principle, a decency threshold was initially established as at least equivalent to the 68% of the national average net wage. Later, for good reasons, the ECSR had to lower this percentage from 68 to 60%.

In Greece, the minimum salary and wages for blue- and white-collar workers were traditionally determined by virtue of a *National General Collective Labour Agreement*, which was binding for all workers (blue and white collar) at national level, regardless of union membership, age or occupation.³⁴ Until 2012, the minimum gross wage (determined as above) was for a single white-collar employee 751,30 Euros.

By virtue of the Cabinet Act of 28 February 2012, which was later ratified by Framework (parliamentary) Act 4046/2012 appended to the second Memorandum, the Government was mandated to reduce the least monthly salary of the *National General Collective Labour Agreement* by 22% and by 32% for young workers and apprentices aged below 25. A more austere posterior Act³⁵ stipulated that the minimum wage would no longer be determined through collective labour agreements, but by an Act of Parliament. Therefore, now the minimum gross monthly salary remained at the level of 586,98 Euros and for the aged below 25 to 510,95 Euros.

In its complaint No 111/2014, GSEE maintained that the situation concerning the minimum wages in Greece was not in conformity with article 4 para 1, as these minima were unfair³⁶.

The Committee upheld the complaint and found that statutory minimum wages and a fortiori the reduced minimum wage for workers under 25 years were manifestly unfair, as they fell below the standard threshold of 60% of the net average wage. It was further highlighted that neither the complainant nor the Government had provided information on the net value of the average and minimum wages, while the gross figures provided were found sufficiently indicative for the Committee to conclude that the statutory minimum wage as determined by Council of Ministers Act No 6/2012 and by Parliament Act (Law) No 4093/2012 were manifestly unfair in the meaning of article 4§1 of the 1961 Charter.

Precisely the Committee noted that the gross minimum wage including bonuses corresponded to approximately 46% of the gross average wage and the reduced minimum

³³ Conclusions XIV-2.

³⁴ Article 3-1a of Law 1876/1990. The wage established by this Collective Agreement was minimum wage and referred to those workers who were not entitled to a higher salary on the grounds of a sectoral, occupational or company collective agreement or individual employment contract (*Yannakourou / Tsimpoukis, ibida*).

³⁵ Law 4093/2012.

³⁶ It should be noted that although there were manifest contraventions of articles 5 and 6 of the Charter, the above provisions had not been accepted by Greece when it ratified the 1961/Charter and therefore no collective complaint could invoke them.

wage of workers under 25 years of age to only about 41% of the gross average wage, which was far below the thresholds established by the Committee.

The Committee noted moreover that it examined the follow-up given to the decision in *GENOP-DEI and ADEDY v. Greece*, Complaint No 66/2012³⁷ regarding article 4§1 of the 1961 Charter in Findings 2015 (in the reporting procedure) in which it concluded that the situation had not yet been brought into conformity³⁸.

For the above reasons the Committee held that there was a violation of article 4§1 of the 1961 Charter as fair remuneration was not guaranteed³⁹.

5. Excessive length of weekly work

Article 2 of the Charter establishes *the right to just conditions of work* and covers the main aspects of working time.

Para 1 requires the member states “*to provide for reasonable daily and weekly working hours and the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit*”.

To satisfy this provision, states must set reasonable limits on daily and weekly working time through legislation, regulations, collective agreements, or any other binding means⁴⁰. However, reasonable daily and weekly working hours have not been defined in general terms. The reasonableness varies from place to place and from time to time. In its investigation of the working time in post memoranda Greece (complaint 111/2014), the Committee found that the intervention of the austerity legislative measures and the subsequent erosion of the collective mechanisms has led to a situation, whereby normative guarantees that the weekly time will be reasonable, no longer existed. Besides, the legal framework did not clearly define the scope available to the (collectively) negotiating parties in order to reasonably delimit the weekly work. Moreover, the national collective agreements which alone determined the arrangements in the working time field have been terminated by Cabinet Act 6/2012. Finally, it was not foreseen that the agreements that will henceforth be concluded in the company or even at individual level would really respect a maximum and reasonable weekly working time.

In view of the above, the Committee found⁴¹ that the situation of employees with respect to working time was in violation of the Charter article 2 para 1 due to the excessive length of weekly work authorized and the lack of sufficient collective bargaining guarantees.

6. Deterioration instead of improvement of the social security

³⁷ Supra II. 3.

³⁸ Findings 2015, Greece, published in January 2016.

³⁹ Decision of the ECSR on Collective Complaint 111/2014, Paras 187 et seq.

⁴⁰ European Social Charter Short Guide, *ibida*, p. 123.

⁴¹ Decision on the merits adopted on 23 March 2017.

On 7 December 2012 five public sector unions⁴², due to major reductions in their pension, lodged separate Collective Complaints⁴³, alleging violation of article 12 para 3 of the Charter.

The article invoked provides: “[*The parties undertake*] to endeavour to raise progressively the system of social security to a higher level”.

The Greek Government refused the allegation of violation, and expressly stated that its obligations to cut the pensions derived from the financial support mechanism agreement between Greece, the European Institutions and the International Monetary Fund⁴⁴. Nevertheless, the European Committee of Social Rights did not sustain such argument, and tacitly addressing its critique to those who had enforced this measure to Greece, marked that the international obligation of the member-states to implement the Charter should be maintained in any case. The Committee dismissed the Government’s defense in the following terms (identical wording in all five decisions):

“With regard to the observation made by the Government to the effect that the rights safeguarded under the 1961 Charter have been restricted pursuant to the Government’s other international obligations, namely those it has under the loan arrangement with the EU institutions and the International Monetary Fund, the Committee considers that the fact that the contested provisions of domestic law seek to fulfill the requirements of other legal obligations does not remove them from the ambit of the Charter. It has previously concluded to this effect in relation to national provisions enacted by states parties to the Charter which were intended to implement European Union directives or other legal norms emanating from the European Union⁴⁵. In the same context, the Committee has held also that when states parties agree on binding measures, which relate to matters within the remit of the Charter, they should —both when preparing the text in question and when implementing it into national law— take full account of the commitments they have taken upon ratifying the European Social Charter. It is ultimately for the Committee to assess compliance of a national situation with the Charter, including when the implementation of the parallel international obligations into domestic law may interfere with the proper implementation of those emanating from the Charter (CGT v. France; Complaint No 55/2009, referred to above, §33)”⁴⁶.

And the Committee concluded:

⁴² Namely the Federation of employed pensioners of Greece (IKA-ETAM), the Panhellenic Federation of Public Service Pensioners, the Pensioners’ union of the Athens-Piraeus Electric Railways (I.S.A.P), the Panhellenic Federation of Pensioners of the Public Electricity Corporation (PAS-DEI) and the Pensioners’ Union of the Agricultural Bank of Greece (ATE).

⁴³ Nos 76/2012, 77/2012, 78/2012, 79/2012 and 80/2012.

⁴⁴ Decision of the ECSR on Complaint No 76/2012, para 10.

⁴⁵ *Confédération générale du travail (CGT) v. France; Complaint No 55/2009, decision on the merits of 23 June 2010, §32; Confédération Française de l’Encadrement (CFE-CGC) v. France, Complaint No 16/2003, decision on the merits of 12 October 2004, §30.*

⁴⁶ Paras 50, 51, *ibid.*

“In general, the Committee thus concludes that the Government has not established, as is required by article 12§3, that efforts have been made to maintain a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large-scale pauperization of a significant segment of the population, as has been observed by various international organisations (see paragraphs 32 and 43 above)”⁴⁷.

7. ECSR: No excuse for the encroachments

In order to defend itself towards its accountability with regard to the alleged violations raised in the framework of the collective complaint No 111/2014, the Greek Government invoked mainly 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 5 2 of the Vienna Convention on the Law of Treaties⁴⁸.

The argument, which might imply an invocation of article 31 of the Charter, was dismissed by the Committee, which responded stressing that *States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions.*

In view of the crucial importance of the issue, a central part of the Committee’s reasoning is verbatim reproduced:

“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’⁴⁹.

“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,

⁴⁷ Para 76, *ibid.*

⁴⁸ Article 52 reads: “Coercion of a State or of an international organisation by the threat or use of force. A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations”.

⁴⁹ 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 et seq.

given the State's dependency on financial aid provided by European and international creditor institutions imposing strict austerity measures.

“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.

“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.

“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.⁵⁰ 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”.

III. The reception of article 24 of the revised ESC into the Greek legal order and its complications

1. The 2016 ratification of the revised ESC

Greece had not ratified the revised ESC for many years after its adoption; being therefore not bound by the new article 24, it was not obliged to introduce into its legislation the principle of the valid reason as a prerequisite for the legality of the termination of employment. But it did ratify the revised Charter on 29 January 2016, without any

⁵⁰ See mutatis mutandis *IKA-ETAM v. Greece*, Complaint No 76/2012, op.cit. §§50-52.

reservations regarding article 24.⁵¹ Such ratification took place in the midst of the absolute domination of the *memoranda of understanding*, which, as is well known, were utterly hostile to social rights and the ESC.⁵² Political heroism, or rather ignorance with regard to the importance of ratifying an Instrument protecting Social Human Rights under these circumstances? Anyway, this was a major political decision with serious consequences, consisting mainly in the obligation of all Public Institutions to constantly monitor the implementation of the provisions of the Charter, which was extremely difficult, if not impossible then, due to the content of the social rights and their conflict with the, already expounded, memoranda commitments and the continuous supervision of the country for compliance with the will and the blackmails of its creditors. Thus, the ratification of the Charter within this rough period remained incomplete and practically unfulfilled, in the sense that the implementation of the Charter rights remained quite poor. Besides, or rather due to this, there was lack of preparation among the legal circles to smoothly receive and integrate the new dismissal regime introduced by article 24 of the revised Charter. Indeed, for almost one century (1920-2016) all involved parties and their legal councils had been used to applying Laws 2112/1920 and 3198/1955, which sought to ensure the payment of a severance,⁵³ provided by the employer *ex lege* in any case of dismissal —no matter with or without cause— and not to protect the work position per se. Of course, the Greek jurisprudence, following the entry into force of our Civil Code in 1946, had begun to make reference to article 281 of the Civil Code, which forbids and invalidates the abusive exercise of rights,⁵⁴ in order to safeguard the protection of the post of employees in cases where terminations were judged *abusive* and therefore invalid. And this protection might have been operative in some cases, since the invalid (abusive) dismissal automatically resulted in the activation of the mechanism of reinstatement and payment of arrears. Nevertheless, the concept of abusiveness is clearly narrower than the concept of “*no termination without valid reason*”, and therefore does not meet the requirements of the wide-ranging clause of article 24, and mainly, as I shall develop later, creates deadlocks if the employee does not want to be reinstated in the undertaking wherefrom, he/she was unlawfully removed. Given the above, there was no suitable background for the smooth integration of the provisions of article 24 of the rev. ESC in the Greek legal order. It was therefore necessary to introduce specific provisions, in particular as regards the legal consequences of the lack of a valid reason, as article 24 (lit. b) does not produce a direct

⁵¹ Certainly, the legislator was aware of the fact at the time (and attests to this in the explanatory memorandum to Article 24) that the unconditional ratification of article 24 entailed a paradigm shift in the law of dismissal, since now the prior system of free (unjustified) dismissal that prevailed in the jurisprudence of the Supreme Court had to be abandoned and the model of valid reason as a condition of a lawful termination should be adopted.

⁵² See the analysis of *V. Palli*, Review of Labour Law (Επιθεώρησης Εργατικού Δικαίου) 2020, p. 1299 ff. (1301).

⁵³ Which was not a sanction of illegality, because, in the perception of the legislator at the time, the employer was not illegal by dismissing the employee —albeit for no reason—, but was exercising his/her legal right. The compensation therefore provided by Law 2112/1920 is paid regardless of the reason or the absence of the reason for dismissal.

⁵⁴ For the meaning and the function of this provision in the Greek system of dismissal law, see *C. Tsimpoukis*, *Lex Social*, 2018, p. 20.

effect on them, as its content requires legislative clarification and concretization. In addition, legislative consideration should be given to the term “*adequate compensation*” regarding the employee who does not wish to return to work after an invalid dismissal, or in cases that the reinstatement is objectively not feasible for the employer.⁵⁵ But no such consideration was ever given by the Greek legislation. It is therefore not strange that the ratification of the rev. ESC, and in particular of article 24, caused uncertainties in the termination law status of the country. Namely, some legal scholars familiar with the fundamental labor rights background argued that article 24 lit. a, even without specific legislative intervention, produces a direct and horizontal effect in the Greek law of dismissal and therefore removes the traditional model of the termination without cause (employment at will), converting it to “*termination only with valid reason.*” Others again, entirely unaware of the ESC and the methods of its interpretation, were shocked on the threat of the reversal of the prior regime and provided a completely pervert interpretation of article 24 lit. a, contending that, despite the ratification and the clear wording of the revised ESC provisions, nothing had changed in the previous regime of the “free termination” since the *adequate compensation* of the termination without a valid reason provided for in article 24 lit. b, in our system of the “free termination” is paid anyway in the form of a *severance indemnity*⁵⁶, no matter if the dismissal is lawful or not!⁵⁷ Therefore, they maintained, the Greek law on termination provides enhanced protection, as the dismissed will be paid for his/her removal, be it with or without a valid reason,⁵⁸ unlike article 24b, where compensation is paid only in case of termination without valid reason. The Greek judges, in the main also unaware of the real meaning of the relevant provisions of the Charter, were taken by surprise and ended up stumbling between the two positions. In the end, the Supreme Court in civil matters (the Areios Pagos), in fact judging on a case which did not fall within the scope of application of article 24 of the revised ESC (obiter), espoused the second view, accepting that, even after the ratification of the Charter, the termination of the employment contract by the employer remains a unilateral unjustifiable legal act and that no valid reason is required for its legality, provided that the severance indemnity was paid.⁵⁹ It is obvious that what the Supreme Court seems to ignore, is that the principle of termination of employment with a valid

⁵⁵ Such care is taken in German, French and Italian law.

⁵⁶ This payment is not compensation, but a lump sum of money paid independent of any damage suffered, on the basis of the employee’s seniority and his/her monthly salary on the day of dismissal.

⁵⁷ However, there is a catalytic difference between the two types, since the severance pay of Law 2112/1920 concerns the past of the employment relationship, while the compensation of article 24 of the rev. ESG seeks to compensate the damage suffered by the illegally fired, but also to prevent illegal dismissals, see details *D. Zerdelis*, Labour Law - Individual Labor Relations, 2019, pp. 1238 ff.; *P. Boumboucheropoulos*, article 117 par. 2 Law 4623/2019 and the valid reason in the current law of termination of the employment contract, *EErgD* 2020, p. 213 ff. (224-225); *V. Palli*, *EErgD* 2020, p. 1302; *C. Tsimpoukis*, *EErgD* 2017, pp. 1395 ff. (1414-1418), where further memoir.

⁵⁸ For the two opposing views, see the bibliography cited in *V. Palli*, *EErgD* 2020, p. 1299, sub. 1.

⁵⁹ Supreme Court (Areios Pagos), decision no 1512/2018 *EErgD* 2019, 408, see details *C. Tsimpoukis*, The recruitment of Article 24 of the rev. ESC from the jurisprudence until the entry into force of Article 48 of Law 4611/2019 - Commentary on five court decisions, *EErgD* 2019, pp. 397 ff.; also, harsh criticism in Areios Pagos, no 1512/2018 in: *V. Palli*, *EErgD* 2020, p. 1317.

reason is an internationally protected fundamental right per se⁶⁰ firmly connected with the right to work. The compensation is the sanction, which only aims at deterring the employer from dismissing its employees without a valid reason. Clearly then, article 24 of the revised ESC seeks to ensure the stability of employment first and foremost; and the provision of adequate compensation is only the means to this end. Not the end itself.

2. Legislative integration of article 24 into the law of dismissal in 2019

In view of this situation, the then legislator (May 2019) decided to intervene and verbatim reproduced the letter of article 24 of the Revised Charter in the labour legislation. The Law highlighted moreover (article 48 of law 4611/17.5.2019) that the dismissal of the employee without a valid reason is invalid. Certainly, the measure was inadequate, as the country should have enacted a comprehensive and up-to-date statute on protection from dismissal; however, it was positive, as a first step, since the Greek State thus demonstrated its intention to respect the content of article 24 of the revised ESC and integrate it in the domestic legal order⁶¹. The new provision, had it lasted long, would have made it easier for jurisprudence and academia to unfold the full content of article 24 and for the country to approach a real paradigm shift in the field of dismissal law.

3. The hasty withdrawal of the integration provisions by the new Government

Not even three months later, before the ink of Government Gazette that had published the said integration provisions could even dry, the same legislator—the State remains as Legal Entity despite the change of government—, with ingenuous reasoning⁶², repealed overnight and by an overdue amendment the integration provisions which by an overwhelming majority had gone through three months ago. The new repealing provision⁶³, which essentially attempted to repeal article 24 of the revised ESC altogether, is in fact legally and substantially incoherent, as now the legislator, attempting to downgrade article 24⁶⁴ chose to combine it with Laws 2112/1920 and 3198/1955, which however refer to the institution of the severance indemnity and, as already stated, do not protect the work positions as such. Moreover, the fundamental rights (such as the right guaranteed by article 24 of the revised ESC) should not be interpreted or applied in combination with other provisions of ordinary law, but indeed prevail over the latter. But how can we explain this incredible legislative intervention? I think it is obvious, and this is already vigorously confirmed by the recent article 66 of the reform Law 4808/2021, that what was attempted by the hasty removal of the prior integration legislation attests to the intention of its authors to escape the implementation of article 24 of the revised ESC by reducing it to the level of the ordinary legislation and, still worse, to devitalize it

⁶⁰ Stemming from human dignity, which is *a supra-legal value constituting the foundation of human rights* (B. Açumuz / O. Akbulut, *The European Social Charter, A Commentary*, Volume 1, Cross-Cutting Themes 2022, p. 273).

⁶¹ Thus also *D. Zerdelis*, *EErgD* 2019, p. 376.

⁶² See the catalytic critique of *P. Boumboucheropoulos*, *EErgD* 2020, pp. 213 ff.

⁶³ Article 117 par. 2 of Law 4623/9.8.2019.

⁶⁴ Which was introduced as an international convention pursuant to article 28 par. 1 of the Constitution and therefore has a normative force superior to the ordinary laws.

by incorporating it into the compensatory framework of the Laws 2112/1920 and 3198/1955. In the end, all this awkward and unacceptable situation brought in theory and jurisprudence, but also in employers and employees, unprecedented confusion in the application of current termination law, since no one can make any more a reasonable prediction of when a dismissal would be lawful or unlawful.

4. Reforms in the law of Employment Termination. The coup de grâce to art. 24a of the revised ESC: extermination of the principle of valid reason.

Things got much worse with the latest legislative reforms in the law of dismissal introduced by article 66 of Law 4808/2021. In particular, this provision further obscures the prior situation, since **a)** it does not even refer to article 24 of the revised ESC⁶⁵ and there is no otherwise recognition of the principle that the lawfulness of dismissal requires the existence of a valid reason; **b)** splits the reasons that render a dismissal unlawful into two categories based on their alleged severity and sets different consequences for unlawful dismissals, depending on which of the two categories they belong to. Thus, in paragraph 2 (first category) the provision identifies specific reasons that render the dismissal invalid and incurable and therefore the employment relationship continues to exist despite dismissal and the terminated employee will be reinstated with payment of arrears⁶⁶. However, paragraph 3 (second category) provides that if termination is due to reasons others than the ones specified in para 2, termination is also invalid, however this latter invalidity can be overturned (cured) unilaterally at the arbitrary request⁶⁷ of either party to the employment relationship. In this case the employee loses his/her job with a mostly inadequate monetary compensation automatically calculated on the basis of his/her seniority and last salary.⁶⁸ Consequently, for the numerous categories of reasons of “reduced weight as to their unlawfulness”, the termination of the employment contract can become valid at the arbitrary choice of the employer (or the employee) and reinstatement with payment of arrears will be canceled. Given the above, the confusion caused by the 2019 provision, which had abolished the invalidity as a consequence of the lack of a valid reason, is now tragically intensified, as the 2021 legislator does not clarify which reasons belong to the second category and therefore in which cases the dismissal can become valid with the consequences provided for in the second category (monetary compensation in leu of reinstatement and arrears). The new scheme, as described above, is however incompatible with the content and requirements of article 24 of the revised ESC, which requires the states that have ratified the Charter to recognize and ensure by

⁶⁵ In fact, the strong aversion of the legislator towards article 24 is demonstrated by the fact that in an *interpretative Circular* (No 64597/3.9.2021) to article 66, drafted by the Ministry of Labour and Social Affairs, no mention is made to Article 24 of the rev. ESC.

⁶⁶ These are reasons which are either already prohibited under specific provisions (e.g., prohibition of discrimination, protection of motherhood, trade unionism, etc.) or are judged by the jurisprudence as abusive under article 281 of the Civil Code.

⁶⁷ The word “request” is inaccurate or misleading. It is not about a wish, request or claim, which is submitted and can be accepted or rejected. It is about a unilateral statement, which immediately produces the legal consequences that the declaring party wishes.

⁶⁸ See detailed below under 3.5.

any appropriate measure that the existence of a valid reason justifying the dismissal is essential for its legality. Therefore, since there is no provision in the legislation posterior to the ratification of the revised Charter, or even established case law and practice, that explicitly guarantees and clarifies that no dismissal will be lawful unless it is due to a valid reason related to the conduct, capacity or operational requirements of the undertaking, but on the contrary it is not clear when a dismissal is lawful or unlawful, it follows that the situation in Greece is not in conformity with article 24 lit. a of the rev. ESC, which is thus violated.

5. The consequences of the unlawful dismissal enshrined in article 66 of Law 4808/2021 and their direct conflict with article 24 lit. b of the revised ESC.

5.1. Reinstatement as the main remedy for dismissal without a valid reason.

The reintegration of the dismissed person into the company (re-instatement) is assessed to be the most reliable sanction in case of unjustified dismissal, since only in this way the reasonable interest of the employee in the stability of employment is satisfied, as he/she is restored to his/her position while maintaining his/her acquired rights⁶⁹. Furthermore, re-employment also corresponds to the right to work, which is guaranteed both by the ESC in article 1, as well as by the International Covenant on Social, Economic and Cultural Rights in article 6. Nevertheless, due to the fact that the employment contract presents strong personal components, even in a big and impersonal enterprise, the return of the unlawfully dismissed person and his/her reintegration there, after a judicial dispute, often fierce, but also on account of the frictions that usually precede the dismissal, can be problematic for both parties. The labour law must therefore intervene and seek the best possible harmonization of the conflicting interests, which inevitably develop in this sensitive context, as, many legislators have done in various legal systems.

The ECSR, on the interpretation of article 24 of the revised ESC, adopted at the issue of re-employment the ILO Convention 158/1982, which acknowledges the reintegration of the employee in the company as the most consistent redress in case of unjustified dismissal.⁷⁰ Since 2003, the Commission has pointed out that in every country that has ratified the revised ESC re-employment, together with the payment of remuneration for the period between the unjustified dismissal until the delivery of the court decision or the reintegration of the dismissed person, must be enshrined in law as a general principle⁷¹. It later added that in cases where the national court finds that reintegration is objectively and reasonably impossible for the employer or simply undesirable for the dismissed person, the re-employment claim can be replaced by the claim for adequate compensation⁷². This position of ECSR was reaffirmed in 2016 on the occasion of a decision of 8 September 2016 on a collective complaint brought by the Finnish

⁶⁹ International Labour Conference, 82nd Session 1995, Report III [part 4B], Protection Against Unjustified Dismissal, § 221. Also, ECSR in its decision no 106/2014 against Finland, para 55.

⁷⁰ Article 10 of ILO Convention 158/1982.

⁷¹ ECSR Conclusions 2003, Bulgaria.

⁷² ECSR Conclusions 2012, Finland; ECSR 2012, Albania.

Association for Social Rights (a Finnish NGO) against Finland⁷³. In the same case, the Commission states that in any case, i.e., even if re-employment is impossible or undesirable for the dismissed person, the remuneration lost by the employee due to the unlawful dismissal should be paid. The same views are confirmed in the later decision of the ECSR on the collective complaint No. 158/2017⁷⁴.

5.2. Serious restrictions of reinstatement in Greece.

The possibility of re-employment after an abusive (invalid) dismissal, before the reforms of Law 4808/2021, was regulated as follows: Any unlawful (abusive or explicitly prohibited, e.g., due to retaliation, discrimination, maternity etc.) dismissal was invalid and therefore could not entail the termination of the employment relationship. But this, automatically involved the right of the dismissed person to return to his/her position (article 656 of the Civil Code) as if he/she had never been dismissed (article 180 of the Civil Code)⁷⁵. However, this civil law mechanism led to the mandatory reinstatement of the dismissed person, without taking into account either the possibly objective inability of the employer to re-employ the employee, or the reasonable reluctance/refusal of the employee to re-join and continue his/her job, even if this reluctance was due to serious reasons or his/her inability to return to his/her previous employer if he/she had in the meantime found a new job⁷⁶. In the event that the employee did not wish to be reinstated, the only option left for him/her was to resign, in which case, in addition to the loss of severance pay (which he/she would have to pay back to the employer as unduly paid to him/her)⁷⁷, he/she would lose his/her job without any compensation or other relief whatsoever. If again the reintegration of the employee, after many years of litigation, was objectively impossible for the employer, the latter could not refuse to reinstate the employee but could only proceed to a new dismissal, with further multi-year disputes on its validity for both sides. It is striking that this deadlock, extremely detrimental to both parties (as well as to the national economy), never caused the labour legislator to intervene and settle the issue, ensuring a balanced solution for both sides, such as for example occurs under German law⁷⁸. The above expounded situation with regard to the reinstatement of the abusively dismissed person has now changed by article 66 of Law 4808/2021. This article, as already mentioned above, splits the legal consequences of

⁷³ Decision of ECSR of 31.1.2017 on the collective complaint 106/2014 Finnish Society of Social Rights v. Finland, 2017, 989 (see especially paragraphs 55-57). It should be noted that Finland is the only country that has recognized the possibility for its Non-Governmental Organizations to file collective actions against it.

⁷⁴ ECSR, Judgment of 11 February 2019 in *Confederazione Generale Italiana del Lavoro (CGIL) v Italy*, para 84 et seq.

⁷⁵ Cf. articles 281, 174, 180 and 656 of the Greek Civil Code.

⁷⁶ Moreover, according to the case-law, he/she was obliged to seek and accept other employment, in accordance with the principle of good faith.

⁷⁷ Given that the employment relationship had not been validly terminated.

⁷⁸ Where, in accordance with article 9 of the law on the protection against dismissal (*Kündigungsschutzgesetz*), the court may terminate the employment contract by a court decision if so requested by one of the parties, provided that re-employment, under the specific conditions of the case, is judged either objectively impossible for the employer, or reasonably undesirable for the employee. In such a case the employer will have to pay adequate compensation to the terminated employee.

unlawful dismissal into two categories based on the severity of employer unlawfulness (as the law puts it). The first category (par. 1) lists the reasons which, due to the major weight assigned to them by law, imply, as in the previous legal framework, the irreversible invalidity of the employer's termination act and the re-employment of those who have been dismissed. However, it covers a very small category of terminations, since it does not include redundancies. In addition, the legislator, instead of seizing the opportunity of the new legislation to harmonise the conflicting interests, clearly favoured the employer by opening up to the dismissed employees who do not wish to be re-employed the option to replace the loss of their position with a monetary "compensation" (see article 66 par. 4⁷⁹). However, the criteria for determining the amount of payment (the employee's previous service, the severity of the employer's fault and the economic condition of the parties) and the establishment of a ceiling, are not related to the amount of damage that the dismissed person may really suffer. Therefore, it will not be a real restitution but a modest civil penalty, which neither adequately compensates the unlawfully terminated person for the loss of his/her employment, nor deters the employers from unlawfully dismissing their employees. The new arrangement, therefore, did not tackle the issue and did not provide any real protection to those who do not wish—for obvious reasons—to rejoin the company. Subsequently, paragraph 3 further stipulates that if the dismissal is due to reasons other than those of paragraph 1 (i.e., reasons which, although not specified, are considered minor by the legislature), then the re-employment claim and the arrears are replaced, on the initiative of either the employer or the employee, with an amount of a so-called *additional compensation* in favor of the dismissed. Such compensation is the same as paid to those who do not wish to be re-employed (first category). Therefore, in the case of the second category of reasons, which covers the vast majority of terminations, including redundancies, the employer, with a simple arbitrary request (which can be submitted at any time at the first or second instance of jurisdiction, judging from the anticipated outcome of the trial), may by its own will cancel the re-employment of the unlawfully terminated employee and the payment of arrears of wages. In the end, the issue of re-employment of the employee after unlawful dismissal was settled in the most unproblematic for the employer and painful for the worker way. Thus, in the case of the first category the employee is urged to sacrifice his/her employment against a minor monetary benefit, while in the second the employer is relieved of the reinstatement obligation and the payment of arrears of wages against a manageable civil penalty.

Given the above, the aforementioned provisions of article 66, having (directly or indirectly) overturned or restricted the possibility of re-employment of the unlawfully dismissed employee and the claim for payment of arrears of wages, seem to be in direct conflict with article 24 of the revised ESC, which, according to the authentic interpretation given by the ECSR, requires the domestic legal orders to provide the

⁷⁹ The provision provides for the payment of an additional monetary compensation in the form of a civil penalty, amounting to a minimum of three monthly salaries and a maximum (cup) of twice that provided by Law 2112/1920 for the legal dismissal.

unlawfully dismissed worker with the effective possibility of re-employment with payment of arrears of wages, and only if re-employment is judged objectively impossible for the employer or it is undesirable for the dismissed person, to be replaced by adequate compensation, which, however, must still include the arrears of wages until the time of the issuance of the court decision declaring the unlawfulness. Therefore, article 66 of Law 4808/2021, disregarding the principle of reinstatement and enshrining opposite and inverse regulations from those of article 24a of the rev. ESC, undisguisedly violates it.

5.3. The adequate compensation for unlawful dismissal in lieu of reinstatement in article 24 lit. b' of the rev. ESC.

If the ECSR, in the course of monitoring a collective complaint, considers that although the legislation of the specific State may offer the possibility of re-employment and reintegration of the dismissed worker into the undertaking, but in a specific case such reintegration appears to be objectively impossible for the employer or undesirable for the employee, the Committee proceeds to the control of the amount of monetary benefit that the unlawfully fired person will be entitled to receive in compensation for the loss of his job. As long ago as in 2012, in the context of assessing national reports, the ECSR had concluded that the amount of the alternative compensation to be paid to the unlawfully dismissed person in lieu of reinstatement should present two main characteristics: First, it must be commensurate with the actual damage suffered by the dismissed person. Under such damage, the Commission primarily understands any remuneration which the dismissed person did not receive as a result of the unlawful dismissal⁸⁰. Second, the amount of compensation must be at a level high enough to dissuade the employer for making unlawful dismissals. In this sense, the Commission has considered that any ceiling on compensation by domestic law or practice which reduces the dissuasive effect of compensation or the reparation of the actual damage of an employee is not in conformity with article 24 of the rev. ESC. Thus, in the case of the collective complaint against Finland by the Finnish Association of Social Rights (no. 106/2014) the ECSR considered⁸¹ that the 24-month wage ceiling set by the Finnish Employment Contracts Act for compensation of the unlawfully dismissed may in some cases (despite its apparently satisfactory amount) not be sufficient and proportionate compensation within the meaning of article 24 b of the rev. ESC, since any recourse to the Finnish law on tort liability was found not to be a sufficient alternative to cover the damage that the dismissed person might suffer. Similarly in the case of the collective action against Italy by the Italian Federation of Workers (no. 158/2017)⁸² the ECSR, reiterates that workers who are dismissed without valid reason must receive full compensation, which will include lost wages due to dismissal, the possibility of re-employment of the employee and

⁸⁰ ECSR, Findings 2012, Finland; ECSR Decision of 31.1.2017 on the collective action 106/2014, *Finnish Society of Social Rights v. Finland*.

⁸¹ ECSR Decision of 31.1.2017 on the collective action 106/2014, *Finnish Society of Social Rights v. Finland*

⁸² ECSR Decision of 11.2.2019 on the collective complaint 158/2017, *Confederazione Generale Italiana del Lavoro (CGIL) against Italy*.

compensation of an amount that is deterrent to the employer and capable of repairing the damage which proves the employee that he/she has suffered.⁸³ Furthermore, emphasizes the Committee, that the provision of a ceiling in compensation as a substitute for re-employment and arrears of wages precluding any further real damage that the dismissed person might prove that he/she has suffered due to the unlawful dismissal, is in principle contrary to the Charter.⁸⁴ Based on these data, the Commission concluded that Italy had violated article 24 of the rev. ESC, because its legislation, providing for a maximum compensation (ceiling) for unlawful dismissals, does not guarantee that the unlawfully dismissed person will be able to restore all the suffered loss, including his/her earnings in the period from the dismissal until the delivery of the court decision⁸⁵.

5.4. The amount of compensation for unlawful dismissal in Law 4808/2021 is in complete discrepancy with article 24 lit. b´ of the rev.ESC.

The legal regime established by article 66 par. 3 of the recent Greek Law 4808/2021 sets a framework for an automated calculation of compensation with a ceiling, as a substitute for re-employment and arrears of wages precluding any further real damage that the dismissed person might prove that he/she has suffered due to the unlawful dismissal. In fact, the maximum amount of the compensation (ceiling) to be paid for unlawful dismissal, as provided in article 66 par. 3 of the Greek Law 4808/21 (twice the legal severance indemnity), without allowing the judge to take provision for achieving a correspondence/proportion between the compensation and the damage inflicted, does not meet the requirements of article 24b. For instance, a typical employee with a salary of 1,200 Euros and five years of service,⁸⁶ receives a maximum compensation for unlawful dismissal of maximum six monthly salaries, namely 7,200 Euros.

In these circumstances, we should not expect many court cases stemming from dismissed employees alleging reasons falling into the second category, since the unilateral and unjustified possibility of the employer to circumvent re-employment and arrears of wages, as well as the low level of substitute compensation, encourages the employer to dismiss its staff at low cost, discourages the employees from going to court, since even if their case succeeds, the benefit will be in most cases negligible, if the court fees, the delay and the inconveniences of the trial are taken into account. This, of course, definitely violates the provision of article 24 bii of the rev. ESC, as it affects (makes unprofitable) the right of the dismissed to appeal to an impartial body.

Certainly then, the situation in Greece as to the consequences of the unlawful dismissal after the entry into force of Law 4808/2021 is not in conformity with article 24 lit. b´ of the rev. ESC, as the Greek law does not care about the connection between damage and compensation. Moreover, instead of deterring the employer from proceeding to unlawful dismissals, it deters the dismissed person from claiming his/her rights.

⁸³ Point 87.

⁸⁴ Point 96.

⁸⁵ Points 102 ff.

⁸⁶ Entitled to receive 3 monthly salaries for severance indemnity in any case of termination

IV. Concluding Remarks

In contemporary Greece, austerity in the context of the Memoranda was primary understood as a tool employed by the institutional creditors for cutting public expenses preferably social benefits (e.g., pensions or disability allowances) and privatising public assets, whereby most people were anxious that they may have to buy fundamental services as health or educational, on excessive prices, while much fewer will become astronomically reach.

But austerity also brought radical reduction of wages in the public and private sector, alongside with dismantling of collective negotiations and erosion of the protective employment legislation. It is evident that such austerity had a lethal impact on constitutional and human rights in the country. We have seen that in the Decisions of the European Committee of Social Rights. And what is more, it has become now a common understanding that austerity is not limited to measures purportedly imposed as a therapy to the economic and financial crisis, but that it rather marks the shift to a new economic and cultural paradigm: the dominance of the full and irrefutable neoliberal credo in the total market. In the end of the day, austerity measures, instead of promoting sound competition, as it was triumphantly declared, have led to extended unemployment and produced pauperisation of a significant segment of the population.

But the drastic reduction of human rights and human dignity especially in the field of labour and social law, is not the only price that Greece had to pay on the altar of austerity and conditionality policy. Actually Greece, the cradle of Democracy, as it was once complacently avowed, now has, as it looks, a *limited* democracy in the sense that the Parliament had no power to legislate in breach of what the conditionality of the Memoranda dictated; and also, in the sense that *it was forced to* legislate in conformity with the conditionality and the austerity measures regardless if such laws contravene constitutional, supranational or international human and fundamental rights⁸⁷. Really the rule of law, the third cornerstone mission of the Council of Europe, had been in the memoranda era, widely replaced by the rule of force.

As we have seen, the Greek Government officially accused the *institutional creditors* that the Memoranda were negotiated under conditions of coercion and threatening within the meaning of article 52 of the Vienna Convention on the Law of Treaties.

⁸⁷ The last episode of a rude contempt towards Greece's constitutional and international commitments occurred when the Troika demanded, under threat of not payment of the July 2017 disbursement, that Greece legislates on the opening of commercial shops in the Athens area on half Sundays of the year. Such demand was finally satisfied and endorsed by the Greek Parliament in article 49 of Law 4472/2017. Of note that, a few days before, the Supreme Administrative Court had unanimously found unconstitutional and therefore invalid a ministerial Decision of similar content (see *N. Gavalas, The participation in the common Sunday rest as a universal cultural principle and as a constitutional right of all workers. A critique on article 49 of Law 4472/2017*, Review of Labour Law (Επιθεώρησις Εργατικού Δικαίου) vol. 79/2017, p. 777 [in Greek]).

The accusation is awful indeed. But no plausible response was ever provided by the institutions involved.

The previous analysis showed as well, that the Greek State, with regard to the implementation of the rev. ESC in the characteristic case of the fundamental principle of the valid reason as an essential prerequisite of the legality of the employment termination, has entirely failed, even after the memoranda era, to adjust the law in a way to correspond to the regulatory content of article 24 of the rev. ESC, In the end, the current situation not only brings the country in complete contradiction with Article 24 of the rev. ESC, but also seriously violates the concept of the rule of law, since this violation is a typical example of contempt of the international obligations of Greece to adapt the law to the regulatory content of a fundamental right, protected by a binding International Treaty⁸⁸.

It is therefore extremely necessary and urgent that a collective complaint by a competent domestic or European Organization be lodged before the ECSR, alleging that the situation in Greece is not in conformity with article 24 of the rev. ESC. The decision that will be delivered by the ECSR, if properly made public, may force the country to move into the direction of compliance with the content of Article 24 of the rev. ESC. The benefit will be great. Primarily for the country itself, its development, economic and social⁸⁹, but also for the very mission of the European Social Charter as the main and most significant legal instrument for the promotion of Fundamental Social Rights globally.

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⁸⁸ It is also worth noting that Greece stubbornly refuses to this day to repeal article 17 par. 5 of law 3899/2010, which introduced a probationary period of one year from the recruitment during which the dismissal is possible without notice and without compensation, despite the fact that the provision has been judged twice contrary to article 4 par. 4 ECSC: on the one hand with the decision of ECSR of 23.12.2012 on the collective appeal no. 65/2011 of G.E.N.O.P.-D.E.I. v. Greece (see remarks by N. Gavalas, in EErgD 2012, pp.1561 ff.) and on the other hand by the decision of ECSR of 5.7.2017 on the collective complaint No. 111/2014 of the G.S.E.E. against Greece.

⁸⁹ According to V. Palli, Review of Labour Law (in Greek) 2020, p.1318-1319, the exercise of a collective complaint before the ECSR “*Is the only remaining means —albeit indirectly— of forcing Greek law to comply with the RESC “but it would also enable the ECSR to interpret the provisions of ed. a’ and b’ of article 24, in order to guide the Greek legislator as to the scope of the obligations it has undertaken with the ratification of the Charter, but also the Greek courts as to the method of interpretation and application of article 24”*”

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