



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

23 September 2015

**Case Document No. 4**

**Greek General Confederation of Labour (GSEE) v. Greece**  
Complaint No.111/2014

**OBSERVATIONS BY THE INTERNATIONAL  
ORGANISATION OF EMPLOYERS (IOE)**

**Registered at the Secretariat on 7 September 2015**





International Organisation of Employers  
Organisation Internationale des Employeurs  
Organización Internacional de Empleadores  
*The Global Voice of Business*

## **SUBMISSION ON THE MERITS OF COLLECTIVE COMPLAINTS No. 111/2014**

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Geneva, 7 September 2015

From:

**The International Organisation of Employers (IOE)**

Avenue Louis Casai 71

CH-1216 Cointrin, Geneva

Considering collective complaints No. 111/2013 lodged by the Greek General Confederation of Labour (GSEE) on 26 September 2014;

Considering the e-mail of M. **Laurent Viotti**, Division of Collective Complaints, Department of the European Social Charter, DG I Directorate of Human Rights, dated 5 June 2015, inviting the IOE to formulate its submissions on the merits of Complaint No. 111/2014, in application of Article 7.2 of the Additional Protocol of 1995 to the European Social Charter;

The IOE herewith refers to its submission on the merits of complaint No. 111/2014, which includes the perspective of the IOE-affiliated Employers' federation, the Hellenic Federation of Enterprises (SEV).

## Outline

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## 1. GENERAL OBSERVATIONS ON THE MERITS OF THE COMPLAINT

1. The present comments constitute a submission on the merits of the collective complaint lodged by the Greek General Confederation of Labour (GSEE) before the European Committee of Social Rights in relation to the application in Greece of Article 1 (the right to work), Article 2 (the right to just conditions of work), Article 4 (the right to a fair remuneration), Article 7 (the right of children and young persons to protection), Article 30 (Derogations in time of war or public emergency), Article 31 (Restrictions) of the 1961 European Social Charter and Article 3.1 of the 1988 Additional Protocol, ratified by Greece (the right to take part in the determination and improvement of the working conditions and working environment).
2. The GSEE alleges that the situation in Greece is in breach of the aforementioned provisions of the Charter and the 1988 Additional Protocol due to the legislation adopted between 2010 and 2014 in response to the economic and financial crisis.
3. The IOE takes note of the decision on admissibility of 19 May 2015 of the European Committee of Social Rights (ECSR), which declared **the complaint admissible with reference to Articles 1, 2, 4, 7, of the 1961 Charter and Article 3.1 of the 1988 Additional Protocol, but not to Articles 30 and 31 of the 1961 Charter.**
4. The IOE first wishes to emphasise that the principal foundation of the complaint and the legislative reforms detailed by GSEE is the unprecedented financial and economic crisis being faced by Greece since 2008.
5. On this basis, the IOE believes that the GSEE claims that the Government of Greece is in breach of its obligations under Articles 1, 2, 4, 7, of the 1961 Charter and Article 3.1 of the 1988 Additional Protocol have to be evaluated in the context of the economic crisis. The proportionality criterion apply to this case.

## 2. The Greek financial situation between 2010 and 2012

### Introduction

1. Greece establishes the clear protection of human and social rights under its Constitution, which entered into force in 1975. The protection of social and human rights is therefore ensured through national laws, in conformity with the constitution, with international conventions ratified by Greece<sup>1</sup> and with European law<sup>2</sup>.
2. Greece's objective to increase the protection of human and social rights has led to the ratification of the 1961 Charter (Law 1426/1984) and of the 1988 Additional Protocol (Law 2595/1998).
3. The legislative technique used to draft the Charter and the Additional Protocol provides the flexibility to adapt the protection of social rights to developing economic conditions. The GSEE wrongly assumes that once a social right is regulated by law, this protection can only be improved and that no adjustment is permitted to adapt to adverse economic conditions that challenge the sustainability of the level or quality of the particular social right.
4. Since the early 90s, European countries have introduced some forms of flexibility while promoting security in employment. These policies are not *per se* a violation of the European Social Charter.
5. The fiscal consolidation measures introduced as a response to the 2008 world economic crisis, the 2009 Eurozone economic crisis and the 2009 public debt crisis in Greece, which have challenged the quality of social rights, have been questioned on their effectiveness in enhancing economic development and responding to the economic crisis. The political and economic debate has not been concluded. However, it is generally accepted that the two root causes of the crisis have been the enormous twin deficits: the competitiveness deficit and the budget deficit.
6. The labour law reforms mentioned in the complaint comply with the terms set out in the Memoranda of Understanding (MOU) attached to the international loan agreements<sup>3</sup> signed by the Greek Government<sup>4</sup>. According to the two MOU, the Greek economy requires restrictions of public expenditure and structural reforms to enhance competitiveness. Structural reforms included the improvement of work flexibility and the harmonization of employment protection legislation with average standards in the European Union.
7. GSEE's complaint describes the amendments to Greek laws, but does not refer to the level of protection before the amendment. Moreover, it makes no reference to the severity of the public debt crisis in Greece since 2009, which continues to persist and escalate, leading to threats of the exit of Greece from the Eurozone on several occasions (the most recent in June and July 2015). This crisis generated an economic upheaval that has created a unique recession and impoverished the population of the country. Over the past five years, Greece has lost 22% of its GDP, and unemployment

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<sup>1</sup> ILO conventions and recommendations on international labour standards: Greece has ratified the 8 fundamental Conventions.

<sup>2</sup> Greece joined the European Union in 1981.

<sup>3</sup> MOU1 incorporated by L. 3845/2010 and MOU 2 incorporated by L. 4046/2012. These MOU between the Greek Government and the institutions that provided the rescue package determined the specific policy commitments of the Greek Government.

<sup>4</sup> See below paragraph B: EU Summit decisions No. 12/7/2015.

has rocketed from 9.6% (2009) to 26.5% (2014), and for young people from 25.7% (2009) to 52.4% (2014).

8. These factors should be taken into account when evaluating the application of the Charter in Greece and shall be analyzed under the criterion of proportionality between the measures adopted and the aims pursued.

#### **A. Economic crisis and labour market reforms in the Eurozone**

1. The European debt crisis (also referred to as the Eurozone crisis or the European sovereign debt crisis) is a multi-year debt crisis in several member States of the Eurozone since the end of 2009. Some States (Greece, Portugal, Ireland, and Cyprus) were unable to repay or refinance their government debt or to bail out over-indebted banks under their national supervision without the assistance of third parties including the European Financial Stability Facility (EFSF), the European Central Bank (ECB) or the International Monetary Fund (IMF).
2. The European debt crisis is rooted in an environment of excessive structural deficits and accelerating debt levels. The States that were adversely affected faced a strong rise in interest rate spreads for government bonds as a result of investor concerns about their future debt sustainability. Four Eurozone states had to be rescued by sovereign bailout programmes, which were provided jointly by the IMF and the European Commission, with additional technical support from the ECB. Together these three international organisations representing the bailout creditors are known as “the Troika”.
3. During 2010–12 it became evident that, of the eighteen Eurozone States, four (Greece, Ireland, Portugal and Cyprus), facing persistent negative growth prospects and increasing government debt, would find it difficult or impossible to repay or refinance their government debt without bailout assistance support from the Troika. The transfer of bailout funds was performed in tranches over the years and was conditional on the governments would simultaneously implement a package of fiscal consolidation, structural reforms, privatisation of public assets and setting up funds for further bank recapitalization and resolution. Spain was, strictly speaking, not hit by a sovereign debt-crisis in 2012, as the financial support package they received from the European Stability Mechanism (ESM) was for bank recapitalization and did not include financial support for the government itself. As of July 2014, Ireland and Portugal had completed and exited their bailout programmes successfully, meaning that a combination of improved structural deficits and a return to economic growth had enabled them to regain full market access to accommodate their future refinancing needs. Greece and Cyprus both managed to partly regain market access in 2014, and were scheduled to have their bailout programme periods end in March 2016.
4. In order to maintain money flows between European banks, the ECB lowered the interest rates and provided cheap loans of more than one trillion Euro. On 6 September 2012, the ECB also calmed financial markets by announcing free unlimited support for all Eurozone countries involved in a sovereign state bailout/precautionary programme from EFSF/ESM, through the Outright Monetary Transactions (OMT)<sup>5</sup> programme.

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<sup>5</sup> Specific technical features have been established for the [Outright Monetary Transactions programme](#).

## B. The economic crisis in Greece

1. The main characteristic of the Greek financial crisis has been the extremely high deficit. The excessive cost of public borrowing has hindered the country's ability to be granted loans in the international market.
2. With a view to rescuing the Greek economy, a financial support mechanism was established at European level between February and April 2010. As an inevitable way out of the crisis, a loan to Greece amounting to €110bn was provided. The terms of the loan agreement between the Government of Greece and the troika of bailout creditors were stipulated in the Memoranda attached to it and ratified by Article 1 of Law 3845/2010<sup>6</sup> scheduling the policy measures and the loan installments over a period of three years. Following the 2010 loan, adjustments programmes have been introduced and signed between the same parties and have been ratified by Law 4024/2012<sup>7</sup> with the related Memoranda. Based on the above international loan agreements, restructuring measures have been introduced gradually in response to the evaluation of the structural reforms and the fiscal measures, which were among the conditions for the loan tranches.
3. The critical economic situation in the period 2010-2014 affected the level of protection of social rights, but reflected the loan conditions as follows:
  - a. **To control public deficit**, a restriction on public expenditure was introduced, which resulted in wage cuts in public services and in public sector enterprises and restructured the wage system for public servants. The wage and pension cuts started on 1 October 2010 with the adoption of Law 3833/2010 and evolved until 2013 with the adoption of Law 3845/2010, Law 3899/2010, Law 4024/2011 and Law 4093/2012<sup>8</sup>.
  - b. **To improve competitiveness**, the Greek government focused on:
    - Decentralization of collective agreements, shifting to enterprise level agreements.
    - Reform of the minimum wage setting system, by decreasing the minimum wages, restricting the applicability of the national general collective agreement to signatory companies only and the introduction of statutory minimum wages determined by the government.

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<sup>6</sup> Law 3845/2010 ratified also the "Measures for the implementation of the support mechanism for the Greek economy by the Eurozone member states and the International Monetary Fund". It was adopted by the Greek Parliament on 6<sup>th</sup> May 2010. The economic adjustment programme for Greece – May 2010 (European Economy , Occasional Paper 61/May 2010 see especially, Labour market reforms page 24).

<sup>7</sup> Law 4046/2012 ratified the PSI LM Facility Agreement and the Co-financing Agreement, together with the attached Memoranda. See: "The second economic adjustment programme for Greece – March 2012" (European Commission – Economic and Social Affairs), in particular paragraphs: 4.4. Growth – enhancing structural reforms, 4.4.1, Labour market. Also see "The second economic adjustment programme for Greece – Second review – March 2013" (European Commission - Economic and Social Affairs) Occasional Paper No. 148/May 2013 (Page 39 Strengthening labour market institutions and promoting employment). Law 4093/2012 on the Midterm Adjustment Programme for Fiscal Strategy 2013-2016.

<sup>8</sup> GSEE refers also to the legislation which has introduced horizontal wage cuts for the civil servants and the employees in all public sector enterprises and legal entities, namely Law 3833/2010, Law 3845/2010, Law 3899/2010, Law 4024/2011, Law 4046/2012 and Law 4093/2011.



- Restriction of the scope of compulsory arbitration awards to basic wages and finally by the resort to arbitration only with the consent of the bargaining parties<sup>9</sup>.
- Flexibility in working hours within the framework of the EU directives 93/104/EC and 2000/34/EC as implemented through the Presidential Decrees No. 88/1999 and 76/2005, and by Law 4093/2011.
- Reduction of severance payments and the introduction of a one-year probation period for contracts of indefinite duration<sup>10</sup>.
- Employment of the long-term unemployed (unemployed for over 12 months) by establishing a seniority increase to the minimum wage of 5% for every three years of service, up to nine years of service with a total 15% increase, instead of the usual 10% minimum wage increase for three years of service, up to nine years and a total of 30%<sup>11</sup>.
- Increase in employment flexibility, having greater recourse to temporary agency work<sup>12</sup>.

### C. Similar complaints submitted to other international forums

1. Between 2010 and 2012, GSEE has presented submissions to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on different ILO Conventions, as well as complaints before the ILO Committee on Freedom of Association (CFA) alleging the same issues as mentioned in collective complaint No. 111/2014<sup>13</sup>. The ILO CEACR, the CFA and the Committee on the Application of Standards of the International Labour Conference<sup>14</sup> have been very cautious in their determinations on legislative reforms in the context of fiscal consolidation measures adopted in Greece. Within this framework, an ILO High Level Mission took place in 2011 and assembled the Greek Government and the social partners, as well as official representatives of the European Commission, the ECB and the IMF. The Report of the High Level Mission<sup>15</sup> described the labour market reforms under economic crisis conditions and the explanations given by the parties concerned, but did not reveal any violation of international labour standards as a result of labour law reforms.
2. The CFA, while taking into account the outcome of the ILO mission, observed that *“neither party to the complaint has called into question the gravity and urgency of the situation and that this must be duly taken into account as background for its conclusions below”*. It subsequently expressed itself as follows: *“(a) Deeply aware that the measures giving rise to this complaint have been taken within a context qualified as grave and exceptional, provoked by a financial and economic crisis, and while recognizing the efforts made by the Government and the social partners to tackle these daunting times, the Committee recommends that the Government promote and strengthen the institutional framework for collective bargaining and social dialogue and urges, as a general matter, that permanent and intensive social*

<sup>9</sup> Article 14 of Law 3899/2010, Article 37 of Law 4024/2011, Law 4046/2012 accompanied by the Ministerial Council Act 6/28.2.2012 and followed by Law 4093/2012.

<sup>10</sup> Law 4093/2012 and Law 3899/2010

<sup>11</sup> Law 4254/2014

<sup>12</sup> Articles 116, 122 and 124 of Law 40524/2012 (as amended by Law 4254/2014)

<sup>13</sup> CFA [Case No. 2820](#)

<sup>14</sup> See Reports 2011 and 2012

<sup>15</sup> See [Report of High Level Mission to Greece](#) (Athens 19- 23 September 2011), see especially conclusions par. 297-356

*dialogue be held on all issues raised in the complaint and in its conclusions with the aim of developing a comprehensive common vision for labour relations in the country in full conformity with the principles of freedom of association and the effective recognition of collective bargaining and the relevant ratified ILO Conventions*". This is a clear demonstration of the cautious attitude of the CFA on these issues.

3. Complaints have also been submitted with similar allegations as collective complaint No. 111/2014 before the European Commission of Human Rights and the Greek Courts. These complaints have not been upheld by the highest courts in the country<sup>16</sup>.

### 3. SPECIFIC COMMENTS ON COMPLIANCE WITH THE EUROPEAN SOCIAL CHARTER

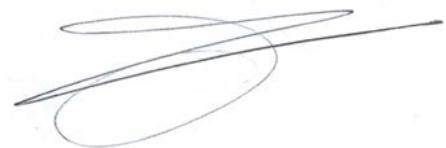
1. The critical economic situation in the period 2010-2014 affected the level of protection of social rights, but reflected the international loan conditions determined by the troika. Economic measures have been adopted in light of public deficit control and to improve competitiveness.
2. The proportionality criterion - between the unprecedented financial and economic crisis and the fiscal consolidation measures aimed at facing the crisis -has to be applied and would justify Government actions affecting the level of protection of social rights.
3. The international loan conditions which led to the social measures were considered by the Government and took into account the social and economic rights embodied in the principles and values of the European Social Charter.
4. In addition, the general drafting of the Charter and the Additional Protocol provides adequate flexibility to adapt the protection of social rights to developing economic conditions.
5. Following the 2012 CFA recommendation, the Government is now focusing on the promotion and consolidation of the institutional framework for social dialogue. A relevant proposal is currently under discussion in Parliament on the restoration of the minimum wage and on collective agreement. A "National Reform Program 2015" was also submitted to the European Commission in May 2015 on the restoration of the minimum wage and the promotion of collective bargaining.

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<sup>16</sup> **Full member of the High Administrative Court 668/2012** ruled that pension and wage cuts of civil servants under Law 3833/2010, Law 3845/2010 and Law 2847/2010 do not violate the proportionality criteria and are justifiable by the general interest, considering the need to reduce public expenditure due to the debt crisis. **Full member of the High Administrative Court 2307/2014** ruled that reforms on the collective agreement system under the Cabinet Decision 6/2012 and Law 4046/2012 as well as Law 4293/2012, do not violate the right to work and fair remuneration as well as the freedom of collective bargaining, the system of collective agreements and the establishment of statutory minimum wages under Articles 1 and 4 of the Charter and Article 22 of the Greek Constitution.

#### 4. CONCLUSIONS

1. The unprecedented financial and economic crisis being faced by Greece since 2008 is the principal foundation of the complaint as well as the legislative reforms detailed by GSEE. .
2. While the fiscal consolidation measures have impacted the level of social rights protection, the core of social rights has not been compromised.
3. The general drafting of the Charter and the Additional Protocol provides adequate flexibility to adapt the protection of social rights to developing economic conditions. Such flexibility is required by the ECSR to evaluate the compliance of the legislative reforms mentioned by the complainant with the provisions of the Charter.
4. The critical economic situation in the period 2010-2014 led to the adoption of economic measures with a view to public deficit control as the best and the only way to improve competitiveness and ultimately enhance the protection of social rights.
5. A proportionality criterion between the unprecedented financial and economic crisis and the fiscal consolidation measures aimed at responding to the crisis justifies the Government actions which affected the level of protection of social rights.
6. Greece continues to be in high financial and economic crisis and should proceed with the necessary reforms in order to improve the economic and social situation.
7. **ECSR conclusions with reference to the application of Articles 1, 2, 4, 7, of the 1961 Charter and Article 3.1 of the 1988 Additional Protocol by Greece shall positively consider the legislative reforms recently discussed in Parliament in the context of the current and ongoing economic downturn.** The country needs economic stability and structural reforms, while ensuring proper and successful social dialogue.
8. On this basis, it is requested that the ECSR takes duly into account all the information detailed in the present submission when considering the merits of GSEE complaint No. 111/2014.



**Linda Kromjong**  
**IOE Secretary-General**

*The International Organisation of Employers (IOE) is the largest network of the private sector in the world, with more than 150 business and employer organisation members. In social and labour policy debate taking place in the International Labour Organization, across the UN and multilateral system, and in the G20 and other emerging processes, the IOE is the recognized voice of business. The IOE seeks to influence the environment for doing business, including by advocating for regulatory frameworks at the international level that favour entrepreneurship, private sector development, and sustainable job creation. The IOE supports national business organisations in guiding corporate members in matters of international labour standards, business and human rights, CSR, occupational health and safety, and international industrial relations. For more information visit [www.ioe-emp.org](http://www.ioe-emp.org)*