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THE PROTECTION OF THE FUNDAMENTAL SOCIAL RIGHTS IN THE GREEK LEGAL SYSTEM

TABLE OF CONTENTS

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I. INTRODUCTION

The current study aims to present the framework of the fundamental social rights in the Greek legal system as this has been formed in the national and international cadre. In the first part of the current study we will address the legislative sources of the fundamental social rights in the Greek legal order as well as the hierarchy and the relations among them in case of contradiction. After a brief presentation of the role of social rights in the Greek legal order, it will be also presented the Greek system of the constitutionality control as this is realized by the Greek courts and constitutes a substantial part of the judicial review in Greece.

In the second part of the study, it is attempted a more detailed presentation of the role of the European Social Charter in the Greek legal order and, in particular, the evolution of the binding nature of the Charter through the Greek jurisprudence. As long as the European Social Charter guarantees in solemn manner fundamental social rights, the Greek judge could neither disregard its applicability nor avoid the justification in case of non-implementation of its provisions.

Finally, taking into consideration the fact that the protection of fundamental social rights has been seriously evoked in Greece after the adoption of the austerity measures in accordance with the Memoranda, the third part of the current study is dedicated to the examination of the main issues related to the unconstitutionality of these measures as it has been developed by the Greek courts. With regards to the cases concerning the governmental austerity measures taken in accordance with the imposed Memoranda, Greek courts had the opportunity to proceed in the control of constitutionality of the austerity measures in order to diagnose the obvious contradiction of the majority of these measures to the Constitution and the international rules. However, things did not evolve as expected.

The austerity measures have been also considered by international and European institutions which monitor the implementation by the state parties of the ratified international treaties for the protection of human rights and it was found out

that serious violations occur in the application of those measures. Those measures have also concerned the European Court of Human Rights which confirmed the limits set by the ECHR in the social and economic national policies. Serious violations of social rights in the implementation of the austerity measures have also been thoroughly examined by the European Committee for Social Rights. In particular, according to the Committee[1] several austerity measures which have substantially amended the labour law and the social security legislation in compliance with the memoranda, they violate the provisions of the European Social Charter which guarantees a minimum protection of social and economic human rights imposing obligations on the state parties[2]. The third part also includes the response of the international jurisdictional bodies towards the restrictions of social rights in Greece reminding the obligation for compatibility with the international conventions ratified by the Greek state.

[1] ECSR, GENOP-DEI c. Greece, Complaints 65/2011, 66/2011, 23.5.2012.

[2] L. Samuel, *Fundamental social rights. Case law of the European Social Charter*, 2nd ed., Council of Europe Publishing, 2002, s. 27-30

II. THE FRAMEWORK OF FUNDAMENTAL SOCIAL RIGHTS IN THE GREEK LEGAL ORDER[3]

1. Constitutional sources and ordinary legislation

Regarding the legal sources in the Greek legal system for the protection of fundamental rights, the current Constitution of 1975, as revised in 1986, 2001 and 2008, represents the main legal source of the basic civil and social rights (Art. 4-25), as well as of the basic political rights. In particular, the Constitution guarantees among other the principle of human dignity (Art. 2), the principle of equality (Art. 4), the right to the free development of personality (Art. 5), the rights to domicile, privacy and data protection (Art. 9 and 9A), it recognizes the freedom of religion and expression (Art. 13and 14), the protection of family, marriage, motherhood and youth, the rights to work and social security, the freedom of association and the right to strike (Art. 21, 22, 23). In addition, Article 25 of the Greek Constitution entails the general provisions regarding fundamental rights protection (the principles of Drittwirkung, proportionality and due process), while Articles 29, 51 and 120 guarantee to Greek citizens the right to found and/or to participate in political parties, the right to vote and the right to resist.

Regardless the Greek Constitution, legal sources of fundamental rights are also met in the parliamentary legislation. For instance, the protection of personality, image and name is part of the Greek Civil Code (Art. 67-59), intellectual property is protected by the Law 2121/1993, interfamily violence is prohibited by the Law 3500/2006, while a series of Laws (3769/2009, 3896/2010 and 4097/2012) introduce the application of the equal opportunity principle for men and women regarding access to benefits and services, in labour relations and in the field of self-employment. Indeed, Greek courts are often occupied with the equality and non-discrimination principles between men and women in conjunction with the general principles or Directives introduced by EU law. The impact of EU law in the application of the

[3] Ch. Deliyanni-Dimitrakou, Ch. M. Akrivopoulou, *Fundamental Rights and Private Relations in Greek and European Law,* ed. Sakkoulas, Thessaloniki, 2014, p.12-21

equality principle is rather important in the Greek legal system, especially with regards to labour relations and equal pay.

2. International legal sources

Regarding the international sources of fundamental rights, Greece has always been open to international Community standards for the protection of human rights. Greece joined the League of Nations and the International Labour Organization in 1919 while it also became a member of the United Nations (1945) and an associate Member of the European Union (1963). Currently, Greece has adopted all the important international conventions on human rights such as the European Convention of Human Rights (ECHR), (Legislative Decree 53/1974) and the European Social Charter (Law 1426/1986), the Convention on the Elimination of all forms of Discrimination against Women (Law 1342/1983) and the Convention on the Rights of the Child (Law 2101/1992), the Convention relating to the Status of Refugees (Legislative Decree 3989/1959) and the International Covenant on Civil and Political Rights (Law 2462/1997) etc.

As long as the social rights are concerned, Greece has also been updated with the general international framework and has ratified the UN Convention on the Rights of Persons with Disabilities (Law 4074/2012) and has implemented the European Code of Social Security (Law 1136/1981) along with numerous International Labour Organisation conventions such as those concerning Equal Remuneration (Law 46/1975), Maternity Protection (Law 1302/1982), Freedom of Association and Protection of the Right to Organise (Legislative Decree 4204/1961) and the Right to Organise and to Bargain Collectively (Legislative Decree 4205/1961).

Concerning the position of the international law in the Greek legal order, Article 28 para.1 of the 1975 Greek Constitution reflects its open character towards international law as it states that “the generally accepted rules of international law as well as the international conventions ratified by law that became operative according to their respective conditions shall be an integral part of Greek national law and shall prevail over any contrary provision”. As the term "legislative provision" has been interpreted, it is unanimously accepted that this term refers solely to the provisions of common legislation rather than to constitutional provisions. Consequently, in the Greek legal system the hierarchy of legal sources place the "generally accepted rules

of international law and the international treaties ratified by Greece" between the Constitution and the ordinary legislation.

Furthermore, Article 28 of the Greek Constitution introduces a mixed system of both monistic and dualistic elements in the application of the international law. On the one hand, the generally accepted rules of international law are directly applied in the Greek legal order. On the other hand, in order for an international treaty to generate effect on the Greek national law, the treaty needs to be ratified by a statute. However, the current financial crisis in Greece has impeded the compliance of the Greek State with the international obligations it has undertaken with the ratification of the treaties and particularly those protecting economic and social rights. Additionally, Greece has been condemned by the European Social Charter Committee for the violation of the European Social Charter regarding the legislation adopted by the Greek State which implemented the austerity measures imposed by the Memoranda in the Greek legal order.

What is also of great importance in the Greek legal order is the connection between the ECHR and the Greek private law as long as Greek courts frequently adopt the provisions of the ECHR as a hermeneutic criterion in order to interpret the provisions of common legislation. In particular, Greek case law evokes Article 6 of the ECHR establishing the right to a fair trial as well as Article 1 para.1 of the 1st Protocol to the ECHR establishing the respect of the right to property. Therefore, with the adoption of the hermeneutic criterion Greek courts proceed in a horizontal application of the Convention's provisions in the field of private relations.

3. EU legal sources

Along with the international framework of human rights, Greek legal order also recognizes the importance of the EU legislation on fundamental rights starting from the Treaty on the Functioning of the European Union (TFEU) which includes specific provisions for the protection of fundamental rights. Under Article 6 of the Treaty of the European Union there are further recognized the sources of the EU law on fundamental rights which are the CFREU, the European Convention of Fundamental Rights and the general principles of EU law, as those included in the international human rights treaties adopted by the EU Member States. There are also

fundamental rights which apply as secondary legislation in the Greek legal order and not as mere treaty provisions, an example of which is the Equal Treatment Directives.

In the Greek legal order, EU law is recognized as by virtue source of law on the basis of Article 28 para.1 and 2 of the Greek Constitution which is further evoked by the Greek courts to establish the primacy of EU law over national laws.

4. The Greek system of judicial review

Regarding the Greek system of judicial review this is based on the supremacy of the Greek Constitution over the ordinary legislation which should not disregard the principles guaranteed by the Constitution. It is necessary to note that the constitutionality of laws which is exercised by the Greek courts has a mixed character. It has both the features of a diffuse control as well as the characteristics of a centralized control. In Greece there is no Constitutional court but all courts (lower and superior ones alike) are deemed competent to decide upon the constitutionality of a legal provision. In particular, according to article 93 para.4 of the Constitution the courts are obliged not to implement laws which contravene the constitutional provisions.

Under this framework, Greek courts may review all legal documents, laws, presidential and legislative decrees on the grounds of their conformity with the constitutional norms and principles that guarantee fundamental rights. The Greek judicial system is known as the diffuse, incidental and concrete control of constitutionality while scholars use the term “control of unconstitutionality”.

By diffuse it is meant that the constitutional control is performed by every court of every jurisdiction, irrespective of degree. By incidental it is meant that it takes place when the conditions of admissibility and in general the procedural preconditions of each trial are met. By concrete it is meant that the constitutional control is performed within the framework of a certain dispute, on the occasion of the interpretation and implementation of a specific legal provision or normative act.

Additionally, another main characteristic of the constitutional control in Greece is that it is declaratory which means that the diagnosis of unconstitutionality does not lead to the annulment of the relevant provision whose unconstitutionality has been ascertained. Instead, the provision is just set aside and it is not implemented only

for the purposes of the case under dispute. It is also important to mention that in case of cassation of an administrative act for the reason that it has been issued on the basis of an unconstitutional legal provision, other administrative acts with identical legal basis continue to be valid until they get recalled or annulled.

However, parallel to the diffuse control, the Greek constitutional legislator gradually recognized certain forms of centralized constitutional review which allow the judge to declare void the law that is judged unconstitutional. Although the Greek legal system lacks of a Constitutional Court, the Greek Council of State when it conducts judicial review it acquires a principal role which is reflected in the introduction of principles (i.e. the principle of constitutionality) or doctrines (i.e. the protection of legitimate expectations). The Greek Constitution recognizes two forms of "centralised" judicial review: the first one takes place regarding the cases in which there are involved two of the Supreme Courts [Areios Pagos, Council of State (Art. 94 GC) and the Court of Auditors (Art. 98 GC)] on grounds pertaining to the constitutionality of a legal norm, where the Supreme Special Court (Art. 100 GC) rules on the subject and its decision is binding erga omnes for all Greek courts (Art. 100 para.1 section 5). The second form of centralized control of constitutionality, recognized by the Greek law, is the one exercised by the Plenary Assembly of the Council of State (Supreme Administrative Court) on very important issues, such as the protection of human and constitutional rights, on the basis of Article 100 para.5 of the Constitution.

For instance, the control of constitutionality of the austerity measures adopted by the Greek Government in accordance with the Memoranda took place in the majority of the cases, through the above centralized procedure. And this happened due to the fact that the diffuse control is too slow, and secondly, because through this procedure senior judges of the country had the opportunity to timely diagnose and in solemn manner the obvious contradiction of the majority of the austerity measures to the Constitution and the international rules.

III. THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER IN THE GREEK LEGAL ORDER

1. Preliminary remarks

Greece has ratified the European Social Charter in 1961 and the Additional Protocols of 1988 and 1995. In particular, Greece has ratified 67 of the 72 paragraphs of the European Social Charter, it has not ratified the articles 5 (the right to organize) and 6 (the right to bargain collectively) for which Greece is bound by provisions of other treaties (e.g. Article 11 of the ECHR, Articles 12 para.1 and 28 of the EU Charter of Fundamental Rights). In Greek law a ratified treaty is incorporated in the national legal order with supranational legislative power. This power arises from the Constitution and is based on the hierarchy of the internal legal order.

Moreover, Greek jurisprudence accepts the claiming before the national courts of constitutional social rights not only under the Constitution but also often in the light of international and European treaties. The compliance or non compliance of a legal provision with the Constitution or with the provisions of the international and European treaties ratified by Greece falls in the scope of the control of constitutionality.

Furthermore, the intervention of the European Committee of Social Rights took place with regards to the Greek austerity measures; the Committee has reminded the option to lodge an appeal to other international fora and has underlined the important role of national courts with regards to the direct effect of the provisions of the European Social Charter in such cases. The Committee stressed that the self-executing provisions of the Charter provide with claimable rights, whose effective legal protection must be guaranteed by the national courts.

2. The Greek jurisprudence on the European Social Charter

In general, the direct effect of the provisions of the European Social Charter, as sources of supranational law, is taken for granted by the Greek jurisprudence. When the provisions of the Charter are not applied by the Greek courts, it is due to their vague invocation. It is interesting to notice that in several cases concerning the

austerity measures imposed by the Greek state in accordance with the Memoranda, the national courts have applied the provisions of the European Social Charter even when there were contradicting provisions in the domestic law.

A review of the most important cases brought before the Greek courts show that the provisions of the Charter are taken into account by the national judge.

i. The decision 217/2012 of the Council of State

In this case, the national judge concluded that there is no violation of the European Social Charter. In particular, the applicants were doctors of the National Health System who complained against the Prefectural General Hospital of Elefsina "Thriasio" regarding the payment of their allowances for the on-call-duty hours they had realized. Among the legal arguments of their request for cancellation was that the contested administrative decision which adjusted the amounts of the remuneration for the on-call-duty hours was contrary to Article 4 para. 2 of the European Social Charter according to which the Contracting Parties undertake the obligation "to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases".

However, the Council of State agreed with the judgment of the Court of Appeal which had stressed that the payment of the allowances for the on-cal-duty hours did not violate Article 4 para. 2 of the European Social Charter, because this provision does not prevent the national legislature to place restrictions on the amount and the calculation of the remuneration for overtime work if that right of the workers is not restricted in such a way that ends up to be forfeited, which was not the case in this matter.

ii. The decision 1374/1997 of the Council of State

With this decision the Council of State highlighted the supremacy of the Charter's provisions over the national laws and based its judgment on the Charter's provisions. Concerning the facts of this case, the applicant company requested the cancellation of a ministerial decision which did not approve the founding of an

institution which would provide social security services on the grounds that its purposes are already served and constitute part of the strategy of the Ministry of Health and of its institutions in the context of the general national health policy. The applicant company complained before the Council of State that such reasoning which implies that the supply of health services is exclusively organized by the State establishing a state monopoly is not legal.

The Council of State, taking also into consideration the favorability principle, underlined that while Greek Constitution does not establish a state monopoly for health services; the European Social Charter (Articles 11, 13 and 14) not only does not establish such a monopoly but also encourages the participation of individuals and other organizations in the establishment and maintenance of such services. Indeed, the Court referred to the supranational legal power of the provisions of the European Social Charter over the Constitutional provisions and the national laws and proceeded to the cancellation of the relevant ministerial decision.

iii. The decision 1571/2010 of the Council of State

Another interesting decision of the Council of State concerned the armed forces and particularly the right of the military officers to resign from their position. The applicant, Lieutenant of the medical personnel of the army, had requested the cancellation of the administration's refusal to accept his resignation from the Greek army on the grounds that he had not fulfilled the obligation to stay in the army for 18 years according to Article 64 of the Legislative Decree 1400/1973.

The Council of State admitted that Article 64 of the Legislative Decree 1400/1973, which imposes to the military officers the obligation to remain in the army for a certain period of time without being able to resign, is in compliance with the Greek Constitution, because, at the time of the adoption of the Constitution, the constitutional legislator was aware of this obligation and included that obligation in the provision of Article 56 para. 4 of the Constitution.

Although the Council of State decided that the above provision was in conformity with the Constitution, however, the Council underlined the fact that the provision was opposed to the European Social Charter. In particular, the Council stressed that the European Social Charter was ratified with Law 1426/1984 following

the procedure of Article 28 para.1 of the Constitution and acquired superior legal power over any contrary provision of the domestic law. According to the decision of the Council of State, Article 1 ("Right to work") in Part II of the European Social Charter states that " With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: 1 ... 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon. 3 ... ". As the content of this provision was interpreted by the Council, it is prohibited to impose on any employee, regardless of the legal nature of his work, the obligation to continue performing a work or an occupation he no longer wishes to remain in. Therefore, the Council decided that the obligation imposed to the military officers under Article 64 of the Legislative Decree 1400/1973 to remain in the army for a certain period of time without being able to resign if they want, is contrary to the above provisions of the European Social Charter and cancelled the administration's refusal to approve the resignation of the applicant.

iv. The decision 37/2013 of the Court of first instance of Chios

This case concerns a very interesting decision of the Court of first instance of Chios in front of the question of the constitutionality of the austerity measures adopted by the Greek government and demonstrates the contradictions of the national judges towards this matter. The applicants in this case were civil servants of the municipality of Chios whose positions were eliminated and they entered in a non-active status in accordance with the provisions of the Law 4093/2012 which has established the framework for the mobility of the staff of the public sector in accordance with the urgent austerity measures imposed by the second Memorandum. With their action before the Court of premier instance the applicants requested to continue working for the defendant municipality under the same conditions they used to work before they were placed in the suspension status.

The Court underlined that the non-active status of the civil servants under the Law 4093/2012, following the elimination of their positions, is opposed to the provisions of the Constitution (Articles 2 para. 1, 4 para. 5 and 22 para. 1) as well as of the European Social Charter (Article 4 para. 1) which impose the obligations of respect and protection of the human dignity, equal contribution to public charges and

protection of labor. The Court also stressed that the measure in question violates the principles of non-discrimination, objectivity and meritocracy. In particular, the Court argued that the payment of the 75% of the remuneration of the applicants, who had already undergone dramatic cuts along with a series of new taxes and charges that had been imposed by the Greek State during the last 3 years had dramatically affected the decent standard of living of the applicants themselves and of their families.

As a result, the Court declared that the applicants needed protective measures under the provisional judicial protection because, firstly, the reduction of their salaries endangered their decent living and, secondly, their removal from their work would lead to irreversible situations. Therefore, with its decision the Court of premier instance of Chios obliged the municipality of Chios to temporarily accept the services of the suspended applicants until the final decision. The Court based its judgment on the manifest unconstitutionality of the measure in question and the non-compliance of this measure with the European Social Charter along with the cumulative effect of the measure, combined with the new taxes which had been imposed the last three years, which jeopardized the decent standard of living of the applicants.

IV. THE GREEK AUSTERITY MEASURES IN THE LIGHT OF FUNDAMENTAL SOCIAL RIGHTS THROUGH THE JURISPREUDENCE OF THE GREEK COURTS[4]

1. Preliminary remarks

It is evident that Greece is affected more than any other European country by the financial crisis. In 2010 the Greek Government due to a huge public debt has been obliged to ask for external financing by the European Commission, the European Central Bank and the International Monetary Fund and was committed to implement measures of reform that are described in two Memoranda of Understanding.

In fact, since 2010 several austerity measures have been applied in Greece in compliance with the Memoranda under the control of Troika which consists of representatives of the European Commission, the European Central Bank and the International Monetary Fund. The austerity measures adopted by the Greek government included reductions in the remuneration, benefits, bonuses and retirement pensions of public servants, with the scope to reduce public spending and react to the economic and financial crisis the country was facing. Unemployment, job insecurity, income and pension reduction, collective redundancies, poverty, restriction of collective rights and the enhancement of extreme right parties are among the most serious consequences of crisis in the socioeconomic life.

In particular, the effort of the Greek governments to find a solution for the debt crisis caused an overturn of the collective labor relations, by making very flexible the layoffs and the atypical forms of employment as well as by developing discriminatory treatment to the youth generation, in terms of remuneration, working conditions and social security. The reforms which have taken place with the implication of the austerity measures in Greece infringe freedoms and fundamental

[4] Ch. Deliyanni-Dimitrakou, *Les transformations du droit du travail et la crise. Approches comparées en Europe,* Intervention lors du colloque organisé le 14 février 2014 par la Cour de Cassation de Paris et l'Institut de Recherche en Droit Européen; International et Comparé (IRDEIC) de l'Université de Toulouse, Extrait, p. 30-54

rights that are recognized in the Hellenic legal order through constitutional, international and supranational rules.

Nevertheless, the fact that the measures in question restrict the freedoms and fundamental rights does not make them automatically unconstitutional. To assess the constitutionality, in other words, to examine if these measures are compatible with the constitutional, international and supranational rules which guarantee the fundamental rights in the Greek legal order, it is necessary to consider two parameters. Firstly, the internal efficiency of those rules, that is to say, their place in the Greek judicial system. Secondly, the socio-economic causes that imposed the adoption of such measures and, in particular, the question of whether these causes justify or not restrictions on fundamental rights.

2. Review of the jurisprudence on the Greek austerity measures

As already developed in the first part of the current study, the Greek judicial review of the constitutionality of laws has both the features of a diffuse control as well as the characteristics of a centralized control. The diffuse control, which is based on Article 93 para.4 of the Greek Constitution, can be exercised by all courts in the country, regardless of their degree of jurisdiction. The penalty, to which this control leads, involves the non application in the particular case of the law that is declared unconstitutional.

On the other hand, one of the new forms of centralized control of constitutionality, recognized by the Greek law is the one exercised by the Plenary Assembly of the Council of State on important issues such as, for example, the protection of human rights, etc. according to Article 100 para.5 of the Greek Constitution. The control of constitutionality of the austerity measures adopted by the Hellenic government based on the Memorandum was realized, in most cases, through the centralized procedure.

a) The Greek austerity measures as an object of the centralized control of constitutionality

i. The decision 668/2012 of the Plenary Assembly of the Council of State concerning Memorandum I

Invited to assess a request for cancellation of the austerity measures of the first Memorandum, the Plenary Assembly of the Council of State with its decision 668/2012 concluded that the disputed measures were compatible with the Constitution and the international conventions. Specifically, the majority opinion of the Plenary Assembly agreed that the first Memorandum (L. 3845/2010) is not an international convention within the meaning of Article 28 of the Greek Constitution and, therefore, it was not necessary to be ratified with a law. In addition, the Court stressed that the restrictive measures of the first Memorandum and, in particular, the cuts in salaries, pensions, allowances, holidays' bonuses (Christmas and Easter), etc., were not contrary to the Constitution and to the First Protocol of the European Convention on Human Rights (ECHR), which establishes the rights of property and heritage, nor did they violate the international conventions of ILO.

The main reasoning of the Council of State was the existence of serious reasons inextricably linked with the rescue of the national economy which, therefore, fell within the notion of the public interest protected by Article 106 of the Greek Constitution that justified the adoption of the measures in question.

In Greek law, the notion of public interest operates as the "restriction of the restrictions." In other words, in order for the restriction of a right established by the Constitution to be considered tolerable, it must be justified on the grounds of public interest. The Greek doctrine has stressed that the public interest is a very vague concept and in order to be specified in pluralistic societies, it requires the consideration of all the interests under dispute.

Indeed, the innovation of the decision 668/2012 of the Plenary Assembly of the Council of State that it has not invoked the public interest in an abstract matter. However, the Court acknowledged that the appreciation of the public interest must be subject to the judicial control of limits stressing at the same time that the measures taken by the national legislators to serve the public interest must respect the proportionality principle. In particular, the measures taken must be appropriate and necessary and they must not be disproportionate to the aim pursued. Based on this reasoning, the Council of State began to appreciate the Greek legislature's options

when initiating contentious austerity measures, citing various elements which justify the relevant interventions on the freedom of association and collective autonomy. It turns out from these reasons that if the Greek government did not achieve the structural objectives adopted in accordance with the first Memorandum and if the government was forced to impose restrictions on salaries and supplementary pensions, the judgment of the Court would be certainly different.

Thus, in order to refute the applicants' allegation that the measures in question violated the general principle of equality and the equality before tax, the Council of State underlined the transitional and exceptional character of these measures. In addition, the allegation concerning the discriminatory treatment of employees and freelancers concerning the remuneration cuts, for the first ones, and the adoption of fiscal adjustment measures, for the second ones, the Court responded that the tax regularization was necessary for the rapid collection of taxes, implying that if, in the future, the state neglects the fight against tax evasion, the attitude of the Court would be different.

Finally, to the argument that the measures in question violated Article 1 of the First Protocol of the ECHR protecting property rights and, therefore, the right to the wage, the Council of State responded that Article 1 of the First Protocol to the ECHR does not specify a remuneration of a determined amount of money but the provision would be violated if the measures imposed cuts which would lead wages to a level below that of decent life, which was not the case. It is clear from this statement of the Court that the measures adopted by the Greek Government would infringe Article 1 of the First Protocol to the ECHR if they imposed wage cuts causing wages to a level below the threshold of poverty.

ii. The decision 1285/2012 of the Plenary Assembly of the Council of State concerning Memorandum I

The decision 1285/2012 is another one among the decisions[5] where the Council of State has considered legitimate the conclusion of the Memoranda by the

[5] Council of State (Plenary Assembly) 668/2012, 1283/2012, 1284/2012, 1285/2012, 1286/2012, 1623/2012, 1972/2012

Greek State as well as the related policies for the implementation of the austerity measures.

Regarding the facts of the case, the applicant Panhellenic Union of Pensioners of the Public Power Corporation requested the cancellation of the Joint Ministerial Decision which was issued on the basis of the Law 3845/2010 and determined a cut in the pensions of its members concerning the allowances of Christmas, Easter and holidays in accordance with the austerity measures adopted by the Greek government as imposed through the first Memoranda for the reduction of the budget deficit.

Firstly, the Council referred to the Law 3833/2010 entitled "Protection of the national economy-Emergency measures for coping with fiscal crisis" which included various measures in order to deal with the unprecedented adverse economic conditions and the greatest financial crisis of the last decades in Greece, which has undermined the credibility of the country and has caused major difficulties in serving its borrowing needs. The measures concerned cuts in salaries of the employees in the public sector, the introduction of upper salary's and bonuses' limits for the employees in the public sector and exceptional taxes to individuals with large income. Secondly, the Council of State referred to the Law 3845/2010 entitled "Measures for the application of the support mechanism for the Greek economy by euro area Member States and the International Monetary Fund" which introduced more austerity measures concerning further reduction of salaries of the public sector employees, reduction of pensions provided by the social security organizations and increase of the value added tax and excise taxes.

These two laws were issued in accordance with the "Memorandum of Understanding" and, in particular, with its special parts "Memorandum of Economic and Financial Policies", "Memorandum of Understanding on Specific Economic Policy Conditionality" and "Technical Memorandum of Understanding". These Memoranda describe the adverse development in the public finances of Greece which made impossible to be funded from the international markets and it was necessary for the Geek government to be subjected to the support mechanism. The above Memorandum also announced the key objectives of the economic program of the Greek government for the next years and among the measures set for 2010, included the pension cuts through the reduction of the 13th and 14th pension.

The Council of State also referred to the reasons explained in the Law 3845/2010 that the support mechanism was the last option to prevent the bankruptcy of the country and that the need to enter in the support mechanism had led to additional measures which would allow the implementation of the support mechanism with the funding of the Greek economy.

The applicant Union of Pensioners complained before the Council of State that the provision based on the Law 3845/2010 which introduced cut of the Christmas, Easter and holiday bonuses for the pensioners of the social security organizations, is opposed to the Constitution. In particular, the applicant Union complained that the contested provision violates Article 4 para.5 of the Constitution (equality principle), because it shifts the burden of the fiscal consolidation of the economy to a particular group of citizens while the other citizens do not participate in the public charges according to their strengths, and also violates Article 22 para.5 of the Constitution, because the relevant measure was taken without previous substantial justification for the necessity of the measure and without the previous exploration of the possibility to adopt alternative solutions.

The Council of State stressed that the contested provision does not regulate new terms and conditions for the retirement of the insured citizens in the social security organizations, but only introduces reduction of the Christmas, Easter and holidays allowances of the pensioners. According to the Council, this reduction constitutes a general measure of the fiscal consolidation under the framework of the overall economic policy and not under the framework of a general reform of the social security system. The Council also added that with this measure, which is part of the medium-term program for the fiscal consolidation of the country, the government seeks to increase revenues and reduce costs in order to save resources to ensure the viability of the social security organizations, as well as to reduce the government's deficit, which includes the deficits of the social security funds. In view of this objective, the Council decided that the measure in question serves a superior public interest scope and rejected the applicant's request.

iii. The decision 3354/2013 of the Plenary Assembly of the Council of State concerning Memorandum I

In this case the Council of State was lead to an adverse judgment in comparison with its previous decisions and concluded that the austerity measure in question was not in conformity with the Constitution. More specifically, the applicant ADEDY (the Trade Union of the Public Servants in Greece) aimed the cancellation of a joint ministerial decision which implemented the measure of the abolition of the permanent positions due to the automatic dismissal and the position in the pre-retirement suspension status of the employees of the public sector, the public law bodies and the local authorities, which was issued in accordance with the Law 4024/2011.

The Council of State, firstly, reminded that the legislator is not prevented to abolish permanent positions or modify their responsibilities, as well as to extend or retract the rating scale of the employees in the public sector, with the precondition that these provisions do not violate the rule of organization and staffing of the Public Administration with permanent employees. Furthermore, the Council reminded that in accordance with Article 103 para.4 of the Constitution, in case of abolition of an employee's position in the public sector either individually or by eliminating the entire public body which includes this position, the employee may be laid off or transferred in another department.

Secondly, the Council stressed that financial reasons can constitute the criterion of the legislator's option to redefine the State's functions and reorganize the Public Administration, but the relevant provisions must be introduced with respect to the constitutional principles, according to which it is necessary to ensure, on the one hand, the rational, effective and sustainable operation of the Public Administration, and to harmonize, on the other hand, these provisions with the constitutional guarantees concerning the status of the civil servants.

The Council proceeded underlying that since the appointment of a civil servant requires the previous creation of a permanent position through the lawmaking procedure and accordingly it is required the rational organization of the State's functions and services, it is not constitutionally permitted, in order to accommodate the legitimate purpose of the reorganization of the public services and the rational

management of the relevant public spending, to establish conditions of compulsory dismissal of employees from their service on the basis of criteria which are related neither with the operational and organizational needs of the Administration nor with the qualifications, skills and the overall performance of the employees, but to use the dismissal from their positions in order to abolish these permanent positions.

The Council continued that it is also opposed to the Constitution the compulsory and without previous judgment from the official board removal of the employee from its position only with the completion of a certain working period, even if this period is very long, such as the 35 years of service. However, the Council stressed that only if this long service period is also combined with the completion of the age limit for retirement it is permitted the removal of the employee. With the Law 4024/2011 the employees who were removed from their positions and did not yet complete the age limit for retirement they were set in a pre-retirement non-active status which would lead to their lay-off at the end of the pre-retirement suspension period followed by the elimination of their permanent positions in the public sector.

The Council of State concluded that the Law 4024/2011 is contrary to the constitutional framework established in Article 103 of the Constitution while it is also opposed to the constitutional principle of equality and decided that the objectives pursued with the measure in question, referring to the restriction of the State and the reduction of public expenditure, do not rely on the previous redefinition of the functions of the State and the reform of the organizational needs of the Administration in a rational manner, while the intended organization of the services provided in the public sector came as a secondary effect of the removal of the civil servants from their positions with criteria (employee's age and length of service period) which were random, symptomatic and unrelated to the objective pursued.

The Council accepted the application of ADEDY for cancellation of the contested joint ministerial decision to the extent that it contained provisions for the automatic dismissal and the position in the pre-retirement suspension status of the employees for the reason that it has been issued on the basis of an unconstitutional legal provision.

iv. The decision 2307/2014 of the Plenary Assembly of the Council of State concerning Memorandum II

With its decision 2307/2014 the Plenary Assembly of the Council of State examined the compliance with the constitutional and international rules of the austerity measures imposed by the second Memorandum for employees in the private sector. The Greek Council of State in Plenum declared all labour law measures implementing the second Memorandum of Understanding in compliance with the Greek Constitution, the TFEU (Art. 125 and 136), the ECHR (Art. 11 and Art. 1 of its 1st Additional Protocol), the European Social Charter and ILO Conventions Nos. 87, 98 and 154, except from the measures amending recourse to labour arbitration, which were found contrary to the principle of collective autonomy as guaranteed in the Greek Constitution (art 22 para. 2)[6]. The Decision was the result of appeals lodged by nine trade unions, including the General Confederation of Workers of Greece (GSEE), contesting the validity of Ministerial Act 6/2012 which was issued in accordance with the Law 4046/2012 and implemented the austerity labour measures contained in the second Memorandum.

In particular, the main arguments of the decision 2307/2014 of the Plenary Assembly of the Council of State were the following[7]:

The Council admitted that the provisions of the contested ministerial Act allowed the legislator to regulate exclusively and thus remove from the scope of collective bargaining and collective agreements a set of issues concerning the realignment of the level of the minimum wage, previously determined by the national intersectoral collective agreement, and, more specifically, the reduction of wages by 22% in general and by 32% for young people below the age of 25. Because of the fact that at the time of the trial there was published a more recent law (L. 4093/2012) which determined the minimum wage, the Council abolished the trial for the chapter on this issue and did not proceed to the constitutionality control of this measure.

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[6] M. Yannakourou, *Labour measures of Memorandum II before the Greek Council of State: Decision 2307/2014 (Plenum),* Available at: http://eurocrisislaw.eui.eu/wp-content/uploads/2015/04/Greek-Council-of-State-2307_2014.pdf

[7] T. Tsiboukis, *The decision of the Plenary Assembly of the Council of State (2307/2014) for the Memorandum II (L. 4303/2014 and Ministerial Act 6/2012) (in Greek)*, Labour Law Review, vol. 73, 2014, p. 657-665

Moreover, the provisions in question introduced the maximum duration of collective agreements and the ex lege expiration of those already in place for 24 months or more at the time the Act was adopted as well as the elimination of unilateral recourse to labour arbitration and the restriction of its scope of application to the basic wage minus any kind of allowances. Surprisingly, the Council pointed the unconstitutionality of the provisions abolishing the opportunity of unions to resort unilaterally to arbitration following the failure of negotiations in order to conclude a collective labour agreement and concluded that these provisions were contrary to the Greek Constitution.

The contested ministerial Act provided also the suspension of all automatic wage increases based on maturity clauses established by collective agreements and arbitration awards and the removal of "tenure clauses", that is clauses prohibiting dismissal until an employee reaches a certain age, in existing staff regulations in state-owned company and banks, set by means of company collective agreements.

The Council of State recognized that the provisions of Act 6/2012 limited the social partners' power to regulate working conditions and constituted a serious decline in workers' rights, as well as a weakening of their position against employers. However, according to the reasoning of the Council of State, the provisions in question were integrated in a broader set of arrangements aiming at serving the public and general social interest and were adopted under very exceptional circumstances, before the risk of default and the collapse of the national economy. The Council of state underlined that the provisions in question served a legitimate objective and appeared to be proportionate, since they were appropriate for the achievement of the pursued goal, and they could also be considered necessary[8]. Furthermore, the Court stressed that, after all, the contested provisions did not affect the core of the right to collective autonomy, namely the right to freedom of association and the right to strike (Art. 22 and 23 of the Greek Constitution), since employees were still granted the right to pursue the improvement of their job position and the mitigation of the negative crisis incidences on their working conditions, either through collective bargaining or the exercise of their right to strike.

[8] A. Kazakos, *Collective agreements and arbitration after the decision 2307/2014 of the Plenary Assembly of the Council of State and the Law 4303/2014 (in Greek)*, Labour Law Review, vol. 74, is. 1, 2015, p. 107-135

It is interesting to notice that the Greek Council of State, in line with its seminal Plenum Decision 668/2012 (concerning public sector wage and pension cuts in accordance with the first Memorandum), applied once more the "theory of exceptional circumstances" or state of emergency theory. On the other hand, in its decision 2307/2014 the Council abandoned the idea of an overarching financial public interest (invoked for the first time in the Court's Decision 668/2012), the protection of which could justify extensive violations of fundamental rights. On the contrary, the Council invoked "reasons of higher social interest" to consider that the introduced austerity measures were not contrary to the Greek Constitution, to international labour agreements and to the European Convention on Human Rights. This concept of general social interest is a concept equivalent to the public interest, which justifies restrictions to the right of collective autonomy only under strict prerequisites.

Indeed, the Council of State in its Decision 2307/2014 examined these prerequisites and, in particular, the Court held that the state intervention in the field of collective autonomy was exceptional and that the restrictive measures were proportionate, while at the same time the core of the constitutional right to collective autonomy was not neutralised. However, the Court failed to consider whether the austerity labour measures contained in the Ministerial Act 6/2012 were of provisional nature. It is evident from the decisions of the Greek Council of State that it desperately seeks to find equilibrium points between the legitimation of political choices in times of crisis and the protection of fundamental rights.

b) The Greek austerity measures as an object of the diffuse control of constitutionality

Alongside with the centralized control of constitutionality of the austerity measures, these measures were also assessed through the diffuse control of constitutionality.

An interesting case in the still limited jurisprudence of the Greek courts is the Decision No 599/2012 of the County Court of Athens, which stressed that "the intervention in collective autonomy must be a measure absolutely exceptional and not extend beyond a reasonable period. In addition, it must be accompanied by sufficient

guarantees for the protection of the standard of living of workers, respecting, in all cases, the proportionality principle." Based on these considerations, the court concluded that measures involving cuts in wages and benefits and restrictions on social rights and social security rights violate the proportionality principle, the principle of the contribution to the public charges in accordance with the abilities of Greek citizens as well as the provisions of international conventions guaranteeing fair wages. The Court refused to apply -as unconstitutional (Article 93 para.5 of the Greek Constitution) - the provisions of Article 1 para.5, of the Law 3833/2010, on the basis of which the defendant has reduced the salaries of its staff. Therefore, the court went a step further than the judgment of the Plenary Assembly of the Council of State in its decision 668/2012.

Furthermore, there are particularly interesting decisions adopted by the Greek courts on appeals of public sector employees which were placed under the suspension status in accordance with the requirements introduced with the Law 4093/2012 ("Third Memorandum"). A great number of decisions have concluded that this measure violated the constitutional rights of the applicants (Articles 2 para.1, 4 para.5, 22 para.1 al. a, 1 para.25 al. d and para.4 of the Constitution) as well as the principles of proportionality, non-discrimination, objectivity and meritocracy (article 103 para.7 of the Constitution).

3. Decisions of International judicial and quasi-judicial bodies on the Greek austerity measures

a) The condemnation of the Greek austerity measures by the ILO supervisory bodies

Apart from the Greek courts, the Greek austerity measures were also examined both by international judicial organizations as well as by international quasi-judicial supervisory bodies. Thus, the bodies of ILO have ascertained several violations of the international labor conventions by the measures in question. Therefore, in their reports, they have asked the Greek Government to reconsider the impacts of these measures, but also to establish a functional model of social dialogue so as to

strengthen the collective bargaining and provide the conditions for the participation of social partners social in the review process of the measures.

The 365th Report of the Committee on Freedom of Association[9] is of great interest. In particular, it examines, among other cases, the complaints against the Government of Greece concerning the austerity measures linked to the first and second Memorandum, (Case No. 2820) presented by the Greek General Confederation of Labour (GSEE),t he Civil Servants' Confederation (ADEDY), the General Federation of Employees of the National Electric Power Corporation (GENOP–DEI–KIE) and the Greek Federation of Private Employees (OIYE) supported by the International Confederation of Trade Unions (ITUC). The complainants alleged that numerous violations of trade union and collective bargaining rights have been imposed within the framework of austerity measures implemented in the context of the international loan mechanism of the Greek economy. The Committee noted, inter alia, in its final conclusions, the unfavorable impacts of these measures on the freedom of association, the collective bargaining and on other social rights which are recognized by the relevant ratified ILO Conventions. It also recommended that the Greek Government has to remove these violations. The main problems identified in the report of the Committee on Freedom of Association and related to the Greek austerity measures are briefly, the following:

As regards the successive wage cuts in the public sector[10], the Committee recalled that, its previous jurisprudence. It emphasized that the exercise of financial powers by the public authorities in a manner that prevents or limits compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. If, however, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards.

Regarding the allegations raised by the GSEE, while the Committee did not consider the reduction to three months for the period of residual effect given to

[9] http://www.ilo.org/gb/GBSessions/GB316/ins/WCMS_193260/lang--en/index.htm

[10] S. par. 990 of the Report.

an expired collective agreement as a violation of the principles of free collective bargaining, it observed, however, that it comes within an overall context where imposed decentralization and weakening of the broader framework for collective bargaining are likely to leave workers with no minimum safety net for their terms and conditions of work, even beyond the wages issue[11]. Furthermore, the Committee underlined that the elaboration of procedures systematically favouring decentralized bargaining of exclusionary provisions that are less favourable than the provisions at a higher level can lead to a global destabilization of the collective bargaining machinery and of workers' and employers' organizations and constitutes, in this regard, a weakening of freedom of association and collective bargaining contrary to the principles of Conventions Nos 87 and 98[12].

In respect of the allegations related to the use of association of persons for special firm-level agreements, the Committee considered that collective bargaining with representatives of non-unionized workers should only be possible where there are no trade unions at the respective level[13].

Finally, as regards the amendments to the law which only permit recourse to binding arbitration when both parties agree, the Committee recognized that this measure was taken in an effort to align the law and practice with its principles relating to compulsory arbitration and does not consider this measure to be in violation of freedom of association principles[14]. It still expressed many reservations about the additional restrictions on the arbitrator's mandate. In particular, the Committee considered as a general rule that arbitrators should be free to make a determination on a voluntarily requested arbitration without government interference. Observing that these restrictions were introduced within the framework of the proposed stabilization programme, the Committee expects that these restrictions will be regularly reviewed by the social partners with a view to ensuring their elimination at the earliest possible moment. Moreover, the Committee requested the Greek Government, in consultation with the workers' and employers' organizations to review without delay the impact on basic minimum standards other than wages of the elimination of the arbitrator's authority to uphold retainability clauses in collective

[11] S. par. 996 of the Report.
[12] S. par. 997 of the Report.
[13] S. par. 998 of the Report.
[14] S. par. 1000 of the Report.

agreements so that these elements may further inform the review of the overall labour relations system.

b) Decision of the ECHR dated 7th May 2013 (Case Koufaki and Adedy v. Greece) with regards to the Decision 668/2012 of the Council of State (Plenary Assembly)

The European Court of Human Rights has dealt with the Greek austerity measures in the case I. Koufakis and ADEDY c. Greece regarding the reductions in the remuneration and retirement pensions of public servants (Law 3833/2010, 3845/2010, 3847/2010, 4024/2010). The applicants had previously took the matter before the Council of State of Greece: the first applicant, Ms Koufaki, lawyer of the Greek Ombudsman, applied to the court to annul her pay-slip, while the second applicant, ADEDY (the Trade Union of the Public Servants in Greece) sought judicial review because of the detrimental effect of the measures on the financial situation of its members. The Council of State with its decision 668/2012 rejected the applications and both applicants complained before the European Court of Human Rights that the Hellenic Republic, by the issuance of the decision 668/2012 had failed to respect primarily Article 1 of Protocol 1 of the ECHR, with regards to the cuts on the salaries of the civil servants, as well as Articles 6, 8 and 14 of the ECHR which guarantee, respectively, the right to a fair trial, the right to the protection of personal and family life and the non-discrimination.

The European Court of Human Rights joined the complaints of the two applicants and dismissed the case as inadmissible as "manifestly unfounded" validating somehow the arguments made by the Plenary Assembly of the Council of State in its decision 668/2012.

The Court has reminded in its decision that the Member States of the Council of Europe have a wide margin of appreciation in implementing social and economic policies and that the general principles governing Article 1 of Protocol 1 of the ECHR apply also in matters of salaries or social benefits. However, the restrictions introduced by the disputed austerity measures do not constitute a privation of property but they could be considered as an interference with people's legal right to the

peaceful enjoyment of their possessions. The Court emphatically accepted the motifs of the decision 668/2012, and the reasoning of the Introductory Report of the Law 3833/2010 presented by the Government to the Parliament, explicitly stating that the austerity measures had been justified by the exceptional crisis, which was unprecedented in the recent history of Greece and called for an immediate reduction in public spending. The Court, accepting all the essence of 668/2012, referred to the aims of the measures to conclude that the goals served by the salary and pension cuts were in the general interest and in that of the Member States of the euro zone, whose obligation was to observe budgetary discipline and preserve the stability of the zone.

Proceeding to the proportionality test, the Court, underlined that the financial crisis constitutes an element which is seriously taken into account when examining salary cuts, and concluded that the measures were not disproportionate. In particular, regarding the reduction of the first applicant's salary from EUR 2,435.83 to EUR 1,885.79 the Court considered that the reduction was not such that it risked exposing her to substantial difficulties incompatible with Article 1 of Protocol No. 1 and, thus, the interference in question could not be considered to have created an excessive burden on the applicant.

As regards the second applicant, to establish whether the measures affecting ADEDY were in conformity with the proportionality principle, the Court simply referred to the Memorandum and the cuts included in it concerning the removal of the thirteenth and fourteenth months' pensions of the civil servants, and dismissed the argument that the salary cuts affecting the civil servants represented by ADEDY are disproportional. Also, taking into consideration that the Greek legislature did not overstep the limits of its margin of appreciation, it was not for the Court to say whether they had chosen the best means of addressing the problem or whether they could have used their power differently.

Another reason that the Court dismissed the case for the second applicant was that, although ADEDY was not personally affected by the measures in question, the Union invoked Article 1 of the ECHR Protocol to denounce for damages to property that its members have suffered as a result of the austerity measures, without naming those members or determining their exact number. However, in this way, it raised serious concerns to the Court as to whether that Union was presented as a victim, which is a prerequisite for the acceptance of the individual application. By dismissing

the case the European Court of Human Rights validated the previous decision 668/2012 of the Council of State.

c) Decisions Nos 65 and 66/2012 of the European Committee of Social Rights

After all, it is disappointing to note that the serious restrictions of the austerity measures on the collective autonomy and the right to collective bargaining were not included in the two collective complaints No. 65/2011 and 66/2011 submitted to the European Committee of Social Rights by the two major federations of Greece, namely, GENOP/DEI and ADEDY. It should, however, be emphasized that this omission was due to the fact that at the time of the ratification of the European Social Charter, the Greek Government did not ratify articles 5 and 6 which guarantee the right of association and the right of collective bargaining. This explains why the European Committee of Social Rights (ECSR) was unable to comment on the recently adopted legislation that literally dismantled the Greek collective bargaining system. The only argument on the collective bargaining raised by the European Committee of Social Rights was the abolition of the favorability principle of the collective provisions included in collective labor agreements and the granting based on the law of the right to conclude company level agreements which contain provisions less favorable than the branch collective bargaining agreements.

Furthermore, it worth mentioning the main three austerity measures adopted by the Greek Government in the field of labor law which were considered by the Committee as contrary to the European Social Charter. The first was imposed by article 17 of L. 3899/2010, which extended from two to twelve months the probation period during which the employee under a contract of indefinite duration can be fired without prior notice or severance pay. The ECSR stressed that this provision violates Article 4 para.4 of the Charter which recognize the right of all workers to a reasonable period of notice for termination of employment.

The second measure, which was considered contrary to the Charter, was the institution of internship contracts for young people from 15 to 18 years old. The ECSR found that this provision violated three provisions of the European Social

Charter. Firstly, Article 7 para.7 which imposes on contracting parties the obligation to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay. Secondly, Article 10 para.2 of the ESC, which guarantees the right of young people in professional training. And, finally, Article 12 para.3 of the ESC, which imposes the obligation to the contracting states to improve and not deteriorate their social security system.

Finally, the European Committee of Social Rights considered that is opposed to the European Social Charter the provision of L. 3863/2010, according to which the remuneration for young people under 25 can be 32% less than the national minimum wage. The ECSR considered that this provision violates on the one hand, Article 4 para.1 of the ESC, which guarantees the right of workers to an equitable remuneration, and, on the other hand, the principle of non-discrimination on grounds of age referred in the Preamble of the Charter and applied to all the rights guaranteed by the Charter and, therefore, it is also applied to the right to equitable remuneration of Article 4 para.1.

Considering these measures as opposed to the Charter, the ECSR condemned indirectly the policies of the international bodies of Troika and, consequently, those of the European Commission, because they conditioned the financial assistance of a state like Greece to adopt measures which are opposed to the international obligations Greece has undertaken with the ratification of the Charter. In this way, the European Committee of Social Rights underlined the involvement of the European Union in the adoption of these measures.

V. CONCLUSION

In the upcoming years, both national and international courts will continue to deal with the constitutionality and conventionality of the Greek austerity measures until at least some of them are abolished or reviewed. In all cases, regardless of whether the Greek jurisprudence on the austerity measures is still in the early stages of development, judicial decisions until now allow us to draw some conclusions.

It is necessary to point out that although the European Social Charter, the European Directives and the Charter of Fundamental Rights (CFREU) bind, as legal sources, the Greek judge, there is no international text establishing a hierarchy of these sources which would allow the judge to settle with certainty the conflicts among these sources. This is not, however, the case for the ECJ and ECHR which proclaim the superiority of the rules the implementation of which they are responsible to control. But the national judge is not in the same situation with these supranational institutions as it is obliged to "domesticate" the arguments for the superiority of the one or the other source in order to find a solution to the legal conflict he is called to resolve. Therefore, the Greek courts are required to seek "reconciliation" solutions through a dialogue they will begin submitting to the ECJ request for preliminary ruling.

In conclusion, the question that remains is whether the national courts will manage to harmonize the ultimate objective of Memoranda, which is to preserve the Monetary Union, with the safeguarding of the Community vested rights guaranteed through international, supranational and national legal rules which establish fundamental rights and are applied in all Member States.