Austerity Measures in Greece and Social Rights Protection under the European Social Charter

Comment on GSEE v. Greece case, Complaint No. 111/2014, European Committee of Social Rights, 5 July 2017

Nikolaos A. Papadopoulos
Maastricht University Faculteit der Rechtsgeleerdheid, Maastricht, LH, Netherlands

Abstract
On the 5th of July 2017, the European Committee of Social Rights published another decision adopted under the collective complaints procedure, condemning Greece for violating plenty of the European Social Charter provisions concerning labour rights by implementing austerity measures between 2010 and 2014. The Committee adopted a dynamic and analytical interpretation of the Charter setting new criteria, such as the need to take into account the social needs of the most vulnerable when legislating and went even further than in its previous decisions in terms of social rights protection by producing a precedent that can be used as a tool against the application of austerity policies. This paper analyses GSEE v. Greece, Complaint No. 111/2014 before the Committee and attempts to review it under a multi-level context.

Keywords
European Committee of Social Rights (ECSR), European Social Charter (ESC), Labour law, Greece, Austerity measures

Introduction
This paper focuses on the austerity measures implemented in Greece during the severe crisis (2010-2014) and attempts to identify their significant implications for the protection of social rights and in particular labour rights under the European Social Charter (ESC), through the analysis
of the recently published *GSEE v Greece* decision, complaint No. 111/2014, before the European Committee of Social Rights (ECSR). The decision was highly anticipated, as unlike earlier case law it elaborates solely on core provisions of the Charter concerning labour rights and sends valuable messages in different directions regarding the legality and proportionality of austerity measures. The structure of the paper is limited to summarising the background of the dispute, addressing the arising questions of law and the way that the Committee came to its conclusions and providing comments to the decision under a broader multi-level context.

**Background and Facts of the Case**

The complainant organisation based its arguments in this case before the ESCR on specific legislation enacted in Greece between 2010 and 2014 in response to the financial and debt crisis. Therefore, it would be useful to start with a comprehensive overview of those measures implemented by Greece, but also of the general crisis background under which those laws were adopted, by referring to some relevant facts about the State’s economic collapse status and the developments in the labour law regime, in order to gain a deeper understanding of the significance of the facts of the case and the applicant’s allegations.

2.1. Debt crisis and bailout

Greece entered the 21st century enjoying economic growth, offering social benefits, constructing expensive projects and spending funds in various areas. However, the consequences of the 2008 global financial crisis, the lack of a balanced development of the economy after entering the Economic and Monetary Union and the failure of the Greek governments to refrain from participating in or tolerating political and economic corruption and tax scandals led to a dramatical rise in the public debt and deficit and put the country at the point of insolvency by the end of the first decade of the 2000s. To address this situation the Greek government agreed in 2010 and later in 2012 to receive loans of billions of euros from its creditors and in exchange to sign two Memoranda of Understanding, according to which Greece had to undertake various austerity reforms that would reduce its deficit in the coming years.

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1. E.g. hosting the 2004 Olympic Games.
2. It has been publicly accepted by former government officials and Eurostat reports that economic data presented to the EU institutions was misleading and incorrect. See for more details European Commission (2010), ‘Report on Greek Government Deficit and Debt Statistics’, http://ec.europa.eu/eurostat/documents/4187653/6404656/COM_2010_report_greek/e8523cfa-d3e1-4954-8e1a-64bb11e59b3a (accessed 21/11/2017).
3. E.g. briberies, stock market crash, bonds scandals, cartel scandals, offshore companies.
4. 129.7% of GDP and 15.7% of GDP respectively, according to the Bank of Greece - Centre for Culture, Research and Documentation, *The chronicle of the great crisis. The Bank of Greece 2008-2013* (Centre for Culture, Research and Documentation-The Bank of Greece 2014), p. 33. Available at http://www.bankofgreece.gr/BogEkdoseis/The%20Chronicle%20Of%20The%20Great%20Crisis.pdf (accessed 28/11/2017).
5. They were called Memorandum of Economic and Financial Policies and Memorandum of Understanding of Specific Economic Policy Conditionality.
6. Known as Bailout Programs or Economic Adjustment Programmes.
7. Notwithstanding the debate that erupted about the legality of the agreements due to the no bail-out clause of Article 125 TFEU.
2.2. Labour law developments

It was agreed that there was a need for a radical reform of the Greek labour law regime towards more flexible paths and without security safeguards,\(^8\) which the government willingly established through Statutory Acts, despite the lack of consultation at first and the massive protests that were taking place.\(^9\) Among these Acts were the particular Laws that the applicant invoked before the Committee in \textit{GSEE v Greece}\(^10\). Those austerity measures aimed at reducing labour and wage cost by deregulating and suppressing labour rights, breaking down the collective bargaining system and decentralising it by means of a ‘\textit{neo-liberal economic model of market supremacy over labor rights}’\(^11\) as well as by diminishing the trade unions’ autonomy.

The previous legal framework was established by Law 1876/1990 and provided for regulation of industrial relations at sectoral level by concluding Collective Employment Agreements (CEA) between trade unions and employers. According to the framework, the National General Collective Agreement (NGCA) set the minimum wage and safety standards for every worker and the State generally made few interventions. Sectoral agreements were superior to company agreements and according to the principle of favourability, the agreement most favourable to the worker applied in case of concurrent collective agreements. There was also a possibility of unilateral resort to arbitration. That regime with some other protective and stabilising provisions was significantly reformed to implement the structural austerity measures agreed. To begin with, Law 4024/2011 abolished the principle of favourability, diminished the power of concluding agreements at sectoral level and put in force the so-called ‘association of persons’ in order to bypass the power of trade unions and focus more on company-level agreements. Law 4046/2012\(^12\) abolished the NGCA of 2010 and reduced the minimum wage, and Law 4093/2012 provided that from now on the minimum wage would not be established by collective agreement but by law (and later by government decision). Finally, Council of Ministers Act 6/2012 excluded the possibility of unilateral resort to arbitration\(^13\) and diminished the role of the arbiter to decide only on wage matters, taking into consideration the economic situation of the country and the goals of the adjustment programmes. These developments were a major blow to the constitutionally protected right

\(^{8}\) It was considered that labour and wage costs constitute a major factor in determining the competitiveness of the economy. See for more information Milios J. and Sotiropoulos D. (2010), ‘Crisis of Greece or Crisis of the Euro? A View from the European “Periphery”’, \textit{Journal of Balkan and Near Eastern Studies}, Vol. 12, No. 3, 223-240, p. 223.
\(^{9}\) The first Memorandum was adopted without any consultation of trade unions and workers and despite massive protests and strikes. The second Memorandum was put into public discussion, but the negotiations failed.
\(^{10}\) Law 3863/2010, 3899/2010, 4024/2011, Council of Ministers Act No. 6/2012 implementing section 6 para. 1 of Act No. 4046/2012, and Laws 4093/2012 and 4254/2014 implementing 4046/2012. See para. 74 of \textit{GSEE v. Greece}.
\(^{11}\) Yannakourou, M. and Tsimpoukis, C. (2014), ‘Flexibility Without Security and Deconstruction of Collective Bargaining: The New Paradigm of Labor Law in Greece’, \textit{Comparative Labor Law & Policy Journal}, Vol. 35, No. 3, 331-370, p. 333.
\(^{12}\) Law 4046/2012 also entailed the provision in Article 1 para. 6 that MoU clauses relating to labour market reform constitute directly applicable rules. See Achtsioglou, E. and Doherty, M. (2013), ‘There Must Be Some Way Out of Here . . . The Crisis, Labour Rights and Member States in the Eye of the Storm’, \textit{European Law Journal}, Vol. 20, No. 2, 219-240, p. 226.
\(^{13}\) Only by mutual consent from now on.
of collective autonomy\textsuperscript{14} and to workers’ protection rights as described in the previous industrial relations system, the Greek Constitution and binding Treaties including the European Social Charter.

### 2.3. Facts of the Case

The aforementioned and other reforms implementing the Memoranda had a huge impact among other areas on the protection of fundamental social rights in Greece\textsuperscript{15} and resulted in ‘widespread social malaise including for the most socially and economically vulnerable in Greece’.\textsuperscript{16} To tackle this situation, Greek trade unions submitted successfully seven different collective complaints before the ECSR, all concerning directly measures taken by the Greek government implementing the Memoranda to address the crisis and especially regarding labour law and the national social security system. The ESC, which offers effective protection in cases like those, is considered to be complementary to the European Convention of Human Rights (ECHR)\textsuperscript{17} and has also interacted considerably with the European Union.\textsuperscript{18}

\textsuperscript{14} See Article 22 para. 2 of the Greek Constitution which defines the right of workers’ and employers’ representative bodies to define and negotiate jointly the employment conditions and resort to arbitration upon failure of negotiations.

\textsuperscript{15} In 2013 unemployment rates reached a historic 28\% of the general population and 60.8\% among the young population. Source: http://www.bbc.com/news/business-26171213 and http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics. More than 3.5 million people lived under 60\% of the median disposable income amount according to Housos K. (2016), ‘Austerity and Human Rights Law: Towards a Rights-Based Approach to Austerity Policy, a Case Study of Greece’, \textit{Fordham International Law Journal}, Volume 39, Issue 2, 425-446. For more information about the impact of austerity measures see: International Monetary Fund, \textit{Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-by Arrangement}, IMF Country Report No. 13/156 (2013), Available at https://www.imf.org/external/pubs/ft/spr/2013/cr13156.pdf (accessed 29/11/2017); European Parliament \textit{Resolution on the report on Employment and Social Aspects of the Role and Operations of the Troika (ECB, Commission and IMF) with regard to Euro Area Programme Countries}, A7-0135/2014, Available at http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0135&language=EN (accessed 29/11/2017); Steering Committee for Human Rights (CDDH) Feasibility Study on the Impact of the economic crisis and austerity measures on human rights in Europe, 46, Available at https://edoc.coe.int/en/fundamental-freedoms/7304-the-impact-of-the-economic-crisis-and-austerity-measures-on-human-rights-in-europe.html (accessed 30/11/2017); European Economic and Social Committee Study on The Impact of Anti-Crisis Measures and the Social and Employment Situation: Greece, 2013, Available at http://www.eesc.europa.eu/en/our-work/publications-other-work/publications/impact-anti-crisis-measures-and-social-and-employment-situation-greece-study (accessed 30/11/2017).

\textsuperscript{16} Salomon Margot E. (2015), ‘Of Austerity, Human Rights and International Institutions’, \textit{European Law Journal}, Vol. 21, Issue 4, 521-545, p. 526.

\textsuperscript{17} See \textit{International Federation of Human Rights Leagues v France}, complaint No. 14/2003, para 27, merits 8 September 2004. For more information regarding the relationship of the ECSR and the ECtHR see e.g. case \textit{Wilson et al v the United Kingdom}, Applications nos. 30668/96, 30671/96 and 30678/96 before the ECtHR and \textit{Marangopoulos Foundation for Human Rights (MFHR) v Greece}, complaint No. 30/2005 before the ECSR.

\textsuperscript{18} For more information about the relationship of the Social Charter with the EU see: European Parliament, Directorate General for Internal Policies Policy Department C: Citizens’ Rights and Constitutional Affairs Constitutional Affairs (2016), \textit{Study on The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights}, Available at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf (accessed 30/11/2017).
The ECSR is a quasi-judicial instrument, separate but also complementary to the European Court of Human Rights (ECtHR), that generally follows the method of the ECtHR and monitors compliance with the ESC.

In that spirit, the Greek General Confederation of Labour (GSEE), the most representative labour organisation in Greece, submitted on 26 September 2014 appeal No. 111/2014 against Greece before the ECSR, invoking provisions of the 1961 European Social Charter. On May 2015 it was declared admissible by the Committee and a hearing took place on 20 October 2016 in Strasbourg.

**Legal Issues**

### 3.1. Overview of the Charter Articles at stake

The applicant organisation in this case asked the Committee to declare the aforementioned legislation enacted between 2010 and 2014 to deal with the crisis as contrary to Articles 1(1) and 1(2), 2(1) and 2(5), 4(1) and 4(4), 7(5) and 7(7), 30 and 31 of the 1961 Social Charter and Article 3 of the 1988 Protocol to the Charter. It would be helpful before examining the arising questions of law to address some important aspects of the meaning and the significance of the Articles of the Charter at stake, as interpreted by the Committee in its case law, in order to have a better understanding of the legal issues arising in this case.

The protection offered by the ESC is, according to what the Committee has accepted in its case law, not merely theoretical but also practical, i.e. State Parties have the positive obligation to take not only legal but also practical action ‘to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.’ In particular,

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19. The literature takes a mixed view as to whether the Committee is considered a totally judicial body. For more information see Nannery, A. (2015), *The ‘Conscience of Europe’ in the European Sovereign Debt Crisis. An analysis of the judgments of the European Court of Human Rights and the European Committee of Social Rights on austerity measures*, European University Institute, 113, p. 65. Available at http://cadmus.eui.eu/bitstream/handle/1814/39046/2015_Nannery_LLM.pdf?sequence=1 (accessed 11/11/2017); Brillat, R., ‘The Supervisory Machinery of the European Social Charter: Recent Developments and their Impact’, in de Búrca, G. and de Witte, B. (2005), *Social Rights in Europe*, Oxford University Press, 409.

20. See Cullen, H. (2009), ‘The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights’, *Human Rights Law Review*, Volume 9, Issue 1, 61-93.

21. E.g. the margin of appreciation doctrine and the proportionality test.

22. Contracting Parties have the option to ratify the 1995 Collective Complaint Protocol in order to be bound by that revolutionary in terms of international social rights protection procedure. Individual applications are not considered. Greece has ratified the 1961 European Social Charter and the Protocol, but by the time of the discussed application, it had not ratified the revised 1996 European Social Charter. For more information See https://www.coe.int/en/web/turin-european-socialcharter/collective-complaints-procedure1. (accessed 11/11/2017).

23. The Committee adopts decisions that must be respected by the States concerned but are not enforceable in the domestic legal system (declaratory). The decisions reach afterwards the Council of Europe’s (CoE) decision-making body, the Committee of Ministers, that decides to adopt more often a resolution, as was the case in the analysed decision or to issue a non-binding recommendation to the State concerned to bring relevant national legislation in conformity with the Social Charter. It is accepted that there is some political discretion in that procedure.

24. The International Organisation of Employers (IOE), the European Trade Union Confederation (ETUC) and the European Union (EU) also participated after being invited and submitted observations in the hearing.

25. *International Commission of Jurists ICI*, complaint No 1/1998, decision on the merits of 9 September 1999, §32 and *Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53.

26. *International Movement ATD Fourth world v. France*, complaint No 33/2006, decision on the merits of 5 December 2007, § 61 and *European Roma Rights Centre v Bulgaria*, Complaint No. 31/2005, para 29.
Article 1 of the ESC belongs to the first thematic group of the Charter’s provisions that concern employment, training and equal opportunities. It protects the right to work, which entails an obligation of means rather than results for the State to follow an adequate according to the economic situation policy of creating and preserving full employment, freely chosen by the workers and without any kind of discrimination on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion, either direct or indirect.

Articles 2 and 4 belong to the third thematic group that contains labour rights. Article 2 protects the right to just conditions of work and more concretely it sets reasonable limits and conditions on daily and weekly hours, that must be set by regulation, on flexibility measures, on paid holidays and rest periods and on reducing risks at work (of special nature). As regards Article 4, it protects the right to a fair remuneration that ensures a decent standard of living for the workers and their families, which means that wages need to be above the poverty line. More precisely, it recognises the right to equal pay for work of equal value for men and women, which must be provided for in legislation and be judicially protected, as well as rights against termination of employment and deduction of wages. Furthermore, Article 7, which belongs to the fourth group of the Charter that provides for children, families and migrants protection, awards children and young persons special protection that takes into consideration their age, their need for education and holidays and their physical and moral sensitive position. It also extends to apprentices and young workers’ fair wages, which can in principle be less than the adult starting wage, but any difference must be reasonable, and the gap must close quickly. Article 3 of the 1988 Protocol protects the right of workers and their representatives to participate in the decision-making process and the improvement of the working conditions.

Finally, Articles 30 and 31 are parts of the fifth and last part of the Charter. Article 30, on the one hand, deals with derogations from the obligations of a State Party that arise from

27. For more relevant with Article 1 information see Syndicat national des professions du tourisme v. France, Complaint No. 6/1999, Decision on the merits of 10 October 2000, §§24-25, and Syndicat Sud Travail et Affaires Sociales v. France, Complaint No. 24/2004, Decision on the merits of 16 November 2005, §33.
28. See also Preamble of the Charter.
29. For more information see Confédération Francaise de l’Encadrement CFE-CGC v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38 and Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, § 232-236.
30. Including bonuses and gratuities, after deduction of taxes and social security contributions and overtime work remuneration.
31. I.e. 50% of the national average wage. The Committee has even accepted a threshold of 60% according to Council of Europe, 1 September 2008, Digest of The Case Law of The European Committee of Social Rights, p. 43, Available at https://rm.coe.int/168049159f (accessed 30/11/2017).
32. E.g. the right to reasonable notice.
33. Note that minimum age for admission to employment is set at 15 and 18 years of age for dangerous or unhealthy occupations.
34. Minimum 4 weeks of annual holiday with pay.
35. Work at night is prohibited – protection from (sexual) exploitation.
36. Not above 30%.
37. For more information see Council of Europe, 1 September 2008, supra note 31.
38. Note, however, that in previous cases the Committee has stated that this Article does not apply to collective bargaining (e.g. GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, para. 39).
39. Articles 30 and 31 are based on Articles 8 to 11 and 15 of the ECHR, the case law of which can be used as an inspiration for the determination of the meaning of Article 30 and 31 according to Schlachter, M., ‘The European Social Charter:
the ESC in times of war or public emergency, while Article 31, on the other, deals with restrictions or limitations to the Charter provisions, that can apply only in extreme circumstances and under specific preconditions. These two Articles can only be considered by the Committee when assessing the merits of a complaint regarding a substantive article of the ESC. It is important to note, however, that contracting parties should avail themselves of the right of derogation for it to be valid. Greece had not availed itself of the right of derogation at the time the complaint at stake was lodged in GSEE v. Greece, therefore Greece was totally bound by its Charter obligations and the Committee only had to rule on Article 31 and not Article 30.

3.2. Arguments of the Parties

3.2.1. The complainant organisation. In its first argument before the Committee, GSEE claimed that the legislation concerned is contrary to Article 1 para. 1 and 2 of the Charter because it dismantles the previous system of employment negotiations between social partners, it has allowed the employers to be discharged from their obligations arising from collective agreements and arbitration, and it downgrades working conditions and pay terms in a discriminatory way for workers under 25 years of age. The introduction of the ‘associations of persons’ has shifted the employment regulations from branch level to company level or to the individual worker level, who has become a mere spectator in the employment relationship and is at the mercy of the employer and the signed contract. GSEE also claimed that these measures weaken the protective restrictions for employers to resort to using temporary employment. Finally, the measures are neither necessary or efficient according to figures provided by the Commission, nor proportionate with regard to the pursued aim in the context of Article 31 of the Charter, as they are not temporary and have resulted in increased unemployment, bankruptcies and impoverishment of the population.

In its second argument, the complainant organisation repeated its above-mentioned allegations concerning the abolition of the collective agreements and the arbitration awards in force, the rise of company agreements at the expense of the individual worker and the facilitating of the use of temporary employment, in order to establish their opposition to Article 2 para. 1 and para. 5 of the Charter. Furthermore, it claimed that the measures violate the provisions of Article 2 in...
conjunction with Article 31 of the Charter on working time by reducing rest periods from 12 to 11 hours and by other means that result in increased work intensity.\(^{50}\)

To address its third argument, GSEE stated that the measures dismantle the existing pay regulations and violate Article 4 para. 1 of the Charter as they shift the regulation of pay at the company or individual worker level, where the employer is in a dominant position. The reduction of the minimum wage in conjunction with the rise in social contributions and taxes do not meet the limit accepted by the Committee for a decent standard of living and the further reduction of wages for workers under the age of 25 is contrary to the principles of equal pay and non-discrimination based on age.\(^{51}\) Finally, the trial period of 12 months during which the employer can without any reason and at any time dismiss the employee, as stated in Section IA, para. IA, sub.12 of Act No. 4093/2012, as well as the reduced redundancy payments introduced by the same Act, are also in breach of Article 4 para. 4 of the Charter.

GSEE’s fourth argument concerned the protection of labour rights of children and young persons, especially of those apprentices aged 15-18, as the measures concerned\(^{52}\) destroy their prospects of working in decent conditions due to the deregulation and increased unemployment, and therefore violate Article 7 para. 5 and para. 7 of the Charter.

In its fifth and final argument, the complainant reiterated its previous allegations to claim that permission to enter into company agreements which provide for less favourable conditions than the branch agreements without consultation of the workers is contrary to the provisions of Article 3 of the additional Protocol to the Charter.

3.2.2. The respondent government. It is important to note as a preliminary observation that when the complaint was lodged by GSEE on 26 of September 2014, the Cabinet of Antonis Samaras (2012-2015) of the New Democracy party was in office in a coalition with the PASOK party, a government that supported and implemented willingly the austerity measures. However, when the Greek government was invited by the Committee to make observations on the merits of this case on 19 November 2015, the second Cabinet of Alexis Tsipras (2015-) of the SYRIZA party was in office in a coalition with the Independent Greeks party, a government that heavily criticised the former governments’ policies regarding the austerity measures and planned to ‘gradually reverse all the Memorandum injustices . . . and negotiate the creditors’ terms’.\(^{53}\)

This is the main reason why the respondent government, in this case, did not dispute the merits before the ECSR\(^{54}\) and did not at all address the allegations concerning the invoked Charter provisions.\(^{55}\) On the contrary, what the respondent government did was to make a political claim that it asserted the international obligations of Greece to respect social rights arising, inter alia,
from the Social Charter by putting in place specific economic policies to try to replace the austerity programmes and the neoliberal policies with humanitarian measures for the most vulnerable members of the society\(^{56}\) and by reconstructing the individual and collective bargaining system.\(^{57}\) In the meantime, the government saw this opportunity, in my opinion, as a political and legal tool to strengthen its position at a European level and to gain a negotiating advantage\(^{58}\) by using this case to put the blame on the creditors of Greece for the disputed legislation, ‘as it was a result of coercion exerted by threats or the use of force’.\(^{59}\) Thus, as can be seen in para. 47-53 of GSEE v. Greece, this case ends up being a paradoxical dispute of the respondent government joining forces in a way with the complainant organisation against the so-called Troika and in particular the European Commission, that was invited by the Committee to submit observations in this case.\(^{60}\)

3.2.3. Observations by other organisations. The European Commission denied responsibility for the 2010-2014 measures claiming that they were the consequence of serious imbalances of earlier origin and noted in its observations that those measures were necessary and enabled Greece to remain in the Eurozone. It also claimed that it was aware of the social situation in Greece and respected its Charter obligations by including in the third Memorandum under negotiation supportive measures for the most vulnerable and for the collective bargaining system. Similarly, the International Organisation of Employers claimed that while human rights in Greece were affected, the 1961 Charter entails flexibility provisions for adaptation of the granted protection to take account of changing economic conditions and that those measures were the best and only way to save Greece from bankruptcy and other repercussions.\(^{61}\) On the contrary, the European Trade Union Confederation condemned the measures and focused on the application of Article 31 of the Charter claiming that its conditions must be strict and that the measures were not pursuing a legitimate aim nor were they necessary in a democratic society, since there ‘were alternative measures available, such as combating waste of public funds, administrative inefficiency or fraud, which the Government appears not to have considered’.\(^{62}\)

Assessments of the Committee

After examining the aforementioned observations and after surveying whether the relevant domestic law and international materials\(^{63}\) are consistent with the Charter rights and do not impede their

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56. See e.g. para. 117 and references to a pre-paid card for access to foodstuffs, to pension improvements, medical cover, and free basic healthcare.
57. See para. 23, 115, 116 and 117 of GSEE v. Greece.
58. At that time the negotiations of the Greek Prime Minister A. Tsipras and the Minister of Finance Y. Varoufakis with the creditors were ongoing and highly anticipated.
59. ‘Within the meaning of article 52 of the Vienna Convention on the Law of Treaties’. See para. 118 GSEE v. Greece. For more information see Hellenic Parliament, Truth Committee on Public Debt (2015) Preliminary Report, Available at http://www.auditamosgrecia.org/wp-content/uploads/2015/06/Truth-Committee-Report-Debt-Audit-Greece.pdf (accessed 20/11/2017).
60. Para. 6 of GSEE v. Greece.
61. See para. 28 of GSEE v. Greece.
62. See para. 38 of GSEE v. Greece.
63. Such as: Resolution 1884(2012) of 26 June 2012, ‘Austerity measures – a danger for democracy and social rights’ of the Parliamentary Assembly of the Council of Europe; Koufaki and ADE\textsuperscript{D}Y v Greece case before the ECHR application No. 57665/12 and 57657/12 and other relevant materials from the EU, the ILO and the UN.
application, the Committee considered the complaints under the 1961 Charter and the 1988 Protocol,\textsuperscript{64} taking specifically into account the large number of provisions, the persistent nature of the alleged violations as examined in previous relevant complaints against Greece, and the large number of victims of these measures.

At first, the Committee dealt with the allegations concerning Article 31 and followed its case law\textsuperscript{65} to reject them by stating that the legitimate aim pursued in this case through the austerity measures by the government was the public interest, and that the legislature\textsuperscript{66} has a margin of appreciation in defining it. However, the public international human rights obligations of the State, including the Charter, oblige it even when defining the public interest in the case of a severe economic crisis to maintain an adequate level of balanced protection for basic social needs, especially for the most vulnerable, and consider possible alternative and less restrictive measures, which the respondent government did not manage to do in this case.\textsuperscript{67}

As regards the first argument of the complainant concerning Article 1 para. 1 of the Charter, the Committee accepted that unemployment in Greece has reached dramatic levels since 2008, however it was not convinced that the invoked measures were the only and direct cause of the employment and unemployment situation in Greece; other factors may have resulted in this situation, too. Hence, there was no violation of Article 1 para. 1. It is important to note, on the contrary, that dissenting member of the Committee P. Stangos, who comes from Greece, criticised the Committee for not recognising that those measures were the direct cause of the violations and for failing to identify those ‘other factors’. More specifically, he claimed that the measures’ impact was obvious from the statistics and the lack of relevant arguments by the government, and that in the five previous years Greece systematically violated Article 1 para. 1 by applying those measures in its domestic legal order in the form of a deliberate political choice. As regards Article 1 para. 2, the Committee held, following its previous case law,\textsuperscript{68} that the extent of the reduction of the minimum wage and the fact that it applied to all workers under 25 years of age is disproportionate to the legitimate aims pursued even under the particular economic circumstances.

Concerning the alleged violation of Article 2 para. 1, the Committee observed that while the daily limit laid down in those measures is in conformity with the Charter, no rule sets an upper limit on weekly work hours nor provides for a minimum weekly rest period,\textsuperscript{69} which could mean that a worker may have to work up to an unreasonable 78 hours per week. Referring to its case law and to statistics from the Organisation for Economic Co-operation and Development (OECD),\textsuperscript{70} the Committee ruled that the excessive length of weekly work violates Article 2 para. 1 of the Charter.

\textsuperscript{64} Note that Greece ratified the Revised European Social Charter on 18 March 2016, i.e. 2 years after the complaint at stake was lodged. According to the principle of non-retroactivity of treaties, the Committee could not examine the case based on the protection of Articles 5 (the right to organise) and 6 (the right to bargain collectively) as Greece had not ratified them at the time the complaint was lodged.

\textsuperscript{65} See European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, para. 207 and seq., where it stated that while restrictive measures relating to labour law must be interpreted narrowly and must obey the preconditions, they must be adopted only in response to a pressing social need.

\textsuperscript{66} And not external institutions, as the Committee pointed out.

\textsuperscript{67} See accordingly IKA-ETAM v. Greece, Complaint No. 76/2012, para. 79-80.

\textsuperscript{68} See GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011.

\textsuperscript{69} Note that the EU working time Directive, transposed by Greece, does not preclude working longer than 48 hours in individual weeks during the reference period.

\textsuperscript{70} The statistics also included the following: ‘In 2015 Greek employees were at the top of the list with respect to average hours worked at pan-European level’. See para. 156 of GSEE v. Greece.
In addition, while the measures no longer impose a 5-day week work, they do not provide for exceeding a working week of 6 days. Since the complainant failed to provide more evidence regarding the violation of weekly rest, the Committee found no violation of Article 2 para. 5.

The Committee subsequently found, relying on gross figures, that the reduced statutory minimum wage for everyone, and specifically for workers under 25 years of age, is ‘manifestly unfair’ and contrary to Article 4 para. 1, as it is far below the established thresholds of the Committee, as well as discriminatory in terms of age in the light of the Preamble of the 1961 Charter. Since the same threshold applies to workers of 15-18 years of age, there is also a violation of Article 7 para. 5. Furthermore, Article 4 para. 4 has also been violated by Greece, since by 2016 and the condemning decision of the Committee in GENOP-DEI and ADEDY v. Greece, there continue to exist no periods of notice or severance pay in case of termination of the permanent employment relationship during the probationary period in the Greek legal order. The same conclusion was reached by the Committee concerning Article 7 para. 7 of the Charter and the fact that Greece continues not to provide for 3 weeks’ annual holiday with pay. Finally, the Committee found that there is also a violation of Article 3 of the 1988 Protocol, as Greece’s obligation to ensure the effective exercise of the workers’ right to determine and improve their working conditions is not fulfilled, due to the abolishment of the previous collective bargaining system by the austerity measures.

Comments

The Committee made a real effort to explain in depth its reasoning and handed down a dynamic interpretation, following its previous case law standards on relevant cases concerning violations of labour or social security rights by austerity measures in Greece and other countries, to emphatically state once again that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. It recognises that changes may be necessary for the domestic labour law system to adjust to the crisis, but these reforms cannot excessively destabilise the system and refuse to provide social protection for the most vulnerable members, especially in the case that a very large number of people are deprived of their social and other rights and live in conditions of poverty and unemployment persistently for many years. As a result, in comparison with relevant cases before the ECtHR, the ECSR takes a much more dynamic

71. See para. 191 of GSEE v. Greece: ‘it corresponds to approximately 46% of gross average wage and the reduced minimum wage of workers under 25 years to only about 41% of gross average wage.’

72. The Committee noted that it had condemned Greece for the same discriminatory situation in GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, but the situation continued to remain in disconformity with the Charter since the decision was published in 2016.

73. GENOP-DEI and ADEDY v. Greece, Complaint No.65/2011.

74. See e.g. GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, IKA-ETAM v. Greece, Complaint No. 76/2012, POPS v. Greece, Complaint No. 77/2012, I.S.A.P v. Greece, Complaint No 78/2012, POSDEI v. Greece, Complaint No. 79/2012, ATE v. Greece, Complaint No. 80/2012, and EuroCOP v. Ireland, Complaint No. 83/2012

75. European Committee of Social Rights, Conclusions XIX-2 (2009): General Introduction, para. 15.

76. As was initially stated in Autism-Hurope v. France, Complaint No. 13/2002, para. 53.

77. See e.g. Koufaki and ADEDY v. Greece, decision of 7 May 2013, applications nos 62235/12 and 57725/12, Da Conceiqao Mateus v. Portugal and Santos Januario v. Portugal decision of 8 Oct. 2013, Application no. 13341/14 Rico v. Portugal decision of 24 Sept. 2015.
approach towards those affected by the economic crisis social rights.\textsuperscript{78} It attaches less emphasis to the margin of appreciation of the State concerned\textsuperscript{79} and the role of its national authorities to balance competing demands in this field\textsuperscript{80} and more emphasis on relevant statistics and the possibility for possible alternative forms of action.\textsuperscript{81}

Unlike its aforementioned decisions, the ECSR in this case goes even a bit further in terms of social rights protection and offers more satisfactory guidance on the interpretation of the Charter Articles to confront the challenges of the crisis and its austerity measures, as it elaborates on core provisions of the Charter concerning labour law rights and not, for example, pension rights (social security), which are more closely connected to the state budget and the state’s financial status. The Committee sets out some new detailed criteria, which are considered more difficult to disregard when legislating. Such criteria are introduced in relation to the reduction of the minimum wage of workers, the limits on weekly hours of work and rest, and the non-discrimination prohibitions. The significance of this decision is highlighted by the fact that these measures are still in force today, even though Greece has formally exited its 3rd and last Bailout Programme. However, it is a bit disappointing\textsuperscript{82} that the Committee of Ministers that is called upon to make a follow up (political) decision after the ECSR’s ruling, refused once again\textsuperscript{83} to issue a formal Recommendation to Greece to address the situation, but just adopted a resolution.\textsuperscript{84} This also implies that although the collective complaints mechanism of the ECSR has created a revolutionary and encouraging prospect for social rights protection at a pan-European level, the European Social Charter is still recognised as a gap-filling mechanism in the existing European system of human rights protection and according to P. Alston as the ‘poor stepsister of civil and political rights’.\textsuperscript{85} This conclusion is also supported by the fact that the Committee keeps condemning Greece in different decisions for the same measures taken during the crisis, as was illustrated in the Committee’s assessments in \textit{GSEE v. Greece}, but the Greek government still shows no substantial intention of respecting its

\textsuperscript{78} This is partly explained by the fact that the Committee has more time and fewer complaints before it to elaborate on the allegations and is able to take into account plenty of different views and reports, but also due to the fact that it is a body of solely social law experts.

\textsuperscript{79} See accordingly Nannery, A. (2015), page 86, supra note 19, where she states that the fact that social rights are core objectives of the Charter and not part of an expansionary Protocol like Article 1 of the 1st Additional Protocol of the ECHR is a good reason for the more emphatic protection.

\textsuperscript{80} See O’ Gorman, R. (2017). ‘The Failure of the Troika to Measure the Impact of the Economic Adjustment Programmes on the Vulnerable’, \textit{Legal Issues of Economic Integration}, Volume 44, Issue 3, 265-292, p. 279.

\textsuperscript{81} See in comparison para. 48 of \textit{Koufaki and ADEDY v. Greece}, ECHR and para. 90 of \textit{GSEE v. Greece}, ECSR.

\textsuperscript{82} And a procedural weakness according to Khemani, M. (2009), ‘The European Social Charter as a Means of Protecting Fundamental Economic and Social Rights in Europe: Relevant or Redundant? Economic and Social Rights’, p. 18, Available at SSRN: https://ssrn.com/abstract=1606110 or http://dx.doi.org/10.2139/ssrn.1606110, (Accessed 02/12/2017).

\textsuperscript{83} The Committee of Ministers rarely uses this tool as it is understandably assertive and politically influenced.

\textsuperscript{84} Council of Europe, Committee of Ministers, Resolution CM/ResChS(2017)9, Available at http://hudoc.esc.coe.int/eng#{"ESCDcIdentifier":"reschs-2017-9-en"}). (accessed 25/11/2017), which among other things states that the situation in Greece requires urgent attention from all the Council of Europe Member States.

\textsuperscript{85} Alston, P., ‘Assessing the Strengths and Weaknesses of the European Social Charter’s Supervisory System’, p. 47, in de Bürca, G. and de Witte, B. (2005), \textit{Social Rights in Europe}, Oxford University Press, 409. He is referring to social rights in general.
obligations arising from the case law of the Committee and amending the legislation concerned.\textsuperscript{86} That also reflects, to a point, the inadequacy of the Committee’s decisions to enforce changes in the legislation of the State concerned and consequently raises questions about the (non-)enforcing effect of the Social Charter.

Nevertheless, this decision is, in my view, a positive step in the direction of raising awareness at a pan-European level of the repugnant implications of the austerity measures in Greece and attempting to accord to the Social Charter equal with the ECHR importance. The social rights protection precedent produced by this decision and the set of relevant decisions of the Committee can and should be used as a tool for other national,\textsuperscript{87} European and International courts and bodies such as the European Court of Human Rights and the European Court of Justice when interpreting norms that produce social rights obligations to States, and for States and institutions such as the Troika and other public policy actors when they are implementing austerity policies under conditionality. That should be kept in mind with a view in particular to taking into consideration alternative policies that do not deregulate established core labour law standards and take care of the vulnerable members of the society, even when public interests such as bankruptcy or leaving the Eurozone are at stake. The economic crises and the responses to them must be seen at last ‘not only as a financial and economic issue, but also as a human one’.\textsuperscript{88}

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\textsuperscript{86} A difficulty in that regard also concerns the fact that most of those austerity measures were negotiated by the Greek government with its creditors and the character of their application is important for the granting of financial assistance to Greece.

\textsuperscript{87} See e.g. The series of Spanish courts’ judgments that are heavily influenced by the ECSR’s decisions condemning Greece in Complaints 65/2011 and 76-80/2012 and find violations of the European Social Charter in similar cases. See on this Beltrán C. S. (2018). La Charte Sociale Européenne: une arme face aux réformes anti-crise mises en place en Espagne. Lex Social: Revista de Derechos Sociales, Volume 8, Issue 2, 351-364.

\textsuperscript{88} Salomon, Margot E. (2015) p. 541, supra note 16.
