



*HELLENIC REPUBLIC*

**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

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**GNCHR Written Information on the Second Periodic Report of the Hellenic Republic for the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

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## TABLE OF CONTENTS

<b>I. Introduction</b>	<b>3</b>
A. An overall assessment of the situation in Greece	6
B. Matters affecting all the rights examined	7
<i>a. The limitation of the scope of social rights</i>	7
<i>b. The mounting barriers to access to Justice and judicial protection</i>	7
<b>II. Specific Observations on the Report of the Hellenic Republic</b>	<b>9</b>
Article 6	9
<i>Statistical data on employment (para. 35 of the Committee's Concluding Observations)</i>	9
Article 7	10
<i>Minimum and average wage and family needs</i>	10
<i>Equal pay for work of equal value</i>	11
<i>Measures to ensure safety and health at the workplace</i>	15
<i>Measures for the elimination of discrimination</i>	16
<i>Right to work of older persons</i>	18
<i>Working conditions for all workers, including overtime, paid and unpaid leave</i>	19
<i>Public holidays with pay</i>	19
<i>Weekly rest period</i>	19
<i>The right of all workers to a reasonable period of notice for the termination of employment</i>	20
Article 8	21
<i>The dismantling of collective bargaining as a factor exacerbating the violations of social rights</i>	21
Article 9	21
<i>Right to social insurance and security</i>	21
Article 10	27
<i>Reconciliation of working and private life, including protection of maternity</i>	27
Article 12	29
<i>Mental Health (paras. 24 and 46 of the Committee's Concluding Observations)</i>	29
<i>Right to health and care</i>	30
<i>Access to Health Services</i>	31
Article 15	35
<i>Special educational programmes organized and addressed to young people with special needs (vision, hearing, mobility)</i>	35
<i>Care and Protection of persons with special needs and disabilities</i>	37

# **GNCHR Written Information on the Second Periodic Report of the Hellenic Republic for the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

## **I. Introduction**

On 9.1.2012, the Ministry of Foreign Affairs (D4 Human Rights Directorate) of the Hellenic Republic has forwarded to the Greek National Commission for Human Rights (hereinafter GNCHR) the Draft of the second Report of the Hellenic Republic concerning the implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter Covenant) for comments, according to the provisions of Article 1(6e) of the GNCHR founding Law 2667/1998.

After examining the content of the Draft Report (hereinafter Report), the GNCHR submitted to the Ministry of Foreign Affairs its observations which had been unanimously adopted by its Plenary (9.3.2012)<sup>1</sup>. The Ministry of Foreign Affairs took into consideration some of the GNCHR's observations before submitting the Second Periodic Report of the Hellenic Republic (E/C.12/GRC/2, 16.12.2013) to the Committee on Economic, Social and Cultural Rights (hereinafter CESCR).

In view of the upcoming adoption of a list of questions on Greece's second report to the CESCR, which will take place at the CESCR 's next session (54th) in March 2015, in Geneva, the GNCHR submits to the CESCR written information prior to the adoption of lists of issues in relation to the implementation of the Covenant.

The information provided is related to reports adopted by the GNCHR Plenary until January 2015. More specifically, the present text refers to the following GNCHR Observations:

- a. "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", 5.12.2013<sup>2</sup>.
- b. "Recommendations of the National Commission for Human Rights (NCHR) for Childhood Protection: Health and Welfare", 8.5.2014<sup>3</sup>.
- c. "Recommendations based on the Bill on Special Education", 10.7.2014<sup>4</sup>.
- d. "Observations on the 24<sup>th</sup> Greek Report on the application of the European Social Charter and on the 9<sup>th</sup> Greek Report on the application of the Additional Protocol to the European Social Charter

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<sup>1</sup> GNCHR, "Observations on the Draft Report of Greece about the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)", 9.3.2012, *Annual Report 2012-2013*. All of the GNCHR's Reports are available at its website: [www.nchr.gr](http://www.nchr.gr).

<sup>2</sup> GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", 5.12.2013, *Annual Report 2012-2013*.

<sup>3</sup> GNCHR, "Recommendations of the National Commission for Human Rights (NCHR) for Childhood Protection: Health and Welfare", 8.5.2014, *Annual Report 2014*, to be published.

<sup>4</sup> GNCHR, "Recommendations based on the Bill on Special Education", 10.7.2014, *Annual Report 2014*, to be published.

which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9. 2014<sup>5</sup>.

e. “International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation”, 9.10.2014<sup>6</sup>.

f. “Protection of the rights of older persons”, 20.11.2014<sup>7</sup>.

The GNCHR particularly stresses that submission of the Report on the application of the Covenant comes at a time when Greece is plagued by a financial crisis. The GNCHR recalls that already since 2010 it conveyed to the State the “need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”, whilst a year and a half later it issued a Recommendation “on the imperative need to reverse the sharp decline in civil liberties and social rights”. The most recent GNCHR document is its “Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”, adopted by the Plenary on 27.6.2013<sup>8</sup>.

We also note that the European Network of National Human Rights Institutions (ENNHRI) sent, in January 2014, open letters to Mr. J.-M. Barroso and Mr. M. Draghi “On the upcoming Troika visit to Greece”, to which the above GNCHR Recommendation was *inter alia* attached. In these letters, ENNHRI drew attention to the adverse effects of the crisis and austerity measures on the enjoyment of human rights in our country. It recalled that the EU Member States are bound by human rights obligations and that both EU Member States and EU institutions are bound by the EU Charter of Fundamental Rights (hereinafter the EU Charter). It stressed that “only by connecting macro-economic decision-making processes and human rights can we decelerate, perhaps even invert, the transformation of the financial crisis into a humanitarian crisis” and called on the European Commission and the ECB to carry out a systematic *ex ante* human rights impact assessment of all austerity measures; to make sure they do not lead to human rights violations; and to integrate human rights institutions and experts in the process of macro-economic decision-making<sup>9</sup>.

In this regard, the GNCHR cannot but highlight the need to refer to the impacts of the deep financial crisis and the financial austerity measures, which clearly have affected the rights covered by the application of the Covenant.

The GNCHR expresses in particular its deep concern about the avalanche of unpredictable,

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<sup>5</sup> GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9.2014, *Annual Report 2014*, to be published.

<sup>6</sup> GNCHR, “International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation”, 9.10.2014, *Annual Report 2014*, to be published.

<sup>7</sup> GNCHR, “Protection of the rights of older persons”, 8.5.2014, *Annual Report 2014*, to be published.

<sup>8</sup> GNCHR, “Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”, 27.6.2013, “Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights”, 8.12.2011 and “The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”, 7.6.2010. All GNCHR’s reports on the impact of financial crisis on the enjoyment of human rights are available at: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

<sup>9</sup> The ENNHRI open letters and the attachments thereto are available at: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

complicated, conflicting and constantly modified “austerity measures” of immediate and often retroactive effect, which exacerbate the general feeling of insecurity, as deplored by the GNCHR in its Recommendation since 8.12.2011, is continuing and constantly growing; therefore, the Greek legislation does not have the “*quality*” required by the European Convention on Human Rights (hereinafter ECHR).

The GNCHR 2011 Recommendation “On the imperative need to reverse the sharp decline in civil liberties and social rights” was quoted by the European Committee of Social Rights (hereinafter ECSR) in seven decisions finding violations of the European Social Charter by Greece<sup>10</sup>. The ECSR’s example was followed by other European and international bodies, such as the Council of Europe (hereinafter CoE) Committee of Ministers<sup>11</sup>, the CoE Commissioner for Human Rights<sup>12</sup>, the ILO Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR)<sup>13</sup> and the UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Mr. Cephias Lumina<sup>14</sup>.

Moreover, the GNCHR observes with emphasis that the recent Conclusions of the ECSR concerning the application of Articles 2 and 4 of the 1961 Charter and Articles 2 and 3 of the 1988 Additional Protocol in Greece not only take note of the information contained in the comments submitted by the GNCHR on October 9<sup>th</sup> and December 1<sup>st</sup>, 2014, but furthermore quote certain parts of the GNCHR report<sup>15</sup>. In particular, the GNCHR Observations have been taken into consideration in almost all of the Conclusions’ thematic groups and, more specifically, with regard to issues such as reasonable working time, public holidays with pay, annual holiday with pay, weekly rest period, decent remuneration, reasonable notice of termination of employment, limits to

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<sup>10</sup> ECSR 23.05.2012, Complaints Nos. 65/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece* and 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece*, as well as ECSR 07.12.2012, Complaints Nos. 76/2012, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, 77/2012, *Panhellenic Federation of Public Service Pensioners (POPS) v. Greece*, 78/2012, *Pensioners’ Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*, 79/2012, *Panhellenic Federation of pensioners of the Public Electricity Corporation (POS-DEI) v. Greece*, 80/2012, *Pensioners’ Union of the Agricultural Bank of Greece (ATE) v. Greece*.

<sup>11</sup> Council of Europe, Committee of Ministers, *Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012)*, adopted by the Committee of Ministers on 16 October 2013 at the 1181<sup>st</sup> meeting of the Ministers’ Deputies, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS\(2013\)21&Language=lanEnglish&Ver=original&Site=CM&BackColorIntranet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCSS(2013)21&Language=lanEnglish&Ver=original&Site=CM&BackColorIntranet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

<sup>12</sup> Council of Europe, Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, November 2013, p. 52, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2530030&SecMode=1&DocId=2144886&Usage=2>.

<sup>13</sup> CEACR, in Reports to the International Labour Conference (ILC) 2013 finding violations of ILO Conventions Nos. 95 (protection of wages) and 102 (social security *minimum* standards) by Greece.

<sup>14</sup> UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, in his Report *Mission to Greece (22–27 April 2013)*, to the UN Human Rights Council 25<sup>th</sup> Session, 11 March 2014 (A/HRC/25/50/Add.1).

<sup>15</sup> ECSR, Conclusions XX-3 (2014) (GREECE), Articles 2 and 4 of the 1961 Charter and Articles 2 and 3 of the 1988 Additional Protocol, January 2015.

wage deductions and right of workers to take part in the determination and improvement of working conditions and working environment<sup>16</sup>.

It is in the light of the above that the GNCHR's more specific observations on the respect for the rights dealt with in the Greek Report under examination must be read.

### **A. An overall assessment of the situation in Greece**

The GNCHR, in its capacity as an independent advisory body to the Greek State, is following with particular attention and concern the impact of austerity measures on fundamental, especially social, rights. It is also highlighting the European and international monitoring bodies' observations regarding the violation of international norms on the protection of human rights and the international concern as expressed in the decisions and recommendations of these bodies, which, contrary to the Greek State, take GNCHR's Recommendations into consideration.

With respect to the seven aforementioned ESRC decisions, the GNCHR observes that none of the provisions found incompatible with the ESC has been modified or repealed.

Moreover, apart from the ECSR, the CEACR has found in its Report to the 103<sup>rd</sup> International Labour Conference (hereinafter ILC) 2014 on the application of ILO Convention No 102 by Greece that its observations made in previous reports were not followed, with the result that the situation has considerably deteriorated. The same conclusion was reached by the CoE Committee of Ministers in a Resolution finding violations of the European Code of Social Security by Greece<sup>17</sup>.

The CEACR stresses in particular, referring to the ECSR, that "austerity policies led the country to an economic and humanitarian catastrophe unprecedented in peacetime: a 25% shrinking of GDP – more than at the time of the Great Depression in the United States; over 27% unemployment – the highest level in any western industrialized country during the last 30 years; 40% reduction of household disposable incomes; a third of the population below the poverty threshold; and over 1 million people or 17.5% of the population living in households with no income at all. These consequences are substantially related to the economic adjustment program Greece had to accept from the group of international institutions known as “the Troika” [...], to ensure repayment of its sovereign debt”<sup>18</sup>.

The Greek National Confederation of Labour (hereinafter GSEE) has recently submitted a complaint to the ECSR, regarding the violation of a great number of workers' social rights guaranteed by the ESC in the last four years<sup>19</sup>.

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<sup>16</sup> ECSR, Conclusions XX-3 (2014) (GREECE), *op.cit.*, p. 4, 5, 6, 9, 10, 11, 17, 18, 20 και 24.

<sup>17</sup> Council of Europe, Committee of Ministers, *Resolution CM/ResCSS(2013)21 on the application of the European Code of Social Security by Greece (Period from 1 July 2011 to 30 June 2012), adopted by the Committee of Ministers on 16 October 2013 at the 1181st meeting of the Ministers' Deputies, op. cit.*

<sup>18</sup> Observations (CEACR) adopted 2013, published 103<sup>rd</sup> ILC session (2014), *Social Security (Minimum Standards) Convention, 1952 (No. 102)*, p. 516, Greece, available at:

[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3150771](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3150771).

<sup>19</sup> General Confederation of Greek Workers (GSEE), *Press Release-GSEE's Application to the Council of Europe*, 29.9.2014, available at: [http://www.gsee.gr/news/news\\_view.php?id=2325](http://www.gsee.gr/news/news_view.php?id=2325).

The complete deregulation of labour relations, the dramatic salary reductions and the dismantling of the welfare state do not only concern the workers, the unemployed and the pensioners in Greece; they are features of fiscal and social policies which are widespread in Europe.

It is in the light of the above that the GNCHR's more specific observations on the respect for the rights dealt with in the Greek Reports under examination must be read.

## **B. Matters affecting all the rights examined**

The GNCHR considers it crucial to mention at least three matters which affect all the rights examined here: the restrictions to the scope of social rights (A) and the increasing impediments to access to justice of individuals whose rights are being violated (B).

### **a. The limitation of the scope of social rights**

The GNCHR has repeatedly complained about Article 84 of Act 3386/2005, which prohibits the provision of medical care to undocumented migrants, making doctors who contravene this prohibition liable to criminal and disciplinary sanctions. It has underlined that this leads to inhuman and degrading treatment of these persons and violates their right to social aid and healthcare, whilst endangering public health. According to this provision, hospitals and clinics are only allowed to provide their services to undocumented minors, and to undocumented adults in cases of emergency only. As the doctors, respecting the Hippocratic oath and human rights, defy this prohibition, an urgent Circular of the Ministry of Health and Social Solidarity recalled the above provisions and strongly underlined the relevant obligations and the liability of doctors<sup>20</sup>.

### **b. The mounting barriers to access to Justice and judicial protection**

The GNCHR avails itself of the opportunity to remind its positions regarding the drastic increase in litigation costs for lodging legal remedies, and to once again emphasize how inappropriate this choice is as a means to resolve the problem of the excessive length of proceedings. The GNCHR, invoking ECtHR case-law, has emphasized that such measures severely violate the right of a great number of individuals to access to Justice and judicial protection. This is the more so as a large and dramatically increasing part of the Greek population is exposed to poverty and social exclusion.

It is an undeniable fact that the economic crisis in Greece is unprecedented in intensity and duration<sup>21</sup>. According to Eurostat, in 2013 the Gross Domestic Product (GDP) of Greece had shrunk by 20.6 % in comparison to 2009 (or even by 23.2 % in comparison to 2007)<sup>22</sup>, while the Group of Analysis of Public Policy of the Athens' University of Economics notes that the poverty threshold

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<sup>20</sup> Circular Y4α/οικ.45610/02/05/2012. See GNCHR, *Observations on Law 3386/2005 «Entrance, residence and social integration of third countries' nationals in Greece»*, as well as GNCHR, *Press Release, «Cruel and Degrading Treatment of Our Fellow People: Responsibility of the State»*, 25.5.2012, available at: [www.nchr.gr](http://www.nchr.gr).

<sup>21</sup> See Athens University of Economics, Analysis Group for Public Policy, *Dimension of poverty in Greece of the crisis*, Newsletter 1/2012, M. Matsaganis, Ch. Leventi, E. Kanavitsa (dir.), available at: [http://www.paru.gr/files/newsletters/NewsLetter\\_01.pdf](http://www.paru.gr/files/newsletters/NewsLetter_01.pdf); and *The anatomy of poverty in Greece in 2013*, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.), p. 3-4: [http://www.paru.gr/files/newsletters/NewsLetter\\_05.pdf](http://www.paru.gr/files/newsletters/NewsLetter_05.pdf).

<sup>22</sup> Available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tec00115>.

based on a fixed rate has sharply risen, to 39 % in 2012 and 44 % in 2013<sup>23</sup>. According to the Greek Statistical Authority (hereinafter ELSTAT), in 2012, 34.6 % of the population (now obviously more) were at risk of poverty and social exclusion<sup>24</sup>.

Moreover, pursuant to the 2<sup>nd</sup> “Memorandum of Understanding” (hereinafter MoU), the *minimum* wages under the National General Collective Agreement (hereinafter CA) of 15.7.2010 were reduced by 22 % for all employees, except for those under the age of 25, for whom the *minimum* wages were reduced by 32 %. Thus, the *minimum* monthly salary has reached 586.08 Euros and for the workers under the age of 25, 510.95 Euros, while the poverty threshold is 580 Euros<sup>25</sup>. The ECSR found that this reduction of the young workers’ salary constitutes a violation of the ESC<sup>26</sup>. Moreover, in its very recent Conclusions concerning the application of Articles 2 and 4 of the 1961 Charter and Articles 2 and 3 of the 1988 Additional Protocol in Greece, the ECSR, found that the situation in Greece is not in conformity with Article 4(1) of the 1961 Charter on the grounds that:

“The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 provide for the payment of a minimum wage to all workers under the age of 25 which is below the poverty level;

The provisions of section 74, paragraph 8 of Act No. 3863/2010 and of section 1, paragraph 1 of Council of Ministers Act No. 6/2012 discriminate against workers under the age of 25”<sup>27</sup>.

Indeed, in a period, of turbulence of growing intensity in the labour and social security field and of restrictions and deprivation of fundamental social rights, when a greater number of people than ever need effective judicial protection, the mounting barriers to access to Justice constitute a human rights violation of particular gravity.

For this reason and in order not to restrict access to Justice for individuals only, since it is only they who pay litigation costs, the GNCHR has recommended that, in case a legal remedy lodged by the State or legal persons governed by public law is dismissed, considerably increased litigation costs and pecuniary penalties be imposed, which will have a deterrent effect<sup>28</sup>. As it is mainly the unjustified legal remedies lodged by the State and other public entities which burden the system of Justice, this is a way to reduce the courts’ backlog without creating a problem of inequality of the parties.

The GNCHR, in its comments concerning the Bill which became Act 4055/2012, invoked a specific

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<sup>23</sup> See Athens University of Economics, Analysis Group for Public Policy, *The anatomy of poverty in Greece in 2013*, Newsletter 5/2013, M. Matsaganis, Ch. Leventi (dir.): [http://www.paru.gr/files/newsletters/NewsLetter\\_05.pdf](http://www.paru.gr/files/newsletters/NewsLetter_05.pdf).

<sup>24</sup> ELSTAT *Living conditions in Greece* July 2014, Labour market, Table 8, Poverty-inequality, Table 6: [http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p\\_param=A0101&r\\_param=SJO01&y\\_param=TS&mytabs=0](http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs=0).

<sup>25</sup> ECSR 23.05.2012, Complaint No. 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece*.

<sup>26</sup> *Ibidem*.

<sup>27</sup> ECSR, Conclusions XX-3 (2014) (GREECE), *op.cit.*, p. 12-13.

<sup>28</sup> GNCHR, “Comments on the Bill of the Ministry of Justice titled “Acceleration of proceedings in administrative courts and other provisions””, *Report 2010*, p. 123, also available at: [http://www.nchr.gr/images/English\\_Site/DIKAIHDIKH/2010\\_Dioikhtikh\\_Dikh.pdf](http://www.nchr.gr/images/English_Site/DIKAIHDIKH/2010_Dioikhtikh_Dikh.pdf).



opinion formulated in Opinion No. 4/2010 of the Administrative Plenary of the Council of State (Supreme Administrative Court), according to which “it is absolutely impossible to achieve an important reduction of the length of proceedings before the Council of State without drastically reducing the number of cases brought before it. This reduction cannot of course be achieved by legislative measures which would annihilate or seriously impede the right of individuals, as guaranteed by the Constitution and the ECHR, to seek the annulment of illegal acts or omissions of the Administration. Consequently, the only measure available to the legislator for achieving a significant reduction of the cases brought before the Council of State, is the drastic reduction of the legal remedies lodged by the State and legal persons governed by public law, which, as they exercise public power, do not have a right to judicial protection, the latter being only guaranteed to individuals”<sup>29</sup>.

Moreover, the GNCHR has recommended as a measure of support to those heavily afflicted by unemployment, job insecurity and the weakening of CAs, in line with Articles 21, 22(1) and (5), and 25 of the Constitution, that litigation costs be abolished at least for employment and social security cases and be drastically reduced for the other cases. At the same time, the legal aid system, which is inadequate mainly due to the very strict conditions subject to which it is available, must be reorganised and extended<sup>30</sup>. These recommendations are also in line with the recommendations of ILO bodies for the taking of support measures in favour of workers in the framework of the crisis, as these recommendations have been formulated following complaints of GSEE<sup>31</sup>.

## **II. Specific Observations on the Report of the Hellenic Republic**

### **Article 6**

#### **Statistical data on employment (para. 35 of the Committee’s Concluding Observations)<sup>32</sup>**

According to the latest data of ELSTAT, in June 2014 (which, it must be noted, is a month of

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<sup>29</sup> Minutes of the Administrative Plenary of the Council of State No. 4/2010, specific opinion regarding the provision that became Article 12 of the Bill. This opinion invokes the decisions made by the ECtHR, *Radio France v. France* 23.9.2003, par. 26 (on the admissibility), *Monasteries v. Greece*, 9.12.1994, par. 49, and *Commercial, Industrial and Rural Chamber of Timisoara v. Romania*, 16.07.2009, par. 15. To these decisions we add those of the ECtHR *Section de Commune d’Antilly v. France*, 23.11.1999 (on the admissibility), and *Danderyds Kommun v. Sweden*, 7.06.2001 (on the admissibility).

<sup>30</sup> Law 3226/2004.

<sup>31</sup> ILO, Committee on the Application of Standards, 2013 Report (102<sup>nd</sup> ILC), [http://www.ilo.org/ilc/ILCSessions/102/reports/committee-reports/WCMS\\_216456/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/102/reports/committee-reports/WCMS_216456/lang-en/index.htm); Committee on Freedom of Association, 365<sup>th</sup> Report of the Committee on Freedom of Association (November 2012), case 2820, [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-relconf/documents/meetingdocument/wcms\\_193260.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_193260.pdf); Committee on the Application of Standards 2011 Report (100<sup>th</sup> ILC), [http://www.ilo.org/global/standards/WCMS\\_165970/lang-en/index.htm](http://www.ilo.org/global/standards/WCMS_165970/lang-en/index.htm). See also ILO, Committee of Experts on the Application of Conventions and Recommendations, 2013 Report, [http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS\\_205472/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/102/reports/reports-submitted/WCMS_205472/lang-en/index.htm); 2012 Report, [http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS\\_174843/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174843/lang-en/index.htm); 2011 Report, [http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS\\_151556/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS_151556/lang-en/index.htm) and ILO, High Level Mission to Greece, Report (November 2011), available at: [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-normes/documents/missionreport/wcms\\_170433.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-normes/documents/missionreport/wcms_170433.pdf).

<sup>32</sup> GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9.2014, *op.cit.*

seasonal employment), the unemployed were 1.303.884 and the unemployment rate was 27 % (men: 23.8 %, women 31.1 %, 15-24 age group: 51.5 %)³³. Long-term unemployment (over 12 months) was 71.4 % of total unemployment in the first quarter of 2014³⁴.

Only 9 % of the unemployed registered with OAED (the Manpower Employment Organization) (the number of whom is lower than the total number of unemployed reported by ELSTAT: 993.118), are entitled to unemployment benefits, in principle for a maximum of 12 months. As a consequence, long-term unemployment is not covered. The beneficiaries are entitled to 360 Euros per month, plus 36 Euros for every dependent family member. This amount is much lower than the poverty threshold (580 Euros, as found by the ECSR). The long-term unemployed may receive a personal allowance of 200 Euros, for a maximum of 12 months more, albeit subject to a very strict means-test³⁵.

## Article 7

### Minimum and average wage and family needs³⁶

The GNCHR expresses its concern for the imposed wage cuts and wage “freezes”, employment issues which used to be regulated by CAs and arbitration decisions already in effect. These measures were provided by Ministerial Council Act 6/28.2.2012, which was issued by virtue of the enabling provision of Article 1(6) of Law 4046/2012 repeating clauses of the 2<sup>nd</sup> MoU.

These measures have entailed the most dramatic drop in the standard of living guaranteed by the ESC and the Greek Constitution.

The ECSR, in its recent Conclusions concerning the application of Articles 2 and 4 of the 1961 Charter and Articles 2 and 3 of the 1988 Additional Protocol in Greece, found that the situation in Greece is not in conformity with Article 4(1) of the 1961 Charter on the grounds that:

“The minimum wage applicable to contractual staff in the civil service is not sufficient to ensure a decent standard of living;

The minimum wage applicable to private sector workers is not sufficient to ensure a decent standard of living”³⁷.

Furthermore, the GNCHR expresses its concern about the 32 % reduction to the *minimum* wage for all workers under 25 years of age, which has been found by the ECSR to be in breach of Article 4

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³³ ELSTAT Press release September 11 for June 2014: [http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101\\_SJO02\\_DT\\_MM\\_06\\_2014\\_01\\_F\\_EN.pdf](http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO02_DT_MM_06_2014_01_F_EN.pdf).

³⁴ ELSTAT, Table 6: [http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p\\_param=A0101&r\\_param=SJO01&y\\_param=TS&mytabs](http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs).

³⁵ OAED (Manpower Employment Organization): <http://www.oaed.gr>.

³⁶ GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9. 2014, *op.cit.*

³⁷ ECSR, Conclusions XX-3 (2014) (GREECE), *op.cit.*, p. 12.

ESC<sup>38</sup>.

The relevant provisions have not been repealed or modified. Moreover, their impact has never been evaluated and they have not led to the reduction of the unemployment of the young, while the use of flexible forms of employment for them is increasing. According to the latest data of ELSTAT, in June 2014 (which, it must be noted, is a month of seasonal employment), the unemployed were 1.303.884 and the unemployment rate was 27 % (men: 23.8 %, women 31.1 %, 15-24 age group: 51.5 %) <sup>39</sup>. Long-term unemployment (over 12 months) was 71.4 % of total unemployment in the first quarter of 2014<sup>40</sup>.

Only 9 % of the unemployed registered with OAED (the number of whom is lower than the total number of unemployed reported by ELSTAT: 993.118), are entitled to unemployment benefits, in principle for a maximum of 12 months. As a consequence, long-term unemployment is not covered. The beneficiaries are entitled to 360 Euros per month, plus 36 Euros for every dependent family member. This amount is much lower than the poverty threshold (580 Euros, as found by the ECSR)<sup>41</sup>. The long-term unemployed may receive a personal allowance of 200 Euros, for a maximum of 12 months more, albeit subject to a very strict means-test<sup>42</sup>.

The GNCHR also notes that by its recent judgment No. 2307/2014, the Council of State Plenum, partly upheld a petition of GSEE for the annulment of Ministerial Council Act 6/2012. It annulled as unconstitutional the provisions of this Ministerial Act to the extent that they abolished the right of the parties to unilaterally resort to arbitration and restricted the scope of arbitration to basic salary or/and daily wage determination, while prohibiting the regulation of all non-wage matters, and even the adoption of clauses maintaining such provisions in force (retainability clauses).

### **Equal pay for work of equal value<sup>43</sup>**

The GNCHR has made, in the recent past, various observations on the implementation of the right of men and women to equal pay for work of equal value in Greece<sup>44</sup>. Since no progress has been made ever since, the GNCHR repeats the following remarks:

The GNCHR welcomed the adoption of Law 3896/2010, which transposed Directive 2002/73/EC on equal treatment of men and women in employment and the fact that several of its observations

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<sup>38</sup> ECSR, 23.05.2012, Complaint 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*.

<sup>39</sup> ELSTAT Press release September 11 for June 2014, available at: [http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101\\_SJO02\\_DT\\_MM\\_06\\_2014\\_01\\_F\\_EN.pdf](http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO02_DT_MM_06_2014_01_F_EN.pdf).

<sup>40</sup> ELSTAT, Table 6, available at: [http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p\\_param=A0101&r\\_param=SJO01&y\\_param=TS&mytabs](http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A0101&r_param=SJO01&y_param=TS&mytabs).

<sup>41</sup> ECSR, 23.05.2012, Complaint 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*.

<sup>42</sup> OAED (Manpower Employment Organization). Information available at: <http://www.oaed.gr>.

<sup>43</sup> GNCHR, "GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe", 10.9. 2014, *op.cit*.

<sup>44</sup> GNCHR, "Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)", *op.cit*.

regarding the relevant Bill were taken into account. It noted, however that this Law is inadequate in certain respects Firstly, the definition it provides for “vocational training” is neither clear nor consistent with EU law, something which undermines legal certainty.

Moreover, Article 19 on “Positive Measures” does not comply with Article 116(2) of the Greek Constitution which introduces an obligation for all state organs<sup>45</sup>. According to well-established jurisprudence of the Council of State, this constitutional provision “obliges the legislator and all other state authorities to adopt in all fields the positive measures in favour of women that are appropriate and necessary for achieving the best possible result” with a view to minimising inequalities and with the ultimate goal to achieve substantive gender equality<sup>46</sup>. Furthermore, Article 116(2) of the Greek Constitution stipulates that the positive measures should aim to eradicate “inequalities” (which is a boarder term than the term «*discrimination*» of Article 19 of Law 3896/2010)<sup>47</sup>.

Furthermore, the GNCHR noted, in its observations on the Bill for the transposition of Directive 2002/73/EC (which became Law 3488/2006), that there is no autonomous personal right to parental leave for both male and female workers<sup>48</sup> and that Article 3(4) of this Law regarding the protection of maternity does not comply with the provisions of Article 21(1) and (5) of the Greek Constitution, which guarantee the effective protection of maternity<sup>49</sup>.

Especially in the private sector, women undergo unfavourable treatment during the hiring and negotiation process, not only when they are pregnant or have just given birth to a baby, but also

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<sup>45</sup> Article 116 (2) of the Greek Constitution: “*Adoption of positive measures for promoting equality between men and women does not constitute discrimination on grounds of sex. The State shall take measures for the elimination of inequalities actually existing, in particular to the detriment of women*”.

<sup>46</sup> Council of State, judgments Nos 2831/2003, 2832-2833/2003, 3027-3028/2003, 3185, 3187-3189/2003 and 192/2004.

<sup>47</sup> See as noted by the GNCHR in “Comments on Bill titled ‘Application of the Principle of Equal Treatment Irrespective of Racial or Ethnic Origin, Religious or Other Beliefs, Disability, Age or Sexual Orientation’”, 2003: The Greek Constitution, Article 4(2), guarantees substantive gender equality (Council of State judgment No. 1933/1998). On the occasion of the constitutional revision of 2001, the provision of Article 116(2) allowing derogations was repealed and replaced with a provision which requires positive measures as a means for achieving gender equality and the abolishment of all inequalities in practice, especially those affecting women. Consequently, as of the entry into force of the revised Constitution (18.4.2001), all provisions allowing derogations were null and void, while any provision introducing derogations in the future shall be invalid. This is why neither Law 3488/2006 transposing Directive 2002/73/EC nor Law 3896/2010 transposing Directive 2006/54/EC, allow derogations from gender equality in employment. Besides, both these Directives allow member States to introduce or maintain national provisions more favourable than their own and do not allow the reduction in the level of protection of workers in the areas which they cover. The GNCHR underlined that “according to fundamental principles of international and European law as well as to the explicit provisions of the Directives, the provisions of Article 116(2) of the Greek Constitution prevail as more protective”.

<sup>48</sup> GNCHR, “Resolution concerning the Reconciliation between Professional and Family Life in view of the Incorporation of EU Directive 73/2002/EC into Greek Legislation”, 9.3.2006, Annual Report 2005, also available at: [http://www.nchr.gr/images/English\\_Site/NomothetikesProtaseis/NationalLegislation/Professional\\_family\\_life%202006.pdf](http://www.nchr.gr/images/English_Site/NomothetikesProtaseis/NationalLegislation/Professional_family_life%202006.pdf).

<sup>49</sup> Article 21(1) of the Greek Constitution: “*The family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State*” and Article 21(5): “*Planning and implementing a demographic policy, as well as taking of all necessary measures, is an obligation of the State*”.

when they have young children or are married and at child-bearing age<sup>50</sup>.

The GNCHR has also underlined that the legal framework (Law 3488/2006 and Law 3896/2010, which transpose Directives 2002/73/EC and 2006/54/EC, respectively)<sup>51</sup> is inadequate for ensuring effective judicial protection to victims of discrimination, most of whom are women. Legal entities are not granted standing to engage in their own name in legal proceedings for the protection of the rights of the victims.

The GNCHR is constantly repeating a general observation, regarding the provisions transposing the EU gender equality Directives: the procedural provisions (mainly regarding the standing of legal entities and the burden of proof) are not incorporated into the relevant Codes of Procedure. As a consequence, they remain unknown to judges, lawyers and the persons concerned. Therefore, the transposition of the EU Directives is inadequate, since it does not establish the required legal certainty and transparency which would allow the victims of discrimination to be aware of their rights and to claim them before the courts and other competent authorities.

Despite the adoption of Law 3896/2010 and other relevant measures, the deregulation of employment relations due to the growing financial crisis and the successive austerity measures continue to aggravate the position of women in the labour market, rendering them even more vulnerable. Taking into account the recent concluding observations of the UN Committee on the Elimination of Discrimination against Women<sup>52</sup>, the GNCHR expresses its concern for the marginalization of women in the labour market as reflected *inter alia* in the high female unemployment rates. The application of Law 4042/2011 and the severe pension cuts regarding widows and other categories of women have also had a negative effect.

Furthermore, the reversal of the hierarchy of CAs and the weakening of the National General CA and the sectoral CAs affect women in particular, mainly regarding equality in pay, and thus lead to the widening of the pay gap, as CAs used to be the best means to promote and protect uniform pay and employment conditions, without any discrimination.

Another source of concern is the continuous reduction of the (already insufficient) day-care structures for children and dependent persons as well as other social structures, which limit women's ability to take up employment or keep them in jobs with reduced rights, at the same time perpetuating gender stereotypes, as men are not encouraged to participate in such care. The harmonisation of family professional life should be a matter for both men and women. There is also a disturbing rise in discriminatory practices, especially on multiple grounds, to the detriment of

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<sup>50</sup> GNCHR, "Resolution concerning the Reconciliation between Professional and Family Life in view of the Incorporation of EU Directive 73/2002/EC into Greek Legislation", *op.cit.*

<sup>51</sup> GNCHR, "Comments on the Bill 'Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonization of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006'", available at: [http://www.nchr.gr/images/pdf/apofaseis/isothta\\_fullwn/EEDA\\_YpErgasias\\_2006.54\\_2010.pdf](http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/EEDA_YpErgasias_2006.54_2010.pdf) and [http://www.nchr.gr/images/pdf/apofaseis/isothta\\_fullwn/paratiriseis\\_sx.Nomou\\_2006\\_54.pdf](http://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/paratiriseis_sx.Nomou_2006_54.pdf).

<sup>52</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Greece*, CEDAW/C/GRC/CO/7 (26.4.2013), par. 28.

women employed within the framework of sub-contracting or temporary employment. In such cases, women are especially targeted if they are engaged in trade union activity<sup>53</sup>.

The CEACR expresses its concern at the “disproportionate impact” of the crisis and austerity measures on women and the widening of the pay gap to their detriment. The CEACR stresses in particular that “the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures adversely affected the negotiating power of women, and would lead to their over-representation in precarious low-paid jobs”. The CEACR, with reference to the information received from the Greek Ombudsman, (hereinafter the Ombudsman) observes that since the vast majority of employees in the wider public sector are women, the measures of “labour reserve” and those introduced by Law 4024/2011 (a new public service statute, a new job classification and a new harmonized wage scale resulting in wage cuts of up to 50 per cent in certain cases) is likely to have an impact on female unemployment. The CoE Commissioner for Human Rights has also emphasized the serious impact of the crisis and austerities measures on women<sup>54</sup>.

In the private sector, the rapid growth of flexible forms of employment as well as the replacement of contracts of indefinite duration by fixed term contracts lead to a significant reduction in wages. The CEACR stresses, referring to the Ombudsman, that flexible forms of employment, mainly part-time and rotation work, are more often offered to women, especially during pregnancy and upon return from maternity leave, reducing their levels of pay, while layoffs due to pregnancy, maternity and sexual harassment increase. "Flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced"<sup>55</sup>.

In fact, unemployment, especially among women and young people, is especially high and as the CEACR notes, “a large number of women have joined the ranks of the ‘discouraged’ workers who are not accounted for in the statistics”, while "small and medium-sized enterprises, which are an important source of employment for women and young people, close down massively"<sup>56</sup>.

Moreover, fiscal consolidation decisions and austerity measures are taken without any *ex ante* or

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<sup>53</sup> GNCHR, “Workers’ rights and conditions of work in the framework of sub-contracting”, 9.7.2009, *Annual Report 2009*, also available at: [http://www.nchr.gr/images/pdf/apofaseis/ergasia/fin\\_EEDA\\_ergolavikes\\_anatheseis\\_ioul09.pdf](http://www.nchr.gr/images/pdf/apofaseis/ergasia/fin_EEDA_ergolavikes_anatheseis_ioul09.pdf).

<sup>54</sup> Council of Europe, Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, November 2013, *op. cit.*, p. 23, and *Protect women’s rights during the crisis.:* [www.commissioner.coe.int](http://www.commissioner.coe.int).

<sup>55</sup> Observation (CEACR) - adopted 2011, published 101<sup>st</sup> ILC session (2012), *Equal Remuneration Convention, 1951* (No. 100), Greece (Ratification: 1975): [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2699054](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054).

<sup>56</sup> Observation (CEACR) - adopted 2011, published 101<sup>st</sup> ILC session (2012), *Equal Remuneration Convention, 1951* (No. 100), Greece (Ratification: 1975): [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2699054](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054). See also Observation (CEACR) - adopted 2012, published 102<sup>nd</sup> ILC session (2013) *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* – Greece: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3084473](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473).

even *ex post* impact assessment<sup>57</sup>.

Also, "recalling that CAs have been a principal source of determination of pay rates, the Committee refers to its comments on Convention No. 98 and calls upon the Government to bear in mind that collective bargaining is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex"<sup>58</sup>.

To the abovementioned observations the GNCHR adds the need to strengthen the Labour Inspectorate (SEPE) and the Ombudsman, something crucial at a time when both bodies are suffering major budget cuts. This is all the more so as the number of workers who cannot afford recourse to the courts for financial reasons is in constant increase, stressed herea bove.

More generally, the GNCHR shares the Ombudsman's fear that any progress achieved so far in employment and gender equality may be reversed, something which would result in failure to draw on valuable human resources, as well as in violation of the rule of law and democratic principles<sup>59</sup>. The insufficiency of policy measures aiming at combating high female unemployment, the failure to encourage men's participation in family care, the gender pay gap to the detriment of women and the so-called "glass ceiling" on women's professional evolution indeed constitute problems of human rights and democracy.

### **Measures to ensure safety and health at the workplace<sup>60</sup>**

#### *The right to take part in the determination and improvement of the working conditions and working environment*

Along with the CEACR, the GNCHR observes that "the industrial relations framework has been destabilized as the managerial prerogatives have been reinforced in a disproportionate and excessive manner: employers were allowed to unilaterally impose rotation work and suspension of work for 9 months and 3 months respectively within a year. The easing of rules on collective dismissals have led to their drastic increase. In the public sector, the labour reserve was being introduced in order to effectively dismiss thousands of workers in some 150 public agencies. Dismissals had been generally facilitated by reducing severance pay and facilitating its payment in bimonthly installments". The CEACR particularly deplores the massive dismissals in the wider public sector

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<sup>57</sup> See GNCHR, "Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards", 27.6.2013, *op.cit.*, "Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights", 8.12.2011, *op.cit.* and "The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis", 7.6.2010, *op.cit.*

<sup>58</sup> Observation (CEACR) - adopted 2011, published 101<sup>st</sup> ILC session (2012), Equal Remuneration Convention, 1951 (No. 100), Greece (Ratification: 1975), available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2699054](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699054). See also Observation (CEACR) - adopted 2012, published 102<sup>nd</sup> ILC session (2013) *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* – Greece, available: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3084473](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084473).

<sup>59</sup> Greek Ombudsman, "Gender and labour relations", *Special Report 2012*, available at: <http://www.synigoros.gr/resources/docs/11eidikes-fylo--2.pdf>.

<sup>60</sup> GNCHR, "GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe", 10.9. 2014, *op.cit.*

without consultation with the competent trade unions<sup>61</sup>.

The GNCHR has already expressed its concern at the facilitation of dismissals<sup>62</sup>. It notes that “the [ILO] High Level Mission [in Greece] echoes the concern expressed to it by many parties that overall, the changes being introduced to the industrial relations system in the current circumstances are likely to have a spillover effect on collective bargaining as a whole, to the detriment of social peace and society at large. The High Level Mission refers in this regard to the obligation of Greece under ratified Conventions to promote the practice of collective bargaining in general. It takes special note of the desire expressed by all social partners to evaluate the impact of the reforms introduced in the framework of the support mechanism on the industrial relations system and social dialogue more generally”<sup>63</sup>.

### **Measures for the elimination of discrimination**<sup>64</sup>

#### *Discrimination on grounds of age regarding unemployment allowances*

The long-term unemployed receive an employment allowance of EUR 200 (far below the poverty threshold, which is EUR 580 (see p. 7 above) for a maximum of 12 months, subject to a strict means-test. Those entitled to it must be over 20 years and below 66 years of age. This is clearly discrimination on grounds of age.

#### *Discrimination on grounds of nationality regarding child allowances*

A monthly allowance of EUR 40 is granted, subject to a strict means-test, for each dependent child under the age of 18, or 19 if the child is attending high school, or 24 if the child is attending a university or other post-high school educational establishment. The allowance is granted to parents who are permanent residents in Greece, even if they are EU citizens. This constitutes indirect discrimination against families on grounds of EU nationality, according to well-established CJEU case law, which is also contrary to Article 16 and to Article 34 of the ESC as interpreted by the Committee.

If the parents are citizens of other (including European) countries, they must be legally and permanently residents in Greece and their children must be Greek citizens. This constitutes direct discrimination against families on grounds of nationality, which is contrary to Article 16 and to Article 34 of the ESC as interpreted by the Committee<sup>65</sup>.

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<sup>61</sup> ILO, High Level Mission to Greece, Report (November 2011), *op. cit.*, par. 126; ILO, Application of International Labour Standards 2014 (I), *Report of the CEACR*, International Labour Conference, 103rd Session, 2014, p. 111-112, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_235054.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf).

<sup>62</sup> GNCHR, “Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights”, 8.12.2011, *op.cit.*

<sup>63</sup> ILO, High Level Mission to Greece, Report (November 2011), *op. cit.*, par. 307.

<sup>64</sup> GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9. 2014, *op.cit.*

<sup>65</sup> Article First, Sub-paragraph IA.11 (3), of Law 4093/2012, as amended by Article 38 of Law 4144/2013.



*Discrimination against female employees of the State and public legal entities employed on a fixed-term contract*

The Civil Servants Code (CSC)<sup>66</sup> as a whole covers civil servants and permanent employees of legal persons governed by public law. The CSC provisions regarding leaves, including maternity and parental leaves, also apply to permanent employees of local authorities<sup>67</sup>, as well as to persons employed by the State, legal persons governed by public law and local authorities under a contract of indefinite duration<sup>68</sup>. They do not apply to persons employed by these same employers under a fixed-term contract. These persons receive the leaves provided for the private sector, which are less advantageous.

In the private sector maternity leave is seventeen weeks in total: eight weeks before and nine weeks after childbirth. It is thus shorter than the CSC leave. In the private sector, the employer pays part of the woman's wages during maternity leave (one month in case of employment of at least one year after the coming into effect of the contract of employment; fifteen days in case of shorter employment), provided that she has worked for at least ten days for the same employer<sup>69</sup>. By contrast, women covered by the CSC receive their full wages throughout the maternity leave without any requirement of previous service.

In the private sector, the wages during maternity leave are in principle supplemented, by an allowance paid by the woman's social security scheme<sup>70</sup> and an allowance paid by a scheme run by OAED<sup>71</sup>. However, in order to receive the social security allowance, female employees must have completed 200 working days during the two years preceding the commencement of maternity leave. By contrast, the payment of a sickness allowance by the same social security scheme is subject to 100 working days in the year preceding the notification of the sickness.<sup>72</sup> Therefore, the payment of the maternity allowance is subject to stricter conditions than the payment of the sickness allowance, in breach of the requirements of Article 11(3) of Directive 92/85/EEC.

The above constitute less favourable treatment of women employed on a fixed term contract in comparison with employees covered by the CSC and permanent employees of local authorities and persons employed by the State, legal persons governed by public law and local authorities under a contract of indefinite duration, although the women under a fixed term contract are employed by the same employers. These violations are of particular importance in view of the growing practice of the State and public entities to hire employees on fixed term contracts.

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<sup>66</sup> CSC (Law 3528/2007, OJ A, 26 of 09 February 2007), as amended.

<sup>67</sup> This is provided by Article Second of the CSC.

<sup>68</sup> Article 4(5) of Law 2839/2000.

<sup>69</sup> Articles 657-658 Civil Code (absence due to a serious reason, such as sickness or maternity leave).

<sup>70</sup> Article 11 of Law 2874/2000, which sanctions Clause 7 of the national general collective agreement for 2000; Article 39 of Law 1846/1951 (on IKA, the main social security scheme for workers under a private law employment relationship).

<sup>71</sup> OAED (Manpower Employment Organization): <http://www.oaed.gr>.

<sup>72</sup> Article 35(1) of Law 1846/1951, as amended, lastly by Article 178(3) of Law 4261/2014.

## Right to work of older persons<sup>73</sup>

The GNCHR deems crucial to mention older persons' right to work. Article 6 of the International Covenant on Economic, Social and Cultural Rights establishes the right to work on which the Committee on economic, social and cultural rights has focused in General Comment No 6 on economic, social and cultural rights of older persons. Both this Committee<sup>74</sup> and the Committee of Ministers of the Council of Europe<sup>75</sup> along with ILO<sup>76</sup> highlight the need to eliminate discriminations in employment in both the private and the public sector. States owe to protect, *inter alia*, the right of older persons to access work, to maintain their current employment, to work in conditions of safety up to their retirement and to participate in trade unions.

In fact, GNCHR stresses the great importance of protecting every older person's individual right to work. It is noted, however, that in the State's overall choices on a social policy level, this right must be balanced against the obligation to respect intergenerational solidarity. The protection of the right of older persons to work must not exclude the protection of the youth's right to work, as well as regulations towards facilitating the youth's work must not lead to jeopardizing the older persons' work.

The ECSR also stresses this exact balance on the merits of the complaint of organisations of pensioners against Greece which was submitted before it on the grounds of violation of Article 12 (3) of the ESC. The Committee noted, *obiter dictum*, how inconsistent for a national economy plagued by youth unemployment, the decisions on the restrictions of pension rights in cases where the level of pension benefits is a sufficiently high one, on the restriction in respect of holiday bonuses for all pensioners without exception are. Workers who are aware that their pensions have been drastically cut have, thus, the motive to prolong their staying in the workforce and deprive younger generations of these positions.<sup>77</sup>

The GNCHR stresses that respect towards the older persons' right to work must not be exhausted in the proposal for adopting policies of "active ageing" of the population which are also promoted by the European Union. This policy is summarised in the prolonging of senior pensioners in the workforce or in their return to the labour market. However, they receive restricted pensions and revenues so as to become an attractive body of persons for the labour market contributing to the abandonment of every shade of intergenerational justice.<sup>78</sup>

Besides, the sterile adoption of "good practices"<sup>79</sup>, based on the experience of other countries, does not guarantee their effectiveness in Greece as well. In order to evaluate how "good" a practice

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<sup>73</sup> GNCHR, "Protection of the rights of older persons", 8.5.2014, *op.cit.*

<sup>74</sup> UN, ICESCR Committee, General Comment No.6, *The economic, social and cultural rights of older persons*, *op.cit.*, par. 22-25.

<sup>75</sup> Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, *op. cit.*, par. 26-28.

<sup>76</sup> See [ILO, Older Workers Recommendation No. 162](#).

<sup>77</sup> ECSR, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, *op.cit.*, par. 77.

<sup>78</sup> P. Stagos, "Discrimination on the grounds of age and the challenge of intergenerational solidarity in the Greek and European law", *Review of Labour Law*, 2014, Vol. 73, p. 995.

<sup>79</sup> J. E. Stiglitz, *Joseph Stiglitz and the World Bank: The Rebel Within*, Anthem Press, 2001, p. 203.

actually is for the protection of older persons' rights in Greece, the Greek legal framework and the Greek reality must be taken into consideration.

### **Working conditions for all workers, including overtime, paid and unpaid leave<sup>80</sup>**

*The right to just conditions of work: a minimum of three weeks annual holiday with pay*

The ECSR has unanimously found violations of a number of articles of the 1961 ESC in the case of the “special apprenticeship contracts” between employers and workers aged 15 to 18 years who are not granted paid annual holiday<sup>81</sup>. More particularly, the deprivation of the annual holiday violates Article 7 (7) of the 1961 ESC, which requires a paid annual holiday of no less than three weeks. The GNCHR observes that the relevant provisions have not been modified, and as a consequence Greek legislation is still incompatible with the ESC in this respect.

Besides, the deprivation of the annual holiday violates a fundamental principle of EU law, enshrined in Article 31 (2) of the EU Charter (fair and just working conditions) and expressed in Directive 2003/88/EC<sup>82</sup> which provides for the right of every worker to paid annual leave of at least four weeks<sup>83</sup>.

The GNCHR also expresses its concern about the contracts of employment in community service programs, within the framework of which it is uncertain whether employees are entitled to paid leave, since their contracts are considered special purpose contracts. The obligations of the body which is competent for the execution of these programs are limited to ensuring health and safety conditions in the workplace, while it has no obligation to pay any other benefits to the employees beyond those expressly specified in Article 89 (A) (1) of Law 3996/2011.

### **Public holidays with pay**

The GNCHR observes that the ECSR, in its recent Conclusions concerning the application of Articles 2 and 4 of the 1961 Charter and Articles 2 and 3 of the 1988 Additional Protocol in Greece, found that the situation in Greece is not in conformity with Article 2(2) of the 1961 Charter on the ground that, in the private sector, work performed on a public holiday is not adequately compensated<sup>84</sup>.

### **Weekly rest period**

The GNCHR observes that the ECSR, in its recent Conclusions concerning the application of

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<sup>80</sup> GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9. 2014, *op.cit.*

<sup>81</sup> ECSR, 23.05.2012, Complaint 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece.*

<sup>82</sup> Directive 2003/88/EC OJ L 299/9, 4.11.2003 concerning certain aspects of the organisation of working time, OJ 2999/9, 18.11.2003.

<sup>83</sup> CEU Cases C-173/99 *BECTU*, [2001] ECR I-4881; C-579/12 *RX-II*, *Strack*, EU:C:2013:570; C-78/11 *ANGED*, EU:C:2012:372.

<sup>84</sup> ECSR, Conclusions XX-3 (2014) (GREECE), *op.cit.*, p. 5.

Articles 2 and 4 of the 1961 Charter and Articles 2 and 3 of the 1988 Additional Protocol in Greece, found that the situation in Greece is not in conformity with Article 2(5) of the 1961 Charter on the ground that domestic workers are not covered by the legislation guaranteeing a weekly rest period<sup>85</sup>.

### **The right of all workers to a reasonable period of notice for the termination of employment**

Article 74 (2) (A'), of Law 3863/2010, as amended by Article 17 (5) (a), of Law 3899/2010, which aims to increase the flexibility of labour relations, in compliance with the first update of the MoU, reads as follows: "*The first twelve months of employment on a permanent contract from the date it becomes operative shall be deemed to be a trial period and the employment may be terminated without notice and with no severance pay unless both parties agree otherwise.*"

As the ECSR has held, the above provision violates Article 4 (4), of the ESC<sup>86</sup>. However, this provision has not been amended or repealed. The ECSR, in its recent Conclusions concerning the application of Articles 2 and 4 of the 1961 Charter and Articles 2 and 3 of the 1988 Additional Protocol in Greece, found that the situation in Greece is not in conformity with Article 4(4) of the 1961 Charter on the grounds that: "There are no periods of notice or severance pay in case of termination of employment during the probationary period and the violation noted by the decision on the merits of Collective Complaint No. 65/2011 has not been remedied"<sup>87</sup>.

On the contrary, dismissals have been further facilitated by Law 4093/2012 in breach of Article 4 (1), (3) and (4) of the ESC, with the following consequences:

A significant part of the risk of job loss is passed on to the worker given that severance pay intends to mitigate the effects of dismissals and secure livelihood support of the employees until they find another job. Moreover, severance payments constitute wages in a broad sense<sup>88</sup>; they are a form of accrued income that increases proportionally with job tenure in an enterprise. In this respect, wages, in the broader sense, have also been affected. Severance pay reductions, in the framework of the current situation in the labour market and in conjunction with high unemployment rates are not only unjustified but also fail to serve the purpose of severance pay.

In breach of the principle of equal pay, "multi-speed" workers have emerged in the labour market depending on the wholly fortuitous criterion of the date of hire. Employees hired from now on, as well as those at work who have not completed 16 years of service with the same employer, will receive reduced severance pay with a 12-month salary ceiling. Employees who have completed 17-28 years of service, upon the publication of Law 4093/2012, will be entitled for each additional year of service to one salary with a 2,000 Euros ceiling.

Moreover, as compensation constitutes "pay" in EU law as well and the above provision introduced discriminatory treatment related to dismissal and conditions of pay of employees who are most

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<sup>85</sup> ECSR, Conclusions XX-3 (2014) (GREECE), *op.cit.*, p. 9.

<sup>86</sup> ECSR 23.05.2012, Complaint No. 65/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece.*

<sup>87</sup> <sup>87</sup> ECSR, Conclusions XX-3 (2014) (GREECE), *op.cit.*, p. 19.

<sup>88</sup> Cf. *infra*, regarding EU law.

likely to be mainly young, a violation of Directive 2000/78/EC and Articles 21 (Non-discrimination) and 30 (protection in the event of unjustified dismissal) of the EU Charter is very likely. According to the CJEU and to the ECSR, notice and compensation aim at supporting the worker until he/she finds a new job. However, this measure deprives workers from their income, while at the same time it violates their right to work. This is all the more so as employment prospects are increasingly limited due to soaring unemployment, particularly among young people<sup>89</sup>.

## **Article 8**

### **The dismantling of collective bargaining as a factor exacerbating the violations of social rights<sup>90</sup>**

The GNCHR is constantly deploring<sup>91</sup> that the sweeping reforms which dismantled the system of collective bargaining and collective agreements, as introduced by a series of legislative provisions (in particular Acts 3845/2010, 3863/2010, 3899/2010, 4024/2011, 4093/2012, Ministerial Council Act 6/28.2.2012 implementing Article 1(6) of Act 2046/2012), have a direct impact on labour issues of broader social interest regulated by CAs. This is because the shrinking of the normative content of the CAs weakens significantly the ability of these crucial collective instruments not only to regulate labour relations, but also to function constructively for the eradication of dangerous stereotypes in the workplace and the protection of vulnerable groups and women from social exclusion and misery<sup>92</sup>.

## **Article 9**

### **Right to social insurance and security<sup>93</sup>**

In its recent Recommendation on the rights of older persons, the Committee of Ministers of the Council of Europe mentions that older persons should receive appropriate resources enabling them to have an adequate standard of living and participate in public, economic, social and cultural life<sup>94</sup>. The enjoyment of the right to social insurance and security is of fundamental importance towards

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<sup>89</sup> S. Koukoulis-Spiliotopoulos, “Austerity measures v. Human Rights and EU foundational values”, attached to the open letters of ENNHRI to Mr. J.-M. Barroso and Mr. M. Draghi (see Introduction above *i.f.*), available at: [http://www.nchr.gr/images/English\\_Site/NEWS/StrengtheningFRGNCHRfinal.pdf](http://www.nchr.gr/images/English_Site/NEWS/StrengtheningFRGNCHRfinal.pdf).

<sup>90</sup> GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9. 2014, *op.cit.*

<sup>91</sup> See GNCHR, “Recommendation on the imperative need to reverse the sharp decline in civil liberties and social right”, 8.12.2011, *op.cit.* and “Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”, 27.6.2013, *op.cit.*

<sup>92</sup> GNCHR, “Protection of the rights of people living with HIV/AIDS”, 27.1.2011, *Annual Report 2011*, also available at: [http://www.nchr.gr/images/English\\_Site/YGEIA/NCHR%20Report%20on%20the%20rights%20of%20people%20living%20with%20HIV%20\\_2\\_.pdf](http://www.nchr.gr/images/English_Site/YGEIA/NCHR%20Report%20on%20the%20rights%20of%20people%20living%20with%20HIV%20_2_.pdf).

<sup>93</sup> GNCHR, “Protection of the rights of older persons”, 8.5.2014, *op. cit.*

<sup>94</sup> Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, 19 February 2014, par. 21.

ensuring an adequate standard of living.

On the other hand, the International Covenant on Economic, Social and Cultural Rights guarantees in a general way the right to social security (Article 9)<sup>95</sup>. The Committee of Economic, Social and Cultural Rights in General Comment No 6 on the economic, social and cultural rights of older persons, taking into account the ILO conventions on social security as well (Convention 102 on Social Security Minimum Standards and Convention 128 on Invalidity, Old-age and Survivors)<sup>96</sup>, stresses that States parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law<sup>97</sup>. In fact, the Committee highlights that in order fully to implement the provisions of Article 9 of the Covenant, States parties should, within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income<sup>98</sup>.

At this point, the GNCHR stresses the fact that according to a survey conducted by the Small Enterprises' Institute of the Hellenic Confederation of Professionals, Craftsmen and Merchants (IME GSEVEE), income coming from pensions is the main, and perhaps the only, support for a great number of households (48.6%)<sup>99</sup>. In one out of two households in Greece, old pensioners support the unemployed members of their families rendering the protection of the social security system more imperative than ever.

Furthermore, according to a recent study by INE-GSEE (Trade Union Labour Institute), the changes in population that have been taking place in recent years have a direct and powerful impact on the labour market and the social security system. Nowadays, older persons live longer and more healthily with respect to previous generations. In 2010, the expected life expectancy (Greece) at the age of 65 years old was 17 years for men and 21 years for women. Moreover, the chance of a newborn boy's reaching 65 years of age is over 80%, while the corresponding chance for a girl is over 90%. This development means that the rise in life expectancy denotes the payment of pension benefits for even longer periods. The ageing of the population and its shrinking regarding the age of work has an impact, either direct or indirect, on the structure of the workforce, the circumstances of offer and effectiveness in the labour market along with the long-term viability of the Social Security

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<sup>95</sup> According to Article 9 "The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance".

<sup>96</sup> ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202), *Recommendation concerning National Floors of Social Protection*, available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID,P12100\\_LANG\\_CODE:3065\\_524,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:3065_524,en:NO) and ILO, R162 - Older Workers Recommendation, 1980 (No. 162), *Recommendation concerning Older Workers*, available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R162](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R162)

<sup>97</sup> UN, ICESCR, General Comment No. 6, *The economic, social and cultural rights of older persons*, par.27

<sup>98</sup> UN, ICESCR, General Comment No. 6, *The economic, social and cultural rights of older persons*, op. cit., par. 30. See also UN, ICESCR Committee, General Comment No. 19 *on the right to social security*, par. 15.

<sup>99</sup> IME GSEVEE Survey, *Household's Income – Expenditure*, 01.23.2014, available at: <http://www.imegsevee.gr/imesurveys/796-households-income-expediture>.

System<sup>100</sup>.

Besides, a recent analysis published by ILO points out in the most vivid terms to the need of meeting population challenges by means of promoting employment and social protection, setting as priorities the expansion of pension coverage and the securing of effective access to health and care for older persons<sup>101</sup>.

The GNCHR notes, however, that in Greece, interventions on social security, in the context of the consecutive austerity measures, attempt to address the impact of the demographic deficit by means of drastically reducing pension benefits instead of structuring a long-term dynamic fiscal policy which shall protect the Social Security System with new resources coming from economic development.

The GNCHR notes that the Social Security System has been seriously afflicted due to extensive fiscal interventions and austerity measures, resulting in the serious jeopardizing of the social security rights of older persons<sup>102</sup>.

In this context, GNCHR observes that the social state in Greece is addressed as the “subject of the crisis” which is “responsible” for the fiscal derailment<sup>103</sup> while it is actually the “object” of the crisis, being constantly weakened and dismantled by regulations which cut down benefits and social rights, thus, violently raising retirement age and rendering the pre-conditions for social security benefits stricter especially for groups in need of particular and constant social protection.

Austerity measures adopted in the context of Greece’s fiscal adaptation programme, contribute, apart from the drastic and constant cuts in social security benefits caused, to the radical restructuring of the Country’s Social Security System. This restructuring occurs by means of the State’s gradual withdrawal from the obligation of co-funding the Social Security System regarding the main and supplementary pensions (restricted since 1.1.2015 to funding “main” pensions<sup>104</sup> only) on the one hand and by means of drastic parametric changes<sup>105</sup> at the expense of insurance rights and expectations of the insured on the other one. When, actors of social insurance do not receive a

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<sup>100</sup> INE-GSEE, *Social Insurance and the Impact of Population Ageing on Greece's social insurance system in 2013-2050*, Athens, 12.9.2013.

<sup>101</sup> ILO, *Social protection for older person: key policy trends and statistics* / International Labour Office, Social Protection Department. - Geneva: ILO, 2014, available at : [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_310211.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_310211.pdf).

<sup>102</sup> A representative example, which has also been highlighted in the consultation of 6.30.2014 by the Greek Ombudsman, concerns the issue of the pre-conditions for granting pension to expatriate uninsured very old persons. The modifications brought upon by Law 4093/2012 lead to full pension forfeiture for uninsured very old persons who belong to a particularly vulnerable population group. As mentioned in a Decision by the Greek Ombudsman, a great number of uninsured very old persons, already pensioners, who receive a small pension from their countries or have not completed a 20-year stay in Greece, have been deprived of the provision of pension since 3.1.2013. The Greek Ombudsman also highlights that in view of the particularly low pension that repatriated expatriates receive, pension forfeiture for uninsured very old persons shall raise issues of decent living. See about the Greek Ombudsman’s recommendations on the issue: *The Greek Ombudsman’s intervention on the pre-conditions for granting pension to expatriate uninsured very old persons*, June 2013.

<sup>103</sup> See M., Matsaganis, *Social policy in hard times*, Kritiki Publications, Chapter 1.

<sup>104</sup> Article 37 Law 3863/2010 (OJHR 115/7.15.2010/A), Article 3 Law 3865/2010 (OJHR 120/7.21/2010/A).

<sup>105</sup> For example, direct cuts in pensions which have triggered successive cumulative cuts up to 50%, the rise of retirement age from 60 to 67 years of age, the extension of the contribution period from 35 to 40 years.

satisfying funding, the future of pension rights is not secured.

The GNCHR highlights that the issue of social insurance is an open social issue, ever a topical one, which must be constantly addressed in the context of the constant social dialogue and with respect to certain fundamental principles. In the context of the respective OKE (Economic and Social Council of Greece) Opinion<sup>106</sup> as well, GNCHR stresses the greatness of these principles, which go as follows:

- a. Social security is public, universal and obligatory for all workers, either Greek or legally residing aliens.
- b. The State guarantees the viability, operation, stable funding and the social character of our country's health, welfare and pension system.
- c. The social insurance system must be governed by the principle of equal treatment of the country's citizens and be socially fair, financially viable and promote intergenerational solidarity.
- d. The reform of the social security system must be connected to the restructuring of the tax system towards a more fair distribution of the tax burden.
- e. The reform of the social security system must be connected to an active and effective policy for increasing employment.
- f. Policies in the field of social security must also evaluate the developing parameters of the measures taken. This is because the reform of the social security system has an impact on crucial sizes of the economy, such as development, employment and competitiveness, which shall define in their own turn the potential of the social security system itself.
- g. The administration of social security organizations of main insurance must be based on an equal three-way representation of the State, employers and workers.
- h. The reasons of effectiveness as well as the aforementioned principle of equality impose the intensification of efforts towards limiting social security contribution evasion and the control of undeclared employment, both negative phenomena that characterize the Greek social security system.
- i. The viability of our social security system is also connected to our country's demographic problem which constitutes an issue of major influence. Addressing this issue would entail the immediate formation of effective policies. So far, nothing has been done towards this direction.
- j. The various changes in the Social Security System must not overturn mature expectations<sup>107</sup>, but upgrade the system and strengthen the relations of trust between the State and the citizens so as to

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<sup>106</sup> OKE Opinion No. 241/7.5.2010 on the Draft Law of subsequent Law 3863/2010.

<sup>107</sup> See also European Court of Human Rights case-law on the protection of "legitimate expectation" in the context of protecting the right to property. The Court, broadening the scope of Article 1 of the First Additional Protocol, includes "legitimate expectation" in the notion of "good" for the effective enjoyment of the right to property: ECHR, *Pine Valley Developments Ltd and Others v. Ireland*, 11.29.1991, Series A no. 222, p.23 & 51, *Prince Hans-Adam II de Liechtenstein v. Germany* [GC], No [42527/98](#) par. 82-83, CEDH 2001-VIII, *Kopecký v. Slovakia* [GC], No [44912/98](#) par. 35, CEDH 2004 IX.



develop and strengthen social security conscience.

Regarding the adoption of a basic social security system for non-beneficiaries of social benefits, the GNCHR highlights that social assistance and support is of supplementary/assisting character and it is unthinkable to replace social security which must preserve its universal character<sup>108</sup>. In the context of the above issues, the GNCHR falls back on the relevant observations of international bodies. As noted by the ECSR “*the cumulative effect of the restrictions (...) is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned*”<sup>109</sup>. The ECSR also stresses that the income of older persons should not be lower than the poverty threshold. However, an important percentage of the pensions granted falls below this limit. The increasing level of unemployment is presenting a challenge for social security and social assistance systems as the number of beneficiaries increases while tax and social contributions revenues decline.

The ECSR highlights that Greece has not yet established that efforts have been made to maintain a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale of pauperisation of a significant segment of the population<sup>110</sup>. The ECSR *concludes* that the restricting measures in question, which appear to deprive a segment of the population of an essential part of its living resources, have been applied without taking into account the legitimate expectation of the pensioners. This legitimate expectation secures for the beneficiaries the taking of amending measures in the field of social security which shall take into account their vulnerability, their permanent financial expectations and finally their right to enjoy an effective access to social protection and social security<sup>111</sup>.

In the same direction, the ILO observes that existing pension thresholds are insufficient to prevent poverty in old age. In fact, it indicates that the rates of relative poverty and material deprivation have more worsened for people over 65 than for the population on average, stressing Greece’s need to monitor this phenomenon<sup>112</sup>. According to Eurostat, between 2010 and 2011, the percentage of older persons over 65 who fell below the poverty threshold was increased by 2.2 %<sup>113</sup>.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its 2013 Report towards the International Labour Conference (ILC) refers to the

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<sup>108</sup> ILO, R202 - *Social Protection Floors Recommendation*, 2012 (No. 202), Recommendation concerning National Floors of Social Protection Adoption: Geneva, 101st ILC session (14 Jun 2012), available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:3065524:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3065524:NO).

<sup>109</sup> ECSR, *Federation of employed pensioners of Greece (IKA–ETAM) v. Greece*, Complaint No. 76/2012, 12.7.2012, par. 78.

<sup>110</sup> *Idem*, par. 81.

<sup>111</sup> ECSR, decisions on the complaints No. 76-80/2012, 12.7.2012, available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp).

<sup>112</sup> ILO, *Application of International Labour Standards 2014 (I)*, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 103rd Session, 2014, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_235054.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf).

<sup>113</sup> ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 102nd Session, 2013, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_205472.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205472.pdf).

positions of GNCHR – as expressed in its Recommendation on the impact of the financial crisis on human rights (2011) – and observes violations on behalf of Greece regarding International Labour Conventions of Article 95 (on the protection of wages) and Article 102 (on the social security minimum standards)<sup>114</sup>. The CEACR condemns Greece in particular for not taking into account GNCHR Recommendations on the impact of austerity measures. These recommendations are taken into account by the Committee of Ministers in the Council of Europe founding violations of the European Code of Social Security by Greece<sup>115</sup>.

The CEACR in its 2014 Report on International Labour Convention No 102, recalls the observations made in previous reports as well and deems that they have not been taken into account by the Greek Government resulting in the serious worsening of the current state of affairs. In particular, the CEACR condemns the fact that, due to austerity measures, the country has been led to an unprecedented economic and humanitarian crisis and observes that the financial results of the economic adjustment programme threaten the viability of the national social security system resulting in the undermining of the social protection goals as provided by Convention 102 and the Code of Social Security of the Council of Europe<sup>116</sup>.

Based on the CEACR Report and with an explicit reference to the respective observations by ECSR and the Committee of Ministers of the Council of Europe, Greece was directly (double footnote case) referred for inspection by the Committee on the Application of Standards – CAS – of the 2014 International Labour Conference. CAS in its Report<sup>117</sup> observed that “*the continuous contraction of the social security system in terms of coverage and benefits had affected all branches of social security and in some instances resulted in reducing the overall level of protection below the levels laid down in Articles 65-67 of the 102 Convention*”.

Finally, the GNCHR also highlights the quite recent judgment of the First Chamber of the Greek Council of the State regarding the cuts in pensions in Greece<sup>118</sup>. The judgment deems that cuts in main pensions by the organizations of social security does not collide with the constitutional mandates, but due to the issue’s great importance, the case was referred to the Plenary for final

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<sup>114</sup> CEACR, *Protection of Wages Convention, 1949 (No. 95) - Greece*, adopted 2012, published 102nd ILC session (2013), available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3085303:NO%20CE%BA%CE%B1%CE%B9%20CEACR,%20Social%20Security%20\(Minimum%20Standards\)%20Convention,%201952%20\(No.%20102\)](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3085303:NO%20CE%BA%CE%B1%CE%B9%20CEACR,%20Social%20Security%20(Minimum%20Standards)%20Convention,%201952%20(No.%20102)) and CEACR, *Social Security (Minimum Standards) Convention, 1952 (No. 102) - Greece*, adopted 2012, published 102nd ILC session (2013), available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3088061](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3088061).

<sup>115</sup> Committee of Ministers, Council of Europe, Resolution *CM/ResCSS(2012)8 on the application of the European Code of Social Security and its Protocol by Greece*, 9.12.2012 and Committee of Ministers, Council of Europe, Resolution *CM/ResCSS (2013)21 on the application of the European Code of Social Security and its Protocol by Greece*, 10.16.2013.

<sup>116</sup> CEACR, *Social Security (Minimum Standards) Convention, 1952 (No. 102) - Greece*, adopted 2013, published 103rd ILC session (2014), available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3150771](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3150771) and CEACR, *Social Security (Minimum Standards) Convention, 1952 (No. 102) - Greece*, adopted 2012, published 102nd ILC session (2013), *op.cit.*

<sup>117</sup> ILO, Committee on the Application of Standards Report (2014), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_246782.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246782.pdf).

<sup>118</sup> Council of State 3410/2014.

judgment. Nonetheless, the opinions of the minority of the judgment which highlights that “*State funding of the social security system is not allowed to be constitutionally reduced to a point where it does not provide a satisfactory standard of social security*” are also noted. In fact, the minority of the Greek Council of the State also stresses the need for the interventions to the country’s social security system to be attempted upon estimation and evaluation of their impact on the pensioners’ standard of living<sup>119</sup>, which has been repeatedly stressed by the GNCHR in its texts<sup>120</sup>.

## Article 10

### Reconciliation of working and private life, including protection of maternity

#### *Maternity leave*<sup>121</sup>

The CSC provisions regarding leaves, including maternity and parental leaves, also apply to permanent employees of local authorities<sup>122</sup>, as well as to persons employed by the State, legal persons governed by public law and local authorities under a contract of indefinite duration<sup>123</sup>. They do not apply, nonetheless, as already mentioned to persons employed by these same employers under a fixed-term contract. These persons receive the leaves provided for the private sector, which are less advantageous.

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<sup>119</sup> “ *Even when the Country faces very adverse financial circumstances, for addressing which extended structural changes to the State are required along with the simultaneous imposing of strict fiscal and other measures in order to cover the Country's fiscal deficit, which entail particularly heavy burdens for the governed, so as for the legislator's interventions to the Country's security system to be characterised constitutionally tolerable for securing its viability (inherently structural changes in the organisations of social security, redefining the conditions for granting any kind of provisions etc.), whose self-evident consequence is the limitation of the extent and amount of any insurance provisions whatsoever, the interventions must be attempted upon planning, respecting the particular provisions of the Constitution and upon planning, to be attempted, that is, in a rational manner, which is reflected in a previous, overall study which has been compiled on the basis of specific data and upon calculating the overall consequences brought upon these interventions to the provisions of the insured.*” Furthermore, “ *it is required that the legislator's interventions to the Country's security system be justified, in the sense that it must be clear that they are attempted upon the previous evaluation of all financial or other, either direct or indirect, burden which has been imposed to the insured and after constant evaluation, especially of successive interventions, of the consequences entailed, cumulatively, on their standards of living, on the basis of a previous, overall study and calling upon particular data, which are drawn from economic, actuarial, statistical studies, which must be compiled by independent authorities, such as the National Actuarial Authority, the Hellenic Statistical Authority etc.*”.

<sup>120</sup> See the recent GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9.2014, *op.cit.* and GNCHR, “Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”, 27.6.2013, *op.cit.*, “Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights”, 8.12.2011, *op.cit.* and “The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”, 7.6.2010, *op.cit.* In fact, the minority of the Council of State in its 3410/2014 judgement explicitly refers to the GNCHR decisions on the impact of austerity measures on human rights protection: “*Regarding the impact of the adverse situation Greek economy has come to, due to the constant austerity measures which have been imposed by means of the laws of the memorandum and their impact on the Country's security system, see inter alia, the Recommendations of 2.8.2011 and 7.26.2013 of the Greek National Commission for Human Rights (GNCHR) [...]*”. The same applies to the 3663/2014 decision of the Council of State (Chamber A).

<sup>121</sup> GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9.2014, *op. cit.*

<sup>122</sup> This is provided by Article Second of the CSC.

<sup>123</sup> Article 4(5) of Law 2839/2000.

In the private sector maternity leave is seventeen weeks in total: eight weeks before and nine weeks after childbirth. It is thus shorter than the CSC leave. In the private sector, the employer pays part of the woman's wages during maternity leave (one month in case of employment of at least one year after the coming into effect of the contract of employment; fifteen days in case of shorter employment), provided that she has worked for at least ten days for the same employer<sup>124</sup>. By contrast, women covered by the CSC receive their full wages throughout the maternity leave without any requirement of previous service.

In the private sector, the wages during maternity leave are in principle supplemented, by an allowance paid by the woman's social security scheme<sup>125</sup> and an allowance paid by a scheme run by OAED<sup>126</sup>. However, in order to receive the social security allowance, female employees must have completed 200 working days during the two years preceding the commencement of maternity leave. By contrast, the payment of a sickness allowance by the same social security scheme is subject to 100 working days in the year preceding the notification of the sickness.<sup>127</sup> Therefore, the payment of the maternity allowance is subject to stricter conditions than the payment of the sickness allowance, in breach of the requirements of Article 11(3) of Directive 92/85/EEC.

*Measures to combat poverty (paras. 20, 41)*<sup>128</sup>

Combating child poverty has been and continues to be one of the GNCHR's priorities. Indeed, the rise of child poverty in Greece is not a new phenomenon: the relevant index had started increasing slowly but steadily already since the late 1990s. This increase has become more dramatic in recent years. According to a research conducted by Athens University of Economics and Business, it is estimated that 20% of children (as opposed to 4% in 2009) live in families who are in no position to buy the necessary goods for securing the minimum level of decent living<sup>129</sup>.

More specifically, nowadays in Greece, more than 2.2 million people live under the line of poverty, among whom 440,000 are children. The constantly increasing unemployment rates and the difficulty of access to social services financed by the State combined with the important shrinking of state financing deteriorate the already hazardous living conditions for both children and their families and render necessary the evaluation of the results of the financial crisis in children and adolescents' life and development, while aiming at minimising the hazards in their life and

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<sup>124</sup> Articles 657-658 Civil Code (absence due to a serious reason, such as sickness or maternity leave).

<sup>125</sup> Article 11 of Law 2874/2000, which sanctions Clause 7 of the national general collective agreement for 2000; Article 39 of Law 1846/1951 (on IKA, the main social security scheme for workers under a private law employment relationship).

<sup>126</sup> OAED (Manpower Employment Organization): <http://www.oaed.gr>.

<sup>127</sup> Article 35(1) of Law 1846/1951, as amended, lastly by Article 178(3) of Law 4261/2014.

<sup>128</sup> GNCHR, "Recommendations of the National Commission for Human Rights (NCHR) for Childhood Protection: Health and Welfare", 8.5.2014, *op.cit.*

<sup>129</sup> See Athens University of Economics and Business, Policy Analysis Research Unit, *The Anatomy of Poverty in Greece of 2013*, Information Brochure 5/2013, (eds.) M. Matsaganis, C. Leventi, p. 5-7, available at: [http://www.paru.gr/files/newsletters/NewsLetter\\_05.pdf](http://www.paru.gr/files/newsletters/NewsLetter_05.pdf) and *The politics against poverty in Greece during the crisis*, Information Brochure 6/2013, (ed.) M. Matsaganis, p. 5, available at: [http://www.paru.gr/files/newsletters/NewsLetter\\_06.pdf](http://www.paru.gr/files/newsletters/NewsLetter_06.pdf).

development<sup>130</sup>.

### *Child allowances*<sup>131</sup>

A monthly allowance of EUR 40 is granted subject to a strict means-test, for each dependent child under the age of 18, or 19 if the child is attending high school, or 24 if the child is attending a university or other post-high school educational establishment. Nevertheless, as mentioned above, the allowance is granted to parents who are permanent residents in Greece, even if they are EU citizens. If the parents are citizens of other (including European) countries, they must be legally and permanently residents in Greece and their children must be Greek citizens.

## **Article 12**

### **Mental Health**<sup>132</sup> (paras. 24 and 46 of the Committee's Concluding Observations)

The state of child and adolescent mental health in Greece of the crisis is appalling. This is confirmed by a recent scientific study, in which, among others, it is highlighted that the number of new cases is increasing along with the need to provide reinforcing services within the community – due to the fact that social services are not functioning– and in schools- where psychiatric services are not provided<sup>133</sup>. Besides, a great number of patients abandon the private sector and seek public system services. A recent research compared statistical data, in a sample of public and private psychiatric institutions in Athens, Piraeus and Salonica for 2007 and 2011 (two years before and two years after the implementation of austerity measures). From this comparison, it results that new cases in non-hospital services for children increased by 39.8% and by 25.5% for adults, while the corresponding percentages in the private sector decreased by 35.4%. As a result, the waiting list and the waiting time are longer<sup>134</sup>. Indeed, the evaluation of the application of National Plan of Action *Psychargos* in the period 2000-2009 demonstrates that the development of psychiatric services for children is more inadequate than the one regarding adults while only 30% of scheduled services have indeed been brought into effect. Moreover, the distribution of these services has been utterly inconsistent given that they are mainly located in Attica. In other regions, the provision of psychiatric care to children is inexistent<sup>135</sup>. In fact, the situation is exacerbating due to the impact of the crisis on families and schools which are no longer capable of serving the supporting role they

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<sup>130</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece, op.cit.*, par. 28-29 and Greek Ombudsman (Ombudsman for Children's Rights), *Recommendations about the content of a National Plan of Action for Children's Rights*, July 2013, par. 11.

<sup>131</sup> GNCHR, "GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe", 10.9.2014, *op. cit.*

<sup>132</sup> GNCHR, "Recommendations of the National Commission for Human Rights (NCHR) for Childhood Protection: Health and Welfare", 8.5.2014, *op.cit.*

<sup>133</sup> D. Anagnostopoulos και E. Soumaki, «Child and adolescent psychiatry in Greece during the crisis: a brief report», *ECAP Journal*, February 2013, available at: [http://www.escap.eu/policy/care-crisis-in-greece/brief-report-\(ecap\)](http://www.escap.eu/policy/care-crisis-in-greece/brief-report-(ecap)).

<sup>134</sup> *Ibidem*. In most centers, waiting time has tripled and it nowadays exceeds one month, while in special cases it can reach up to a year.

<sup>135</sup> G.Thornicroft, T. Craig και T. Power, «Ex post evaluation of the National Action Plan 'Psychargos' 2000–2009. Executive summary». *Hellenic Ministry of Health and Social Solidarity*, Athens 2010.

once held.

As far as the existent structures of mental health services provision are concerned, they function with limited staff by 10-40% which is not always remunerated on time and the salary of which has been severely reduced. A great number of more specialist personnel had to retire<sup>136</sup>. Also, an important number of community centers, mental rehabilitation units and specialized centers no longer function. The impact of the crisis was exceptionally strong especially for units addressing special categories of disorders and learning difficulties. This most serious impact of the financial crisis is, in fact, not limited to the already existent structures since all plans to create mental health units for children which had been originally planned within the scope of the psychiatric reform since 2000 were abandoned<sup>137</sup>.

Additionally, as far as the organization of mental health and social welfare services that handle cases of crisis in the family, abuse and neglect is concerned, the GNCHR observes that the services a child or a family can address for consulting are limited and sometimes the waiting is rather long. The absence of services for family mediation and out-of-court dispute resolution relating to the application of court decisions, parental custody and children's right to communicating with the parent they do not live with is total.

### **Right to health and care<sup>138</sup>**

The GNCHR has also addressed the very important issue of the right to health and care of older persons.

In a recent report, ILO<sup>139</sup> stresses that fiscal consolidation measures taken in response to the financial crisis reversed progress towards universal health coverage by sharpening inequalities in access to health care and increasing exclusion from it. In Greece, according to OECD, *per capita* health spending fell significantly by 11.1% between 2009 and 2011<sup>140</sup>. This has had a direct negative impact on the accessibility and affordability of health services.

Combined with the drastic reduction in pension benefits, the right to health of a significant segment of older persons in Greece is not secured in practice<sup>141</sup>. The GNCHR notes that the same goes for older persons care as well.

Due to lack of proper resources or/and due to the intense phenomenon of families being supported by the pensioners' resources in Greece, older persons care in our Country is mainly provided at

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<sup>136</sup> D. Anagnostopoulos και E. Soumaki, «Child and adolescent psychiatry in Greece during the crisis: a brief report», *op.cit.*

<sup>137</sup> A. Kentikelenis, M. Karanikolos, A. Reeves, M. McKee και D. Stuckler, «Greece's health crisis: from austerity to denialism», *Lancet*, Vol. 383 - February 22, 2014, p. 749.

<sup>138</sup> GNCHR, «Protection of the rights of older persons», 8.5.2014, *op.cit.*

<sup>139</sup> ILO, *World Social Protection Report 2014/15: Building economic recovery, inclusive development and social justice*, International Labour Office – Geneva: ILO, 2014, p. 113, available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_245201.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_245201.pdf).

<sup>140</sup> *Ibidem*.

<sup>141</sup> UN, ICESCR Committee, *General Comment No. 14 On the right to the highest attainable standard of health*, par. 25.

home. This, even though governed by the principle of care within the community<sup>142</sup>, generates a series of problems the State is called upon to resolve. Among these problems, the GNCHR particularly highlights the lack of quality control of the care provided along with the provision of care services by untrained individuals. In the same context, it is important the State examine the issue of sociopolitical support to the families taking care of older persons.

The GNCHR stresses the need to secure services and structures of respite care of older persons. The abolishment of actors, however, such as the Workers' Housing Organisation, which provided certain services to insured older persons, social services and entertainment activities, calls for concern regarding the securing of these benefits.

Moreover, the ECSRights recalls that health care for the older persons in Greece is part of the primary health care system rendered to the population in general while the specially provided health services to older persons are also important<sup>143</sup>. In this direction, the GNCHR stresses the need to implement programmes of mental health for older persons who are in need of psychological support, the securing of sufficient palliative care as well as educational programmes for people taking care of older persons. It is also important to improve the accessibility and quality of long-term geriatric care along with the coordination of social health and care services for older persons.

Regarding the institutional care of older persons, provided in retirement homes<sup>144</sup>, the GNCHR reminds the importance of the retirement homes inspection system being independent and the need the actor which controls the observation of basic care and services standards of the institutions and homes being independent of the administrative body of every institution/home under inspection.<sup>145</sup>

### **Access to Health Services<sup>146</sup>**

The GNCHR has addressed the crucial issue of the state of services and health and welfare structures for children in Greece. More specifically, the right to health for all children without exception needs to be secured both with preventive measures (preventive examinations, vaccinations) and the promotion of the research about health issues as well as with measures that securing access to quality health services<sup>147</sup> for addressing health problems (treatments, hospitalisation, medical care). This has become more imperative than ever in circumstances of constantly increasing child poverty which means double harm to children's right to health. The

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<sup>142</sup> See for the definition of care networks, P. Hert και M. Eugenio, "Specific Human Rights for Older Persons", *EHRLR*, 2011, p. 415.

<sup>143</sup> ECSR, *Conclusions XX-2 (2013), Articles 3, 11, 12, 13 and 14 of the 1961 Charter and Article 4 of the 1988 Additional Protocol (Greece)*.

<sup>144</sup> Regarding the legal framework on the operation and the conditions of operation of these institutions see indicatively N 2345/1995 (OJHR 213/10.12.1995/A), Ministerial Decision 81551/2007 (OJHR 1136/7.6.2007/B), Law 3852/2010 (OJHR 87/6.7.2010/A).

<sup>145</sup> See Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, op.cit.*, par. 42.

<sup>146</sup> GNCHR, "Recommendations of the National Commission for Human Rights (NCHR) for Childhood Protection: Health and Welfare", 8.5.2014, *op.cit.*

<sup>147</sup> See among others: European Commission, *Commission Recommendation: Investing in children: breaking the cycle of disadvantage*, 20.2.2013, C(2013) 778 final and Council of Europe, *Strategy for the Rights of the Child (2012-2015)*, 15.2.2012, CM(2011)171 final.

social-economic crisis that afflicts many European Countries, and especially Greece, seriously harms social protection programs more and more. The unconditional recognition of the child's right to health and access to health services and other protective welfare mechanisms, does not, therefore, seem to be adequate, when the effectiveness of exercising this right is subject to the diversity of institutional mechanisms and national legislations. Even more so, at a time when society at large is passing through a most deep social, cultural and financial crisis.

Indeed, the rise of child poverty in Greece is not a new phenomenon: the relevant index had started increasing slowly but steadily already since the late 1990s<sup>148</sup>. On the one hand, child poverty creates circumstances that aggravate child health, while on the other hand, it encumbers the access of children to the necessary health services. Besides, at this point additional poverty traits come in, e.g. low education level, which impede prevention and the timely addressing of health problems resulting in differentiations in morbidity among income groups. However, holistic health protection is more fully and efficiently achieved through the State's intervention in other fields as well, apart from securing the child's best possible mental and physical state.

According to a recent research on the state of health in Greece during the period of financial crisis, austerity measures have afflicted children's health due to decrease in family income and parents' unemployment<sup>149</sup>. As the same research mentions, the percentage of children on the borderline of poverty has increased from 28.2% in 2007 to 30.4% in 2011, while the number of children receiving inadequate nutrition is constantly increasing. In the meantime, between 2011 and 2012 children living under the line of income poverty were increased by 12%, as opposed to 8% in the whole population of the poor<sup>150</sup>.

Taking into account all the aforementioned, but also data stemming from the Children's Ombudsman's analytic Report in the European Network of Ombudspersons for Children (ENOC)<sup>151</sup>, the GNCHR observes with concern that securing the children's universal right to health encounters innumerable obstacles. The following are indicatively highlighted:

- The GNCHR observes that the number of children receiving insufficient nutrition is constantly increasing. Nutrition problems constitute a fundamental factor of child health degradation, both mental and physical. Poor children in Greece have more chances of being undernourished, even though children who do not belong to income poverty can also experience circumstances of deprivation. According to *Eurostat's* data, between 2010 and 2011 the percentage of households below the level of poverty that declared incapable of nutrition containing meat, fish, chicken or vegetables of equal nutritive value every other day has doubled. Equal incapability is

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<sup>148</sup> For more information concerning the child poverty see *supra*, p. 27 *et seq.*

<sup>149</sup> A. Kentikelenis, M. Karanikolos, A. Reeves, M. McKee και D. Stuckler, «Greece's health crisis: from austerity to denialism», *op.cit.*, p. 750.

<sup>150</sup> UNICEF, Hellenic National Committee, *The State of the Children in Greece 2014. The consequences of the financial crisis on children*, p. 27, available at: <http://www.unicef.gr/pdfs/children-in-greece-2014.pdf>.

<sup>151</sup> Greek Ombudsman (Ombudsman for Children's Rights), *The rights of children living in institutions. Report on a study of the European Network of Ombudspersons for Children (ENOC)*, July 2011.



also observed in non- poor households which intensifies social inequality<sup>152</sup>. Apart from inadequate nutrition, incapability of sufficient heating in combination with housing problems, e.g. humidity conditions, lack of living space, insufficient lighting also aggravate the state of children's health significantly<sup>153</sup>.

- Even more, it is noted that the structures of social protection as well as family and child support on a regional and local level are almost inexistent. Wherever supporting social services exist, they are neither efficient, nor is their personnel sufficiently trained in child protection. They are understaffed which frequently results that social workers are not able to pay home visits.

- The welfare provision of early childhood care has also largely shrunk since 2010 due to cuts in budget and staff resulting in the creation of overpopulated classes. In the functioning municipal nurseries, there have been noted problems of non-transparent selection process of the hosted children, e.g. municipal citizens are given preference over residents, problems of insufficient control by the supervising authority especially during the process of submitting additional contributions or even exceeding the lawful ratio of nursery teachers to children<sup>154</sup>.

- The insufficient organisation of services for handling cases of abuse and neglect is completed by the institutional absence of provision for family courts collaborating with social workers and mental health experts<sup>155</sup>.

- The GNCHR observes with great concern that the institutional lacks and organisational insufficiencies are not only limited to supporting the family, but they also concern alternative care which replaces the parental one when removal from the biological family is deemed necessary. In Greece, this alternative care is mostly based on the institutional welfare model. The phenomenon of the gradual passing of the obligation for childhood protection from the State to the private sector is, in fact, noted, since children are often placed in guest houses or community houses belonging to non-profit private law legal entities or in church establishments.

- According to the Ombudsman's for the Child analytic Report, which was submitted to the European Network for Ombudspersons for Children (ENOC), on the grounds of a relevant research conducted in 2011<sup>156</sup>, the most important problems to face in both public and private law child protection institutions are to be summarised as follows:

- The legislation covering child protection public institutions is quite antique and incomplete, while models and standards which respect children's rights and must be met by child protection institutions, either public or private, have not been promulgated by law. The process of certifying private law institutions may have been legally provided and its bringing into effect by the

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<sup>152</sup> UNICEF, Hellenic National Committee for UNICEF, *The state of children in Greece*, 2013, *op. cit.*, p. 47-48.

<sup>153</sup> *Idem*, p. 48-49.

<sup>154</sup> See Greek Ombudsman (Ombudsman for Children's Rights), *Report to the UN Committee on the Rights of the Child. Findings and Recommendations of the Independent Authority on the implementation of Children's Rights in Greece. (July 2003 - December 2011)*, April 2012, p. 14-15.

<sup>155</sup> See Greek Ombudsman, *Annual Report 2006*, p. 200.

<sup>156</sup> Greek Ombudsman (Ombudsman for Children's Rights), *The rights of children living in institutions. Report on a study of the European Network of Ombudspersons for Children (ENOC)*, July 2011.

National Centre of Social Solidarity may have started, but the corresponding standards and quality control procedures have not been promulgated yet. Additionally, public law institutions monitoring has been assigned to the Ministry of Health while private law institutions control has been assigned to the Regional Welfare Directorates, through the social counsellors appointed in the Country's Regions.

- Nevertheless, the absence of a clear framework of standards which institutions have to meet often renders this control inefficient and ineffective. In fact, due to this inadequate or rather ineffective monitoring of these welfare structures, imposing extreme rules of behavior on hosted minors which deviate from the Greek society's generally acceptable standards is tolerated in certain institutions. Indicatively, prohibiting trousers to girls, imposing strict fast, prohibiting participation in school trips, limiting communication with parents etc. Moreover, children who are placed in institutions, very often remain there for a particularly long period of time. When it is internationally considered that a child shall remain in an institution no more than six (6) months, in Greece it is estimated that a child remains in an institution for more than six (6) years on average. The Ministry of Health and Social Solidarity - as long as it held responsibility for welfare issues - and nowadays the Ministry of Labour, Social Security and Welfare, has incorporated in the national policy neither UN's Guidelines on alternative care, nor the content of the Recommendations of the Council of Europe 2005(5) on the rights of children living in institutions and CM/Rec (2010) 2 on deinstitutionalisation and life within the community of children with disabilities.
- Many institutions for children with disabilities and chronic illnesses continue to have character of asylum and to operate isolated from the social fabric, applying antique care systems with the hosted receive inadequate coverage of their medical, treatment and educational needs. Sometimes, in fact, they use non-acceptable methods for immobilizing and limiting children for preventive reasons. Despite promulgating the competence for systematic institution monitoring and control by the Health and Welfare Services Inspection Body which was established according to Law 2920/2001, in reality, given the absence of a sanction and revocation of leaves system, suggestions offered by the Body for improving the conditions in the institutions in question are only being partially brought into effect by their governing boards. It has to be noted here that HWSIB is no longer responsible for these institutions, due to the transfer of the Welfare General Secretariat, to which they are entitled, to the Ministry of Labour. Private law institutions are, in fact, functioning in most cases without standard licences, since the legislative framework for their issue is incomplete.
- Concerning their human resources most institutions present serious lacks especially in scientific and specialist staff. Indeed, it is often the case that private law institutions function with no specialist scientific staff or are even staffed mainly by volunteers.
- The situation as described above is worsening, according to the Greek Ombudsman's Report towards the UN Committee on the Rights of the Child, during the time of the financial crisis that

is afflicting Greek society, given that staff employment in public institutions is subject to great restrictions, while their resources are shrinking<sup>157</sup>.

## Article 15

### **Special educational programmes organized and addressed to young people with special needs (vision, hearing, mobility)<sup>158</sup>**

The GNCHR observes that, even though the issue of Special Education is everlasting, Greek legislation is intertemporally characterized by institutional gaps on the issue, since it is not fully compatible with the child's with disability established right to education. It is not only the content of Greek legislation that raises concern, but also its incomplete implementation. In practice, it is noted that discrimination against these children are still present and that the way the child's with disabilities special circumstances are addressed, in order for his/her rights to be satisfied on an equal basis with his/her peers, is not effective.

In its *Final Observations* of 24 October 2008, the ECSR, upon examining the annual reports of state Members of the Council Europe, has deemed that Greece is not aligned to the requirements of Article 15(1) of the ESC, since no legislative steps were taken towards establishing the lifelong learning of persons with disabilities. More specifically, the ECSR has noted that there was no particular provision for persons with disabilities neither in the public educational system nor later regarding the establishment of the right to vocational training, reintegration and social integration. In fact, in the same Report, the ECSR highlighted the lack of and failure to present more specific statistical data that would allow for an appraisal on Greece's alignment to the ESC requirements<sup>159</sup>. The situation does not seem to have changed all that much, since in the most recent *Final Observations* as well (7 December 2012), the Committee deemed that omission to send the necessary information for the appraisal of the requirement of persons with disabilities in Greece and their ability to access education, which the Committee had repeatedly asked from the Greek State, does not comply with every member State's conventional obligation to submit a report concerning the implementation of ESC provisions<sup>160</sup>.

The current economic and social crisis exacerbates the chronic problems observed in the education of children with special needs. According to the Unicef Report on *The State of the World's Children 2013*, the bond between poverty and disability is strong. More specifically, household survey data from 13 low- and middle-income countries showed that children with disabilities aged 6-17 years

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<sup>157</sup> Representatives of many private institutions have reported to the Ombudsman that they are even threatened with closure because of their reduced resources and increased taxation on both donations and their property. At the same time, the cases of children that must be removed from their natural families are increasing, as the extreme poverty acts as an additional factor that exacerbates the inability of some parents to adequately care for their children. Greek Ombudsman (Ombudsman for Children's Rights), *Report to the UN Committee on the Rights of the Child, op.cit.*

<sup>158</sup> GNCHR, "Recommendations based on the Bill on Special Education", 10.7.2014, *op.cit.*

<sup>159</sup> Council of Europe, European Committee for Social Rights, *Final Observations XIX-1*, 24 October 2008, Articles 15,15(1), available at: <http://hudoc.esc.coe.int/esc2008/query.asp?action=query&timestamp=31325.77>.

<sup>160</sup> Council of Europe, European Committee for Social Rights, *Final Observations XX-1*, 7 December 2012, Article 15(1), available at: <http://hudoc.esc.coe.int/esc2008/query.asp?action=query&timestamp=31325.77>.

are significantly less likely to be enrolled in school than peers without disabilities<sup>161</sup>. The GNCHR has already voiced its concern for the impact of austerity measures on the outbreak of discrimination on multiple levels and the sharp decline in social rights<sup>162</sup>.

The Greek Ombudsman, as an equality body, in its latest Report<sup>163</sup>, notes this situation and mentions a series of characteristic examples of chronic problems. Some of them are the school year delay in special schools, the constantly delayed hiring of substitute teachers instead of permanent educational and special educational staff, the significant delay or the non-appropriate provision for parallel support, and lack of realisation thereof, especially in kindergarten school and primary education, the insufficient staffing of integration classes and special schools, especially in the periphery, which result in hindering the equal access to education for many children with disabilities or/and special educational needs.

Another cause for concern is the State's insufficient, hesitant and delayed response to reactions coming from a part of the school community aiming at discouraging the enrollment and integration of children with special needs to general education. The State shares a wider responsibility concerning combating the marginalization of children with disabilities. The significant divergence between the rates of children's attendance to special kindergarten classes and the corresponding rates of attending elementary classes is yet another cause for concern<sup>164</sup>. The absence of special quality indexes towards this direction does not allow for clearly defining the factors that discourage parents from enrolling their children in kindergarten. As a result, important aspects of marginalisation in education of children with disabilities are left unseen.

Unicef, in its recent Report on the *State of World Children 2013*, notes that "exclusion denies children with disabilities the lifelong benefits of education: a better job, social and economic security, and opportunities for full participation in society." On the contrary, the same Report places particular emphasis on the investments' in the educational system of children with disabilities potential contribution to the future productivity of these children as members of the workforce<sup>165</sup>. Unfortunately, in Greece lack of supporting infrastructure for children with disabilities further extends to the fields of training, lifelong learning and professional placement, widening, thus, the

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<sup>161</sup> More specifically, it is stated that "as long as children with disabilities are denied equal access to their local schools, governments cannot reach the Millennium Development Goal of achieving universal primary education (MDG 2), and States parties to the Convention on the Rights of Persons with Disabilities cannot fulfil their responsibilities under Article 24". See UNICEF, *The state of the World's children 2013. Children with disabilities*, May 2013, available at: <http://www.unicef.gr/uploads/filemanager/PDF/info/swcr13.pdf>, p. 20 *et seq.*

<sup>162</sup> See GNCHR, "Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards", 27.6.2013, *op.cit.*, "Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights", 8.12.2011, *op.cit.* and "The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis", 7.6.2010, *op.cit.*

<sup>163</sup> Greek Ombudsman, *Special Report 2013*, p.108.

<sup>164</sup> KANEP-GSEE, *The fundamentals of education – 2010*, Vol. A, January 2011, available at: <http://www.kanep-gsee.gr/ereynes-meletes-ekdoseis/ethsies-ektheseis-ekpaideushs/ethsia-ekthesh-gia-thn-typikh-ekpaideysh-2010>, p.15 and 20.

<sup>165</sup> See UNICEF, *The state of the World's children 2013. Children with disabilities*, *op.cit.*, p.37. It is also mentioned that one year of schooling increases an individual's earnings by 10%. See United Nations Educational, Scientific and Cultural Organization, *Building Human Capacities in Least Developed Countries to Promote Poverty Eradication and Sustainable Development*, UNESCO, Paris, 2011, p.8.

social exclusion they experience. This illustrates the lack of association between education and professional prospects, which cannot be deemed to be covered by legislation on compulsory hiring of persons with disabilities in the workplace<sup>166</sup>.

The GNCHR expresses its concern about the absence of data regarding the vocational training of children with disabilities, even within the context of third-degree studies.

**Care and Protection of persons with special needs and disabilities<sup>167</sup>**

Regarding services and structures for children with disabilities and chronic illnesses, there is great concern that these structures typically assume character of asylum in Greece. The State has not seen to establishing centers recreation centers, care and services provision within the community for children with serious disabilities or multiple disabilities. This causes great concern, given that in certain cases, these children are neglected within the family with the latter not receiving adequate support from the State.

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<sup>166</sup> Law 2643/1998 (OJHR 220/A/9.28.1998), as amended and in force.

<sup>167</sup> GNCHR, “Recommendations of the National Commission for Human Rights (NCHR) for Childhood Protection: Health and Welfare”, 8.5.2014, *op.cit.*