

Resolution CM/ResChS(2014)10

**Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI) v. Greece,
Complaint No. 79/2012**

*(Adopted by the Committee of Ministers on 2 July 2014
at the 1204th meeting of the Ministers' Deputies)*

The Committee of Ministers,¹

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 2 January 2012 by the Panhellenic Federation of Pensioners of the Public Electricity Corporation against Greece;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

That there is a violation of Article 12§3 of the 1961 Charter

Reductions in the benefits available in a national social security system will not automatically constitute a violation of Article 12§3 of the Charter.

However, even when reasons pertaining to the economic situation of a State Party make it impossible for a State to maintain its social security system at the level that it had previously attained, it is necessary by virtue of the requirements of Article 12§3 for that State Party to maintain the social security system on a satisfactory level that takes into account the legitimate expectations of beneficiaries of the system and the right of all persons to effective enjoyment of the right to social security. This requirement stems from the commitment of State Parties to “endeavour to raise progressively the system of social security to a higher level” which is expressly set out in the text of Article 12§3, and is distinct from the requirement set out in the last part of Article 12§2 to maintain the social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security (and for the 1961 Charter, the International Labour Convention No. 102 concerning Minimum Standards of Social Security).

When issuing provisions that will restrict the rights guaranteed in the 1961 Charter, the States Parties must, pursuant to Article 31 of the 1961 Charter, be capable of establishing that any restrictions or limitations are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

It has on many occasions been held that the income of the elderly should not be lower than the poverty threshold, defined as 50% of median equalised income as calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

With regard to the level of pension benefits under the 1961 Charter, reference is made to Article 4§1(a) of the 1988 Additional Protocol, which entered into force with regard to Greece on 1 July 1998. This provision, which also appears with identical wording in Article 23§1(a) of the 1996 Revised Charter, provides for the right of the elderly to adequate resources in order to enable them to lead a decent life.

Some of the restrictions introduced by the government and criticised by the complainant trade union do not in themselves amount to a violation of the 1961 Charter. This is particularly the case in relation to the restrictions introduced in respect of holiday bonuses, the restrictions of pension rights in cases where the level of pension benefits is a sufficiently high one, and in cases where people are of such a low age that it is legitimate for the State to conclude that it is in the public interest for such persons to be encouraged to remain part of the workforce than to be retired.

In contrast, the cumulative effect of the restrictions, as described in the information provided by the complainant trade union, and which were not contested by the government, is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned.

Despite the particular context in Greece created by the economic crisis and the fact that the government was required to take urgent decisions, the government has not conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups in society. Neither has it discussed the available studies with the organisations concerned, despite the fact that they represent the interests of many of the groups most affected by these measures.

Research was not undertaken to discover whether other measures could have been put in place, which may have limited the cumulative effects of the contested restrictions upon pensioners.

The government has not established, as is required by Article 12§3, that efforts have been made to maintain a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale pauperisation of a significant segment of the population, as has been observed by various international organisations.

Any decisions made in respect of pension entitlements must respect the need to reconcile the general interest with individual rights, including any legitimate expectations that individuals may have in respect of the stability of the rules applicable to social security benefits. The restrictive measures at stake, which appear to have the effect of depriving one segment of the population of a very substantial portion of their means of subsistence, have been introduced in a manner that does not respect the legitimate expectation of pensioners that adjustments to their social security entitlements will be implemented in a manner that takes due account of their vulnerability, settled financial expectations and ultimately their right to enjoy effective access to social protection and social security. However, other mechanisms are more suited to address complaints relating to the effects of the contested legislation on individual pensioners' right to property. In this regard, domestic courts can also play a significant role.

Having regard to the information communicated by the Greek delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 24 April 2014,

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights (see appendix to the resolution);
2. looks forward to Greece reporting, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, that the situation has been brought into conformity.

Appendix to Resolution CM/ResChS(2014)10

Measures taken by the Greek Government regarding Complaint No. 79/2012: Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI) v. Greece

The principle of the social welfare State and of the fundamental social rights (social security, employment, education, health and medical insurance/benefits), enshrined in the Greek Constitution, along with the inclusion, in the Greek legal system, of basic supranational regulations in the field of social security, based upon the EU acquis and the acquis of relevant international organisations, depict that the Greek State recognises the necessity of guaranteeing a certain level of social protection as a fundamental element of the national system of social security.

Social Security is enshrined in Article 22§5 of the Greek Constitution. It functions via self-administered organisations, extends upon the entire working population in Greece, by means of obligatory payment of their social security contributions, and is fully intertwined with active employment. The basic role of the Social Security System in Greece is to guarantee social protection in the country and to ensure that everyone, and especially the elderly and weaker/vulnerable social groups, can enjoy an income which allows them to maintain their living standards at a logical level, especially in periods of illness, unemployment or after retirement.

Concerning the pension system in particular, its success lies in securing its financial viability (and thus its capability in providing in the long-run sufficient pensions), in coping successfully with future, as well as unpredictable situations (population ageing, new forms of employment) and in better reflecting the citizens' changing needs (as for example the new family models).

It is for the abovementioned reasons that the measures, cited below, were adopted, being the product of a long social dialogue, with the participation of both political forces and social partners, in order to reform the Social Security System and to guarantee its functioning for the future, rendering it modern, rational, socially just, and viable in the long term. Our main objective in this effort was to retain the public, obligatory, global and redistributive character of the Social Security, while at the same time to deal with the accumulated problems of the last few decades (the fragmentation of the Social Security Funds and the lack of actual exploitation of their financial assets).

Specifically:

A. For the protection of vulnerable groups

1) Starting from 1/1/2013, the pensions below 1000 euros are guaranteed while cuts on those above 1000 euros are introduced on a scale from 5% up to 20%, depending on the amount or number of pensions (Law 4093/2012).

2) For the protection of the elderly with low pensions, the Benefit of Social Solidarity (EKAS) which is a non-retributive benefit, continues to be granted (Law 4151/2013).

3) Based on Law 4093/2012, for the non-insured elderly, a pension of 360 euros is granted based on certain conditions (not receiving another pension/residing legally in the country for 20 years/fulfilling other family and income conditions).

4) According to Law 4052/2012, the programme “Pensioner’s homecare” was established, funded by the Insurance Capital For Solidarity among Generations-AKAGE (AKATE). The beneficiaries are: pensioners of the main social security bodies of the Ministry of Employment & Social Security/pensioners of the public sector/elderly pensioners with no insurance (under the social security body OGA), who have temporary or permanent problems of health or incapability. Its objective is to help them live in their own home, by offering, among others, organised and systematic services provided by social workers, psychosocial support, services of nursing, physiotherapy and home assistance.

B. For the improvement of the social security system

1. Dealing with problems of fraud in social security

Under Laws 4144/2013, 4172/2013, 4046/2012 and 4127/2013, reform measures were adopted in order to fight incidents of fraud/error in the social security system and incidents of “contribution evasion”.

a. The network ARIADNE (as provided by Law 414/2013) is a system of rapid registration on all demographic and family changes of the beneficiaries of social security (death, marriage, divorce). Through this system which constitutes a form of digital interconnection and interaction between all bodies responsible (Body for the Social Security E-Governance – IDIKA/HAIKA, Social Security Funds, State Registry Offices), updated data of the situation of beneficiaries are automatically notified to the relevant social security bodies. All of the abovementioned changes are processed by:

- for births/deaths: State Registry Offices under the authority of the Ministry of Interior;
- for marriages: General Secretariat for Information Systems (GGPS/ΓΠΠΣ) under the authority of the Ministry of Finance;
- for cohabitation pacts: Notary Offices;
- for Divorces: Judicial authorities and courts.

By the same Law, it is provided that payment of all pensions which are not verified through both the relevant Social Security Registry Number (AMKA) and Tax Registry Number (AFM) of the beneficiary is automatically suspended, pending the necessary cross-checks.

Besides the network Ariadne, a Global System of Control of Pension Payments called Helios was created. This system connects electronically, the 93 different systems of pension payments of 4.407.288 pensions for 2.714.034 beneficiaries currently in Greece. Both systems are connected so that cross-checks can be performed. Helios also provided for a National Registry of Pensioners and Pensions which, by use of a database, allows for fighting against fraud.

b. The establishment of a National Centre for collecting Social Security Contributions (KEAO/KEAO)

By virtue of Law 4172/2013, the National Centre for all Social Security Contributions (KEAO) has been established. Its aim is to establish common mechanisms and procedures for the timely collection of debts and of due social security contributions of the social security organisations, with a view to reinforcing the viability of the system of social security. That is a first step towards a wider reform which aims at fully integrating the revenues of the social security organisations with the tax administration and at unifying the process of collecting tax and social security debts, by 01.07.17. It also aims at solving problems that, in the past, rendered the process of collection and that of compulsory measures too complicated and time consuming, as a result of which the social security organisations were unable to collect their due contributions.

In particular, KEAO's objectives are:

- to collect due social security contributions to all the Social Security Bodies under the responsibility of the Ministry of Employment;
 - to create an electronic database including a Registry of persons with pending due contributions towards the Social Security Organisations and all relative data for statistical and analysis purposes;
 - to study and submit proposals for legislative regulations;
 - to proceed with the planning and execution of the necessary actions for the attainment of its purpose.
- KEAO will be self-sufficient in terms of finance and logistics and under the supervision of IKA.

2. The establishment of the Insurance Capital for Solidarity among Generations-AKAGE (AKATE), as another safeguard for the future generations, is also provided. It aims at creating reserve funds for the financing of the pension sector of the social security organisations. Its resources will stem from: privatisations of State Companies and Organisations (10%), allocated 4% of annual revenues of VAT (value-added tax) and allocated 10% of the social resource, which, thus, is reinstated to the society in its entirety, to which it belongs.

3. By virtue of Law 4093/2012, a pilot programme is being established in two Greek regions, based on socioeconomic criteria, called "Pilot Programme for minimum guaranteed income". This programme concerns persons and families who live in extreme poverty, by contributing to their income and engaging them in actions of social reintegration.

It is a fact that in the current adverse economic conjunction, Greece's efforts to deal with the grave fiscal problem and the structural weaknesses of the Greek economy, in the context of the country's obligations towards the financial support mechanism, entails the exercise of a restrictive fiscal policy, with effects on the household income. In the above-mentioned context and during the current conjuncture, the Greek authorities keep implementing support measures of the vulnerable groups of the population while striving to alleviate their burden or even exempt them from the austerity measures that run into force.

Such measures are indicatively:

- favourable regulations regarding the payment of the Extraordinary Special Property Tax, (which may involve reduction of the amount or even exemption) for the vulnerable groups which include people in poverty or threatened by poverty, large families, long term invalids, long-term unemployed and unemployed people who receive unemployment benefit (Law 4152/2013 a.1);
- tax exemptions for certain types of salaries, pensions, as those granted to war victims, war invalids, blind persons or invalids and beneficiaries of EKAS (Greek Tax Code, a.6);
- cuts on pensions are not made if the beneficiary or members of his family receive small pensions, or are invalids (Laws 4024/2011 a.1, 4051/2012 a.1, 4093/2012 a.1 as amended by Law 4111/2013);
- possibility for facilitating arrangements for the payment of debts towards the State in cases of 'financial inability' (Law 4152/2013 a.1).

¹In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.