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Baby Steps after the Crisis

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LIST OF ABBREVIATIONS

ArPa	Areios Pagos (Supreme Civil and Criminal Court of Greece)
BCL	Law of Companies and Societies
CBA	Collective Bargaining Agreement
CC	Civil Code
DEN	Bulletin of Labour Law (Deltio Ergatikis Nomothesias)
EAAE	Greek Insurance Companies Association
ECHR	European Convention on Human Rights
EFKA	Unified Social Security Organisation
GDP	Gross Domestic Product
GSEE	General Confederation of Greek Workers
HCA	Judgment of the Hellenic Court of Audit
HCofS	Judgment of the Hellenic Council of State
HGG	Hellenic Government Gazette
ILC	International Labour Convention
IORP	Institution for Occupational Retirement Provision
LA	Legislative Act
LLR	Labour Law Review
MPISOC	Max Planck Institute for Social Law and Social Policy
ND	New Democracy (Political Party)
Nomos LIB	Nomos Legal Information Bank
OAED	Hellenic Manpower Organisation
OECD	Organisation for Economic Co-operation and Development

- OPEKA----- Organisation for Welfare Allowances and Social Solidarity
- OSSF ----- Occupational Social Security Fund
- PirCofA -----Piraeus Court of Appeal
- Plen.-----Plenum
- PSC----- Pensioner Solidarity Contribution
- SEV ----- Hellenic Federation of Enterprises
- SLA----- Supported Living Accommodation
- SSI----- Social Solidarity Income

1. INTRODUCTION

Greece was formally released from its austerity obligations on 20 August 2018 but entered an 'enhanced surveillance' arrangement until 2022, in order to complete its promised reforms under the latest stability support programme. International creditors may, from now on, conduct scheduled quarterly audits to establish the progress made in implementing reform, but the Hellenic government has recovered its independence regarding the day-to-day and long-term management of public finances.

Following the extensive reform of the social security system by Law 4387/2016, a key aim of the socialist government was to tackle problems in order to ensure – to the extent possible – a smooth shift to the new regime, as well as to cover the basic needs of salaried employees/workers, the unemployed, the homeless, victims of natural disasters and other vulnerable population groups.

The legislature has adopted fragmentary provisions, and only some exceptional pieces of institutional legislation, in particular where it could justify social or developmental measures to such an extent as allowed by the moderate economic growth margins. Courts have also attempted hesitantly, using the provisions of the Hellenic Constitution as a key tool, to remedy certain excesses or inequalities that had resulted from the stability programmes signed by Greece.

International creditors have allowed for some social measures, provided that they are justified by predefined economic growth margins, but have opposed any reforms that could threaten the economy, which is still fragile.

For more comprehensive information, below you will find some views expressed by businesses, OECD, workers and the general public, accompanied by our short comments.

2. CURRENT SITUATION OVERVIEW

2.1. The Future of Employment (Employers' and OECD Opinion)

The Hellenic Federation of Enterprisers (SEV), the leading and oldest federation of enterprises in Greece, put forward a number of proposals in early 2018 on the future of employment, with a view to ensuring growth and competitiveness. Given the risk of the Greek economy being trapped in the circle of low-specialisation and low-wage countries, a proposal was made for giving priority to international trading goods and services, and to processing and technology services in particular¹. To date, Greece has a low employment

¹ SEV, Special Report, 21.02.2019.

indicator of 55% compared to 69% in the EU (Q2 2018), and each job that is created is not identified with a unique worker, as one worker may have two or even three part-time jobs². Full-time jobs being replaced to a great extent by part-time and temporary or underpaid jobs, gives the impression that the unemployment rate is declining. What is important, however, is the quality, not quantity, of employment. Based on Q3 2018 GDP data, the Greek economy is recovering gradually, primarily due to the momentum of exports and the contribution of private consumption. Recovery, however, is slow³.

In April 2018, the OECD report on the surveillance of the Greek economy commented positively on some recent labour relations reforms, such as the reduction in payroll costs and flexible forms of employment, which, despite compromising traditional labour law practices, the OECD designated as signs of progress and increased competition. Given that payroll costs represented merely one of the problems at hand, an easy choice was made to reduce such costs while avoiding other legislative reforms that would require brave political initiative. This resulted in a generation of overqualified persons who had to choose either to settle for low-skills jobs or migrate abroad for work⁴.

2.2. The Exit from the Financial Crisis (Employees' and Public Opinion)

Employees and the general public feel that the exit from the economic crisis will be put off for quite some time, as long as there are restrictions on the collective bargaining of employment terms and conditions and until salaried employees whose skills are fitting for developing enterprises and jobs enter the labour market. In accordance with a nationwide survey on a random sample of 1.000 individuals⁵, 80% felt that the government coalition was unable to get Greece out of the crisis. However, the major opposition party was also found to be totally unable to achieve that. When asked specifically whether unrestricted collective redundancies would contribute to economic growth, 84% of the individuals surveyed replied that they would not. When asked generally whether debt sustainability or the end of austerity was more important for the economy, 74% opted for the end of austerity. Finally, the survey found that the measures to deal with the crisis had affected the following groups of people, in the order cited: the self-employed, pensioners, private sector employees and, lastly, public servants.

² SEV, Special Report, 21.11.2018.

³ Masourakis M. – Mitsopoulos M. – Printsipas Th., The Greek Economy recovers with slow pulses ..., SEV Monthly Bulletin 40, 17.12.2018.

⁴ Dimarellis K., The impact of the labour relations on the Greek Economy according to the OECD Report, DEN 2018, 801.

⁵ ALCO, on behalf of the General Confederation of Greek Workers, Research referred to the period 30.05-02.06.2016.

3. SOCIAL POLICY DEBATES DURING 2018

3.1. The Expansion of Private Insurance

It is commonly accepted that the social security system must be based on three pillars: However, imposing excessive social security contributions on individuals and enterprises to support the first two pillars (mandatory insurance) restricts public debate on this crucial topic, as young people in our day believe that they will never be able to get a decent public pension. Also, there is controversy with respect to the need to radically restructure the second pillar of mandatory insurance, the capitalisation scheme, whereas with respect to the third pillar, optional insurance, the Hellenic State has hesitated to give strong incentives to make complementary private insurance programmes more attractive. In any case, the insurance sector now plays a role that involves much more than issuing insurance policies, also functioning as a large employer, taxpayer and investor⁶.

It is widely accepted that the new stringent surveillance framework⁷ has made the insurance market credible and has recently strengthened people's trust in private insurance. Many people have resorted to the savings programmes offered by insurance companies as a method to protect sums previously deposited in banks. On the other hand, the average monthly pension is EUR 750.00 (net) and the guaranteed national monthly pension was set at EUR 384.00 for the public social security system (Law 4387/2016), both sums being insufficient to cover even fundamental living and health expenses.

These developments and the widespread dissatisfaction to them led to the adoption of Law 4578/2018 on reducing insurance contributions for the self-employed, independent professionals and farmers with respect to mandatory social security. The relevant rate was reduced from 20% to 13.33% as of 1 January 2019 and is calculated on the monthly income, as determined on the basis of the net taxable income from the previous tax year's activity. The adoption of the above law is expected to somewhat improve the ability of the self-employed to make a living and give them some room for joining occupational funds or concluding private insurance contracts.

⁶ Common Press Release of ND (New Democracy) and EAEE (Greek Insurance Companies Association) from 07.12.2018.

⁷ Directive 2009/138/EC (Solvency II).

3.2. Jobs Creation vs Collective Redundancies

Official Data indicate positive developments in terms of creating new jobs⁸. The announcements made for programmes intended to halt the brain drain, such as funds for productive economic reform and funds for new scientists employed in dynamic economic sectors, in conjunction with vocational education and training programmes organised by the Hellenic Manpower Organisation (OAED), are undoubtedly in the right direction.

However, as opposed to the above positive developments, the results of which will only be felt later on, arrangements have been put in place to facilitate the dismissal of individual employees, thus reducing the level of protection and the amount of layoff compensation, as well as facilitating collective redundancies⁹, by simplifying the relevant procedures (Art. 17 of Law 4472/2017).

It is very difficult to report on the constant fluctuations in the number of persons employed, but an effort is being made to achieve a positive balance both in theory and in practice. In theory, for example, an effort is made to reduce collective redundancies through 'voluntary work termination schemes', pointing to the impact on social security particularly in cases where credit institutions are to bear the costs of these schemes, while stressing that enterprises may abuse their economic freedom¹⁰. In practice, for example, unions are trying to ensure various benefits for dismissed workers either by claiming sums for self-insurance or by making them eligible for training and counselling programmes for re-entering the labour market. However, these measures falling under the so-called 'social plan' are not mandatory for employers.

3.3. Reactivation of the Occupational Pension Funds

3.3.1. Establishment of New First and Second Level Institutions

Occupational pensions in Greece are back in the limelight as the total replacement rate of income foregone due to retirement is expected to be reduced significantly (48.5% in the

⁸ Based on information from the Ministry of Labour, Social Security and Social Solidarity, the unemployment rate dropped to 18.6% in September 2018, i.e. a 7.3% reduction compared to 2015. Also, undeclared work declined from 20% to 12% and over 300,000 jobs were created in the same period.

⁹ 'Collective redundancies' means laying off more than 6 employees in enterprises with 20 to 150 employees or 5% of the total staff and up to 30 employees in larger enterprises (Art. 74 of Law 3863/2010). Article 17 of Law 4472/2017 abolished the veto rights of the Minister, or of the Head of Region, which were, however, exercised subject to three basic criteria: the labour market conditions, the situation of the enterprise and the interests of the national economy. Therefore, controlling the procedure concerned is now only formal, in line with Directive 98/59/EC.

¹⁰ Stergiou Agg., The voluntary work termination plan as an illegal violation of social security objectives, DEN 2017, 337.

2020-2060 period, compared to 95.7% before the 2016 retirement reform), based on information from the Bank of Greece. This reduction is deemed to be caused by the minimisation of mandatory contributions and reduced wages, which result in lower income for the public social security system. However, occupational pension developments are taking place under adverse conditions, such as an unpredictable tax regime, large number of small-sized enterprises, absence of incentives, red tape, etc¹¹. The development of the second pillar of social security in Greece is rudimentary. Its benefits are enjoyed by an estimated 1.1% of the population, the respective EU ratio being 25%.

An additional six occupational pension funds (OSSFs) are expected to be added to the 18 currently operating in Greece. The high average return on investment in the last five years (22%), as well as in 2017 (over 10%), has urged new groups of professionals from various Greek economic sectors to enter occupational (non-profit) insurance¹². Based on reliable information, authorisations are expected to be granted for employees of the Hellenic Telecommunications Organisation, lawyers, employees of Hellenic Stock Exchanges and salespersons doing business with the Greek insurance company *Interamerican*.

The Hellenic Union of Institutions for Occupational Retirement Provision was founded recently to help develop the relevant arrangement of the second pillar of the Greek social security system: in particular to develop, improve and modernise the regulatory, statutory, investment and administrative framework for the operation of occupational pension schemes and to represent their members to various institutional bodies and European institutions. The national law that is being prepared to transpose EU Directive 2016/2341 is also expected to boost the modernisation of the existing institutional framework (Law 3029/2002).

The Union aims to carry out integrated supervision with a view to speeding up the authorisation of new OSSFs, to allow for setting up open funds (for multiple employers and multiple sectors), to abolish the threshold of 100 individuals that leaves out smaller enterprises, to ensure favourable tax treatment for the transfer of reserves from similar activities, to ensure administration by non-profit 'schemes'¹³ subject to predefined conditions for proper operation, etc.

¹¹ Ermeidou El., Occupational Pensions: Today the Next Step, Insurance World.gr, Economy – Politics, 29.11.2018.

¹² Katsaganis Dim., Two-digit number the performance of the pension funds, Capital.gr, 27.09.2018.

¹³ These are institutions for occupational retirement provision (IORPs), to use the term given in EU Directive 2016/2341.

3.3.2. Compromise for the Creation of Nation-Wide Pension Fund

It is noteworthy that the foundation has already been laid for an occupational pension fund intended for all private sector employees¹⁴. The creation of this fund is expected to result from the ongoing negotiations between GSEE and the employers' representatives. A relevant provision is already included in the existing national bargaining agreement.

Social insurance coverage under this nation-wide OSSF will be mandatory, to complement the benefits granted by obligatory social security bodies (first pillar). It will operate on a funded basis with defined contributions to individual shares, and the final benefit (one-off benefit or pension) will depend on the return on the fund's investments. There are rumours for funding at a rate of 2% (1% for either party). However, even this low rate appears not to have been agreed upon yet, as non-payroll costs (social security contributions and taxes) in Greece do not leave much room for extra payments. The social partners, who are currently at the negotiating table, are seeking State intervention that will introduce favourable conditions for making a social compromise in favour of occupational social protection.

3.4. Free Collective Bargaining and Obligatory Labour Arbitration

In 2010, when the first anti-worker laws were adopted owing to the Greek financial stability programmes, GSEE appealed to the International Labour Organisation for breaching the rules of International Labour Convention No 98/1949 concerning the right to organise and to bargain collectively. The restrictions imposed on collective bargaining rights were amended repeatedly after that, from 2010 to 2018. SEV also submitted its comments on the operation of obligatory arbitration in resolving collective labour disputes (with reference to Article 6 of International Labour Convention No 154/1981, read in conjunction with Recommendations Nos 163/1981 and 92/1951). Following submission of the Greek government's views¹⁵ to the committee responsible for looking into breaches of international rules, the procedure was completed in June 2018 in the context of ILO Meeting No 107. The Greek government was forced to ensure that State authorities would abstain from all interventions that could restrict the right to bargain freely or prevent such bargaining conduct¹⁶.

¹⁴ Salourou R., Super-Fund for occupational pensions is coming up for 2 million salaried employees, sofokleousin.gr, 27.12.2018.

¹⁵ The government stressed that it had conducted long and tough negotiations with its creditors, i.e. the European institutions and the International Monetary Fund (IMF), the latter taking the view that a coordinated collective bargaining system would prevent Greece from getting back on its growth track and its unemployment rate from declining.

¹⁶ SEV, Special Report, Who is afraid of free collective bargaining, 19.12.2018. GSEE, Press Release, 07.06.2018.

We should present the views of the trilateral Greek representation to that International Meeting, given that the relevant provisions of the International Labour Law and the Hellenic Constitution appeared to be conflicting on a *prima facie* basis.

Workers argued that owing to the Greek financial stability programmes their interests were compromised by the policies adopted, as these policies abolished the hierarchy of collective bargaining, weakened trade unions by imposing enterprise bargaining agreements to be signed by unions of persons, etc. They doubted whether the completion of the stability programme would improve the situation substantially, as creditors had repeatedly stressed that Greece would remain under enhanced surveillance for a number of years. Commenting on Judgment No 2307/2014 of the Plenum of the Hellenic Council of State, workers argued that an obligatory arbitration procedure is a shield against abusive practices on the part of the employers, the latter of which hamper the signing of a collective agreement.

With reference to the above Judgment of the Hellenic Council of State, which declared unconstitutional the Law 4046/2012 (on abolishing the unilateral recourse to arbitration), employers explained that the government had encouraged the use of obligatory arbitration as a means of replacing voluntary collective bargaining agreements, despite the ILO Expert Committee having repeatedly stated that a compulsory arbitration system did not fulfil the obligation under the International Convention. The Committee pointed out that the legal provisions allowing one of the parties to request an obligatory arbitration procedure unilaterally to resolve a collective dispute did not promote collective bargaining. On the contrary, they hampered collective bargaining and contradicted the International Convention.

The Government argued that the amendment to the provisions on arbitration had been decided following extensive trilateral dialogue, to which SEV was also a party. Some of the employers' proposals were adopted, but most were found to be incompliant with both the Hellenic Constitution and the above Court Judgment. In addition, the Government did restrict the scope of unilateral recourse to arbitration, stressing arbitration's complementary role, and evidencing its strategy towards strengthening the negotiating power of workers. The Government took the view that, following recovery of the Greek economy, it would be up to the social partners to use the tools available to them in good faith and conclude collective agreements with a view to promoting social peace and justice.

Finally, the Expert Committee expressed their concerns regarding the Government's views on the obligatory arbitration system and the judgement of the Hellenic Council of State, which had ruled that the provision of Law 4046/2012 repealing the unilateral recourse to obligatory arbitration was illegitimate. They considered that the unilateral recourse to arbitration, as a means to avoid free and voluntary collective bargaining, could apply but only in very few cases.

The principles of expanding collective agreements¹⁷ and favouring workers in case of cumulative collective agreements¹⁸, which had been suspended in 2010 and 2011, respectively¹⁹, were reinstated as of 21 August 2018, when Greece was released from the financial stability programme. Unilateral recourse to obligatory arbitration was recognised as a constitutional right²⁰ which must, however, be exercised on a complementary basis and subject to the strict condition of avoiding a deadlock situation of not having a collective bargaining arrangement in place.

4. RELEVANT ACTS OF PARLIAMENT PASSED AND BILLS

4.1. Annulment of the Regulated Pension Cuttings and Expected Pension Freezing

A serious threat loomed throughout 2018 that main and supplementary pensions (for old age, disability and death) would have to be decreased by 18% as of 1 January 2019. That measure, as adopted by Article 1 of Law 4472/2017 on the pretext of 'recalculation with a view to making the amounts of pensions equal', would affect more than 1,5 million pensioners²¹, primarily those with more than 30 years of insurance and a high pensionable salary, without offering any protection to those entitled to lower pension amounts. Naturally, the political leadership of the Ministry of Labour had made allowances for interventions to be implemented in the future to improve the situation or even repeal the measure, if so permitted by the fiscal situation in Greece and EFKA's financial results²².

Once again, the law adopted as a result of the Greek financial stability programmes proved to be more stringent than needed. Eventually, pensioners avoided that sacrifice and the Government was proved right in arguing that there would be such a financial surplus at the

¹⁷ By virtue of a ministerial decision, Paragraph 2 of Article five of Law 4475/2017 reintroduced the expansion of the scope of sectoral collective bargaining agreements by declaring it mandatory to cover employees who are not members of trade unions and those working for employers which are not members of respective employer associations.

¹⁸ Based on that principle, as replaced by Article 16 of Law 4472/2017, enterprise collective bargaining agreements could not contain less favourable provisions than those of sectoral ones in respect of payroll and other matters.

¹⁹ See Laws 3845/2010 and 4024/2011.

²⁰ Establishing an arbitration system is in conformity with Art. 22(2) of the Hellenic Constitution, which provides: 'General working conditions shall be determined by law, supplemented by collective labour agreements concluded through free bargaining and, in case of the failure of such, by rules determined by arbitration'.

²¹ Based on information from the 'HELIOS' system (March 2018), there were 1.941.446 individuals entitled to a main pension benefit (except older or other people insured by the Hellenic Agricultural Insurance Organisation or employees of the Bank of Greece), with a cost of EUR 1,777 million per month or EUR 21,324 per year.

²² Papapetrou St., Who are affected by the new pension cuttings from 2019, www.naftemporiki.gr, 03.05.2018.

end of 2018 that no new pension cuts would be needed. Indeed, Article 1 of Law 4583/2018 was adopted unanimously by the Hellenic Parliament to repeal the provisions on the pension cuts planned (one year earlier) as of 1 January 2019.

However, the provision adopted in 2017 to the effect that all pensions should remain 'frozen' by the end of 2021 was retained. As of 1 January 2022, older pensioners with a 'personal difference' will experience no increase, at least until that 'surplus amount' is eliminated. Pension expenditure may drop to 12,9% of the GDP in 2040, when the predicted EU average is 13% of the GDP for 2040 (Ageing Report 2015), but a dramatic increase in the number of pensioners will be experienced in the following years due to mass retirement and the ageing population.

4.2. Reduction of the Social Contribution Percentages

Reducing social security contributions has, since 2016, been a constant request on the part of the self-employed, independent professionals and farmers, as they found that their available income kept vanishing due to these contributions, coupled with the taxes they had to pay. The relevant counter-incentive of remaining in the labour market, owing to high non-payroll costs, was one of the reasons why scientists and valuable workers left the country, in conjunction with the absence of rewards in the form of social benefits. Reducing social security contributions was preferred over increasing wages (always within the margin allowed by basic economic growth) as there was a grave risk of layoffs or thousands of workers entering an undeclared work status.

Thus Law 4578/2018 was adopted, providing for a reduction in the pension percentage of the monthly social security contributions paid by the self-employed from 20% to 13,33% as of 1 January 2019, as well as for farmers to reach the same rate gradually over the 2019-2022 period. The Government boasted in Parliament that it had managed to create a surplus in the public social security system in fewer than three years and to make it sustainable in the long run, so the unnecessary measure to keep higher contribution rates could be abandoned. On the contrary, the opposition proposed a costlier solution²³ of adopting the same rate (15%) for the pension percentage of monthly social security contributions for all insured people, without discrimination.

4.3. Reform of the Social Welfare System

Law 4520/2018 brought about an important institutional change with respect to social welfare programmes. The Agricultural Insurance Organisation (OGA) was converted into the

²³ The opposition's proposal would result to an estimated annual reduction in EFKA's income of approximately EUR 2 billion, which would have to be offset either by drawing funds from the State budget or by reducing main pensions accordingly.

Welfare Benefits and Social Solidarity Organisation (OPEKA). There was no such a system as social welfare on the part of the Hellenic State until the above new organisation was set up. There was no digital record of the welfare benefits envisaged and granted, nor a comprehensive control mechanism for beneficiaries of welfare benefits. The competent committee that was established in 2017 recorded at least 150 benefits granted by municipalities, regions, ministries and other organisations, which were based on hard-to-find provisions and funded from taxes paid. For dozens of years, people had depended on each mayor, MP and political figure to determine and appropriately exercise their constitutionally established rights.

Upon launch, the new Social Welfare System had more than 1.000 employees (compared to 54 previously) and a budget of approximately EUR 2 billion (compared to EUR 790 million in 2015). The above law attempted to develop, for the first time, a single, modern and cohesive administrative system for detecting the actual needs of the population and implementing social solidarity policies, as well as making sure that the available funds efficiently mitigate poverty and social exclusion. All welfare benefits are now pooled together at OPEKA and granted through electronic procedures and audits²⁴. This establishes a social and substantial solidarity system with uniform rules and equal access for all. The competent departments of OPEKA must electronically cross-check information declared by applicants, and a special directorate for inspection and audit is set up at the organisation.

The new piece of legislation constitutes the second pillar of the National Social Solidarity System. The first one is the national social protection mechanism with 240 welfare community centres, included in municipal social services. These interconnected pillars will strengthen local authorities, as municipalities are for the first time given a digital tool for providing services to their citizens. People are able to obtain information, even electronically at home, about all of their rights, such as services to which they are entitled (cheap electricity, water, etc.), whether they can send their children to a day-care centre, whether they are entitled to food provisioning, what training programmes are available for the unemployed, etc. After an individual has obtained this information and applied, OPEKA will have to provide a set of benefits including *inter alia*: a child grant, a social solidarity income (SSI) benefit, the granting of insurance capacity and covering of funeral expenses, agricultural welfare services, disability benefits, financial aid and social services to support special and vulnerable groups.

As of 2018, Greece is looking ahead to establish genuine welfare rights for all people in distress across its territory, replacing the obsolete State charity model, known as 'Queen Frederica's system'.

²⁴ Skoufa Elis., Revolutionary change the OPEKA for the social solidarity in our country, left.gr, 17.02.2018.

Also, the institutional reform has helped address emergency or anticipated needs, for example by setting up a special account for granting aid to people affected by wildfires at the State's expense (by way of derogation from the provisions on public finances, public investments and other general or specific rules)²⁵ and the 'help at home' social care programme, which is operated by municipalities and communities and aims to assist the elderly or disabled people through approximately 1.000 units established all over Greece. This programme aims at making sure that the mentally ill are able to live decently and independently.

In exceptional cases, welfare benefits are used as a supplement to one's income from work. The former negative requirement attached to any welfare benefit, namely the complete lack of income from work, appears now an outdated disadvantage as in other European countries. Consequently, for inclusion in this welfare programme and for the calculation of income support, 20% of the net revenue from salaried work or from community service programmes is excluded from the means-test assessment (from the total income declared for households living in Greece legally and permanently)²⁶. We should also not forget the deinstitutionalisation policy implemented by improving the organisation of Supported Living Accommodation (SLA)²⁷. More specifically, certain (scientifically certified) public and private bodies are authorised to provide all necessary services to enable people with disabilities to live decently and as independently as possible as active members of society, aiming towards their social inclusion and access to education (counselling support, theoretical and practical training, etc.).

5. CASE LAW DEVELOPMENTS

5.1. Constitutional Protection against the Violation of Pensioners' Rights

In the last years of the economic recession in particular, courts never ceased looking for a legal basis in the Greek Constitution and the European Convention on Human Rights to mitigate cuts²⁸. The exact content of the constitutional guarantee of social insurance (in Art. 22(5) of the Constitution), and of the core of that social right in particular, was investigated. More specifically, the courts have delved into the meaning of 'intergenerational contract' (proper distribution of burdens) in relation to compensatory justice (*pro-rata* equality), which are seemingly contradictory concepts, but are both

²⁵ LA No 24.07.2018, as ratified by Art. 2 of Law 4576/2018.

²⁶ See Joint Ministerial Decision No Δ13/οικ./33475/1935 (GG, Series II, No 2281/15.06.2018).

²⁷ See Joint Ministerial Decision No Δ12/ΓΠ. οικ. 62866/1832 (GG, Series II, No 5582/12.12.2018).

²⁸ Petoglou A., Providing social security rights under the Constitution, according to the recent case-law of the Council of State (HCofS 2287/2015, Plen., HCofS 734/2016, Plen., HCofS 660/2016, LLR 2017, 251).

included in the notions of social insurance (Art. 4(1) and 25(1)(c) of the Hellenic Constitution) and social justice. This issue was prompted, *inter alia*, by the laws on retrospective pension and one-off benefit cuts as established rights. To justify the cuts, the bounds of 'public interest' had been re-examined to make useful distinctions between cuts of a fiscal and structural nature and cuts of an unjustified (preferential) nature.

More specifically, by virtue of its Judgment No 1506/2016, the plenum of the Court of Audit resolved the general topic of pension cuts imposed under Law 4093/2012 (Art. 1), as adopted owing to the Greek financial stability programmes. The court ruled that the reduction in pension benefits contradicted Articles 4(5) and 25(1) and (4) of the Greek Constitution and Article 1 of the First Additional Protocol to the ECHR²⁹. Moreover, by virtue of its Judgment No 1277/2018, the plenum of the Court of Audit ruled that the pension cuts imposed in the public sector under pp. 2 and 3 of Law 4111/2013 contradicted Articles 2(1) (4) and (5) and 25(1) of the Greek Constitution. The substantiation of the second judgment was extremely interesting³⁰. Despite agreeing that implementation of new measures was, in principle, necessary to address the ongoing financial crisis, also taking due account of the constitutionally established principle of the viability of the financial system (Plen. of the HCA, Minutes of General Meeting No 26 of 17.12.2014), in accordance with the line of reasoning presented above, the legislature should have given the specific reasons why taking these measures was compatible with the aforementioned constitutional principles of equal distribution of public burdens, proportionality and equivalence between one's pension and active wages. The last paragraph made reference to the case law of German courts³¹, based on the view that irrespective of whether imposing a contested cut would put the decent living of public sector pensioners at risk, breaching the principle of equivalence between one's pension and active wages would suffice in determining the amount of pension benefits granted to public sector employees and officials in the event of cuts applied due to adverse financial conditions. Active wages should be taken into account in addition to the limits of decent living.

It is noteworthy that a similar judgment had been handed down by the same court³² to the effect that the pensioners' solidarity contribution, as imposed under Law 3865/2010, was unlawful and unconstitutional.

The unconstitutionality of some cuts, as recognised by the judgments of the supreme courts to date, has resulted in a substantial pending public expenditure, amounting to EUR 18 billion, or EUR 25 billion according to other estimates, if pensioners are finally

²⁹ HCA 1506/2016, www.enikonomia.gr, 28.07.2016.

³⁰ HCA 1277/2018, Plen., www.lawspot.gr, 29.10.2018. Also, www.ergasianet.gr.

³¹ See Judgment No 2BvR 1387/02 of the German Federal Constitutional Court from 27.9.2005.

³² HCA 244/2017, Plen., in Communication No 105 of the Hellenic Federation of Military Officers.

vindicated. In fact, international creditors have considered taking additional measures in case the retrospective reimbursement of cuts disrupts public finances and jeopardises Greece's obligation to achieve primary surpluses amounting to 3.5% of the GDP. A political solution has also been proposed to offset the taxes owed by pensioners and their families against the sums owed to them by the Greek State by declaring the cuts under the second financial stability programme unconstitutional and abolishing the three bonuses for pensioners and currently serving employees³³. A large number of legal actions are being lodged currently by eligible pensioners, to prevent their claims from being time-barred.

5.2. The Company Liable to Pay Social Security Contributions

Upon merger of social security organisations into EFKA, the previous problem of setting the amount payable by companies became a question of which companies are to pay contributions. The question arises of who should be considered as the employer, in the case of several enterprises being involved in a given labour relation. Considering the current flexibility in the labour market and the practice of 'affiliated enterprises, it is usual for one company to own or hold production equipment, another to carry out managerial tasks and a third to pay wages to workers. The responsibility of identifying the employer usually lies with the Labour Inspectorate and the workers, who are trying to ensure compliance with the agreed employment terms and conditions.

The 'employer' concept in terms of social security does not refer only to the counterparty that has signed the labour agreement, but also – based on decade-long legislation, case law and theory – refers to the party that derives benefits from the economic results of dependent employment, as the aim of social security is to ensure fixed funding.

According to Article 8(5) of Emergency Law 1846/1951, employer means 'a natural or legal person on behalf of which the persons subject to insurance offer their work'. That is, the term 'employer' does not refer only to the person or company representative who signed the labour contract. While in the context of labour law courts usually will be satisfied with determining the personal dependency of the salaried employee, in the context of social security law they will also look to the economic (business) dependency, i.e. the holder of the economic interest³⁴. Therefore, the party liable to pay contributions cannot be clearly determined by the law. It depends on real facts presented (and evidenced), including also any concealed employers that are trying to avoid the business risk. Actually, where an enterprise is subject to joint operation, it is recognised that the responsibility to pay contributions lies jointly with several employers, even where different premises are used

³³ Lampaditi M., Economic threat for the public finances the return of pensions in arrears, www.nextdeal.gr, 01.02.19.

³⁴ Agalopoulos Chr., Social Insurances, 1955. Kremalis K., The social insurance of the employed persons, 1982, 184. Angelos Stergiou, The employer liable for paying contributions, DEN 2018, 881 *et seq.*

and even in the case of a group of companies sharing the benefits derived from work offered by the employee.

Owing to the variety of business activity and extensive contribution evasion, the concept of the employer liable to pay contributions was recently expanded even further, given in particular the substitution of salaried work with work done under contract or an agreement for independent services³⁵. Parties' aiming to breach legislation on social security results in an undoubtedly invalid and fictitious agreement, which must be null and void (under Art. 138(1) CC), thus posing no particular problems to inspection authorities.

In the contrary event of parties' ignorance, our case law follows a number of operating criteria³⁶. First, the party for whose economic interest the work is done is sought. This party is the company operator, i.e. the natural or legal person that bears the company's costs and risks. Where these roles are allocated to several parties, there are either several employers liable to pay the social security contributions in their entirety, or one employer and other persons whose share is legally insignificant. The term 'forbidden abusive evasion of employer obligations' (under Art. 281 CC) refers to a manager, legal representative, key shareholder or dominant partner relying on the legal person, which has formally hired the company's employees in order to force said person to bear his/her obligation to pay social security contributions, i.e. he/she uses the legal entity as a pretext to breach the law on social security. There may be a similar situation in the case of a group of affiliated or cooperating undertakings whose integrated economic function is inconsistent with its apparently fragmented legal status. Our theory and case law have not considered workers as being mere lenders of the business activity, but as holders of the social right of work and its social security guarantees³⁷.

6. CLOSING REMARKS

Just like a baby's steps are marked with instability and indecisiveness, based mostly on intuition, the outcome of the initial social policy measures to be implemented after exiting the prolonged economic crisis in Greece could not be predefined. Nevertheless, they have been marked with social justice.

³⁵ Georgiadou N., Actual and apparent employer, Labour Law Bulletin 2018, 1441 et seq.

³⁶ ArPa 1261/14, DEN 2015, 102. ArPa 1290/10, Nomos LIB. ArPa 873/09, DEN 2010, 99. ArPa 884/17, DEN 2018, 279, PirCofA 714/99, Nomos LIB. Cf. ArPa 1446/14, DEN 2015, 16.

³⁷ Georgiadou N., *ibid*, 1520. Travlos-Tzanetatos D., Labour law and groups of Companies, The Law of Companies and Societies, 2017, 442.

Most of the arrangements adopted in the last months of 2018 aimed to minimise the political losses that resulted from the painful measures adopted recently. This attempt was made within the narrow margins of a fragile and still contested economic recovery.

Insofar, as the reforms implemented after the end of the Greek financial stability programmes are assessed positively, the path towards sustainable development with wholesome incentives and fewer sacrifices will become increasingly stable.

However, it will take long for the baby to reach adulthood...

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