

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS/COMITE
EUROPEEN DES DROITS SOCIAUX**

DECISION ON THE MERITS

23 May 2012

**General Federation of employees of the national electric power corporation
(GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions
(ADEDY) v. Greece**

Complaint No. 65/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 257th session attended by:

Messrs Luis JIMENA QUESADA, President

Colm O’CINNEIDE, Vice-President

Mrs Monika SCHLACHTER, Vice-President

Mr Jean-Michel BELORGEY, General Rapporteur

Mrs Csilla KOLLONAY LEHOCZKY

Messrs Andrzej SWIATKOWSKI

Lauri LEPPIK

Mrs Birgitta NYSTRÖM

Messrs Rüçhan IŞIK

Petros STANGOS

Alexandru ATHANASIU

Ms Jarna PETMAN

Elena MACHULSKAYA

Mr Giuseppe PALMISANO

Mrs Karin LUKAS

Assisted by Mr Régis BRILLAT, Executive Secretary,

Having deliberated on 21 March and 23 May 2012;

On the basis of the report presented by Mr Jean-Michel BELORGEY;
Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint presented by the General Federation of employees of the national electric power corporation (GENOP-DEI) and the Confederation of Greek Civil Servants' Trade Unions (ADEDY) was registered on 21 February 2011. Additional written statements in support of the complaint were registered on 6 May 2011.

The complaint alleges that:

- the provision contained in Section 17§5 of Act No. 3899 of 17 December 2010, by making it possible to dismiss a person without notice or severance pay during the probation period in an open-ended contract, is in breach of Article 4§4 of the 1961 Charter;

- the provisions contained in Section 13 of the above-mentioned Act, by making it possible firstly for a collective agreement at enterprise level to derogate from the provisions set out in a collective agreement concluded at sectoral level, leading to a deterioration in working conditions for the employees concerned, and secondly, if there is no trade union in the enterprise, for the collective agreement at enterprise level to be concluded by trade unions of a different level (corresponding sectoral trade union or federation), are in breach of Article 3§1a of the 1988 Additional Protocol to the 1961 Charter.

2. The Committee declared the complaint admissible on 30 June 2011.

3. In accordance with Article 7 paragraphs 1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol") and with the Committee's decision on the admissibility of the complaint, on 5 July 2011 the Executive Secretary communicated the text of the admissibility decision to the Greek Government ("the Government") and to GENOP-DEI and ADEDY. On the same day, he also sent the decision to the States Parties to the Protocol and the states that have made a declaration

in accordance with Article D§2, and to the organisations referred to in Article 27§2 of the Charter.

4. In accordance with Rule 31§1 of its Rules, the Committee set 30 September 2011 as the deadline for the Government to present its submissions on the merits. At the Government's request, the Committee extended this deadline twice, first until 31 October and then until 21 November 2011. The deadline set for GENOP-DEI and ADEDY's response on the merits of the complaint was 20 January 2012.

The Government's submissions on the merits were registered on 23 November 2011. GENOP-DEI and ADEDY's response to them was registered on 2 January 2012.

SUBMISSIONS OF THE PARTIES

A – The complainant organisations

6. GENOP-DEI and ADEDY allege that the situation in Greece is not in conformity with Article 4§4 of the 1961 Charter and Article 3§1a of the Additional Protocol of 1988 on the grounds that: Section 17 of Act No. 3899 of 17 December 2010, in equating the first twelve months of employment in an open-ended contract with a trial period, makes dismissal without notice or compensation possible during this period, which is in direct breach of Article 4§4; Section 13 of the aforementioned Act, by making it possible for a collective agreement at enterprise level to derogate from the provisions on remuneration and working conditions set out in a collective agreement concluded at branch level, encourages the systematic deterioration of working conditions, which is in breach of Article 3§1a.

B – The Government

7. The Government asks the Committee to find the complaint unfounded in all respects.

RELEVANT DOMESTIC LAW

8. In their submissions the parties refer to the following provisions of domestic law.

Section 17§5 of Act No. 3899 of 17 December 2010:

“5a. In Section 74§2 of Act No. 3863/2010, a sub-section shall be added, i.e. Sub-section A ‘, as follows: “A. 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.”

5b. The first sub-section of Section 74§2 of Act No. 3863/2010 shall become Section B’; point “a” of paragraph 2 shall be amended as follows: “B. The permanent contract of an employee with more than twelve (12) months of service may be terminated on the basis of prior written notice by the employer, as follows: a) in the case of employees who have worked from 12 (twelve) months to 2 (two) years, 1 (one) month’s notice prior to dismissal”.

Section 13 of Act No. 3899 of 17 December 2010:

“In Section 3 of Act No. 1876/1990 a new paragraph 5A shall be added as follows:

1. a) The remuneration and working conditions specified in so-called special enterprise collective agreements may deviate from the provisions of the relevant sectoral collective agreement. In such cases, the enterprise agreement shall prevail, without limitations, over the relevant sectoral agreement. The remuneration and working conditions may not deviate, however, below the level established by the national general collective agreement.

The provisions of Section 10 and paragraphs 2, 3 and 4 of Section 11 of Act No. 1876/1990 shall not apply to collective agreements concluded at enterprise level. Enterprise-level collective agreements shall take account of the need to improve enterprises’ ability to adapt to market conditions, with a view to creating or preserving jobs and improving the enterprises’ competitiveness.

b) enterprise-level collective agreements may stipulate the number of employment positions, the conditions governing part-time work, suspension of work and other matters, including duration.

2. *In derogation from the provisions of Section 6, paragraph 1, sub-paragraph b, of Act No. 1876/1990, the “special” enterprise collective agreement may be signed by an employer who employs fewer than 50 (fifty) employees and the relevant enterprise-level trade union or, if there is no such union, by the relevant sectoral trade union or federation.*

3. *For the purpose of implementing the provisions stipulated in paragraph 1, the parties concerned shall submit a reasoned report to the Social Oversight Board of the Labour Inspectorate, stating the reasons for their intention to sign the said agreement. The Board will deliver its opinion within a period of twenty (20) days, after which it shall be assumed that the opinion has been delivered. The same procedure shall apply when extending the enterprise-level collective agreement.*

4. *The collective agreement referred to in paragraph 1 shall enter into force on the date on which it is signed according to Section 5 of Act No. 1876/1990.*

5. *In the event of a violation of the terms of this section, the enterprise-level collective agreement shall be deemed to be null and void and, where there are dismissals, the compensation shall be calculated on the basis of the wages set by the relevant sectoral agreement.*

6. *Any reduction in employees’ wages in deviation from what has been agreed under an enterprise-level collective agreement shall constitute unlawful delay in the payment of wages, for which Act No. 690/1945, as amended by Section 8, paragraph 1 of Act No. 2336 / 1995, shall be applied”.*

9. In its submissions on the merits, the Government states that the above-mentioned paragraph 5A, as set out in Section 13 of Act No. 3899/2010, has been superseded by the provisions of Act No. 4024/2011 on “Regulations on pensions, unified wage and grade scale, job redundancy and other provisions to implement the Medium-Term Fiscal Strategy Framework 2012-2015”.

10. The Government points out that, as a result, paragraph 5A applied only during the period between the entry into force of Act No. 3899/2010 (17/12/2010) and Act No. 4024/2011 (27/10/2011). According to the information provided by the Government, during this period fourteen (14) enterprise-level collective agreements were registered with the competent agencies.

11. The Government states that the provisions of Act No. 4024/2011 which superseded the above-mentioned paragraph 5A read as follows: *“Enterprise agreements shall be concluded by the enterprise unions representing all the workers concerned, irrespective of their occupational category, job or area of specialisation; where no such union exists, the said collective agreements shall be concluded by union organisations at the first level in the sector concerned and by the chief executive of the enterprise”* (cf. Section 37, paragraph 1, of Act No. 4024/2011).

12. The Government further states that the above-mentioned Act added a subsection to paragraph 2 of Section 10 of Act No. 1876/1990. It reads as follows: *“Throughout the period of application of the Medium-Term Fiscal Strategy Framework, the firm-level labour collective agreement shall prevail in case of concurrent implementation with a sectoral labour collective agreement and in all cases it is not permitted to include working conditions that are less favourable for the workers than the working conditions provided for by national general labour collective agreements, in accordance with paragraph 2 of Section 3 of this Act.”* (cf. Section 37, paragraph 5, of Act No. 4024/2011).

13. In this framework, the Greek National Commission for Human Rights expressed deep concern inter alia at: the on-going drastic reductions in even the lower salaries and pensions; the reversal of the hierarchy and the weakening of collective labour agreements which set out protective minimum standards of wages and working conditions for all workers; the facilitation of dismissal and the restrictions of hiring; the rapid increase in unemployment and the overall job insecurity.

THE LAW

PRELIMINARY REMARKS

14. In its submissions on the merits, the Government provides information and makes some general points about the economic crisis suffered by the country in recent years. These submissions refer to the measures adopted to redress the above-mentioned problems. Mention is made of the initiatives taken to deal with the structural problems of the labour market, social security and welfare systems and their operation, especially

with regard to wages setting (through collective bargaining), settling conflicts, introducing greater flexibility into employment relationship and, more generally, reducing the cost of labour and combating unemployment.

15. Where matters relating to trade unions are concerned, the Government states that these measures consist of a partial restructuring of the collective bargaining system, focusing mainly on increasing the number of bargaining levels. The Government states that the measures in question have been adopted whilst taking care to ensure that the core of the freedom of association and of collective bargaining is not affected, but, on the contrary, safeguarded and extended to cases where it was hitherto not applicable. In this connection, the Government argues that the provisions referred to in the complaint (concerning respectively the introduction of “*probation period contracts*” and “*firm-level collective agreements*”) were adopted to enhance the competitiveness of enterprises and make for a more decentralised system of collective agreements.

16. However the Committee said, in the general introduction to Conclusions XIX-2 (2009) on the repercussions of the economic crisis on social rights, that, while the “increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline”, by acceding to the 1961 Charter, the Parties “have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.” Accordingly, it concluded that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.”

17. The Committee considers that what applies to the right to health and social protection should apply equally to labour law and that while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses,

these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter.

18. The Committee considers that a greater employment flexibility in order to combat unemployment and encourage employers to take on staff, should not result in depriving broad categories of employees, particularly those who have not had a stable job for long, of their fundamental rights in the field of labour law, protecting them from arbitrary decisions by their employers or from economic fluctuations. The establishment and maintenance of such rights in the two fields cited above is indeed one of the aims of the Charter. In addition, doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems, particularly social assistance, unless it was decided at the same time to stop fulfilling the obligations of the Charter in the area of social protection.

19. The general principles outlined by the Committee in this section are taken into account in the assessments made by the Committee in the part concerning the alleged violation of the articles of the 1961 Charter.

ALLEGED VIOLATION OF ARTICLE 4§4 OF THE 1961 CHARTER

20. Article 4§4 of the 1961 Charter reads as follows:

Article 4 – Right to a fair remuneration

Part I:

“All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.”

Part II:

“With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake: (...) §4 to recognise the right of all workers to a reasonable period of notice for termination of employment; (...).”

A – Submissions of the parties

1. The complainant organisations

21. The complainant organisations claim that Section 17§5 of Act No. 3899 of 17 December 2010 is incompatible with Article 4§4 of the 1961 Charter as it provides that during the probation period, a permanent contract may be terminated without notice and with no severance pay. In this connection, GENOP-DEI et ADEDY refer to the principle laid down by the Committee to the effect that “the right to reasonable notice of termination of employment applies to all categories of employees (Conclusions XIII-4, Belgium, p.352)” and that the period of notice “also applies during the probationary period (Conclusions 2010, Ukraine)”.

22. The two trade union organisations further maintain that the length of the probation period depends *inter alia* on employees’ qualifications and cannot therefore be uniformly the same for all employees, or be laid down in statute, as provided for in Section 17 (12 months). In their view, this is in breach of the principle of proportionality, which is a general principle of law that is recognised and applied by the European Court of Human Rights and the Court of Justice of the European Union.

2. The respondent Government

23. The Government holds that the complainant organisations are failing to take account of the trial nature of the contracts of employment referred to in Section 17§5; according to the Government, such contracts (defined as “*probation employment contracts*”) focus on the trial factor, which is used to evaluate the employee before offering him or her an open-ended contract of employment. In this connection, the Government believes that the complainant organisations are confusing “the scope of probation employment contracts and open-ended contracts of employment”.

24. The Government argues that the probation period justifies the initial instability of employment and that – given the current economic crisis and the unstable nature of Greek enterprises’ business activities – the statutory provision in question is reasonable. The Government also claims that the notice provided for in Article 4§4 of the 1961 Charter does not apply to probationary contracts.

B - Assessment of the Committee

25. The Committee has on several occasions stated the following principles:

i) the right to reasonable notice of termination of employment applies to all categories of employees, independently of their status/grade, including those employed on a non-standard basis. It also applies during the probationary period. National law must be broad enough to ensure that no workers are left unprotected;

ii) the Committee has not defined *in abstracto* the concept of “reasonable” notice nor ruled on the function of the notice period or on compensation. It assesses the situations on a case by case basis. The major criterion is length of service. It has concluded, for example, that the following are not in conformity with the Charter: less than one month’s notice after one year of service (...)¹;

iii) the main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before his or her current employment ends, i.e. while he or she is still receiving wages. In this respect, receipt of wages in lieu of notice is acceptable, provided that the sum paid is equivalent to that which the worker would have earned during the corresponding period of notice.

iv) the only acceptable justification for immediate dismissal is serious misconduct.

26. To date the Committee has not been required to rule specifically on the concept of probationary or trial periods, the length that such a period might last, in view, in particular, of the qualifications required for the post occupied, or the circumstances under which the extension of the period may be regarded as acceptable. However, it does go without saying that, while it is legitimate for such concepts to apply to enable employers to check that employees’ qualifications and, more generally, their conduct meet the requirements of the post they occupy, the concept should not be so broadly interpreted and the period it lasts should not be so long that guarantees concerning notice and severance pay are rendered ineffective.

¹ On that basis, the Committee could conclude that the one-month notice period provided for in Section 17§5 for employees with more than one year of service is in conformity with the 1961 Charter.

27. However, in the instant case, Section 17§5 of Act No. 3899 of 17 December 2010 makes no provision for notice periods or severance pay in cases where an employment contract, which qualify as '*permanent*' under the said law, is terminated during the probationary period set at one year by the same law.

28. Therefore, whatever the qualification that is given to the contract in question, the Committee concludes that Section 17§5 of Act No. 3899 of 17 December 2010 constitutes a violation of Article 4§4 of the 1961 Charter.

ALLEGED VIOLATION OF ARTICLE 3§1 OF THE 1988 ADDITIONAL PROTOCOL

29. Article 3§1 of the 1988 Protocol reads as follows:

Article 3 - Right to take part in the determination and improvement of the working conditions and working environment

Part I:

“Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.”

Part II:

“§1. With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute: a) to the determination and the improvement of the working conditions, work organisation and working environment; (...).”

30. According to the Appendix to the 1988 Protocol:

“ (...) For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice; 2) The term “national legislation and practice” embraces as the case may be, in

addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs, as well as relevant case law".

A – Submissions of the parties

The complainant organisations

31. The complainant organisations maintain that the provisions in Section 13 (paragraphs 5A.1 and 5A.2) of Act No. 3899 of 17 December 2010 violate Article 3§1 of the Protocol in two respects.

32. Firstly, GENOP-DEI and ADEDY hold that paragraph 5A.1 is in breach of Article 3§1a of the Protocol as it authorises unions in the undertaking to negotiate agreements providing for working conditions that are “consistently and unrestrictedly” poorer than those specified in sectoral collective agreements; in other words, the organisations believe that the above-mentioned paragraph violates the Protocol as it grants unions in the undertaking the power to introduce working conditions that are less favourable for the undertakings' employees than those laid down in the sectoral agreements.

33. GENOP-DEI and ADEDY further maintain that paragraph 5A.2 is in breach of Article 3§1a of the 1988 Protocol because, where there is no trade union in the undertaking, it empowers sectoral unions (or the relevant federation) to conclude enterprise-level collective agreements directly. Given that these trade union organisations are outside the undertaking, GENOP-DEI and ADEDY believe that the paragraph in question violates employees' right to contribute to the determination and improvement of working conditions.

2. The respondent Government

34. The Government provides general information about the legal safeguards concerning freedom of association and trade union action in Greece. Mention is made of the Constitution (Article 22 § 2 and Article 23 § 1), the International Labour Conventions (No. 87/1948 – ratified by Act No. 4204/1961; No. 98/1949 – ratified by

Legislative Decree No. 4205/1961; and No. 154/1981 – ratified by Act No. 2403/1996). It is pointed out here that, in accordance with Article 28§1 of the Constitution, these conventions automatically prevail over any provision to the contrary. It is then stated that freedom of association is specifically protected by Act No. 1264/1982, and freedom of collective bargaining by Act No. 1876/1990.

35. With regard to Act No. 1876/1990, the Government states that this stipulates, *inter alia*, the types of collective agreements and their rank in terms of their binding effect, and that the terms defined by national general labour collective agreements prevail over all the other types of collective agreements, whether sectoral or enterprise-level. In this connection, the Government points out that the national general labour collective agreements set the minimum remuneration and working conditions, which constitute the minimum safety net for workers nationwide, ensuring decent wages and decent living standards.

36. With regard to the provision referred to in the complaint, the Government points out that even though Section 13 allows enterprise-level collective agreements to deviate from sectoral collective agreements, it does not allow such conventions to stipulate working conditions that are less favourable than those laid down in the relevant national general collective agreements. The Government further states that the – temporary – introduction of the new bargaining level required a prior agreement between the organisations concerned (employers and workers), in accordance with the relevant provisions of Act No. 1876/1990.

37. As regards the provisions which, in the course of 2011, replaced paragraph 5A – as set out in Section 13 of Act No. 3899/2010 – the Government states that according to these, an enterprise union must consist of at least three fifths (3/5) of the workers of the enterprise, irrespective of the total number of employees and with no time-limit to its duration. Should the requirement concerning the participation of 3/5 of the workers not be met, the said union must be dissolved forthwith.

38. The Government concludes that the above-mentioned provisions do not violate the freedom of collective bargaining as, in any case, only the legal

representatives of workers at enterprise level have the right to conclude enterprise-level collective agreements.

B - Assessment of the Committee

39. In the framework of the examination of the Parties' submissions, the Committee took into consideration the conclusions on collective bargaining of the Report on the High Level Mission to Greece (Athens, 19-23 September 2011) of the International Labour Organization (ILO). However, the Committee holds that Article 3 of the 1988 Additional Protocol and, in particular, paragraph 1a, does not concern the right to collective bargaining.

40. Hence, the Committee considers that the issue raised by the complainants falls within the scope of Articles 5 and 6 of the Charter - and not within that of Article 3§1a of the Protocol – but it cannot examine them because they have not been accepted by Greece.

CONCLUSION

41. For these reasons the Committee concludes:

- unanimously that there has been a violation of Article 4§4 of the 1961 Charter;

- by 14 votes to 1 that Article 3§1a of the 1988 Additional Protocol to the 1961 Charter is not applicable.

In accordance with Rule 30 of the Committee's Rules, a dissenting opinion of Mr Petros STANGOS is appended to this decision.

DISSENTING OPINION OF MR. PETROS STANGOS

I did not endorse the decision taken by the majority of Committee members, to the effect that Article 3§1a of the 1988 Additional Protocol to the 1961 Charter does not concern the right to collective bargaining and consequently this provision is inapplicable for the purposes of considering the merits of the complainants' allegation

with regard to the non-compliance, where it is affected, of the national legislation which, in the context of regulating the employment relationship, deals with certain aspects of the enterprise-level collective agreements practice.

I consider that collective bargaining comes within the scope of Article 3§1a of the 1988 Protocol. This emerges from several texts, for instance the Appendix to the above-mentioned 1988 Protocol, referred to in §32 of the present decision. According to the Appendix, collective agreements (or other agreements) arising from the negotiations between employers and workers' representatives are covered, together with other domestic legal acts, by the terms "national legislation and practice" which form part of the operative content of Article 3§1a of the 1988 Protocol. Likewise, in the Explanatory Report to the 1988 Protocol, the explanation common to Articles 2 and 3 of the Protocol states that the Contracting Parties may take action to implement each of the two provisions, leaving "(...) workers' representatives and employers to arrange the implementation of the provision by means of collective agreements, other agreements or any other form of voluntary negotiation. Implementation must, however, be effective and adequate" (§32 of the Report). The explanation specific to Article 3§1 of the Protocol states that the matters listed in this article, including "the determination and the improvement of the working conditions, work organisation and working environment" contained in sub-paragraph a of the provision, "(...) are frequently covered by collective agreements or other agreements between employers and workers' representatives" (§47 of the Report).

In consequence of the applicability of Article 3§1a of the Protocol to collective bargaining, I consider that in the first place, it may be inferred from a literal interpretation of the provision that the essential requirement for Article 3§1a of the Protocol to be upheld is that a collective agreement – whether negotiated at the level of the enterprise's trade union, the sectoral trade union or at another level – should in all circumstances allow the participation and contribution of the workers, or of their representatives, in determining and cumulatively improving the working conditions, organisation and environment.

On the basis of this interpretation, I consider that the Greek legislation, through the provision in the new §5A.1 of Section 3 of Act No. 1876/90 introduced by Section 13 of Act No. 3899/2010, which grants trade unions in an undertaking the power to make the working conditions less favourable for the employees of the undertaking than

those laid down in the sectoral agreements, outlaws participation and contribution by workers' representatives where motivated by an aim (impairment of working conditions) diametrically opposed to the one (improvement of these conditions) which is peremptorily stipulated (since it is coupled with the vague notion of "determination" of working conditions) by the operative part of Article 3§1a of the Protocol. The infringement of this provision thus committed by Greece is corroborated by the fact that the practice of concluding collective agreements at enterprise level, as sanctioned by the Act of 2010, is assigned the purpose of serving first and foremost to reduce the proportion made up by the cost of labour in the production cost of firms, with the ultimate aim of increasing their competitiveness. Indeed, under the terms of the new §5A.1, 5th indent, of Act No. 1876/90, "Enterprise-level collective agreements shall take account of the need to improve enterprises' ability to adapt to market conditions, with a view to creating or preserving jobs and improving the enterprises' competitiveness".

Secondly and lastly, I consider that another breach of Article 3§1a of the 1988 Protocol is also committed by Greece owing to the provision in the new §5A.2 of Act No. 1876/90 that where there is no enterprise-level trade union or one meeting the requirements of the law, an enterprise-level collective agreement may be concluded by the employer with a trade union at a higher level. In fact it behoves the workers of the enterprise, or their representatives, to participate in determining and improving working conditions in the enterprise. That being so, negotiation at a level above that of the enterprise appears likely to enhance the bargaining capability of the wage-earning party. It is therefore generally favourable to the workers of enterprises where they have little or no union affiliation. However, this only holds in the case of negotiations concerning working conditions in all enterprises of an occupational sector or a geographical area. It is a different matter for negotiations over working conditions in a given enterprise, which cannot be conducted by anyone but the workers' representatives, otherwise the workers are liable to have their pecuniary and non-pecuniary interests flouted or overridden by other considerations. Having regard to this risk incurred by this category of workers, I consider that the new §5A.2 of Act No. 1876/90, as introduced by Section 13 of Act No. 3899 of 2010, constitutes an additional violation of Article 3§1a of the 1988 Protocol.