EUROPEAN COMMITTEE OF SOCIAL RIGHTS/COMITÉ EUROPÉEN 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. 66/2011

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 23 May 2012,

On the basis of the report presented by Mr Colm O'CINNEIDE,

Delivers the following decision adopted on this 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 at the Secretariat on 6 May 2011.

The complaint alleges that:

- the provision contained in Act No. 3863 of 15 July 2010 introducing "special apprenticeship contracts" between employers and individuals aged 15 to 18 violates Articles 1§1, 7§2, 7§7, 7§9, 10§2 and 12§2 of the 1961 Charter;

- the provision contained in Act No. 3863 of 15 July 2010 concerning the employment of new entrants to the labour market aged under 25 violates Article 4§1, taken in conjunction with Article 1§2 of the1961 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 26 of its Rules of Procedure, the Committee set 30 September 2011 as the deadline for the Government to make 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.

5. 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.

6. In assessing the complainants' allegations, the Committee considered that the substance of the arguments made in respect of Article 12§2 concerned instead the provisions of Article 12§3 (see § 45 below). On that basis, in accordance with its Rules of Procedure, the Committee reclassified the complaint. By a letter dated 6 February 2012, it invited the Government to make submissions on the said allegations in respect of the provisions of Article 12§3, and to provide further clarifications.

7. The reply of the Government was registered at the Secretariat on 26 March 2012.

SUBMISSIONS OF THE PARTIES

A – The complainant organisations

8. GENOP-DEI and ADEDY, referring to Act No. 3863 of 15 July 2010, contended that:

- Article 74§9, insofar as it allows fixed-term "special apprenticeship contracts" to be concluded between employers and individuals aged 15 to 18, without regard for the main safeguards provided for by labour and social security law, in particular as regards the employment and training of young people, is in breach of Articles 1§1, 7§2, 7§7, 7§9, 10§2 and 12§2 of the 1961 Charter;

- Article 74§8, which allows employers to pay new entrants to the labour market aged under 25 a rate of 84% of the minimum wage or daily wage, is in breach of Article 4§1, taken in conjunction with Article 1§2 of the 1961 Charter, because it takes no account of differences between the persons concerned, discriminates on the basis of age, and fails to guarantee them a fair wage and a decent standard of living.

B – The respondent Government

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

RELEVANT DOMESTIC LAW

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

Section 74§9 of Act No. 3863 of 15 July 2010:

"Special apprenticeship contracts of up to one year's duration may be concluded between employers and persons between 15 and 18 years of age, so that the latter may acquire skills. The said apprentices shall be paid at a rate of 70% of the minimum wage or daily wage provided for by the National General Labour Collective Agreement (E.G.S.E.E.). They shall enjoy sickness insurance coverage in kind as well as coverage against accident risk at a rate of 1%.The period of apprenticeship for persons who have reached the age of 16 shall not exceed 8 hours a day and 40 hours a week. For those who are under the age of 16, as well as those who are attending lower secondary school, any type of upper secondary school or public or private technical/professional schools accredited by the state, the period of apprenticeship shall not exceed 6 hours a day and 30 hours a week. The apprenticeship may not take place between 10 pm and 6 am of the following day. The provisions of labour law, excluding those concerning health and safety at work, shall not apply to the said persons".

Section 74§8 of Act No. 3863 of 15 July 2010:

"Employers who hire young new entrants to the labour market up to the age of 25 and pay them 84% of the minimum wage or daily wage each time as provided for by the National General Labour Collective Agreement shall ipso jure participate in the OAED programme for subsidisation of the social insurance contributions incurred by the said newly hired persons. [Such contributions] shall cover all the main insurance sections of IKA-ETAM, the supplementary insurance section of the ETAM or other supplementary insurance funds, as well as social insurance contributions which the IKA-ETAM collects or re-collects in favour of Social Insurance Bodies and Sections, on condition that the employers pay to newly hired persons, as part of their net earnings, an amount equal to that which the OAED undertakes to pay to the aforementioned

social insurance bodies, in order to cover the social insurance contributions incurred by the newly hired persons. The terms, conditions, duration and any other relevant details relating to the implementation of this section shall be decided by the Minister of Labour and Social Security after consulting the OAED Administrative Board".

THE LAW

PRELIMINARY OBSERVATIONS

11. 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 measures adopted in response to this economic crisis, which form part of an overall package of initiatives introduced to deal with the structural problems in the labour market and the operation of social security and welfare systems. These initiatives are intended in particular to address issues related to wage setting through collective bargaining and conflict resolution, introduce greater flexibility into employment relationship and, more generally, reduce the cost of labour and combat unemployment, especially youth unemployment which has worsened as a result of the financial crisis1. The Greek government has also pointed out that youth unemployment is continuing to grow because of young people's lack of experience and skills, which means that employers are unwilling to hire them. Referring to the recommendations set out in an OECD survey2, the Government underlines the need to implement policies for tackling the serious problem of unemployment among 15 to 24-year-olds. In the Government's view, the statutory provisions at issue in this complaint are a cornerstone of these policies.

1 According to the information provided, unemployment among 15 to 29-year-olds in Greece reached 30.9% in 2011 (compared with 22.79% in 2010), whereas the average unemployment rate for the population as a whole currently stands at 15.9% (compared with 11.7% in 2010).

2 OECD Economic Surveys – Greece / Vol. 2007/5, pp. 9, 92 and 99.

12. With respect to this context of economic crisis which forms the background to this complaint, the Committee has commented , 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, 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 most need the protection.

13. The Committee considers that what applies to the right to health and social protection should apply equally to labour law. While it may be reasonable for state parties to respond to the crisis by changing current legislation and practice to limit public expenditure or relieve constraints on business activity, such measures should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter.

14. In particular, the Committee considers that measures taken to encourage greater employment flexibility with a view to combating unemployment should not deprive broad categories of employees of their fundamental rights in the field of labour law, which protect them against arbitrary decisions by their employers or the worst effects of economic fluctuations. The establishment and maintenance of these basic rights is a core objective of the Charter.

15. The general principles outlined by the Committee in this section are taken into account in the assessments made by the Committee in the following parts of this decision, which concerns the alleged violation of the articles of the 1961 Charter.

16. With respect to the particular situation in Greece, the Committee also notes the Recommendation issued by the Greek National Commission for Human Rights on 8 December 2011, on “The imperative need to reverse the sharp decline in civil liberties and social rights”. This document expresses deep concern at *inter alia*:

“- the ongoing 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 dismissals and the restrictions on hiring;
- the rapid increase in unemployment and the overall job insecurity;
- the disorganization, reduction or elimination of social infrastructures;
- the drastic reduction or withdrawal of vital social benefits;
- the lack of support for maternity, paternity, children and the family in general, while the number of unemployed parents with young children is continuously increasing;
- the lack of prospects for the young, who are either unemployed or employed under detrimental and precarious conditions”.

A) With regard to the alleged violation of Articles 1§1, 7§2, 7§7, 7§9, 10§2 and 12§3 of the 1961 Charter by Section 74§9 of Act No. 3863/2010

I. ALLEGED VIOLATION OF ARTICLE 1§1 OF THE 1961 CHARTER

17. Article 1§1 of the 1961 Charter reads as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Parties undertake: (…)

§1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment; (…)”.

A – Submissions of the parties

1. The complainant organisations

18. The complainants maintain that Section 74§9 violates Article 1§1 because it introduces so-called apprenticeship contracts that are in practice merely contracts of up to one year with no job security, which deprive the young persons concerned, with a few exceptions, of the protection afforded by labour law. According to GENOP-DEI and ADEDY, the statutory provision in question also excludes young people in this age group from access to specific labour law safeguards that would normally apply to them, and also place disproportionate restrictions on their entitlement to social security.

2. The respondent Government

19. The Government argues that "special apprenticeship contracts" are a means of integrating young people into the labour market, i.e. an opportunity to help them acquire work experience. The Government acknowledges that, given their length, "special apprenticeship contracts" do not constitute stable employment but claims that when adapted to the young people concerned, they can create the preconditions for stable employment. The Government observes that by promoting the acquisition of vocational skills, the said contracts can help to achieve and maintain the highest level of employment possible with a view to attaining full employment.

B – Assessment of the Committee

20. Article 1§1 is concerned with the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment. It is not concerned – as the complainants assert – with the protection afforded by labour and/or social security law. As a result, the arguments adduced by the complainants to the effect that the 'special apprenticeship contracts' at issue in this complaint do not provide adequate job security or adequate social protection, are not relevant to the question of whether the situation in Greece is in conformity with Article 1§1 of the 1961 Charter.

Furthermore, the Committee recognises that states enjoy a wide margin of appreciation when it comes to the design and implementation of national employment policies.

21. In view of the above, the Committee holds that Article 74§9 of Act No. 3863/2010 does not constitute a violation of Article 1§1 of the 1961 Charter.

II. ALLEGED VIOLATION OF ARTICLE 7§§2, 7 and 9 OF THE 1961 CHARTER

22. Article 7§§2, 7 and 9 of the 1961 Charter reads as follows:

Article 7 – The right of children and young persons to protection

Part I: “Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.”

Part II: “With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: (…)

§2. to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy; (…)

§7. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay; (…)

§9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control; (…)”.

A – Submissions of the parties

1. The complainant organisations

23. GENOP-DEI and ADEDY make the general point that “special apprenticeship contracts” are really employment contracts to which not only the general rules of labour and social security law but also the special rules relating to young people should apply. In particular, the two trade union organisations maintain that the provision contained in Section 74§9 violates Articles 7§2, 7§7 and 7§9 of the 1961 Charter because where admission to employment for occupations regarded as dangerous or unhealthy is concerned, it makes no reference either to the requirements relating to age (which, according to the 1961 Charter, must be greater than 15 years), or to the requirement, in the case of certain jobs, to provide regular medical check-ups for persons under 18. The complainants further contend that

Section 74§9 also removes all entitlement to paid holidays, by excluding the young persons concerned from the scope of labour legislation.

2. The respondent Government

24. In its submission, the Government states that "by virtue of Article 74§9 of Act No. 3863/2010, the labour law applies to apprenticeship contracts concluded between employers and persons between 15 and 18 years of age. Consequently, the provisions of the labour law governing the minimum age for access to employment, the pre-conditions for granting annual leave and for the medical examination of persons under the age of 18 continue to apply". The Government further states in its submissions that all protective provisions governing the employment of minors also apply to apprenticeship contracts. In this connection, the Government provides a detailed list of the legal instruments concerned:

- "Act No. 1837/1989 on "Protection of minors in employment and other provisions" (Official Gazette 85/A);Presidential Decree No. 62/1998 on "Measures to protect young persons at work, in compliance with Directive 94/33/EC" (Official Gazette 67/A);
- Ministerial Decision No. 1390/1989 on "Labour books for minors" (Official Gazette No. 766/B/09-10-1989);Act No. 2918/2001 on "Ratification of the 182 ILC concerning the prohibition and immediate action for the elimination of the worst forms of child labour" (Official Gazette 119/A/15-06-2001); Act No. 3144/2003 on "Social dialogue for the promotion of employment and social protection and other provisions" (Official Gazette 111/A) – Article 4 of which provides for the protection of health, safety and morals of working persons under the age of 18, in compliance with 182 ILC; Ministerial Decision No. 130621/2003 (Official Gazette 875/B/02/07/2003), which defines the tasks, projects and activities in which minors are prohibited from being employed, as it is considered that, due to their nature and the conditions under which these are carried out, they are liable to harm the minors' health and safety or to pose a danger to their moral welfare".

B – Assessment of the Committee

25. The Committee noted that some of the information provided by the Government in its submissions on the merits seemed to be inconsistent with the wording

of Section 74§9 of Act No. 3863/2010. In particular, according to the English translation (contained in the submissions), the last paragraph of the above-mentioned section provides that "the provisions of labour law, excluding those concerning health and safety at work, do not apply to (…) persons [aged between 15 and 18 who are employed on apprenticeship contracts]". With this in mind, the Committee, by letter of 6 February 2012, asked the Government to clarify whether the provisions of Greek labour law applied in full to the special apprenticeship contracts established by Article 74§9. The Committee also asked the Government whether national labour law and/or the legislation on the employment of minors a) guarantees at least three weeks' annual paid leave for workers employed under the special apprenticeship contracts; and b) ensures that, in respect of occupations prescribed by national laws or regulations, the above-mentioned workers are subject to regular medical control.

26. In its response to the Committee's request, registered on 26 March 2012, the Government confirmed that:

"Article 74§9 of Act No3863/2010 stipulates that young persons aged 15 to 18 that conclude apprenticeship contracts do not come under the provisions of labour law, with the exception of the provisions on the health and safety of workers". However, it stressed that the protective provisions governing the employment of minors also apply to apprenticeship contracts". In particular, the Government indicated that "ministerial decision No. 130621/2003 applies to all persons under the age of 18 that are bound by any type of employment contract or working relationship (including the special apprenticeship contracts provided for by article 74§9 of Act No 3863/2010) or by a task-specific contract or by a contract for the rendering of independent services or are self-employed".

27. As regards regular medical control, the Government stated that:

"In accordance with the provisions of the 'Code of laws on the health and safety of workers', which was ratified with article 1 of Act No3850/2010 (O.G.A'85) and applies to all undertakings, establishments, business undertakings and works of both the private and the public sectors (as well as to Public Bodies Corporate and Local Self-Government Organisations), and to all workers employed in any type of working relationship (including the special apprenticeship contracts provided for by article 74§9

of Act No3863/2010), the employer is obliged to safeguard the health and safety of workers in all aspects of work, to take measures that safeguard the health and safety of third persons, as well as to make use of the services of a safety technician and (where provided for) of a labour physician. Within this framework, it is provided for, on a case by case basis, that the employer is obliged to submit the workers to periodic medical examinations when they are exposed to factors (natural, chemical and biological), face musculoskeletal problems (in the manual handling of loads) and are under the age of 18".

28. In view of this additional information provided by the Government, the Committee considers that the situation satisfies the requirements of age limit in respect of dangerous or unhealthy occupations provided for by Article 7§2 as well as the requirements regarding regular medical control provided for by Article 7§9 of the 1961 Charter.

29. Therefore, the Committee holds that there is no violation of Article 7§§2 and 9 of the 1961 Charter.

30. As regards annual holiday with pay, the Government confirmed in this additional submission that:

"The apprentices are not entitled to a three-week leave within the one year of their special apprenticeship contract; given that the labour law does not apply – excluding the provisions concerning health and safety at work".

31. The Committee notes that the young persons concerned are excluded from the scope of the labour legislation and are not entitled to three weeks' annual holiday with pay.

31. The Committee notes that the young persons concerned are excluded from the scope of the labour legislation and are not entitled to three weeks' annual holiday with pay.
32. Therefore, the Committee holds that there is a violation of Article 7§7 of the 1961 Charter.

32. Therefore, the Committee holds that there is a violation of Article 7§7 of the 1961 Charter.

III. ALLEGED VIOLATION OF ARTICLE 10§2 OF THE 1961 CHARTER

33. Article 10§2 of the 1961 Charter reads as follows:

Article 10 – The right to vocational training

Part I: "Everyone has the right to appropriate facilities for vocational training."

Part II: "With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake: (…)

§2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;(…)".

A – Submissions of the parties

1. The complainant organisations

34. The complainants contend that the regulations on "special apprenticeship contracts" restricting these contracts to a maximum of one year and making no reference to any employers' obligations are incompatible with Article 10§2 of the 1961 Charter. GENOP-DEI and ADEDY take the view that compliance with this article requires the establishment of a coherent body of rules, something which, they claim, is completely lacking in the legislation concerned. The complainants observe that Section 74§9 makes no reference to any obligation on the employer to provide training for the young people hired, that it simply states that "special apprenticeship contracts" are to be entered into "for the purposes of acquiring particular skills", that it says nothing about how these skills are to be acquired and does not establish any relationship whatsoever with the Greek apprenticeship system or any other youth training scheme. GENOP-DEI

and ADEDY also submit that there is a further incompatibility with Article 10§2 of the 1961 Charter, due the brevity of the above-mentioned contracts and the failure to divide time between practical and theoretical learning.

2. The respondent Government

35. The Government argues that, under Act No. 3475/2006 on the "Organisation and operation of secondary vocational training" (Official Gazette No. 146/A/13-07-2006), the apprenticeship lasts 2 years, including 4 terms of theory classes in the apprenticeship schools run by the OAED (employment agency) and practical instruction in the public or private sector. It explains that this same system applies to vocational schools (EPASs) targeted at persons who have completed secondary education. The training provided in EPASs lasts 2 years (4 terms) and is free of charge. During the period of practical instruction, apprentices receive remuneration and are insured by their employers to whom the OAED awards incentives, in an effort to increase the number of apprentices employed. Detailed information about the number of persons who received practical instruction in the years 2007, 2008, 2009 and 2010 and the relevant budgets is provided by the Government. The Government concludes that apprenticeship contracts provided for by article 74§9 of Act No. 3863/2010 are not contrary to article 10§2 of the European Social Charter (…), in line with and separately from the vocational training and apprenticeship system.

B – Assessment of the Committee

36. Under Article 10§2, young people have the right to access apprenticeship and other training arrangements (Conclusions XIV-2, Interpretative statement of Article 10§2, p. 61). Apprenticeship is defined by the Committee for the purpose of assessing conformity with Article 10§2 as involving "training based on a contract between the young person and the employer" which is regulated by a body of rules which govern the length of the apprenticeship, the division of time between practical and theoretical learning, the manner in which apprentices are selected, the selection and qualifications of trainers; the remuneration of apprentices; and termination of the apprenticeship contract. Besides the traditional apprenticeship system, other training arrangements can also be implemented in order to satisfy Article 10§2 as long as they combine both

theoretical and practical vocational training and maintain close ties between training establishments and the working world (Conclusions XIV-2, Interpretative statement of Article 10§2, p. 60). However, once again, such alternative arrangements must be governed by a coherent framework of rules which regulate the relationship between workplace experience and educational provision.

37. Except for the length of the apprenticeship contracts (one year) and the matter of remuneration (70% of the minimum wage or daily wage set by the National General Collective Agreement), Section 74§9 does not regulate the other key aspects listed above of an apprenticeship relationship: it merely states that such contracts are to be concluded to enable the young persons concerned to acquire vocational skills. In this respect, the Government points out that apprenticeship contracts provided for by Section 74§9 aim exclusively at acquiring work experience through employment and irrespective of whether or not the persons concerned attend some educational programme.

38. The provisions of Act No. 3475/2006 do not appear in fact to provide any indication as to how time should be divided between theoretical and practical instruction, how apprentices should be selected, how trainers should be selected, and how apprentices should be remunerated. Furthermore, the relationship between the secondary vocational training introduced by the above-mentioned act and the "apprenticeship contracts" referred to in Section 74§9 of Act No. 3863/2010 do not appear to be clearly delineated. With this in mind, the Committee considers that the apprenticeship system provided for in Act No. 3475/2006 cannot be deemed to "compensate" for the deficiencies noted in relation to the "special apprenticeship contracts".

39. Furthermore, the Committee noted that on the basis of the Ministerial Council Act No. 6 of 28-2-2012 - Regulation of issues concerning the application of article 1§6 of Law No 4046/2012 - Article 1§1:

"(…) From 14-2-2012 onwards, the minimum wage and daily wage for young persons under the age of 25 set by the National General Labour Collective Agreement in force since 15-7-2010, as they were provided for and applied on 1-1-2012, are

decreased by 32%. The minimum wage and daily wage mentioned above that are decreased by 32% also apply to the apprentices referred to in article 74§9 of Law No3863/2010 (…)”.

40. As a result, - the Committee considers that since the provisions of Section 74§9 do not provide for an adequate system of apprenticeship and other systematic arrangements for training young boys and girls in their various forms of employment, they are not in conformity with Article 10§2

41. Therefore, the Committee holds that there is a violation of Article 10§2 of the 1961 Charter.

IV. ALLEGED VIOLATION OF ARTICLE 12§3 OF THE 1961 CHARTER

42. Article 12§3 of the 1961 Charter reads as follows:

Article 12 – The right to social security

Part I: “All workers and their dependents have the right to social security.”

Part II: “With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake: (…)

§3. to endeavour to raise progressively the system of social security to a higher level (…)”.

A – Submissions of the parties

1. The complainant organisations

43. The complainants submit that under Section 74§9, social security coverage is confined to sickness benefits in kind, while excluding sickness allowances and the reimbursement of prescription charges, and to occupational accident coverage at a rate of 1%. GENOP-DEI and ADEDY consider that such coverage is “extremely limited and rudimentary”.

2. The respondent Government

44. In its submissions on the merits, the Government does not make any specific comments on the alleged violation of Article 12§3 of the 1961 Charter.

B- Assessment to the Committee

45. The provisions contained in Section 74§9 represent a substantial change in the social security system, which appear to establish a distinct category of workers with qualified entitlement to social security. In this respect, the Committee confirms its interpretation according to which changes to the social security system are first of all assessed under Article 12§3 which provides for the obligation to raise progressively the system to a higher level (Conclusions XIV-1, Interpretative statement of Article 12, p. 47 Conclusions XVI-1, Interpretative statement of Article 12, p. 11). In that respect, as noted in § 7 above, the Committee considered that the complainants' allegations, in substance, concern Article 12§3 and not Article 12§2 as originally argued. On this basis, the Committee invited the Government to make submissions on the said allegations in respect of Article 12§3.

46. Bearing in mind the special conditions of social security for workers employed in the framework of special apprenticeship contracts (insurance coverage in-kind, coverage against accident risk at a rate of 1%), the Committee in particular asked the Government to provide information on the following aspects:

- the reasons given for the special conditions of social security applied to apprenticeship contracts, the necessity of these conditions as well as the results obtained by their implementation;
- the existence of measures of social assistance for those who find themselves in a situation of need as a result of the implementation of the above-mentioned conditions.

The Government did not make any submissions in respect of these specific issues.

47. Article 12§3 requires state parties to 'endeavour to raise progressively the system of social security to a higher level'. In this respect, the Committee recognises that it may be necessary to introduce measures to consolidate public finances in times of economic crisis, in order to ensure the maintenance and sustainability of the existing

social security system. However, any such measures should not undermine the core framework of a national social security system or deny individuals the opportunity to enjoy the protection it offers against serious social and economic risk. Therefore, any changes to a social security system must maintain in place a sufficiently extensive system of compulsory social security and refrain from excluding entire categories of worker from the social protection offered by this system) (Conclusions XVI-1, Interpretative statement of Article 12, p. 11). The Committee considers that financial consolidation measures which fail to respect these limits constitute retrogressive steps which cannot be deemed to be in conformity with Article 12§3.

48. In the instant case, the Committee considers that the highly limited protection against social and economic risks afforded to minors engaged in 'special apprenticeship contracts' under Section 74§9 of Act No. 3863/2010 has the practical effect of establishing a distinct category of workers who are effectively excluded from the general range of protection offered by the social security system at large and that this represents a deterioration of the social security scheme which does not fulfil the criteria to be compatible with Article 12§3 of the 1961 Charter.

49. Therefore, the Committee holds that there is a violation of Article 12§3 of the 1961 Charter.

B) With regard to the alleged violation of Article 4§1 taken in conjunction with Article 1§2 of the Charter by Section 74§8 of Act No. 3863:

ALLEGED VIOLATION OF ARTICLE 4§1 TAKEN IN CONJUNCTION WITH ARTICLE 1§2 OF THE 1961 CHARTER

50. Articles 4§1 and 1§2 of the 1961 Charter read as follows:

Article 4 - The 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:

§1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living; (…)”.

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Parties undertake: (…)

§2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon; (…)”.

A – Submissions of the parties

1. The complainant organisations

51. The complainants maintain that in order to show that Section 74§8 is incompatible with the Charter, it is necessary to consider Articles 4§1 and 1§2 in conjunction with each other. They accordingly consider that under Article 4§1 the right to a fair remuneration is satisfied when employees and their families can afford a decent standard of living, which is assessed as a percentage of the national average wage.

52. Furthermore, referring to the Committee’s case law, GENOP-DEI and ADEDY maintain that Article 1§2 entails, inter alia, "the eradication of all forms of discrimination in employment" (Conclusions I, p. 15) and that “discrimination is not just an unjustified difference of treatment but may also arise by failing to take due and positive account of all relevant differences (see Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52).” GENOP-DEI and ADEDY make the point here that:

“this principle is recognised both by the Court of Justice of the European Union (see judgment of 17 July 1963, Case 13-63, Italian Republic v Commission of the European Economic Community, CJEC 1963, p.335) and by the European Court of Human Rights (judgment of 6 April 2000, Thlimmenos v. Greece, no. 3469/97, ECHR 2000-IV, §44)”.

53. With regard more specifically to labour legislation, GENOP-DEI and ADEDY observe that “according to the Committee, (Conclusions XVI -1, Austria; Conclusions 2006, Albania), the discriminatory acts and provisions prohibited by Article 1§2 are all those which may occur in connection with employment conditions in general and, in particular, remuneration”. They further state that the ban on discrimination under Article 1§2 applies to all grounds for discrimination, including age.

54. In this connection, the two trade unions point out that Section 74§8 means that persons up to the age of 25 are all placed on the same low level of pay, with no account taken of differences in age and personal circumstances, such as level of education and training, family situation, etc., simply because they are new entrants to the labour market. They conclude from this that persons under the age of 25 may be denied fair remuneration in a manner which is not in conformity with Article 4§1 taken together with Article 1§2. Furthermore, they allege that such persons are subject to direct discrimination based on age, which is also not in conformity with Article 4§1 taken together with Article 1§2.

2. The respondent Government

55. Given the general considerations concerning Greece’s economic situation (see above), the Government observes that thanks to the legislation in question, a financial incentive to employ young persons up to the age of 25 has been created, which is necessary if the acute problem of unemployment encountered by persons belonging to this age group, in comparison with other age groups, is to be resolved. The Government further considers that the minimum wage offered to young newly hired persons ensures a decent living for them, since it is determined by the social partners through the conclusion of the National General Labour Collective Agreement, which defines the minimum legal wages applicable all over the country.

B – Assessment of the Committee

56. After examination of the issues at stake, the Committee considered that it would assess the question of fair remuneration separately from the question of age discrimination.

Fair remuneration

57. In order to be considered fair within the meaning of Article 4§1 a wage must be above the poverty line in a given country i.e. 50% of the national average wage (Conclusions XIV-2, Interpretative Statement of Article 4§1, p. 50-52). In addition, in principle a wage must not fall below 60% of the national average wage (including special bonuses and gratuities and after deduction of taxes and social security contributions; social transfers – e.g. social security allowances or benefits – are taken into account only when they have a direct link to the wage), unless a state is able to demonstrate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living. However, a net wage which is less than half the net national average wage will be deemed to be unfair. When a national minimum wage exists, its net value is used as a basis for comparison with the net average wage. The yardstick for comparison is otherwise provided by the minimum wage determined by collective agreement.

58. In order to be able to assess whether the wages of the young persons employed under Section 74§8 satisfy the requirements laid down in the Charter the Committee asked the Government to provide information on the amount of the current minimum legal wage determined by social partners through the conclusion of the National General Labour Collective Agreement which would apply to workers employed under Section 74§8.

59. In this respect, in its additional submission the Government provided the following information:

"By virtue of the National General Labour Collective Agreement of 15-7-2011, it was determined by the social partners that the minimum wage and daily wage of the workers of the country, as defined on 31-5-2011 on the basis of the National General Labour Collective Agreement for the years 2008-2009, are increased, as from July 1st 2011, by a rate equal to the rate of the annual change in the European inflation for the

year 2010. This rate was set at 1,6%; hence, the minimum wage set as of 1-7-2011 amounts to 33,57 Euro (for a worker that is not married and has no previous service).

Furthermore, by virtue of the Ministerial Council Act "Act 6 of 28-2-2012, Regulation of issues concerning the application of article 1§6 of Law No 4046/2012", article 1§1 stipulates that "from 14-2-2012 onwards, the minimum wage and daily wage set by the National General Labour Collective Agreement in force since 15-7-2010, as they were provided for and applied on 1-1-2012, are decreased by 22% (…)".

60. From a general point of view the Committee considers that it is permissible to pay a lower minimum wage to younger persons in certain circumstances (e.g. when they are taking part in an apprenticeship scheme or otherwise engaged in a form of vocational training). Such a reduction in the minimum wage may enhance the access of younger workers to the labour market and may also be justified on the basis that it reflects a statistical tendency for them to incur lower expenditure on average than other categories of workers when it comes to housing, family support and other living costs. However, any such reduction in the minimum wage should not fall below the poverty level of the country concerned.

61. In this respect, the Committee notes the information on minimum wage levels contained in the Conclusions of the Report on the High Level Mission to Greece (Athens, 19-23 September 2011) of the International Labour Organization (ILO):

"309. The mission has also been informed that there is no concept of a subsistence wage in Greek labour law, and that based on statistical information examined in conjunction with EUROSTAT, the poverty level has been set at approximately €580 per month. The current minimum wage as set in the national general collective agreement is at €730. The High Level Mission was informed that, after tax, take home pay for many workers on the minimum wage is close to the poverty line. Furthermore, a number of significant factors seem to exert downward pressure on wages. Data from ELSTAT indicates that approximately 20 per cent of the population is at risk of falling below the poverty line (…).

312. On the basis of commitments taken in the Memoranda, sub-minimum wages have been introduced for young workers in order to boost youth employment (…)".

62. Furthermore, the Committee notes that the Government informed the Committee in its additional submission that:

"By virtue of the Ministerial Council Act No 6 of 28-2-2012 - Regulation of issues concerning the application of article 1§6 of Law No 4046/2012, [Article 1§1 stipulates that] "(…) from 14 February 2012 onwards, the minimum wage and daily wage for young persons under the age of 25 set by the National General Labour Collective Agreement in force since 15-7-2010, as they were provided for and applied on 1st January 2012, are decreased by 32% (…)".

and that :

"Article 74§8 of Law No 3863/2010, article 43 of Law No 3986/2011, as well as any other regulation that are contrary to the provisions of this paragraph are abolished".

63. The Committee therefore understands that, on the basis of Ministerial Council Act No. 6/2012, Section 74§8 of Act 3863/2010 is abolished and that the reduction of 32% of the minimum wage set out in Council Act No. 6/2012 now applies to all employed persons under the age of 25.

64. Taking this data and the submissions of the parties into account, and considering in particular the extent to which the minimum wage for younger workers is now substantially below the national minimum wage, the Committee concludes that the minimum wage for younger workers now appears to have fallen below the poverty level.

65. With this in mind, the Committee holds that the provisions of Section 74§8 of Act 3863/2010 and now Section 1§1 of Ministerial Council Act No 6 of 28-2-2012 constitute a violation of Article 4§1 of the 1961 Charter insofar as they provide for the payment of a minimum wage to all workers below the age of 25 which is below the poverty level.

Discrimination

66. In respect of the allegation of age discrimination, the Committee considered that, Article 1§2 of the 1961 Charter being a substantial provision belonging to Parts I

and II of the Charter - contrary to Article E of the Revised Charter which belongs to Part V – cannot be taken together with any other substantial provisions of the 1961 Charter in the same vein as article E can. With this in mind, any allegation of discrimination related to the implementation of Article 4§1 of the 1961 Charter can only be read in the light of the non-discrimination clause of the Preamble to the 1961 Charter. With this in mind, the Committee considers that the allegation, presented by the complainants, of a violation of Article 4§1 read in conjunction with Article 1§2 is , in substance, an allegation of a violation of Article 4§1 read in the light of the Preamble to the 1961 Charter, which in respect of discrimination reads as follows:

" (…) Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin; (…)".

67. The Committee therefore invited the Government to provide any comment it wished to make on whether the provisions of Section 74§8 were in conformity with Article 4§1 read in light of the non-discrimination clause of the Preamble to the 1961 Charter3. No comments were made by the Government in respect of this specific issue. However, as noted at § 55, the Government has justified the differential treatment of younger workers on the basis that it encourages employers to hire such workers and therefore aids their integration into the labour market.

3 Cf. Letter of the Secretariat to the Government of 6 February 2012 (No. 50/2012).

68. Providing for the payment of a lower minimum wage to workers below the age of 25 involves a difference of treatment based on age. However, the Committee considers that it is open to a state to demonstrate objective justification for the payment of a lower minimum wage to younger workers, if this can be shown to further a legitimate aim of employment policy and be proportionate to achieve that aim. Applying this test to the facts at issue, the Committee is of the view that the less favourable treatment of younger workers at issue is designed to give effect to a legitimate aim of employment policy, namely to integrate younger workers into the labour market in a time of serious economic crisis. However, the Committee considers that the extent of the reduction in the minimum wage, and the manner in which it is

applied to all workers under the age of 25, is disproportionate even when taking into account the particular economic circumstances in question.

69. As such, the Committee considers that the provisions of Section 74§8 of Act 3863/2010, and now Section 1§1 of Ministerial Council Act No 6 of 28-2-2012, are not in conformity with Article 4§1 in the light of the non-discrimination clause of the Preamble of the 1961 Charter.

70. Therefore, the Committee holds that there is a violation of Article 4§1 of the 1961 Charter in the light of the non-discrimination clause of the Preamble to the 1961 Charter.

CONCLUSION

71. For these reasons, the Committee concludes:

− unanimously that there is no violation of Article 1§1 of the 1961 Charter ;

− unanimously that there is no violation of Article 7§§ 2 and 9 of the 1961 Charter;

− unanimously that there is a violation of Article 7§7 of the 1961 Charter ;

− unanimously that there is a violation of Article 10§2 of the 1961 Charter ;

− unanimously that there is a violation of Article 12§3 of the 1961 Charter ;

− unanimously that there is a violation of Article 4§1 of the 1961 Charter in the light of the non-discrimination clause of the Preamble to the 1961 Charter .

Colm O'CINNEIDE	Luis JIMENA QUESADA	Régis BRILLAT
Rapporteur	President	Executive Secretary