

Labour measures of Memorandum II before the Greek Council of State: Decision 2307/2014 (Plenum)

Matina Yannakourou (European University Cyprus, S.Yannakourou@euc.ac.cy)

On 27 June 2014, the Greek Council of State in Plenum issued Decision 2307/2014 declaring all labour law measures implementing the second Memorandum of Understanding (MoU) in compliance with the Greek Constitution, the TFEU (arts 125 and 136), the ECHR (art 11 and art 1 of its 1st Additional Protocol) and ILO Conventions 87, 98 and 154, except those measures amending recourse to labour arbitration, which were found contrary to the principle of collective autonomy as guaranteed in the Greek Constitution (art 22 para 2). The Decision was the result of appeals lodged in March and April 2012 by nine trade unions, including the General Confederation of Workers of Greece (GSEE), contesting the validity of Ministerial Act 6/2012 which implemented the austerity labour measures contained in the second MoU.

The provisions of this Act allow the legislator to regulate exclusively and thus remove from the scope of collective bargaining and collective agreements the following issues: (i) the realignment of the level of the minimum wage, previously determined by the national intersectoral collective agreement; (ii) the maximum duration of collective agreements and the *ex lege* expiration of those already in place for 24 months or more at the time the Act was adopted; (iii) the elimination of unilateral recourse to labour arbitration and the restriction of its scope of application to the basic wage minus any kind of allowances; (iv) the suspension of all automatic wage increases based on time and/or seniority (maturity clauses) established by collective agreements and/or arbitration awards and (v) the removal of “tenure clauses”, that is clauses prohibiting dismissal until an employee reaches a certain age, in existing staff regulations in state-owned company and banks, set by means of company collective agreements.

The Court held that the provisions of Act 6/2012 actually limit the social partners’ power to regulate working conditions and constitute a serious decline in workers’ rights, as well as a weakening of their position against employers. However, the said provisions are integrated in a broader set of arrangements aiming at serving the public and general social interest and were adopted under very exceptional circumstances, before the risk of default and the collapse of the national economy. The provisions in question serve a legitimate objective and do not appear disproportionate, since they are not inappropriate for the achievement of the pursued goal, neither can they be considered unnecessary. Furthermore, the said regulations do not affect the core of the right to collective autonomy, namely the right to freedom of association and the right to strike (arts 22 and 23 of the Greek Constitution), since employees are still granted the right to pursue the improvement of their job position and the mitigation of the negative crisis incidences on their working conditions, either through collective bargaining or the exercise of their right to strike.

In line with its seminal Plenum Decision 668/2012 (concerning public sector wage and pension cuts following the first MoU), the Greek Council of State thus continues to apply the “theory of exceptional circumstances” or state of emergency theory, although not as soundly as in its previous decision. However, it is obvious that it has abandoned the idea of an overarching financial public interest (invoked for the first time in the Court’s Decision

668/2012), the protection of which could justify extensive violations of fundamental rights. On the contrary, there is a partial return to its consistent pre-crisis case law as to the concept of general social interest, a concept equivalent to the public interest, which justifies restrictions to the right of collective autonomy only under strict prerequisites: (i) the state intervention in this field must be *exceptional* and *provisional*; (ii) the restrictive measures must be *proportionate* and (iii) the *core* of the constitutional right to collective autonomy *must not be neutralised*.

Indeed, in its Decision 2307/2014 the Court examined almost all of these prerequisites and concluded that they are present, but failed to consider one of major relevant factor: whether the austerity labour measures contained in the Ministerial Act 6/2012 are of provisional nature. It neglected the fact that some of the contested measures, for example the freezing of maturity clauses in collective agreements until the rate of unemployment falls below 10%, are of indefinite duration, since it is clear that they have not been imposed for an explicitly defined and limited period of time.

Is this evidence of a shift towards a more flexible interpretation of the criteria used in the judicial review of restrictions to collective autonomy against the Greek Constitution? It is difficult to say, because the Greek Council of State seems to desperately seek equilibrium points between the legitimization of political choices in times of crisis and the protection of fundamental rights; its crisis-led case law is liable to fluctuations.