The European Committee of Social Rights' stance on the Greek austerity measures: a pan-European wake-up call for a European Social Charter Reform

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A. Introduction

When the "-exit" suffix has become the lifeblood and marketing signature of an ever-growing list of nationalist political parties across the European Union (EU) to shamelessly claw back the votes of a disillusioned constituency, it might be time to pause and reflect on the root causes of such manifestations of distress and reevaluate current policy directions. Whilst the temptation might be to soothe popular exasperation with apologetic speeches, unrealistic promises and Christmas bonuses, history has shown that such quick fixes will only delay unavoidable in-depth reforms while worsening the impacts of the socio-economic and confidence crisis.

In the early stages, the EU had declared an honorable aim to bring both peace and prosperity to people of Europe via enhanced economic partnership. Through successive treaties, the scope of what was first labeled an economic union significantly widened and today, could not objectively be reduced to the four economic freedoms of the European Single Market.[1] Alas, critics have been exacerbated with the economic crisis and its dubious "management" at European and national levels.[2]

However, the *ideological* after-war European construction started before the European Coal and Steel Community, with the signature of the Treaty of London on the 5th of May 1949,[3] which founded the Council of Europe and reaffirmed the commitment of the ten signatory States[4] to "individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy."[5] Today, all 28 Member States (MS) of the EU are parties to the Council of Europe and as such have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In fact, the construction of the EU was interlaced with the Council of Europe's achievements in the realm of human rights, sometimes, admittedly, willy-nilly. Harmonizing the operations of these two institutions remains a

1 CJEU, case C-50/96, *Deutsche Telekom AG v. Lilli Schröder*, ECLI:EU:C:2000:72: the EU "*is not merely an economic union but is at the same time intended, by common action, to ensure social progress and seek constant improvement of the living and working conditions of the peoples of Europe*" (para. 55).

2 *Yannakourou/Tsimpoukis*, Comp. Labor Law & Policy Journal, Vol. 35, No. 3, 2014, p. 333: "*It illustrates a broader paradigm shift in labour law consisting in the replacement of afterwar humanitarian labor law model with a neo-liberal economic model of market supremacy over labor rights*".

3 Statute of the Council of Europe, ETS No.001, 05/05/1949.

4 Ten first signatory States: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom.

5 Ibid., (fn. 3), Preamble.

work in progress, as discussed later in this contribution. The convergence has been uneven for the type of human rights concerned, and especially deficient for social and economic rights, enshrined in the European Social Charter (ESC),[6] the twin sister of the ECHR. In the last decade, this had led the European Committee of Social Rights (ECSR or Committee), the quasi-judicial monitoring body of the ESC, to issue a series of decisions exposing situations of violation of social rights in EU MS, in Greece in particular, situations that were kindled directly or indirectly by the EU's institutions' rebukes to the MS concerned.

After coming back briefly to the genesis of the ESC and the functioning of its monitoring mechanisms, this contribution will argue that these are essential to realizing long-term concrete protection of social and economic rights in Europe, as illustrated by the Greek saga cases. Unfortunately, the political stalemate that brushed off endeavors to revive the ESC's main text and protocols, as well as entrenched positions of the EU institutions on the Greek situation, are of ill-omened nature for the future of social rights in Europe, despite some superficial attempts to bridge the divide.

B. The potential of the ESC unveiled by the ECSR's case-law on Greek reforms

I. The system set up by the ESC

1. A progressive consolidation

The ESC was adopted in 1961 in Turin, more than a decade after the ECHR was opened for signature in Rome, transposing at European level the principles of indivisibility, interdependency, and interrelation of human rights.[7]

Toward the end of the Cold War, the original text and modalities were extended, and the authority of the supervisory mechanism reinforced in four successive steps. The first additional Protocol[8] enlarged the catalog of rights protected by the ESC to three labor-related rights and the right to access social protection for elderly persons. The second Protocol,[9] or "Turin Protocol", clarified the allocation of responsibilities of the different bodies involved in its monitoring and the enforcement of the decisions

6 European Social Charter, ETS No.035, 18/10/1961. It entered into force in 1965 after the ratifications of the United Kingdom, Norway, Sweden, Ireland and Germany (chronological order).

7 Vienna Declaration and Programme of Action, A/CONF.157/23, 25/06/1993, para. 5.

8 Additional Protocol to the ESC, ETS No. 128, 05/05/1988 – hereafter "1988 Additional Protocol".

9 Protocol amending the ESC, ETS No. 142, 21/10/1991 – hereafter "Turin Protocol".

of the ECSR.[10] The third Protocol[11] provides for a system of collective complaints, a procedure that will be discussed in more detail in this paper. It entered into force in 1998 and applies today to 15 contracting parties.[12] Finally, the original ESC text was overhauled and a new revised Charter[13] opened for signature in 1996, entering into force in 1999. This last revision became necessary to absorb the evolution of social and economic rights achieved through EU and national laws and systems.[14] To date, 34 out of the 47 MS of the Council of Europe have ratified the revised Charter; nine States are signatories of the first Charter alone; and four States haven't ratified any: Switzerland, Liechtenstein, Monaco, and San Marino. All EU MS are parties to either one of the Charter's versions.[15]

2. Content and à la carte system

The ESC is divided into six parts. The "meat" is contained in the second part, which lists in 31 articles the rights that are protected by the Charter. The following part sets the *à la carte* ratification system of the Charter, whereby each party is bound to accept at least six of the "hard-core" provisions[16] and a number of articles (at least 16) or paragraphs (at least 63) of the second part.[17] The fourth part of the Charter concerns the follow-up by the ECSR, and the fifth part lists a number of specific clauses, among which the non-discrimination clause (Art. E), which is applicable in correlation with

10 To enter into force, this Protocol requires ratification by all State parties to the original Charter at the date on which the Protocol was opened for signature. However, at the outcome of the Ministerial Conference where the Turin Protocol was adopted, the participating Ministers requested "*both the States party to the Charter and the supervisory bodies to envisage the application of certain of the measures provided for in this Protocol before its entry into force, in so far as the text of the Charter will allow*." Therefore, the Committee of Ministers of the Council of Europe has progressively decided to apply the provisions of the Turin Protocol, in particular Art. 1 (on the communication of copies of reports and comments), Art. 2 (examination of the reports), parts of Art. 3 (regarding the ECSR: members can be more than nine experts, six-year mandate renewable once, independence and impartiality requirements); only the disposition of its Art. 3 providing for the election of the members of the ECSR by the Parliamentary Assembly of the Council of Europe is still not applied.

11 Additional Protocol to the ESC Providing for a System of Collective Complaints, ETS No. 158, 09/11/1995 – hereafter "1995 Protocol".

12 Of which 11 EU MS.

13 ESC (revised), ETS No. 163, 03/05/1996. In the following pages, I will use "ESC", "Charter" or "revised Charter" to refer to the revised ESC and use "1961 Charter" or "original Charter" to refer to the first version of the treaty.

14 Explanatory Report to the 1988 Additional Protocol, para. 13.

15 Among EU MS, only Croatia, Czech Republic, Denmark, Germany, Luxembourg, Poland, Spain and the United Kingdom haven't ratified the revised Charter.

16 These hardcore provisions are the right to work (Art. 1), the right to organize (Art. 5), the right to collective bargaining (Art. 6), the right of children and young persons to protection (Art. 16), the right of migrant workers and their families to protection and assistance (Art. 19) and the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Art. 20).

17 To date, only France and Portugal have chosen not to make use of this scheme and have ratified the totality of the articles of the revised Charter.

all the provisions of the second part accepted by the parties. The first and last parts of the Charter are the usual treaty sections covering political commitments and modalities of entry into force.

3. Monitoring mechanisms

The implementation of the undertakings of the ESC is ensured via two mechanisms: the reporting procedure and the collective complaints procedure, both in the hands of the ECSR. This monitoring body is composed of 15 independent experts of "recognized competence in international social questions", appointed by the Committee of Ministers of the Council of Europe[18] to serve a six-year mandate, renewable once.[19]

a) The reporting procedure

The default monitoring of the Charter, mandatory for all State signatories, consists of a reporting system, which is a classic feature of numerous international human rights treaties. Since a decision taken by the Committee of Ministers in 2002,[20] all the State parties to either version of the Charter have to submit a yearly report to the ECSR on the implementation *de facto* and *de jure* of both accepted and non-accepted provisions of one of the four groups of rights enshrined in the Charter.[21] In order to alleviate the burden on States having ratified the 1995 Protocol, the Committee of Ministers decided in 2014[22] that these 15 States will be subject to a less stringent procedure following which they will only have to submit a simplified report on one of the four groups of rights every two years.

On the basis of these reports, the ECSR will adopt conclusions of conformity or non-conformity or invite the government to provide more information on specific points on which it had insufficient elements to assess compliance with the provisions of the Charter. The follow-up of the conclusions, which have a declaratory value, is the responsibility of the Committee of Ministers who "shall adopt, by a majority of two-thirds of those voting, (…) a resolution covering the entire supervision cycle and containing individual recommendations to the Contracting Parties concerned."[23] These resolutions are adopted on the basis of the draft decisions prepared by the

18 Hereafter referred to as "Committee of Ministers".
19 Art. 25 of the 1961 Charter.
20 *Committee of Ministers*, Decision No. 821/4.1c, Governmental Committee of the ESC Implementation of Art. 22 of the Social Charter (non-accepted provisions), 13/12/2002.
21 In a 2006 decision, the Committee of Ministers divided the rights enshrined in the Charter in four groups of rights: employment, training and equal opportunities; health, social security and social protection; labor rights; children, families, migrants. Committee of Ministers, Decision No. 963/4.2, 03/05/2006.
22 *Committee of Ministers*, Decision No. 1196/4.7, 2-3/04/2014.
23 Art. 28(1) of the 1961 Charter as revised by the Turin Protocol.

Governmental Committee, an intermediary body composed of one representative of each of the Contracting Parties.[24]

b) The collective complaints procedure

The objective of the collective complaints procedure introduced by the 1995 Protocol was to give more effectiveness to the rights enshrined in the Charter by encouraging the active participation of labor and trade unions and non-governmental organizations.[25] In brief, the procedure allows for claims of State-violation of the Charter's provisions to be directly introduced before the ECSR by specific social organizations. These complaints can only be lodged by European social partners, national social partners, some non-governmental organizations having a participatory status with the Council of Europe[26] and national non-governmental organizations, if authorized to do so by the State they originate from.[27]

If the complaint is declared admissible,[28] the ECSR will ask the complainant organization, the State concerned and other interested parties[29] to submit relevant additional information. It may decide to set up a hearing at the request of one of the parties.[30] On the basis of the information that it has been provided, the Rapporteur of the case, appointed by the ECSR's President, will draft a decision on the merits of the complaint.[31] The final decision of conformity or non-conformity is transmitted to the parties, the Parliamentary Assembly (PACE) and the Committee of Ministers, who has to publish it within four months.[32]

The Committee of Ministers is here again in charge of the follow-up of the ECSR's decisions and adopts on their basis a resolution or in more serious cases, a recommendation.[33] At a later stage, the ECSR will re-examine the cases where it took a decision of non-conformity through the follow-up reports submitted by the contracting parties.[34]

24 Art. 27 of the 1961 Charter as revised by the Turin Protocol.
25 Preamble of the 1995 Protocol.
26 Only the international NGOs having a consultative status with the Council of Europe that have been chosen by the Governmental Committee, as per Art. 1 of the 1995 Protocol. List of NGOs available at: https://rm.coe.int/gc-2019-18-list-ingos-01-07-2019/1680966edb (16/08/2019).
27 Only Finland granted this right to national NGOs as per the procedure set out in Art. 2(1) of the 1995 Protocol: Finland's Declaration to the 1995 Protocol, 21/08/1998.
28 The admissibility is based on the respect of the criteria set out by Art. 3 to 5 of the 1995 Protocol.
29 That may be International Organizations or other States parties to the 1995 Protocol, Art. 7(2).
30 Art. 7(4) of the 1995 Additional Protocol.
31 Rule 27 of the Rules on the functioning of the ECSR, 10/09/2019.
32 Art. 8 of the 1995 Protocol.
33 Art. 9 of the 1995 Protocol. A resolution is adopted by simple majority of those voting while a recommendation requires a majority of two-thirds of those voting.
34 Art. 10 of the 1995 Protocol, as modified by the decision of the Committee of Ministers No. 1196/4.7, 2-3/04/2014.

This quasi-judicial procedure is a fast-track process that takes a bottom-up approach to social rights. Firstly, it is a first resort procedure[35] and the average time for the adoption of a decision on the merits from 1998 to 2018 was 14.9 months,[36] which is a rather short time. In addition, due to its collective nature, a decision taken by the ECSR at the outcome of this quasi-judicial process, if respected by the State concerned, should have a wide structural impact and help improve the situation of a group of individuals. No financial remedy can be awarded by the ECSR, but as Urfan Khaliq puts it, it might not be "providing alleviation of the wrongs of the right to an individual, but to everyone who is affected."[37] Finally, the collective complaints procedure adds up to the dynamism of the Charter, no longer confined to the timeline and administrative formalities of the reporting procedure, where the respect of one group of rights is only assessed every four years on the basis of reports submitted by the contracting parties themselves.[38]

II. The collective complaints against Greece

The rights safeguarded by the Charter have been particularly threatened following the economic crisis, and the delicate financial situation it brought upon Greece. The collective complaints procedure allowed labor organizations to step up and react promptly to new (de)regulations and measures, leading to an increasingly precarious social and working environment. In this context, the ECSR acted not only as a guardian of social rights but also as a counterweight to international financial institutions with little regard for social rights, which was particularly clear in the decision *Greek General Confederation of Labour (GSEE) v. Greece*.[39]

35 The fact that domestic remedies have not been exhausted or that a parallel domestic procedure is pending are no obstacles to the admissibility of the complaint before the ECSR.

36 *ECSR*, 2018 Activity Report of the ECSR, p. 15; available at: https://rm.coe.int/activity-report-2018-of-the-european-committee-of-social-rights/168097333a (26/09/2019). To note however that the average processing time increases each year, with 24.8 months for the 9 decisions on the merits issued in 2018.

37 *Khaliq*, General Report of the Turin I Conference, October 2014, p. 32; available at: https://rm.coe.int/168048acf8 (19/08/2019).

38 Giuseppe Palmisano underlines the risk of "*mere bureaucratic and routinaire exercise*" in a Lecture on Challenges and prospects of the European system for the protection of social rights: the ESC and the relationship between the Charter and EU law, FRAME, Brussels, 28/11/2016; available at: http://www.fp7-frame.eu/wp-content/uploads/2016/10/November-28-FRAME-lecture_Palmisano.pdf (19/08/2019). To note that the ECSR can also rely on comments on the reports presented by national organizations members of international organizations of employers and trade unions that were invited to be represented at meetings of the Governmental Committee (Art. 23 of the 1961 Charter as revised by the Turin Protocol).

39 ECSR, Decision on the Complaint No. 11/2014, *Greek General Confederation of Labour (GSEE) v. Greece*, 23/03/2017.

1. Background of the cases

Greece's so-called bankruptcy forced the EU's institutions to take quick measures that were deemed essential to safeguard the stability of the Eurozone. These measures consisted in three "bail-out packages" or "economic adjustment programmes" negotiated over the course of eight years between the European Commission (the Commission), the European Central Bank (ECB) and the International Monetary Fund (IMF), usually referred to as the "Troika", and the Greek government, whereby Greece were to receive several hundreds of billions of euros in exchange for its commitment to cut public expenses and adopt measures to increase competitiveness.[40]

In the First Economic Adjustment Programme for Greece, the Commission encouraged the Greek government to pursue reforms "to modernize the public sector, to render product and labor markets more efficient and flexible, and create a more open and accessible business environment for domestic and foreign investors",[41] noting that "large cuts in public wages and pensions are inevitable",[42] adopting the view that reforms which give more flexibility to employers would improve the labor market situation.[43] The text is also clear on collective bargaining and incites the Greek government to set up a new system of decentralized social bargaining, to introduce new and lower wages for young people and people having been unemployed for a certain period of time, and to ease the rules on dismissal.[44] With these clear directions on what kind of reforms Greece will need to undertake, the Memorandum of Understanding of the First Programme leaves it up to the Greek government to maneuver while respecting social rights, and recalls Greece's commitment to "fairness in their implementation."

In the Memorandum on the Second Economic Adjustment Programme for Greece, the Commission validates the labor market measures implemented by Greece.[45] It also includes a paragraph on the First Programme and Social Equity, emphasizing that the reforms tried to spare the most vulnerable in society and that the new flexible labor rules in terms of wages and collective bargaining aimed at tackling the high unemployment rate, especially among the youth.[46] Regarding the labor market, it recalls that the measures adopted were necessary to allow more flexibility in terms of employment but, as they did not lead to the expected results, it recommended the intro-

40 The first (May 2010), second (March 2012) and third (August 2015) economic adjustment programmes are available at: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-greece_en#first-programme-for-greece (16/08/2019).

41 *European Commission*, First Economic Adjustment Programme, Occasional Papers No. 61, 26/07/2010, para. 10.

42 Ibid., para. 21.

43 Ibid., para. 26.

44 Ibid., para. 41.

45 *European Commission*, Second Economic Adjustment Programme for Greece, Occasional Papers No. 94, March 2012, p. 3.

46 Ibid., p. 8.

duction of further measures, in particular, the drafting of new legislation regarding legal wages and working time.[47]

On the basis of what had been agreed with the Troika and prescribed by the Commission in the First and Second Memoranda, Greece undertook a number of substantial social reforms. In particular, six legislative acts were discussed in the latest case against Greece,[48] four adopted under the First Memorandum, and two under the Second:

The Act No. 3863/2010 adopted on the 15th of July 2010 providing a new social security system, decreased the minimum legal wage for apprentices aged between 15 and 18 years old to 70 percent of the minimum daily wage.

The Act No. 3899/2010, adopted on the 17th of December 2010, introduced a new probation period of 12 months, that could be terminated without notice or severance payment.

The Act No. 4024/2011 adopted on the 27th of October 2011 on pension schemes, workers' remuneration and other provisions backing-up the medium-term fiscal strategic plan 2012-2016; this Act was challenged as it was seen as allowing collective bargaining to happen at the company level, by newly created "association of persons", persons who could not claim independence from the employer.

The Act No. 6/2012 adopted on the 28th of February 2012 reduced minimum wages and salaries by 22 percent, and by 32 percent for employees aged under 25 years old, trainees and apprentices. It also made the rules on termination of open-ended contracts by the employer more flexible.

The Act No. 4093/2012 adopted on the 12th of November 2012 fixed new minimum wages, limited salary raises, and introduced substantial changes in the working time regulation, allowing more companies to opt-out from the five working days and reducing the minimum time for daily rest.

The Act No. 4254/2014 adopted on the 7th of April 2014 increased the cases where employers can have recourse to temporary work agencies.

The conformity of some of these Acts to the provisions of the 1961 Charter was challenged in previous complaints and examined in the reporting procedure.

2. The first series of cases against Greece

In the first decision adopted on the 23rd of May 2012 on the complaint No. 65/2011,[49] the ECSR concluded that Act No. 3899/2010 violated Art. 4(4) of the 1961 Charter[50] in so far as the excessively long probation period it allowed rendered ineffective the right to a reasonable notice for termination of employment, which could not be claimed during the probation period. In another decision adopted on the same

47 Ibid., paras 42 and 45.

48 ECSR, No. 111/2014, *GSEE v. Greece.*

49 ECSR, No. 65/2011, *General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece*, 23/05/2012.

50 Ibid., para. 26.

day,[51] the ECSR found that dispositions of the Act No. 3863/2010 were infringing young people's right to not less than three weeks' holiday per year as protected by Art. 7(7) of the 1961 Charter,[52] and were violating Art. 10(2) regarding the obligation to provide an adequate system of apprenticeship or alternative training for young people,[53] Art. 12(3) regarding the commitment to improve the system of social security progressively,[54] and Art. 4(1) on the right to a fair remuneration read in conjunction with the non-discrimination clause of the Preamble to the 1961 Charter.[55]

In the *IKA-ETAM v. Greece* decision adopted in December 2012,[56] the Federation of employed pensioners of Greece alleged that several acts introduced from May 2010 to October 2011 were violating Art. 12(3) and 31(3) of the 1961 Charter, given the modifications they brought in the public and private pension schemes.[57] After recalling the different steps it takes to assess compatibility with the Charter of measures restricting social security rights, in particular in economic or demographic contexts, the ECSR outlined the disproportionate consequences that the reforms had on the "living conditions of many of the pensioners concerned"[58] and the lack of anterior impacts assessment studies, and concluded to a violation of Art. 12(3) of the 1961 Charter. The ECSR came to the same conclusion in four other complaints challenging the same acts, in four decisions adopted on the same day.[59]

The 2014 conclusions of the ECSR[60] were focused on examining compliance with Art. 2 and 4 of the 1961 Charter, and Art. 2 and 3 of the 1988 Additional Protocol for the period 2009-2012. In particular, the ECSR concluded that Acts No. 4024/2011,

51 ECSR, No. 66/2011, *General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece*, 23/05/2012.

52 The apprenticeship contracts introduced by the Act No. 3863/2010 were depriving apprentices from the three weeks of annual leave during the year that was supposed to last the apprenticeship contract (ibid., paras 25 to 32).

53 Act No. 3863/2010 was very vague regarding the modalities of the apprenticeship (ibid., paras 36 to 40).

54 The ECSR considered that the new provisions relating to apprenticeship in practice had the effect of depriving a category of minors of the benefits of the social security system (ibid., paras 45 to 49).

55 The ECSR drew this conclusion on the basis that the reduction of 32% of the minimum wage for people aged under 25 dragged them below the poverty level, as the standard minimum wage was already low, and that this measure constituted a difference of treatment based on age, disproportionate in regards to the aim pursued and its effects on this category of workers (ibid., paras 57 to 70).

56 ECSR, No. 76/2012, *Federation of employed pensioners of Greece (IKA- ETAM) v. Greece*, 07/12/2012.

57 The Acts concerned were Act No. 3845 of 6 May 2010, Act No. 3847 of 11 May 2010, Act No. 3863 of 15 July 2010, Act No. 3865 of 21 July 2010, Act No. 3896 of 1 July 2011 and Act No. 4024 of 27 October 2011.

58 Ibid., (fn. 56), para. 78.

59 ECSR, No. 77/2012, *Panhellenic Federation of Public Service Pensioners (POPS) v. Greece*, ECSR, No. 78/2012, *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece*, ECSR, No. 79/2012, *Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece*, ECSR, No. 80/2012, *Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece*.

60 ECSR, *Conclusions XX-3*, 05/12/2014.

6/2012 and 3863/2010 were not in conformity with Art. 4(1) of the 1961 Charter, in so far as they lowered the minimum wage below the minimum threshold for decent wages for single workers in the private sector, contractual staff in the civil service and for all workers under the age of 25. In this respect, the ECSR recalled that under Art. 4(1), the minimum wage should be defined to constitute at least 50 percent of the national net average wage. It concluded to the non-conformity of Act No. 3899/2010 with Art. 4(4) of the 1961 Charter regarding the termination of employment contracts during the trial period of 12 months without notice or severance pay. In *GSEE v. Greece*, the question of the conformity of the acts mentioned in these different decisions was raised again, along with the conformity of the Act No. 4254/2014 introduced in 2014.

3. Latest decision: GSEE v. Greece

a) The object of the complaint

Following a complaint lodged in September 2014, the ECSR ruled in March 2017 that Greece failed to comply with its obligations stemming from the 1961 Charter, in particular regarding Art. 1(2), 2(1), 4(1), 4(4) and 7(7), and Art. 3 of the 1988 Additional Protocol, in the case *GSEE v. Greece*. The GSEE was arguing that the series of laws and regulations enacted by Greece in the period 2010-2014, following the economic crisis and under the pressure of the EU (the Commission and the ECB) and the IMF, were endangering a number of social and labor rights protected under the Charter.

In this procedure, the European Trade Union Conference (ETUC),[61] the International Organization of Employers (IOE)[62] and the Commission presented their observations. A hearing was held in October 2016 in Strasbourg. The Commission intervened in support of the Greek government, arguing that the austerity measures were an essential prerequisite for Greece to remain in the Eurozone. It also referred to the Third Memorandum of Understanding with Greece which was approved in

61 The ETUC intervened in favor of the complainant organization and denounced the social and humanitarian turmoil created by the sanctions imposed on Greece by international bodies.

62 The IOE intervened in support of the reforms, arguing that they would have long-term beneficial results on the protection of social rights by improving the competitiveness of companies (taking the view that labor rules need to be flexible to allow employers to adapt to a changing economic environment) and that leaving the Eurozone would have a detrimental effect on the population.

August 2015[63] that was backed-up by a document assessing its social impact.[64] However, this document does not evaluate the social impacts of the first and second memoranda, although it admits that since summer 2014, "the Greek economy fell back again into recession."[65] The Commission limited itself to enumerating measures that should be implemented in accordance with the Third Memorandum to "support the most vulnerable and ensure the fair sharing of the adjustment process."[66] The Third Memorandum comprises only a few social measures to be implemented, relating to a social welfare review and the institution of a guaranteed minimum income and announces further reforms in the pension and health care systems.[67]

As could be expected from its change of administration, the Greek government did not "dispute the merits of the complaint" but reaffirmed its commitment to fulfilling its international obligations and respecting social rights.[68]

b) The analysis of the ECSR

(1) A decision in line with the ECSR's jurisprudence

After excluding the applicability of Art. 30 and 31 of the 1961 Charter,[69] the ECSR followed its previous decisions regarding Art. 4(4) and 7(7) of the 1961 Charter, noting that the situation had not been brought in conformity since it issued its 2012 decisions, as reiterated in its 2015 Conclusions where it followed-up on the situation in Greece.[70]

63 *European Commission*, Memorandum of Understanding between the European Commission acting on behalf on the European Stability Mechanism, the Hellenic Republic and the Bank of Greece (Third Memorandum of Understanding), 19/08/2015.

64 *European Commission*, Assessment of the Social Impact of the new Stability Support Programme for Greece, Commission Staff Working Document, 19/08/2015; available at: https://ec.europa.eu/info/sites/info/files/ecfin_assessment_social_impact_en.pdf (16/08/2019). Rather than a thorough analysis of the social situation in Greece brought by the previous programmes, this assessment focused on specific measures relating to social fairness (in particular, fiscal reforms), labor structure (with a constant focus on "eliminating undue rigidities and constraints") and the social protection system. In this document, it is clear that the Commission is at odds with the ECSR and other human rights institutions' findings. Indeed, it goes on to praise the labor markets reforms implemented by Greece from 2010 to 2014, the same reforms that were found infringing social rights (see sections 2.4 Labour Market and 2.5 Job Creation). The Commission focused on the necessity to create jobs and remedy to youth unemployment by granting employers greater freedom.

65 Ibid., p. 4.

66 Ibid., p. 3.

67 Ibid., (fn. 63), section 2.5.

68 ECSR, *GSEE v. Greece*, (fn. 48), paras 22, 23; this defense is probably due to the change of government, with the election of the Prime Minister Alexis Tsipras from the political party SYRIZA, known to oppose the austerity policy.

69 Art. 30, which sets the conditions under which a State party could derogate from its obligations under the Charter in time of war or public emergency, was inapplicable because Greece did not make use of it at the time it adopted the austerity measures. Art. 31 could not apply as the austerity measures failed to comply with the proportionality requirement.

70 ECSR, *GSEE v. Greece*, (fn. 48), paras 199 to 205 and 226 to 230.

The complainant organization was also claiming a violation of Art. 1(1) protecting the right to work, in so far as the austerity measures had the effect of nearly abolishing the labor rules that had been negotiated before between social partners, preferring to appeal to company agreements defined by associations of persons, the newly created entity with considerably less independence and autonomy from the employer. As a result, employees were deprived of most of their bargaining power. Referring to *GENOP-DEI & ADEDY v. Greece (II)*, the ECSR recalled that Art. 1(1) could not be relied on as the measures relating to labor legislation did not seem to be the direct cause of unemployment in Greece.[71] A member of the ECSR, Petros Stangos, disagreed on this aspect of the decision and wrote a dissenting opinion.[72]

(2) The new elements of the decision

The first new element of the decision is the clarification on what constitutes unreasonable working hours. The ECSR concluded that the austerity measures did not violate the right to a weekly rest period, as guaranteed by Art. 2(5), because a minimum of one-day rest was still guaranteed.[73] Likewise, regarding the daily working hours, the ECSR considered that the reduction of the minimum rest-period to eleven hours was not violating the provisions of Art. 2(1). However, in regards to the weekly working-time, the combination of the increase of the legal threshold of daily working hours and the endorsement of a six-working days per week, with no legal limit of weekly working hours, could create situations where workers would be required to work for 78 hours per week, which the ECSR deemed unreasonable working conditions.[74] In addition, the ECSR referred to data produced by the Organization for Economic Co-operation and Development (OECD) that highlighted that Greece's employees were required to work more hours than in other European countries and that no other initiatives had been taken by the government to increase employees' productivity. It considered the violation to be even more serious as the new regulation and the amendment of the law on collective bargaining did not provide the employees sufficient guarantees to be able to negotiate with employers to determine reasonable working conditions.[75]

Secondly, regarding the prohibition of all forms of discrimination in employment enshrined in Art. 1(2) of the 1961 Charter, the ECSR considered that the decrease of the minimum wage for workers under 25 years constituted a discrimination on the

71 Ibid., paras 125 to 129.

72 Petros Sangros argued that the austerity measures adopted by the Greek government had the detrimental effect of reducing the purchasing power of Greek citizens, with the domino effect of leading to economic lay-offs. He also condemned the "Greek authorities' inertia", who, despite the change of government, had not been able to restore the situation in the five years that have followed the ECSR's first decisions, and considered this to be a "deliberate political choice" contributing to the high and ever-increasing rate of unemployment. ECSR, *GSEE v. Greece*, (fn. 48), Separate dissenting opinion of Petros Stangos, para. 10.

73 ECSR, *GSEE v. Greece*, (fn. 48), paras 162 to 164.

74 Ibid., paras 153, 154.

75 Ibid., paras 157 to 160.

ground of age.[76] The ECSR reasoned that this could not be justified by the legitimate aim to facilitate young workers' access to the labor market, as the measure was manifestly disproportionate.

The ECSR was also asked to decide on the question of the respect of fair remuneration and prohibition of age discrimination arising from Art. 4(1). While it had found already a violation of the right to fair remuneration in its previous decisions against Greece,[77] it extended its conclusion to the Act No. 4254/2014 which reduced the seniority increase of long-term unemployed workers aged over 25.

Then, regarding the right of young workers and apprentices to fair remuneration and allowance protected by Art. 7(5), the ECSR recalled that it had already concluded that the new regulations on minimum wage for workers aged below 25 years brought the minimum wage below the poverty level. Henceforth, it extended its findings to the situation of workers aged 15 to 18 years.

Finally, the ECSR had to address the issue of the respect of the right to take part in the determination and improvement of the working conditions, safeguarded by Art. 3 of the 1988 Protocol. Although the ECSR had rejected the application of this provision in *GENOP- DEI and ADEDY v. Greece (I)* on the basis that the article invoked did not cover the right to collective bargaining and its modalities,[78] it pointed out that the regulations contested by the complainant completely abolished the system of collective bargaining that was in place. Therefore, this lack of participation procedures for workers deprived them of any possibility to participate in negotiations on working conditions and fell within the scope of Art. 3 of the 1988 Additional Protocol.

C. Impacts of the Greek cases: pie-in-the-sky promises and de facto inertia

I. A wake-up call for the European community

In the series of collective complaints against Greece, the ECSR not only secured the rights enshrined in the Charter but also raised the alarm concerning the sustainability of European societies by bringing forward more sociological considerations.[79] As the Secretary General of the Council of Europe highlighted, "the growth rate in itself says little about people's situation or respect for their fundamental rights and their dignity."[80]

76 Ibid., para. 135.
77 ECSR, *GENOP-DEI and ADEDY v. Greece (II)*, paras 56 to 70 (for Ministerial Council Act No. 6/2012).
78 Which is the object of Art. 5 and 6 of the 1961 Charter, that Greece has not accepted.
79 *Nicoletti*, General Report of the Turin I Conference, October 2014, p. 17: "*A frequent response to the current tensions is to assert that social rights should wait until after the crisis because the economic climate is depriving the authorities of the budgetary resources needed to uphold them*".
80 Opinion of the Council of Europe SG Thorbjørn Jagland on the European Pillar of Social Rights, December 2016, para. 29.

1. A motive to strengthen, not downgrade, social protection

The ECSR reaffirmed that the economic crisis, by increasing the vulnerability of individuals, calls for increased solidarity[81] and requires State parties to the Charter to provide strengthened protection to their citizens.[82] Like in previous decisions, the ECSR recalled that States benefit from a large leeway to define what constitutes "public interest"[83] legitimate aim that could justify a limitation of social rights. However, it denied to the Greek State the possibility to avail itself of this justification, noting that the authorities failed to consider the application of alternative or less restrictive measures and that therefore the limitations of social rights was not proportionate to the aim pursued.[84] Indeed, States are still bound to assure their citizens the basic social rights and fulfill their "basic social needs."[85] It is worth noting that, although it is a classic formula, the Committee chose the wording "basic needs" instead of "rights." This formulation appeals to the greater notion of human dignity, which should trump any economic consideration relating to the replenishment of the "public purse."[86] The Committee subsequently reiterated this analysis and warned that accepting to disparage or ignore social rights in those circumstances would amount to "accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems."[87]

81 *ECSR*, General introduction to Conclusions XIX-2, 02/01/2010: "*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*".

82 ECSR, *GSEE v. Greece*, (fn. 48), para. 88.

83 Ibid., para. 84: "*The provisions limiting regulations of working time, pay levels, dismissal protection, etc., are obviously not concerned with protection of the rights and freedoms of others, national security, public health or morals. This is why from among the legitimate aims defined by Article 31§ 1, only the notion of "public interest" is pertinent, given the State's dependency on financial aid provided by European and international creditor institutions imposing strict austerity measures*".

84 Ibid., paras 90, 92; the GSEE decision refers in particular to the adverse effects of the measures on the social and economic situation in Greece, with a higher unemployment and poverty rate, a lower GDP and a raise of the public debt.

85 Ibid., para. 85: "*It is for the national legislature to balance the concerns for the public purse with the imperative of adequately protecting social rights*".

86 As D.J. Harris noted, the Charter does not foresee any limit on States' social obligations linked to their financial resources, as opposed to the ICESCR (Art. 2(1)). This can be explained simply by the fact that the Charter is a European instrument, drafted originally by States that had the financial means to cover their residents' basic social rights, as opposed to an international instrument, encompassing States with much more diverse economic status. *Harris*, in: Kaikobad/Bohlander (eds.), International Law and Power: Perspectives on Legal Order and Justice, 2009, (fn. 47), pp. 11-12.

87 ECSR, *GENOP-DEI and ADEDY v. Greece (I)*, para. 18; ECSR, *GSEE v. Greece*, (fn. 48), para. 88.

2. A decision in line with national and international standpoints

As part of the national applicable laws and practice, the ECSR referred to the Statement of the Greek National Commission on Human Rights (GNCHR)[88] issued in July 2015 on the impact of the austerity measures on human rights.[89] The GNCHR reaffirmed that financing rules deriving from agreements concluded with international or European institutions cannot be used as a means to derogate from other international and/or European human rights treaties. This statement was preceded and followed by a number of similar statements and recommendations issued by the GNCHR since 2010.[90]

As a preamble to the decision, the ECSR referred to statements made by other bodies of the Council of Europe condemning the austerity measures adopted by MS, i.e., the PACE[91] and the Commissioner for Human Rights.[92] The ECSR made other references to international bodies, which expressed concerns and questioned austerity policies adopted in Europe, already mentioned above (the UN CESCR, the OECD). It also cited the EU's core treaties, which both expressly name the Charter as a point of reference for social rights.[93] Furthermore, it noted the conclusions of the ILO Report on the High-Level Mission to Greece,[94] undertaken in September 2011, that the austerity measures adopted were "disconnected from Greek realities."[95]

88 *GNCHR*, Statement on the impact of continuing austerity measures on human rights, 15/07/2015.

89 ECSR, *GSEE v. Greece*, (fn. 48), para. 61.

90 *GNCHR*, The need for constant respects of human rights during the implementation of the fiscal and social exit strategy of the debt crisis, 07/06/2010; *GNCHR*, Recommendation on the imperative need to reverse the sharp decline in civil liberties and social rights, 08/12/2011; *GNCHR*, Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards, 27/06/2013; *GNCHR*, Urgent Statement on Labour and Social Security Rights in Greece, 28/04/2017.

91 The PACE adopted several resolutions on the topic, although only Resolution No. 1884(2012) is mentioned, whereby the PACE reminded MS to use the Charter as a reference for the protection of human rights and recommended: "*a profound reorientation of current austerity programmes, ending their quasi-exclusive focus on expenditure cuts in social areas such as pensions, health services or family benefits*."; *PACE*, Resolution 1884(2012), Austerity measures – a danger for democracy and social rights, 26/06/2012, para. 6; other resolutions include: Resolution 2032(2015), Resolution 2024(2014), Resolution 1888(2012). In Resolution 2203(2018), the PACE took note of "*the adverse impact of the recession and austerity policies on people's social rights, especially those of the most disadvantaged groups of the population*" (para. 10.2.1). In Recommendation 2065(2015), it also called on the Committee of Ministers to conduct a study to establish a "*catalogue of criteria for imposition of austerity measures*" (para. 2).

92 *Commissioner for Human Rights of the Council of Europe*, Safeguarding human rights in times of economic crisis, Issue Paper 2013/2, November 2013.

93 Art. 151 of the Treaty on the Functioning of the European Union (TFEU) and Preamble of the Treaty on the European Union (TEU).

94 *ILO*, Report on the High Level Mission to Greece, 19-23 September 2011, available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/missionreport/wcms_170433.pdf (17/08/2019).

95 Ibid., para. 302.

This solid three-layer base –national, European, and international- gives greater legitimacy to the decision of the ECSR, since its decision only added to the pre-existing literature. It is also an opportunity for the ECSR to remind MS that they did not only commit to respect and promote the list of rights as set forth in the Charter, but also that they consented to do so repeatedly and through various instruments, some of them being guarded by distinct judicial or quasi-judicial bodies, who reached the same conclusions; the ECSR does not stand alone or above these authorities in human rights, but presents a united thrust.

3. A rebuke for the EU institutions

Despite the references to the Treaty on the Functioning of the EU (TFEU) and the Preamble of the Treaty on the EU (TEU) mentioning the Charter, the violations of its provisions emphasize the bridges and gaps existing between EU law, more particularly the Charter of Fundamental Rights of the EU (EU Charter), and the ESC. First of all, the ECSR concluded that the measures implemented by Greece were violating a number of articles of the 1961 Charter that could have their equivalent in the EU Charter. Even though the field of application of the EU Charter is limited to EU bodies and MS when they are implementing Union law,[96] one could consider that in this case, Greece was indeed enacting national measures to comply with a deal that it had concluded with the Commission and the ECB. In fact, the EU Charter prohibits discrimination on the basis of age, protects the right of workers to reasonable daily and weekly working hours and collective bargaining action.[97] However, it does not include provisions on the right to fair remuneration, and the protection awarded to young persons at work is very limited. The treaty system of the ESC is not only wider but is also given more effectiveness through the collective complaints procedure.

It can be seen from Greece's very weak defense that the government was reluctant to be held responsible for the past administration's readiness to execute the Troika's commands and reticent to further implement these austerity reforms.[98] The intervention of the Commission attempted to fill the gaps in Greece's defense and focused on the effects of the disputed regulations on growth and job creation. It referred to its

96 Art. 51 of the EU Charter. Accordingly, measures taken in accordance in relation to the ESM seem to be outside this scope. In that regard, it is very interesting to read the observations presented by Mr. Jean-Claude Trichet, former President of the ECB, as summarized by Mr. Michael McNamara in the PACE Report on European Institutions and Human Rights in Europe, Doc. 13714, 18/02/2015. Mr. Trichet considered that "*no States were forced into an assistance programme*" and that they "*could also refuse the aid and make the necessary adjustments autonomously*." In particular, he "*did not accept that the ECB should have regard to the Charter of Fundamental Rights when making proposals*" (p. 18).

97 In order, Art. 21(1), 31(2), 27 and 28 of the EU Charter.

98 The government did not really attempt to justify the measures, but presented itself as a victim of "*harsh neoliberal policies*" (para. 115), even deplored a financial pact concluded with "*coercion exerted by threats or the use of force*" (para. 118), and expressed its will to improve the social situation and comply with its obligations arising from the Charter.

Assessment of the Social Impact,[99] but admitted that the Greek economy had not improved, nor did unemployment. Whereas the ECSR acknowledged Greece's delicate situation when negotiating with the Troika, it recalled that State Parties cannot surrender their sovereignty to international creditors,[100] holding the Greek government fully accountable for enacting the regulations that were the object of the complaint.[101]

II. The tenuous follow-up of the decisions of the ECSR

Decisions given by the ECSR in the frame of the collective complaints procedure are merely declaratory, and thus cannot be directly applicable in the domestic system of the contracting parties of the Charter. As a result, situations where social and economic rights are recognizably violated can drag on for a certain period of time. In *GSEE v. Greece*, the Committee's final observations particularly condemn the amendments of laws between 2012 and 2014 under the pressure of the Troika, despite the fact that it had already ruled on their non-conformity with the Charter. Hence, the lack of enforcement of its previous decisions, coupled with even more reforms, led to a "worsening of the situation over the years."[102]

As mentioned, the 1995 Protocol entrusts the Committee of Ministers to take action on a decision of non-conformity to the provisions of the Charter. In the case *GSEE v. Greece*, it adopted a resolution in July 2017, inviting "the Greek authorities to submit, as soon as possible, a comprehensive report on the measures taken or envisaged in order to bring the situation into conformity with the Charter."[103] The choice of the resolution is not surprising as the Greek government, almost agreeing with the arguments of the complainant, showed its intention to remedy the situation. Instead of generating an obligation to remedy the violation of the Charter, such a resolution only creates an obligation for the infringing State to report on the measures it took to put the situation in conformity.[104]

The Greek government submitted a follow-up report in July 2018, regarding the actions taken to implement the decisions on the first complaints against the austerity measures.[105] In the report, the government presented new initiatives such as the National Strategic Framework to redesign and enhance Vocation Education, Training and Apprenticeship drafted in April 2016, a subsequent Joint Ministerial Declaration

99 Ibid., (fn. 64).
100 ECSR, *GSEE v. Greece*, (fn. 48), para. 87: "*Nevertheless, the Committee considers that States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions*".
101 Ibid., (fn. 92), p. 27: "*Economic policy is an exercise of state power and as such is subject to human rights norms, standards and procedural principles*".
102 ECSR, *GSEE v. Greece*, (fn. 48), para. 249.
103 *Committee of Ministers*, Resolution CM/ResChS(2017)9, GSEE v. Greece, 05/06/2017.
104 Art. 10 of the 1995 Protocol.
105 *Government of Greece*, 1st National Report on the implementation of the ESC (revised), July 2018; it included reporting on the follow-up on the decisions concerning the complaints No.65/2011, No.66/2011 and No.76 to 80/2012.

entitled "Apprenticeship Quality Framework"[106] and the Law 4387/2016 on "Unified Social Security System – Reforming social security and pension system."[107] The ECSR published its Findings on the reports submitted by MS in December 2018.[108] Regarding the cases *GENOP-DEI and ADEDYS v. Greece*, it considered that the violation of Art. 4(1), 4(4), 7(7), 12(3) had not been remedied as the legislative acts that created the violations were still in force. However, in view of the new initiatives taken to ensure an adequate system of apprenticeship, the situation had been brought in conformity with the provisions of Art. 10(2) of the Charter. Regarding the decisions on the complaints No. 76 to 80/2012, the ECSR found that the "recent legislation adopted demonstrates that restrictions upon pensioners continue to be applied and that this will mean the pauperisation of an important segment of the population", and that therefore the situation had not been brought into conformity with the provisions of the Charter.[109]

The Committee of Ministers took a second recommendation in December 2018, where it took note of the "commitment of the Greek authorities to bring the situation into conformity with the Charter" and welcomed "the legislative measures adopted to promote collective bargaining and to increase the minimum wage."[110]

Another simplified report was submitted by Greece in May 2019,[111] which included reports on Art. 7(5) on the right of young workers and apprentices to fair remuneration. Although it happened after the end of the reporting period, the government added that since February 2019, "the subminimum wage and the subminimum salary were abolished by Ministerial Decision and the minimum wage and the minimum salary were increased."[112] The ECSR has yet to issue its Findings on this report – expected in December 2019. Greece will also have to report on the actions taken to remedy the violations highlighted in the decision *GSEE v. Greece* in October 2019.

It is unfortunate that it took more than four years for the Greek government to start enacting legislation to fix the social situation, and that this might not even have happened if the same national administration had remained in control.[113] This emphasizes the need to reinforce the authority of the ECSR's conclusions and decisions at the outcome of the reporting procedure and the collective complaints procedure.

106 JMD No. 26385/2017.
107 A'85/12-5-2016.
108 *ECSR*, Follow-up to decisions on the merits of collective complaints, Findings 2018.
109 Ibid., para. 410.
110 *Committee of Ministers*, Resolution CM/ResChS(2018)12, 12/12/2018.
111 *Government of Greece*, 2nd National Report on the implementation of the ESC (revised), May 2019; regarding Art. 7, 8, 16, 17, 19, 27 and 31 of the revised Charter for the period 2014-2017.
112 Ibid., p. 12.
113 The new administration in place since July 2019 might also reverse the few reforms undertaken by the government of Alexis Tsipras.

III. The Council of Europe's initiative to revive the ESC put to the test

1. The political stalemate that followed the Turin Process

In the last years, the Council of Europe has tried to give to the ESC a new impetus through the Turin Process,[114] whose flagship measure was to advocate the implementation of the Turin Protocol in its entirety, which would mean that members of the ECSR would be elected by the PACE, giving them the same legitimacy as the judges of the European Court of Human Rights (ECtHR).[115] Furthermore, contrary to the ECtHR, the Committee is not a permanent body with members sitting full-time. It holds seven sessions per year, each session lasting for three to five days.[116] If other changes suggested by the Turin Process were to be implemented, i.e., with more States acceding to the 1995 Protocol and more organizations being entitled to lodge complaints, the rules and the functioning of the Committee would have to be reviewed to cope with the expected increase of caseload.[117]

Among the impediments to the full effectiveness of the ESC, the texts present certain ambiguities regarding the roles of the Committee of Ministers and the Governmental Committee. Firstly, it is difficult to explain the delay of four months granted to the Committee of Ministers to publish the decision of the ECSR on a collective complaint.[118] This timeline could question the authority of the decision of the ECSR, as it links it to the resolution of the Committee of Ministers. Yet, this political body does not, according to the texts, have the possibility of reversing the findings of the ECSR. This statement has to be nuanced. Indeed, according to the Explanatory Report of the

114 The Turin Process, named after the 1991 "Turin Protocol", began at the High-level Conference of the European Social Charter held in Turin in October 2014. Since this first milestone, three other meetings have been held: in Brussels in February 2015, on the future of the protection of social rights in Europe; in Turin in March 2016, as an inter-parliamentary conference on the Charter and a Forum on Social Rights in Europe; and in Nicosia, Cyprus, in February 2017, on the social rights in today's Europe. The High-Level Conference held in Turin in 2014 (Turin I Conference) identified three obstacles: the threat posed by the economic crisis, the conflicts with the EU law, and the weaknesses of the collective complaints procedure. It also established a detailed action plan with specific medium term actions (including the ratification of Revised Charter and Protocols, the election of members of the Committee by the PACE and the strengthening of the monitoring of the PACE); immediate action (such as the increase of the number of Committee members and the valorization of the Charter through better communication), and long-term actions (General Report of the Turin I Conference, October 2014, pp. 45-51). The initiative has its dedicated page on the website of the Council of Europe, available at: https://www.coe.int/en/web/european-social-charter/turin-process (18/08/2019).

115 Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, ETS 155, 11/05/1994.

116 Detailed sessions' calendar available at: https://www.coe.int/en/web/european-social-charter/sessions (18/08/2019).

117 The Committee already requested to see its members increase, see "*Some proposals concerning the role and status of the European Committee of Social Rights on the occasion of the High-Level Conference*" in General Report of the Turin I Conference, October 2014, Appendix 3c.

118 Art. 8(2) of the 1995 Protocol.

1995 Protocol, although the Committee of Ministers "cannot reverse the legal assessment" of the ECSR, it can ground its resolution on "social and economic policy considerations."[119] This casts a shadow of doubt as to whether the resolution of the Committee of Ministers should back-up the findings of the ECSR or temper it on the basis of other policy justifications presented by the State concerned. This doubt is reinforced by Art. 9(2) of the 1995 Protocol, which allows the Committee of Ministers to consult the Governmental Committee, whenever the decision of the ECSR "raises new issues." The involvement of the Governmental Committee in deciding which INGO with consultative status at the Council of Europe will have the right to lodge collective complaints can also be questioned. Although the list of requirements for INGOs seems clear and is pre-determined, the Governmental Committee still has a certain leeway in granting this four-year mandate and can reject an INGO's application by a simple majority vote.[120]

Despite the Turin Process, since the ratification of the revised Charter by Greece in March 2016, the state of ratification of the Charter's texts and protocols is stagnant. How can this political stalemate and defiance be explained? Interestingly, in June 2017, the PACE undertook a survey in countries that have not ratified the revised Charter to understand their motives.[121] The rapporteur identified the main justifications: the fear of too stringent monitoring obligations, the fear of letting the Committee interpret the provisions of the Charter too liberally, and their current disagreement with some of the Committee's decisions. These motives can be extended to their reluctance to ratify the 1995 Protocol.

Undeniably, the Turin process brought the discussions on the Charter to the center of the debates on the future of Europe and highlighted the necessity of establishing clear communication and cooperation with the EU. Additionally, discussions stressed the need to de-politicize social and economic rights.[122]

119 Explanatory Report to the 1995 Protocol on Art. 9.

120 See the list of Non-Governmental Organizations entitled to lodge collective complaints, available at: https://rm.coe.int/gc-2019-18-list-ingos-01-07-2019/1680966edb (19/08/2019).

121 The MS who gave their answers are: Croatia, the Czech Republic, Denmark, Germany, Liechtenstein, Monaco, San Marino, Spain, Switzerland and the United Kingdom. As summarized by the Rapporteur Ms. Sílvia Eloïsa BONET "*amongst the main reasons for the non-ratification of the European Social Charter (revised) by the above countries are the expectation of standards and monitoring obligations exceeding or being inconsistent with national practice or capacities in certain areas, the perception of excessive margins of interpretation regarding some articles (e.g. non-discrimination) and a general disagreement with certain decisions by and procedures related to the ECSR. The level of political willingness to tackle the ratification process seems to play a significant role in most countries. Despite the fact that not all countries contacted in the framework of my survey have replied (10 out of 13 have done so), we can say that this is what is reflected by the majority of those not having ratified the revised Charter.*"; *PACE*, Report, The "Turin process": reinforcing social rights in Europe, Doc. 14343, 12/06/2017, pt. 29.

122 With the words of Michele Nicoletti: "*On the basis of the principle that, within an advanced democracy, ensuring that these rights are fully realized is not a prerogative of the "Right" or "Left", but is a constitutional task of the state governed by the rule of law*". General Report of the Turin I Conference, October 2014, Introduction, p. 9.

2. The protracted reaction of the EU institutions

a) Other stumbling blocks

The reaction of the EU institutions was even more expected as the Greek saga cases were not the only stumbling blocks between the EU and the ECSR. In the so-called "Laval case" against Sweden,[123] the Committee found that the amendments to an existing piece of legislation by the Swedish government (the 2010 law "Lex Laval"), in order to comply with an EU Directive,[124] violated the right to collective bargaining and the right to strike for posted workers.[125] This touched upon the specific prerogative of the EU in the field of freedom of movement. In addition, this law was also adopted following a 2007 ruling of the CJEU determining that the Swedish legislation (before the adoption of Lex Laval) violated the freedom of a Latvian company to provide services in Sweden.[126] The Committee rejected the argument that the rule had its origin in the need to comply with EU law, as it had done in its previous decision against France.[127] It is interesting to read together the decision on Lex Laval and *GSEE v. Greece*. In one decision, the compliance with the Charter of both acts of the European Parliament and the EU Council and a decision of the CJEU are questioned. In the other, an act of the Commission and the ECB were at stake. In other words, all the institutions of the EU were at one point at odds with the provisions of the Charter.

The ECSR's jurisprudence regarding EU law is inconsistent with the position of the ECtHR developed in the Bosphorus case,[128] where it considered that there is refutable presumption that an act of an EU MS taken in order to comply with an EU law obligation is compatible with the ECHR if EU law guarantees a standard of human rights that is equivalent to that of the ECHR. What is inconsistent in appearance, in practice concerns two different sets of rights that do not have the same status in EU law.[129] As Luis Jimena Quesada puts it: "This lack of presumption is very significant in view of the overlapping membership of the European Union and the Council of Europe. From this point of view, the complexities of synergies are accentuated, since the European Committee of Social Rights is increasingly occupying a place next to the two European Courts (ECJ and the ECtHR) in this area."[130]

123 ECSR, No. 85/2012, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, 03/07/2013.
124 Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ L 18 of 21/01/1997, p. 1.
125 Art. 6(2), 6(4) and 19(4) of the 1961 Charter.
126 CJEU, case C-341/05, *Laval un Partneri*, ECLI:EU:C:2007:809.
127 ECSR, No. 55/2009, *Confédération Générale du Travail (CGT) v. France*, 23/06/2010.
128 ECtHR, App. No. 45036/98, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, 30/06/2005.
129 Also, social rights have not yet benefited from any kind of resistance by the courts of the EU MS, as civil and political rights had, and leading the CJEU to issue decisions such as CJEU, case C-36/02, *Omega Spielhallen*, ECLI:EU:C:2004:614.
130 *Jimena Quesada*, Social Rights in the Case-Law of the Court of Justice of the European Union: the Opening to the Turin Process, Nicosia conference, February 2017, Session 1.

b) The outward show of support

This situation of conflict seemed at first to have evolved in a positive fashion. The European Parliament advocated the full compliance of EU acts with the Charter and ILO's core conventions, as well as the end of programs infringing social rights.[131] It even called for the EU's accession to the Charter.[132]

The most substantial progress made by the EU in the field of social rights in this last couple of years, however, is the initiative to establish a European Pillar of Social Rights (EPSR), proclaimed on the 17th of November 2017 by the EU institutions. This pillar has three chapters: one on access to the labor market, another on working conditions and the last one on social protection and inclusion. The Council of Europe reacted through the voice of its Secretary General, who noted in his Opinion on the EPSR that such a pillar needed to acknowledge the collective complaints procedure "for the contribution that it makes to the effective realization of the rights established in the Charter and to the strengthening of inclusive and participatory social democracies."[133] The European Parliament itself considered the better recognition of the Charter as an essential step in its Resolution on the initiative to establish an EPSR, where it encouraged EU MS to ratify the revised Charter. It recalled its position in favor of the EU's accession to the Charter.[134] One could consider this debate a bit premature, especially considering the position of the CJEU, who stalled the process of accession to the ECHR.[135] Although it has been discussed extensively in the literature, the accession of the EU to the ESC is at best a long-term plan: the pre-conditions are far from being met. Indeed, for now, it would be more within reach to encourage EU MS to ratify the revised Charter and to accept all its provisions and even additional protocols, in a view to harmonize their common grounds and give the EU institutions a solid base to start legislating on social rights. Achieving this without the EU acceding to the Charter's system would already be enough to reconcile two visions of Europe that have been in growing conflict since the economic crisis.[136] For the EU, it is just a matter of showing political will, as it already possesses political strength and influence.

131 *European Parliament*, Resolution (EP) No. 2014/2007(INI) on employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries, 13/03/2014.

132 *European Parliament*, Resolution (EP) No. 2009/2241(INI) on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 19/05/2010.

133 Ibid., (fn. 80), p. 4.

134 *European Parliament,* Resolution (EP) No. 2016/2095(INI), 19/01/2017.

135 CJEU, *Opinion 2/13 on the Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, ECLI:EU:C:2014:2454.

136 As Carmen Salcedo noted: "*One could say that two Europes are facing each other*"; *Salcedo*, righting finance, 10/08/2016; available at: http://www.socialwatch.org/node/17408 (19/08/2019).

c) The long-lasting contradictions

In view of other positions adopted by the EU, it would appear that the EPSR is mere window dressing. On the one hand, the discourse of the EU does not seem to coincide. At the outcome of the Third Economic Adjustment Programme, the Eurogroup issued a statement in June 2018 congratulating Greece "for the successful conclusion of the ESM programme" and stressing the importance to continue the reforms to ensure Greece's "prosperous future."[137] In particular, it reminded the Greek government of its commitment to "safeguard competitiveness through an annual update of the minimum wage, in line with the provisions of Law 4172/2013."[138]

Since the end of this Third Economic Adjustment Programme, the Commission has activated the "Enhanced Surveillance Procedure" under which the Commission and the ECB[139] monitor the situation in Greece and issue quarterly reports. Three surveillance reports have already been issued since its activation.[140] In the reports, the Commission seems to disapprove measures adopted by the Greek government that aimed to mitigate the social impact of austerity reforms or simply back-pedaled on such reforms, in line with the decisions of the ECSR. The Commission "expressed concerns" on the revision of the minimum wage, which could have detrimental effects on youth employment and competitiveness.[141] As usual, the arguments used by the Commission are pseudo-social rather than economic *per se*. For having repealed the changes in pension reforms that were agreed following the bail-out programs, the Commission notes that it might "negatively affect female labor participation, which

137 Eurogroup statement on Greece of 22 June 2018, para. 1; available at: https://www.consilium.europa.eu/en/press/press-releases/2018/06/22/eurogroup-statement-on-greece-22-june-2018/ (19/08/2019).

138 Ibid., Annex, para. 4.

139 And, "where appropriate", with the assistance of the IMF; procedure detailed at: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-greece_en#related_4 (18/08/2019).

140 In November 2018, February 2019 and June 2019.

141 *European Commission*, Enhanced Surveillance Report on Greece, Institutional Paper 090, November 2018, p. 8: "*The authorities have indicated their intention not to preserve the sub-minimum wage that currently applies to persons aged under 25, which would imply a considerable increase in the level of the minimum wage for that group. The Commission considers that a final decision on that issue should be taken only after a full impact analysis is conducted demonstrating that the potential impact on employment prospects for young people is limited, given that youth unemployment levels remain high and the share of minimum-wage earners in the youth population also appears to be large (41% in 2017)*"; *European Commission*, Enhanced Surveillance Report on Greece, Institutional Paper 099, February 2019, p. 10 and Annex table: "*The authorities have updated the minimum wage following the procedure laid down in Article 103 of Law 4172/2013. As a result, the minimum wage has been raised by 10.9% and the sub-minimum wage for persons aged under 25 was eliminated (implying an increase of some 27%). The magnitude of the increase raises concerns for the employment prospects (especially for the young and old-age low-skilled workers), and for competitiveness in the medium term*".

is already low in Greece" and "decrease the relative share of social benefits spent on the young and working age population where the risk of poverty is much higher."[142]

On the other hand, it seems that the promises of the EPSR are far from satisfactory. The EPSR contains principles and rights that are not enforceable: it is "an invitation to go further, through legislative and policy measures at both EU and MS levels" as formulated by Olivier de Schutter in a study published in November 2018.[143] Moreover, the EPSR did not incorporate a number of essential provisions of the ESC and hence is for some a mere "political signal" whose confusing modalities of implementation are a pretense to allow an economic reading of social rights.[144]

D. Conclusion

From the decision *GSEE v. Greece*, and the whole line of decisions pertaining to this matter, two conclusions can be drawn. Firstly, that the Charter, its supervisory Committee and the collective complaints procedure are primordial to ensure respect of basic social and economic rights in MS.[145] They also constitute an indirect way to keep other international institutions' dictatorship at bay. It would, therefore, be judicious to entrust the Committee with greater legitimacy a priori, to reinforce the scope and the functioning of the collective complaints procedure, and to ensure that the decisions hereby adopted hold more than a mere declaratory value.

While the ESC seemed to have gained momentum through the use of the collective complaints procedure that gave voice to concerns over consequences of austerity measures across Europe and attempts to revive some of its protocols through the Turin process, it seems that it has now reached a political stalemate. For many European citizens today, the EU became a "driver of social decline."[146] The endorsement of the EPSR might be the start of a change of narrative. Unfortunately, without concrete changes and in view of the Commission's barely concealed disapproval of social reforms made by Greece in the recent years, it would appear that the EU's next steps will only be fueling the discourse of Eurosceptics.

142 *European Commission*, Enhanced Surveillance Report on Greece, Institutional Paper 103, June 2019, p. 35.

143 *De Schutter*, The European Pillar of Social Rights and the Role of the European Social Charter in the EU legal order, 14/11/2018; available at: https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132 (19/08/2019).

144 *Sangos*, Revista juridical de los Derechos sociales, Vol. 9, No. 1, February 2019, p. 123.

145 Viewed as a "gap-filling mechanism in the existing European system of human rights protection"; *Papadopoulos*, European Labour Law Journal, Vol. 10(I), pp. 85-97, 2019.

146 Ibid., (fn. 144).

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