Introduction

Economic, social and cultural rights have borne the brunt of the recent economic crisis and the austerity measures adopted to counter it. Due to their gradual implementation and the need of positive measures to implement them, they were the first to be attacked especially in developed countries where certain achievements in the field of labour rights and social security had attained quite a high standard. The proposals to amend the labour law in France and the fierce reaction of the people are indicative of this trend[1]. Given that these achievements were the result of the progressive implementation of economic, social and cultural rights, as stipulated by international human rights treaties, most of the initiatives to restrict them result in prohibited retrogressive measures.

States falsely consider that it is easier to limit economic and social rights instead of civil and political rights for various reasons. First of all there is much discussion regarding the real justiciability of social rights. Secondly, social rights are interpreted by international human rights bodies mainly through an expansive interpretation of civil and political rights. Thirdly, the dire situation of economic, social and cultural rights in most developing countries renders the discussion of their limitation in developed countries somewhat inappropriate or at least awkward. Finally, certain researchers maintain that sometimes social rights are given lower status as a matter of ideological choice[2], while their real protection is difficult due to inequalities especially within the urban centres. After discussing the possible ways of applying economic, social and cultural rights in the first part of the essay, I will then examine their application during economic crises with a special reference to Greece focusing mainly on two fields, labour rights and social security rights, and the case-law produced by international human rights bodies in that respect.

The rise and current protective framework of economic, social and cultural rights in international human rights law

I. The global normative framework: indivisibility of civil and political rights and economic, social and cultural rights

1. At the international level

References to human rights in general and economic, social and cultural progress and development in particular are already included in the UN Charter[3]. The first international instrument – albeit not legally binding[4] – that refers both to civil and political rights and economic, social and cultural rights is the Universal Declaration of Human Rights (UDHR)[5]. Civil and political rights – the so-called "first generation" rights – were distinguished from economic, social and cultural rights or "second generation" rights in that they required no positive action by the state in order to be safeguarded. The latter had only to refrain from interfering with the right. To the contrary, it was deemed that economic, social and cultural rights required the allocation of resources and public expenditure. Therefore, they were not of immediate implementation but could be achieved only progressively. During the Cold War, Western states considered civil and political rights to be the only enforceable rights. There is also a "third generation" of rights that comprises the rights to development, self-determination, healthy environment, natural resources, collective rights etc.[6].

One can easily draw the conclusion that this is an obsolete argument that cannot firmly support a human rights separation theory, since it has already been established in international human rights jurisprudence that abstention is not enough for the protection of civil and political rights but these require positive measures as well[7], while the Vienna Declaration and Programme of Action[8] reaffirmed that: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis"[9]. Even before that, the Proclamation of Teheran in 1968, stressed that "human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible"[10]. Moreover, the Committee on Economic, Social and Cultural Rights has repeatedly reaffirmed that human rights are "interdependent and indivisible"[11].

While most international human rights treaties of special protection contain provisions both for the protection of civil and political rights and economic, social and cultural rights, verifying thus their interconnected character[12], this approach was not followed by the UN Economic and Social Council when the issue of adoption of a universal covenant arose. At that time, the delegates considered that civil and political rights, on the one hand, and economic, social and cultural rights, on the other, could not be implemented in the same

way[13]. The former required that states refrain from certain harmful action, while the latter could be implemented only progressively, by means of positive measures and appropriate legislative action.

Hence, the UN General Assembly took the policy decision to request the drafting and eventual adoption of two separate covenants, one dedicated to civil and political rights and the other to economic, social and cultural rights[14]. Both were submitted simultaneously for consideration to the General Assembly so that their unity could be emphasized; it was the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). They were adopted on the same day by the same UN General Assembly resolution[15]. However, the two moved hence on separate tracks.

The competent organ to control implementation of the ICCPR, through the consideration of periodic reports submitted by states-parties, is the Human Rights Committee[16]. On the contrary, monitoring of the ICESCR was entrusted initially to the ECOSOC, which had the duty to receive – through the intermediary of the UN Secretary General – and consider reports on the measures that states have adopted and the progress made in achieving the observance of the rights recognized in the ICESCR[17]. The Committee on Economic, Social and Cultural Rights was established only in 1985 under resolution 1985/17 (28 May 1985) of ECOSOC and was mandated to carry out henceforth the monitoring functions assigned to ECOSOC in Part IV of the ICESCR[18].

Furthermore, the ICCPR was equipped from the very beginning with an Optional Protocol which empowered the Human Rights Committee to receive and consider individual communications on alleged violations of the rights of the Covenant. Through the mechanism of individual communications the Human Rights Committee has accumulated a remarkable case-law, which is referred to very often by other international judicial and quasi-judicial human rights bodies. The Optional Protocol to the ICESCR, which established a similar individual complaints procedure regarding economic, social and cultural rights was adopted only in 2008 and entered into force on 5 May 2013. This lack of individual complaints mechanism constituted a major practical obstacle for those that supported the justiciability of economic, social and cultural rights.

2. At the European level

The same separation is prevalent within the European continent, where this differentiation of first and second generation rights was reflected in the adoption of two instruments having a different control mechanism. The main instrument of general human rights protection, the European Convention on Human Rights adopted in 1950 and binding on all Council of Europe member states[19], and its Additional Protocols recognise only civil and political rights (and the right to education from second generation rights by virtue of article 2 Protocol no 1). What is more, the instrument is vested with a unique implementation mechanism. A European Court of Human Rights (ECtHR) is entrusted with considering individual applications on human rights violations, issuing judgments that are binding upon the respondent state, while a political organ, the Committee of Ministers, is responsible for monitoring the compliance of the member state involved, whenever a violation is found by the ECtHR, through the proposal of individual and general measures to remedy the violations. While the ECtHR protects mainly civil and political rights, it also guarantees indirectly economic, social and cultural rights by interpreting them under the prism of civil and political rights[20].

Economic and social rights as such are guaranteed by the European Social Charter (1961) and the Revised European Social Charter (1996), ratified by 27 and 34 states respectively[21]. The instrument is equipped with an Additional Protocol providing for a system of collective complaints (1995). The monitoring organ in this case is not a court but rather a Committee, the European Committee of Social Rights (ECSR), which is composed of independent experts. The latter monitors the compliance of the contracting states through two procedures: the reporting procedure, according to which states are bound to submit national reports regarding the implementation of the provisions of the Charter, and the collective complaints procedure which allows for the lodging of complaints. The ESCR examines the reports and adopts conclusions, while in respect of collective complaints it adopts decisions. Neither of them is binding.

Finally, the Charter of Fundamental Rights, adopted in the framework of the EU and having the same legal value as the founding treaties by virtue of the entry into force of the Lisbon Treaty[22], translates in a binding document the indivisibility of human rights as it was officially recognised in the Vienna Plan of Action: human rights are universal, indivisible and

interdependent and interrelated[23]. Therefore, the Charter includes all three sets of rights: a) classical first generation rights (civil liberties, political rights, judicial protection), b) second generation (economic, cultural and social rights), 3) third-generation rights e.g. protection of the environment. And rights that do not fit in any of the abovementioned categories, e.g. data protection, consumer protection. There is however a gap as to which social rights are declared as principles and which as justifiable rights.

II. The justiciability of economic, social and cultural rights[24]

Formerly there was much discussion on whether economic, social and cultural rights could be considered justiciable. The prevalent opinion was that civil and political rights and economic, social and cultural rights remain in two different legal instruments and the latter have not attained the same degree of justiciability and enforceability as civil and political rights. The main arguments against are the following[25].

The "policy argument"

- First of all it was considered that the implementation of economic, social and cultural rights was clearly a matter of policy. According to this point of view, courts are an inappropriate forum to adjudicate and pronounce on issues of social policy. And in case they are called to adjudicate, they should accord a considerable margin of appreciation to the state authorities[26].

The "limited resources argument"

- Moreover, since their effective protection required resources, it rested solely on the state to realize them progressively. Accordingly, states argue that they do not have adequate resources to provide even the most elementary socio-economic rights to their populations. Therefore, courts could not play an active role in this procedure, because otherwise they would have to meddle in the legislative and executive function by making the law rather than applying it. It would be, in other words, an impermissible form of judicial activism. The partisans of the progressive realization approach had an unexpected ally: article 22 UDHR which stated that "Everyone, as a member of society … is entitled to realization, through national effort and international co-operation and

in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality".

The "effective remedy argument"

- Another argument raised by those maintaining the non-justiciability of socio-economic rights is the fact that the ICESCR does not contain any provision on the duty of states to provide an effective remedy in the national legal order to individuals whose socio-economic rights have been violated. Indeed, the right to an effective remedy is a cornerstone provision in all human rights treaties protecting civil and political rights[27].

Those arguments representing a rather traditional view on the matter have thence been rebutted by the following[28].

The "violations approach"

- One alternative, maintained by A. Chapman is the "violations approach"[29]. According to this, one should set aside the progressive realization of economic, social and cultural rights, which does not allow for their monitoring, and rather focus on the state conduct that violates these rights. Thus, violations could result from governmental measures that actually contravene the provisions of relevant international instruments or from the creation of conditions that do not foster or permit the realization of these rights and, last but not least, from policies and legislations that fail to fulfill minimum core obligations. For example, a state in which a significant number of individuals are deprived of essential foodstuffs, of primary health care, of basic shelter and housing or of basic education is failing to discharge its obligations under the ICESCR[30]. In that context, the Committee on Economic, Social and Cultural Rights has also stressed that vulnerable members of society must be protected, even in times of severe resources constraints, caused by adjustment programmes, economic recession or other factors[31].

The evolving role of courts in a democratic society

- Another argument in favour of the justiciability of socio-economic rights relates to the role of courts in general in a democratic society. Indeed, a constant disagreement among lawyers is the difference between "legal" and "political" matters. One could seize the courts for the former but not the latter. For a long time it was suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. It is an invalid argument, if we take into account that a great range of matters have always political implications. This should not impede the courts from adjudicating on them. Likewise, courts are already involved in cases which have considerable resource implications. This approach has been also adopted by the Committee on Economic, Social and Cultural Rights, which has pointed out that the active involvement of courts in questions implicating socio-economic rights is imperative, in order to protect the rights of the most vulnerable and disadvantaged groups in society[32].

Economic, social and cultural rights that can be enforced immediately

- Furthermore, one could distinguish between those socio-economic rights that could be enforced immediately and others that are by definition subject to progressive realization. The Committee on Economic, Social and Cultural Rights, in its General Comment no.3[33], asked for the provision of judicial remedies with respect to rights which may be considered justiciable. It also enumerated a non-exhaustive list of rights that "would seem capable of immediate application by judicial and other organs in many national legal systems". These include the equal right of men and women to the enjoyment of all economic, social and cultural rights (article 3), the right of everyone to the enjoyment of just and favourable conditions of work (article 7a)i), the right of everyone to form trade unions and the right to strike (article 8), the rights of children (article 10 §3), the right of free and compulsory primary education (article 13 §2a), of parents and, when applicable, legal guardians to choose for their children schools (article 13 §3), the right of individuals and bodies to establish and direct educational institutions (article 13 §4), freedom indispensable for scientific research and creative activity (article 15 §3). As the Committee stated, "the fact that realization over time is foreseen under the Covenant, should not be misinterpreted as depriving the obligation of all meaningful content"[34].

Domestic application of the Covenant

- Fourthly, the absence of a provision on effective remedies does not constitute per se an obstacle to the justiciability of economic, social and cultural rights. Although the ICESCR does not contain a counterpart to article 2 §3b ICCPR, it does stipulate that: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures" (article 2 §1). Pursuant to General Comment No. 9 of the Committee on Economic, Social and Cultural rights the phrase "appropriate means" also includes domestic legal remedies, which reinforce every other initiative[35]. According to the Committee: "Where the means used to give effect to the Covenant on Economic, Social and Cultural Rights differ significantly from those used in relation to other human rights treaties, there should be a compelling justification for this, taking account of the fact that the formulations used in the Covenant are, to a considerable extent, comparable to those used in treaties dealing with civil and political rights"[36]. In the same vein, the Inter-American Court of Human Rights has used article 25 ACHR to request effective remedies for the demarcation and titling of indigenous land in cases where civil and political rights and economic, social and cultural rights intersect[37].

The "permeability principle"

- Another way to address the question of justiciability is through the "permeability principle"[38]. According to this, civil and political rights are used as a basis for admitting complaints concerning economic, social and cultural rights. For instance, allegations regarding the violation of the right to adequate housing could be treated though the right to property or violations of the right to health could be admitted as a possible infringement of the right to life or the right to humane treatment. The contribution of the Inter-American Court of Human Rights case-law to this discussion is priceless. Indeed, the IACtHR cuts the Gordian Knot of the justiciability of socio-economic rights, by protecting them through the dynamic and broad interpretation of civil and political rights. In that way, the indivisibility and interconnected character of

the two generations is reinforced, since economic, social and cultural rights are inherent in civil and political rights.

The impact of austerity measures on economic and social rights. Issues of effective protection

I. The position of the Committee on economic, social and cultural rights

The centrepiece of the ICESCR is the obligation on States parties to respect, protect and fulfil economic, social and cultural rights progressively, using their maximum available resources[39]. Moreover, states parties to the ICESCR have an immediate obligation to ensure the implementation of a minimum essential level of all economic, social and cultural rights. This minimum core[40] covers for instance all obligations that ensure an adequate standard of living such as essential health care, basic shelter and housing, basic forms of education etc. In order to achieve this goal, available resources have to be allocated proportionately. Thus, for instance, a budget that relies heavily on military expenditure will save little for education or health care. Even if available resources are totally inadequate, the state bears the burden of proof to demonstrate that it has used all its resources in a proper manner so as to cover the minimum core[41].

However, states enjoy a wide margin of appreciation (to borrow the phrase inaugurated by the ECtHR)[42] regarding the implementation of socio-economic rights. The obligation of progressive realization carries naturally the prohibition – albeit not absolute – of retrogression. According to General Comment no 3, any deliberate retrogressive measure, if not prohibited, requires "the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources"[43]. This obligation remains the same even in times of economic distress or adjustment programmes.

Hence, unlike the International Covenant on Civil and Political Rights, derogations are not allowed from the ICESCR even during times of economic emergency[44]. According to the Maastricht Guidelines on violations of economic, social and cultural rights, states are obliged to respect, protect and fulfil economic, social and cultural rights through appropriate legislative, administrative, budgetary, judicial and other measures and failure to

observe this obligation may result in violation of said rights[45]. For instance, arbitrary or sweeping forced evictions, which are frequent in situations of economic crises[46], violate the right to housing. Withdrawal of basic labour standards protecting private employees may amount to a violation of the right to work. Last but not least, denial of basic health care may result to a violation of the right to health in extreme circumstances even of the right to life or the prohibition of degrading treatment.

Despite the fact that full realization of economic, social and cultural rights is achieved progressively, this does not alter the legal obligation of states to adopt measures immediately or as soon as possible to that direction. States are obliged to demonstrate that they are actually taking such measures and that they are making progress for the full realization of these rights. Thus, the notion of "progressive realization" cannot be used as a pretext to avoid full execution of the Covenant's provisions. Furthermore, certain minimum core obligations such as essential foodstuffs, essential primary health care, basic shelter and housing, or the most basic forms of education have to be satisfied, irrespective of the economic distress or the availability of resources[47]. In a letter[48] addressed by the Chairperson Pillay to all states parties it is stressed that even though states are allowed to adopt austerity measures in order to overcome severe financial crises, however these decisions should not lead to the denial or infringement of economic, social and cultural rights, especially if this results in negative impacts on vulnerable and marginalized individuals such as the poor, women, children, persons with disabilities, older persons, people with HIV/AIDS, indigenous peoples, ethnic minorities, migrants and refugees. Hence, while adjustments in the implementation of economic and social rights are inevitable, these should not lead to regression. It is interesting that the Chairperson referred to "the pressure that is exercised on many States parties" without clarifying where this pressure comes from: the overall economic necessity or third parties?

In her letter the Chairperson also identifies four requirements that have to be met by adjustment programmes: a) they must be a temporary measure, b) they must be necessary and proportionate, c) they must not be discriminatory but they must strive to mitigate inequalities especially with regard to the disadvantaged, d) the minimum core content of economic and social rights, as developed by the International Labour Organization, must be ensured at all times. Strangely enough, these requirements are identical to those applied for derogation measures from civil and political rights during states of emergency[49].

II. The case-law of the European Court of Human Rights

Even before the current economic crisis, the ECtHR had rendered judgments that included an economic dimension: violation of the right to life regarding the death of fifteen children in a home for children with severe mental disabilities due to lack of food, heating and basic care[50], inadequate access to health care for detainees or asylum-seekers raising issues under articles 2 and 3 ECHR[51], health rights of prisoners[52], violation of article 8 ECHR due to the planned eviction of Roma from an unlawful settlement without proposals for rehousing[53], total deprivation of a social pension[54], qualification of all social benefits as possessions even if they are non-contributory, so as to be covered by article 1 of Protocol No. 1 ECHR[55] etc. Of particular interest was a case regarding insufficient amounts of pension and the allegation of the applicant that this amounted to inhuman treatment, although the Court did not find a violation[56].

With regard to austerity measures adopted by states embroiled in budgetary crises and adjustment programmes, the European Court of Human Rights has already set a clear legal precedent. In *Da Silva Carvalho Rico/Portugal* the outcome was quite predictable: the ECtHR has dismissed the case applying the "proviso of the possible" doctrine[57]. According to this theory, borrowed by German constitutional law and applied by the Portuguese Constitutional Court as well, the state cannot be forced to comply with its obligations in the framework of social rights if it does not possess the economic means to do so[58]. Thus, budgetary constraints on the implementation of social rights can be accepted provided that they are proportionate to the public aim sought and they do not deprive the right of its substance. With a similar reasoning, the Court declared manifestly ill-founded applications against pension reductions for civil servants in Portugal[59] or the temporary reduction in the pensions of judges in Lithuania[60] which had their origin in austerity measures as a response to the economic crisis.

Against this background, we are waiting with extreme anticipation the judgment of the Grand Chamber that will reconsider the case *Béláné Nagy/Hungary*. The Chamber has already found that the removal of a disability pension through consecutive amendments to the eligibility criteria was considered excessive and disproportionate, thus constituting a violation of article 1 of Protocol No. 1[61].

The global economic crisis of 2007-2008 and its impact on Greece

I. The beginning of the crisis

The causes of the global economic crisis of 2008 have already been extensively discussed and will certainly continue to preoccupy political economists in the years to come, especially insofar as no safe exit from the overall crisis is yet envisaged. Consequently, we will not purport to delve into the multifaceted causes of the financial crisis, but rather to offer an overview of it and most importantly the way it has impacted on Greece and how it prompted the relevant austerity measures.

The financial crisis traces its roots in the USA back in 2007. The crisis hit initially a small segment of the financial markets, namely subprime mortgages, but soon it resulted in global recession[62]. Shortly after the initial blow, many financial institutions mostly in developed countries have been affected. National governments were required to bailout banks; the housing market was affected resulting in evictions, while prolonged unemployment became a quasi-permanent feature of contemporary societies. The crisis has had an adverse impact both in developed and developing countries, the latter mainly through the trade channel or through workers' falling remittances[63]. According to reports, the losses of gross domestic product amounted to 10% of global output in 2008-2010, while the loss in values of assets and the loss of personal income precipitated by the austerity measures cannot still be calculated with certainty[64].

II. The immediate aftermath: the European sovereign debt crisis

The global financial crisis resulted in a European sovereign debt crisis in the end of 2008-2009 which affected primarily Iceland, Greece, Portugal, Ireland, Spain and Cyprus. The affected countries were unable to repay government debt or to bail out over-indebted banks without the assistance of third parties. Given the particularities of the European integration – the eurozone is only a currency union and not a fiscal union thus member states maintain different tax, remuneration and pension rules – the options available to political leaders to react were limited. In fact, EU and the eurozone in particular had no contingency plan to counter the effects of an economic crisis of such a magnitude.

The first mechanism that was put in place was the European Financial Stability Facility (EFSF). The EFSF was established in June 2010 as a "société anonyme" under Luxembourgish law and has provided financial assistance to Ireland, Portugal and Greece, through the issuance of bonds and other debt instruments on capital markets. It has 17 shareholders, namely the eurozone member states. Since 1.7.2013 the EFSF is not allowed to engage in new financing programmes or enter into new loan facility agreements. The EFSF assistance programme for Greece expired on 30 June 2015[65].

It was replaced by the European Stability Mechanism (ESM), a permanent international financial institution, established by an intergovernmental treaty signed by the euro area member states on 2 February 2012[66]. ESM is a crisis resolution mechanism, providing stability support to eurozone countries threatened by severe financing problems. Its financial assistance is not funded with taxpayer money; the funds are rather acquired by issuing capital market instruments and engaging in money market transactions. ESM has 19 shareholders – the euro area member states – and is open for membership to all EU member states that will adopt the euro as their sole currency in the future. Since 1 July 2013 it is the sole mechanism for responding to new requests for financial assistance and has thus far assisted Greece, Cyprus and Spain, the first two through loans subject to macroeconomic adjustment programmes and the latter through a loan to government for bank recapitalization. Greece is the sole eurozone member state that has received support from both institutions and the only one to remain in the ESM stability programme. Cyprus has exited successfully the programme on 31.3.2016, while the financial assistance programme for Spain expired on 31.12.2013[67].

Participation in these financial stability mechanisms entails as a short- and long-term consequence the adoption of austerity measures and far-reaching privatization programmes. In fact, austerity measures were the primary political choice of governments in their effort to stem the effects of the economic crisis and reduce deficit and public debt[68]. Even when applied with restraint, austerity measures have an adverse impact on the enjoyment of acquired economic and social rights and thus on our ordinary and everyday life. This approach was inaugurated by the International Monetary Fund that implemented the Structural Adjustment Facility in 1986 and the Enhanced Structural Adjustment Facility one year later, making financial assistance conditional on the implementation of neoliberal structural adjustment programmes impacting adversely on human rights[69].

III. The impact of the economic crisis on Greece

1. The financial assistance provided to Greece

Due to its macroeconomic imbalances[70] and the lack of flexibility resulting from its status as a eurozone member state, Greece was the first eurozone country affected by the global economic crisis. Overcoming the "no bail-out" clause of article 125 of the Treaty on the Functioning of the EU, which prohibits the Union and individual member states from assuming the commitments of governments and other public authorities[71], the first financial assistance package for Greece was agreed in April 2010 and consisted of bilateral loans from eurozone member states and the International Monetary Fund (the so-called Greek Loan Facility).

However, the Greek Loan Facility was inadequate to counter a more or less systemic crisis. Therefore, in March 2012 the Eurogroup approved a second support programme for Greece, provided again by the Eurozone member states and the IMF. This time, the Eurozone assistance was not provided though bilateral loans but through the EFSF. Furthermore, the Eurozone member states decided to apply the procedure of the Private Sector Involvement (PSI) in the restructuring of the public debt. Thus, in May 2012 about 97% of privately held bonds took a 53,5% cut of the face value of the bond, corresponding to an approximately 107 billion euro reduction in Greece's debt.

Overall political instability and reluctance of the Greek governments to adopt and implement measures and reforms requested by its lenders led to another impasse in the summer of 2015 when Greece, unable to repay its debts, arrived very close to official insolvency. Controls were imposed on Greek banks to avoid a massive flow of capital and the Greek government decided to submit a request for financial assistance to the ESM. After laborious negotiations of 17 hours the parties reached an agreement (the Financial Assistance Facility Agreement) on 13 July 2015. The agreement was approved by national parliaments and on 19 August 2015 by the ESM Board of Governors. The precise amount of ESM financial assistance will depend on the IMF's decision regarding its participation in financing the programme, and on the success of reform measures by Greece, including the privatisation of state assets[72].

2. The measures adopted

In order to receive the financial support packages, Greece was requested to adopt a series of specific measures of adjustment the implementation of which was monitored in the first two phases (Greek Loan Facility and EFSF) by officials from the European Commission, the European Central Bank and the IMF, the so-called "Troika", a unique institution of an *ad hoc* nature whose establishment lacked an appropriate legal basis in primary EU law. For this purpose a Memorandum of Understanding was signed between the member state concerned and the "Troika", whereby the member state – in our case Greece – undertook to carry out a number of actions in exchange for financial assistance. The assistance was provided on the basis of strict conditionality; thus the successive Greek governments enjoyed limited leeway in the adoption of the measures required to overcome the crisis[73]. The same stands for the ESM: a set of prior actions were requested urgently in order to enter into negotiations for the reform agenda as it was set out in the most recent Memorandum of Understanding which was approved by the ESM Board of Governors on 19 August 2015 following its endorsement by ESM members according to their national procedures. The MoU of August 2015 focuses on four key areas: restoring fiscal sustainability; safeguarding financial stability; boosting growth, competitiveness and investment; and reforming the public administration.

Given the urgency of the situation, the measures adopted at the national level in the course of the three successive financial assistance packages were not carefully balanced leading to restrictions on economic and social rights. A series of laws, presidential decrees and ministerial decisions form the backbone of the austerity legislation. Due to their high number and lengthy content a detailed analysis of the said legal documents is beyond the scope of the present article. We will provide a selection of the most representative legislations adopted and we will focus on the ones that are detrimental on the social rights selected for analysis in the present article: social security and labour rights.

The first set of social rights attacked by austerity measures were labour rights and social security rights. A set of laws[74] introduced tectonic changes, amongst which figure the following[75]:

- modifications to both public and private pension schemes;

- reduction of public sector wages by 12% and later a further reduction of 3%.;
- remuneration of special apprenticeships for people between 15-18 years old with 70% of the general minimum wage, while new entrants in the labour market under the age of 25 would be remunerated with 84% of the general minimum wage;
- establishment of the wage setting system by law, whereas the minimum wage would be determined by a government decision, after consultation with the social partners;
- reduction of the general minimum wage by 22% for workers older than 25 years old and by 32% for younger workers;
- precedence of the company level CEAs over sectoral or occupational ones even if the latter contained more favourable provisions, provided that the safety net of the National General Collective Agreement is observed;
- arbitration procedures could be initiated only upon mutual consent of the parties, while the arbiter shall take into consideration the economic distress and the requirements of the adjustment programme;

Austerity legislation and effective protection of economic, social and cultural rights[76] in Greece

I. Social security rights

Article 12 of the European Social Charter guarantees the right to social security. Pensions are a principal branch of social security[77]. Both the European Court of Human Rights and the European Committee of Social Rights examined cases related to pension cuts, reaching totally different conclusions.

In *Koufaki and ADEDY/Greece*, the ECtHR found no violation of article 1 Protocol 1 ECHR, guaranteeing the right to property. The Strasbourg court reaffirmed the wide margin of appreciation that states enjoy with regard to their social policy and concluded that the reductions pursued a legitimate aim and were not disproportionate[78]. Moreover, there was no evidence that the applicant run the risk of falling below the subsistence threshold, while the removal of the thirteenth and fourteenth months' pensions had been offset by a one-off bonus.

To the contrary, the European Committee of Social Rights, concluded in five decisions on collective complaints against Greece that the cumulative effect of the modifications of the pensioners' social protection were a violation of the right to social security under Article 12 ESC[79]. In particular, the Committee ruled that certain restrictions such as those related to holiday bonuses, restrictions of pension rights in cases where the level of pension benefits is a sufficiently high one and in cases where people are of such a low age that it is legitimate for the state to conclude that it is in the public interest for such persons to be encouraged to remain part of the work-force than to be retired, did not in themselves constitute a violation of the ESC. However, the cumulative effect of the restrictions would bring about an overall degradation in the standard of living of the pensioners concerned.

It is interesting that the Greek Government tried to conform to the decision of the European Committee of Social Rights by notifying to the Committee of Ministers the measures it had taken to remedy the violations. The measures had a twofold approach: firstly the protection of vulnerable groups and secondly the improvement of the social security system. As to the first pillar, the government asserted that the pensions below 1000 euros would be guaranteed, the Benefit of Social Solidarity (EKAS) which is a non-retributive benefit for the protection of the elderly with low pensions would continue to be granted, a pension of 360 euros would be granted for the non-insured elderly based on certain conditions, while according to Law 4052/2012, the programme "Pensioner's homecare" had been established. It had also introduced favourable regulations regarding the payment of the Extraordinary Special Property Tax, tax exemptions for certain types of pensions, as those granted to war victims, war invalids, blind persons or invalids and beneficiaries of EKAS, while cuts on pensions were not made if the beneficiary or members of his family receive small pensions, or are invalids[80]. As to the improvement of the social security system, the government tried to counter problems of fraud in social security and incidents of "contribution evasion"

While the measures notified are in themselves welcome, it is doubtful whether they are going to last, especially as there is no sign of overcoming the crisis and Greece is supposed to introduce further measures in view of the ESM assistance package she is going to receive.

Contrary to the hesitant approach of the ECtHR regarding the right to social security in economic emergencies, the Inter-American Court of Human Rights has consistently applied

a different approach. In case *"Five Pensioners"/Peru**[81]*** the problem was the reduction by 78% of the pensions of the public sector workers while by law and Constitutional Court judgments their pension was planned to gradually equalize the salary they used to receive. The Inter-American Commission on Human Rights claimed the violation of articles 21 (right to property), 25 (right to judicial protection) and 26 (progressive development) of the Convention. The respondent state, for its part, invoked the argument of the state of emergency due to the economic crisis that it faced at that time.

The Court dwelt upon two questions: a) whether the right to a pension could be considered an acquired right, and b) what parameters should be taken into consideration to quantify the right to a pension, and whether it is possible to cap a pension[82].

Although the first question has been answered in the negative by the ECtHR in *Koufaki and ADEDY/Greece*[83], the IACtHR followed its own path of reasoning, assisted in part by the Constitution of the country and the jurisprudence of its Constitutional Court. Indeed, the former stipulated in its provisions that the "social regimes established for the pensions of public sector employees do not affect legally acquired rights, particularly the right corresponding to the regimes of Decree Laws 19990 and 20530"[84] (these decrees constitute the legal basis for the granting of the pensions in question). Furthermore, the Constitutional Court indicated that, once the requirements for granting a pension set forth in Decree Law No. 20530 have been fulfilled, the employee: "[…] incorporates into his patrimony, by virtue of the express authority of law, a right that is not subject to recognition by the Administration, that is not something that the law grants in some way, that, as has been recalled, arises from compliance with the requirements established by law. Thus, those who were subject to the regime of Decree Law 20530 and who, until the entry into force of Legislative Decree 817 had already complied with the requirements indicated in the norm, that is, they had worked for twenty years or more, have the right to an equalized pension, in accordance with the provisions of Decree Law 20530 and its modifying provisions"[85]. Bearing into consideration the foregoing, the IACtHR concluded that the right to property, stipulated in the ACHR, protects also the right of the applicants to receive an equalized retirement pension in the sense that it is an acquired right[86]. The Court referred also to the limitation clause of the San Salvador Protocol (article 5), holding that, although states may restrict the enjoyment of socio-economic rights in order to preserve the general welfare in a democratic society, and consequently the right to property, such restriction should take

place only through the appropriate legal procedure[87]. However, in the instant case no legal process has been applied.

What is most important in the Court's reasoning is indeed its approach of the right to property in conjunction with the right to a pension. The Court emphasized that from the time that a pensioner pays his contributions to the pension fund, ceases to work for the institution in question and opts for the retirement regime set forth in the law, such pensioner acquires the right to have his pension governed by the terms and conditions established in such law. It is a very important statement, especially if we take into account the adjustments brought about to pension systems all over the world due to the current economic crisis[88]. The Court applied the same reasoning in another case brought before it by the Commission against Peru[89].

Of particular interest is the *dictum* of the Court regarding the violation of article 26 of the American Convention on Human Rights. The Court did not deny its violation. Instead, it refused to pronounce upon it, stressing that the progressive development of economic, social and cultural rights should be measured in relation to the growing coverage of the right to social security and to a pension of the entire population and not in the circumstances of a very limited group of pensioners[90]. In any case, it did not preclude a prospective violation of the article in the factual and legal framework of another case[91].

II. Labour rights

The right to a decent remuneration which is enshrined in article 4 of the European Social Charter[92] was examined thoroughly by the ECSR in complaint no. 66/2011. The Committee examined the differentiated reduction of the minimum wage of people under 25 and it concluded that it constituted a violation of the right to fair remuneration[93]. The Committee held that although in certain circumstances it is acceptable to pay a lower minimum wage to young workers, this wage must under no circumstances fall under the poverty level of the country. In the same set of decisions (no 65/2011), the Committee has found further violations of article 4 ESC, in particular para. 4. More specifically, the Greek state by equating the first twelve months of employment in an open-ended contract with a trial period, made dismissal without notice or compensation possible during this period, thus violating directly article 4 para. 4 ESC.

Unlike the decisions on violations of the right to social security, where the Greek Government has introduced measures of remedy, here the Greek delegation before the Committee of Ministers, while accepting the conclusions of the ECSR, it pointed out that the measures were of a provisional nature and that the Greek Government had the firm intention to revoke these measures as soon as the economic situation of the country would allow. However, due to the political and economic constraints, "it was not possible to envisage a set timeframe, although it was unlikely that tangible results in Greece would be apparent before 2015"[94].

In this respect we should also cast an eye on the jurisprudence of the Inter-American Court of Human Rights. The right to salary was central in case *Abrill Alosilla et al./Peru**[95]*, regarding the retroactive application of decrees that between 1991 and 1992 eliminated the salary scale system that was in effect. Although the state acknowledged its international responsibility before the Commission (in relation to the right of "amparo" – article 25 ACHR – and not the right to property – article 21 ACHR), the failure to conclude promptly a friendly settlement brought the case before the IACtHR.

In this case, the Court did not make any specific reference to economic, social and cultural rights or the San Salvador Protocol. Nevertheless, the national legal documents examined by the Court (judgments of the Constitutional and Social Law Chamber of the Supreme Court of Justice) and the facts of the case imply the violation of socio-economic rights and in particular the right to receive remuneration.

The issue in question was the repeal, by virtue of decrees with retroactive effect, of the salary adjustment system known as "salary scales". This system was not subject to collective bargaining and consisted of the automatic adjustment of monthly remuneration for the personnel at that time denominated as Functionaries and Senior Management, taking as its basis a) the remuneration of the unskilled laborer or lowest position at the company and b) the Salary Scales or Indexes, or Variation Coefficients previously established and assigned to each position. In effect, each time the company increased the salary of the lowest positions as a consequence of a collective bargaining process, by necessity it also resulted in increases for the other positions in the company that could not benefit from that process[96]. The suppression of the "salary scales" system had as a result not only the reduction of salaries but also the retroactive collection of payments[97].

The Court reminded that it has developed a broad concept of property and that it has, through article 21 ACHR, protected vested rights, which are understood as "rights that have become part on an individual's wealth"[98]. It also emphasized that the principle of non-retroactivity of the law meant that the new law does not have the authority to regulate juridical situations that have been duly consolidated. In this respect the IACtHR observed that the "salary scales" system had generated an increase in wages that had become part of the wealth of the victims, i.e. a vested right. The Court differentiated between the system of salary adjustments, which was not a right of the victims *per se,* and the salary increases already received that had already become part of the workers' wealth. In effect, the latter constituted a vested right that was affected by the retroactive application of the law, resulting in violation of the right to property[99].

One should note the "human face" shown once more from the Court, regarding the personal situation of the applicants. In effect, the IACtHR paid particular attention to the fact that all workers had organized their finances based on their salaries and that the salary reduction compromised their opportunity to provide, for instance, economic support to sick family members, while some of them were obliged to sell possessions. It is a human approach that we rarely observe in an international tribunal, even a human rights one[100].

Concluding remarks

Even though international bodies reaffirm in every occasion that retrogression in the protection of economic, social and cultural rights is prohibited and despite the reassurances of the Greek government in one set of complaints before the ECSR that it is doing everything possible to guarantee the protection of vulnerable groups, the situation in Greece is far from stabilising or improving. The new request of assistance before the ESM brings along a new series of measures affecting socio-economic rights (Laws 4389/2016 and 4387/2016) and a great array of privatisations in public assets and organisations that touch upon the minimum core of social rights. A salient example is the announced privatisation of the Athens and Thessaloniki Water and Sewerage Company against the ruling of the Greek Council of State[101] that such a move could put public health at risk due to the uncertainty regarding the quality and affordability of the services[102]. We have a long way ahead until we can declare with certainty that socio-economic rights in Greece enjoy the level of protection they did before the economic crisis.

Notes

[1] Loi travail : 17 % de grévistes à la SNCF pour la première journée de grève illimitée, Le Monde.fr avec AFP, 01.06.2016, http://www.lemonde.fr/economie/article/2016/06/01/loi-travail-debut-d-un-mouvement-de-greve-illimitee-a-la-sncf_4929935_3234.html

[2] *Garcia Pedraza P.,* Crisis and social rights in Europe. Retrogressive measures versus protection mechanisms, Institute for Human Rights, Åbo Akademi University, 2014, p. 18.

[3] See articles 1, 55, 56, 61, 62, 68.

[4] There is a general consensus that most of the human rights norms enumerated in the UDHR have acquired a status of customary law, see in particular, *Henkin L.,* The age of rights, Columbia University, New York, 1990; *Meron T.,* Human rights and humanitarian norms as customary law, Clarendon Press, Oxford, 1989. This argument is further corroborated by the fact that the UN Human Rights Council in its Universal Periodic Review mechanism (established in 2006 by virtue of UNGA res. 60/251) is using as a reference instrument not only the human rights treaties binding upon states and the UN Charter but also the UDHR.

[5] UNGA res. 217 A/10.12.1948.

[6] For this categorization see *Karel V.* Human rights: A thirty year struggle. The sustained efforts to give force of law to the Universal Declaration of Human Rights. UNESCO Courier, 30:11, Paris, November 1977. Contemporary scholars have overridden this conceptualization (see infra).

[7] *Mowbray A.,* The development of positive obligations under the European Convention on Human Rights, Human Rights Law in Perspective, vol. 2, Hart Publ., Oxford-Portland Oregon, 2004.

[8] Adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

[9] ibid. Part. I, §5.

[10] Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968).

[11] See for instance, General Comment no 9 "The domestic application of the Covenant", UN doc. E/C.12/1998/24, 3.12.1998: "The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent", §10.

[12] International Convention on the elimination of all forms of racial discrimination, UNGA res. 2106 (XX), 21.12.1965; Convention on the Elimination of all forms of discrimination against women, **A/RES/34/180**, 18.12.1979; Convention on the rights of the child, A/RES/44/25, 20.11.1989; International Convention on the protection of the rights of all migrant workers and members of their families, A/RES/45/158, 18.12.1990; Convention on the rights of persons with disabilities, A/RES/61/106, 24.1.2007.

[13] See for an account of the relevant discussion, *Craven M.,* The International Covenant on Economic, Social and Cultural Rights: a perspective on its development, Clarendon Press, Oxford, 1995; *Eide A.,* Economic, social and cultural rights as human rights, in Falk R., Human rights: critical concepts in political science, Routledge, London, 2008, p. 299-318.

[14] See A/RES/6/543, 4.2.1952.

[15] A/RES/2200(XXI) A, 16.12.1966. ICCPR has 167 ratifications, whereas ICESCR 160.

[16] Arts 28 et seq. ICCPR. Similar committees of independent experts have been set up by all core human rights treaties.

[17] Art. 16 ICESCR. The procedure of examination is described in arts 16-23 ICESCR.

[18] "Review of the composition, organization and administrative arrangements of the

Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights", Economic and Social Council resolution 1985/17.

[19] Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols no 11 and 14), Rome 4 XI 1950, ETS 005.

[20] The Council of Europe promotes the indivisibility of human rights and the ECtHR has emphasised already in its very early jurisprudence that "there is no water-tight division" between social and economic rights and civil and political rights, *Airey/Ireland,* appl. no. 6289/73, judgment 9.10.1979, para. 26. The regional court that has an extensive jurisprudence on economic, social and cultural rights through an expansive interpretation of civil and political rights is the Inter-American Court of Human Rights, see in that respect *Saranti V.,* Economic, social and cultural rights in the Western Hemisphere under the prism of the Inter-American Court of Human Rights case-law, Annuaire International des Droits de l'Homme, VII/2012-2013, p. 515-553.

[21] Greece ratified the European Social Charter on 6 June 1984 by virtue of Law 1426/1984 accepting 67 of the Charter's 72 articles. The Revised European Social Charter has been ratified on 18 March 2016. Greece has also ratified the Additional Protocol and has accepted the system of collective complaints on 18 June 1998. However, it has not made the declaration that would allow non-governmental organisations to submit collective complaints.

[22] In 2000 the European Parliament approved the Charter which was given legally binding force in 2010 when it was incorporated into the consolidated version of the TEU, by virtue of article 6 TEU that declared that the Charter shall have the same legal value as the Treaties. However, UK and Poland have chosen for a special status through the Protocol on the Application of the Charter of Fundamental Rights of the EU to Poland and to the United Kingdom. Pursuant to this instrument, the ability of the Court of Justice of the EU or any other court or tribunal of Poland or of the United Kingdom is not extended to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that are reaffirmed by the Charter. Thus the Charter does not create justiciable rights applicable to

Poland or the United Kingdom except in so far as Poland or the United Kingdom have provided for such rights in their national law. See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0156:0157:EN:PDF

[23] Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, §5, http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx

[24] See for a general discussion *Coomans F. (ed.),* Justiciability of economic and social rights. Experiences of domestic systems, Intersentia, Antwerp, 2006; *de Schutter O.,* International human rights law, Cambridge University Press, 2010, p. 740-771; *Langford M. (ed.),* Social rights jurisprudence: emerging trends in international and comparative law, CUP, 2009; *Liebenberg S.,* The protection of economic and social rights in domestic legal systems, in Eide A., Krause C., Rosas A. (eds.), Economic, Social and Cultural Rights. A textbook, 2nd ed., Martinus Nijhoff Publ., 2001, p. 55-84; *Matscher F. (ed.),* The implementation of economic and social rights: national, international and comparative aspects, N. P. Engel, Kehl am Rhein, 1991; *Ramcharan B.G. (ed.),* Judicial protection of economic, social and cultural rights, Martinus Nijhoff Publ., Leiden, 2005; *Scheinin M.,* Economic, social and cultural rights as legal rights in Eide A., Krause C., Rosas A. (eds.), Economic, Social and Cultural Rights. A textbook, 2nd ed., Martinus Nijhoff Publ., 2001, p. 29-54.

[25] *Dennis M.J., Stewart D.P.,* Justiciability of economic, social and cultural rights: should there be an international complaints mechanism to adjudicate the rights to food, water, housing and health? 98 AJIL, 2004, p. 462-515 ; *Bossuyt M.,* La distinction juridique entre les droits civils et politiques et les droits economiques, sociaux et culturels, 8 Revue des Droits de l'Homme, 1975, p. 783-820; *Vierdag E.W.,* The legal nature of the rights granted by the International Covenant on Economic, Social and Cultural Rights, 9 Netherlands Yearbook of International Law, 1978, p. 69-105.

[26] For instance, the European Court of Human Rights has repeatedly reaffirmed that states parties enjoy a wide margin of appreciation, when they determine their social policy, especially if their resources are limited and they have to set priorities, see *Koufaki and ADEDY/Greece,* nos. 57665/12 and 57657/12, decision 7.5.2013, §31 ; *Terazzi S.r.l./ Italy,* no

27265/95, 17.10.2002 ; *Wieczorek/Poland*, no 18176/05, 8.12.2009 ; *Jahn et al./Germany*, nos 46720/99, 72203/01 and 72552/01; *Mihaieş and Senteş/ Romania*, nos 44232/11 and 44605/11, decision 6.12.2011 ; *Frimu and 4 other applications/Romania*, nos 45312/11, 45581/11, 45583/11, 45587/11 and 45588/11, decision 7.2.2012, §§40, 42 ; *O'Reilly et al./Ireland*, no 54725/00, decision 28.2.2002 ; *Pentiacova et al./Moldova*, no 14462/03, decision 4.1.2005 ; *Huc/Romania and Germany*, no 7269/05, decision 1.12.2009, § 64.

[27] See art. 2 §3 ICCPR, art. 13 ECHR, 25 ACHR. The African Charter on Human and Peoples' Rights does not contain an equivalent provision. However, article 26 of that instrument stipulates that: "States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter".

[28] See, *van Hoof G.J.H.,* The legal nature of economic, social and cultural rights: a rebuttal of some traditional views, in Alston P., Tomasevski K. (eds.), The right to food, Martinus Nijhoff Publ., 1984, p. 97-110.

[29] *Chapman A.,* "Violations approach" for monitoring the International Covenant on Economic, Social and Cultural Rights, 18 Human Rights Quarterly, 1996, p. 23-66. Also, *Chapman A., Russell S. (eds.),* Core obligations: building a framework for economic, social and cultural rights, Intersentia, Antwerp, 2002.

[30] Committee on Economic, Social and Cultural Rights, General Comment no. 3, "The nature of states parties' obligations (art. 2 §1 of the Covenant)", UN doc. E/1991/23-E/C.12/1990/8, Annex III, §10.

[31] ibid. §12.

[32] General Comment no. 9, "The domestic application of the Covenant", UN doc. E/1999/22, §10. See also decisions of national courts that give effect to socio-economic rights such as the right to housing, the right to education and the right to food, *Government of the Republic of South Africa/Grootboom and others,* Constitutional Court of South Africa, judgment of 4.10.2000; *Yated – Non – Profit Organization for Parents of Children with Down*

Syndrome and 54 Parents/Ministry of Education, Supreme Court of Israel, judgment of 14.8.2002 (HCJ 2599/00); *People's Union for Civil Liberties and another/Union of India and others,* Supreme Court of India, judgment of 2.5.2003. Relevant excerpts are quoted in *de Schutter O.,* International human rights law, Cambridge University Press, 2010, p. 751 et seq.

[33] "The nature of states parties' obligations (art. 2 §1 of the Covenant)", UN doc. E/1991/23-E/C.12/1990/8, Annex III, §5.

[34] ibid. §9. See also the Limburg Principles on the Implementation of the ICESCR, UN doc. E/CN.4/1987/17, "Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time" (principle no 8).

[35] Similarly, despite the absence of a clause on effective remedies in the Convention on the Rights of the Child, the respective Committee has emphasized that effective national remedies must be available to redress violations, underlining that "economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable", see General Comment no. 5 "Implementation of the Convention on the Rights of the Child, arts 4, 42 and 44 §6, UN doc. CRC/GC/2003/5, 27.11.2003.

[36] General Comment no. 9, "The domestic application of the Covenant", UN doc. E/1999/22, §7.

[37] See, for instance, *Mayagna (Sumo) Awas Tingni/Nicaragua,* 31.8.2001.

[38] *Office of the UN High Commissioner for Human Rights,* Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions, New York and Geneva, 2005, p. 50.

[39] Art. 2 para. 1 ICESCR.

[40] See General Comment no 3 The nature of States parties' obligations (art. 2, para. 1, of the Covenant), §10, "a minimum core obligation to ensure the satisfaction of, at the very

least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant".

[41] *Sepúlveda Carmona M.,* Alternatives to austerity: a human rights framework for economic recovery, in Nolan A. (ed.), Economic and social rights after the global financial crisis, CUP, 2014, pp. 25-27.

[42] In the "Maastricht Guidelines" it is described as "margin of discretion", Masstricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, para. 8.[43] General comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant), Fifth session (1990), UN doc. E/1991/23, para. 9.

[44] See, Press Release no 71/16, Inter-American Commission on Human Rights Expresses its Concern Regarding the Declaration of a "State of Exception and Economic Emergency" in Venezuela, June 1, 2016.

[45] January 22-26, 1997, para. 6. "On the occasion of the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter 'the Limburg Principles'), a group of more than thirty experts met in Maastricht from 22-26 January 1997 at the invitation of the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands). The objective of this meeting was to elaborate on the Limburg Principles as regards the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies", Maastricht Guidelines, Introduction. See, https://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html

[46] Almost 100 families evicted daily in Spain – statistics, Published time: 6 Mar, 2015, https://www.rt.com/news/238349-spain-families-lose-homes/

[47] "Maastricht Guidelines", para. 9.

[48] CESCR/48th/SP/MAB/SW, 16.5.2012, http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf

[49] Human Rights Committee, General Comment no 29, States of emergency (article 4 ICCPR), UN doc. CCPR/C/21/Rev.1/Add.11.

[50] *Nencheva and others/Bulgaria*, appl. no. 48609/06, judgment 18.6.2013, paras. 117 et seq.

[51] *Nitecki/Poland*, appl. no. 65653/01, judgment 21.3.2002.

[52] *Alexsanyan v. Russia,* appl. no. 46468/06, judgment 22.12.2008

[53] *Yordanova and others/Bulgaria*, appl. no. 25446/06, judgment 24.4.2012. See also *Winterstein/France*, appl. no. 27013/07, judgment 17.10.2013.

[54] *Kjartan Ásmundsson/Iceland*, appl. no. 60669/00, judgment 12.10.2004*; Moskal/Poland*, appl. no. 10373/05, judgment 15.9.2009, *Larioshina/Russia*, appl. no. 56869/00, decision 23.4.2002; *Kutepov and Anikeyenko/Russia*, appl. no. 68029/01, decision 25.10.2005; *Budina/Russia*, appl. no. 45603/05, decision 18.6.2009.

[55] *Stec and others/ the United Kingdom,* appl. nos. 65731/01 and 65900/01, decision 6.7.2005.

[56] *Larioshina/Russia,* op.cit. See, in general, ECtHR, Seminar Background Paper, 25 January 2013, Implementing the European Convention on Human Rights in times of economic crisis, http://www.echr.coe.int/Documents/Seminar_background_paper_2013_ENG.pdf; Steering Committee for Human Rights (CDDH), The impact of the economic crisis and austerity measures on human rights in Europe, Feasibility study, 84th meeting 7 – 11 December 2015, CDDH(2015)R84 Addendum IV, http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH%282015%29R84%20Addendum%20IV_EN.pdf

[57] "Vorbehalt des Möglichen". See, for this doctrine in constitutional law *Perlingeiro R.,* Does the precondition of the possible (Vorbehalt des Möglichen) limit judicial intervention in social public policies? NLUO Law Journal, vol. II, issue I, August 2015, pp. 20-45.

[58] *Da Silva Carvalho Rico/Portugal,* appl. no 13341/14, decision 1.9.2015, par. 44.

[59] *Da Conceiçã Mateus and Santos Januário/Portugal*, appl. nos. 62235/12 and 57725/12, decision 8.10.2013

[60] *Savickas and Others/ Lithuania,* appl. nos. 66365/09 et al., decision of 15.10.2013.

[61] The dissenting judges contented that the majority has expanded the scope of the right to property, since article 1 of Protocol No. 1 has never been interpreted "by this Court as obliging member States to provide persons with the right to social security benefits, in the form of disability pensions, independently of their having an assertable right to such a pension under domestic law", *Béláné Nagy/Hungary*,appl. no 53080/13, judgment 10.2.2015, joint dissenting opinion of judges Keller, Spano and Kjølbro, para. 1.

[62] *Priewe J.,* What went wrong? Alternative interpretations of the global financial crisis, in UN Conference on Trade and Development – Hochschule für Technik und Wirtschaft Berlin, The financial and economic crisis of 2008-2009 and developing countries, 2010, p. 17-18.

[63] *Dullien S., Kotte D., Márquez A., Priewe J.,* Introduction, in UN Conference on Trade and Development – Hochschule für Technik und Wirtschaft Berlin, The financial and economic crisis of 2008-2009 and developing countries, 2010, p. 1.

[64] *Priewe J.,* What went wrong? Alternative interpretations of the global financial crisis, op.cit.

[65] See for further details and legal documents, http://www.efsf.europa.eu/about/index.htm

[66] T/ESM 2012-LT/en.

[67] See for relevant information and legal documents, http://www.esm.europa.eu/index.htm

[68] *Garcia Pedraza P.,* Crisis and social rights in Europe. Retrogressive measures versus protection mechanisms, Institute for Human Rights, Åbo Akademi University, 2014, p. 7.

[69] *Skogly S.,* The human rights obligations of the World Bank and the International Monetary Fund, Cavendish Publ. Ltd, London/Sydney, 2001.

[70] In October 2009, the incumbent greek government discovered a high fiscal deficit amounting to 15,7% of GDP and a public debt amounting to 129,7% of GDP. These unexpected high numbers resulted in the downgrade of Greece's sovereign debt by Fitsch, Standard & Poor's and Moody's which had as a consequence the inability of the government to receive funding from the financial markets. See for a brief account of the facts, *ELSA, International legal research group on social rights,* Final report: austerity measures and their implications. The role of the European Social Charter in maintaining minimum social standards in countries undergoing austerity measures, July 2015, pp. 647-648.

[71] The assistance was finally provided on the basis of article 143 TFEU according to which when a member state is in difficulties regarding its balance of payments either as a result of an overall disequilibrium in its balance of payments or as a result of the type of currency at its disposal and where such difficulties are liable to jeopardize the functioning of the internal market or the implementation of the common commercial policy, the Commission shall recommend to the Council the grant of mutual assistance.

[72] ESM Programme for Greece, http://www.esm.europa.eu/assistance/Greece/index.htm.

[73] See in that respect P7_TA(2014)0239, Role and operations of the Troika with regard to the euro area programme countries, European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries (2013/2277(INI)).

[74] Law 3833 of 15 March 2010, Law 3845 of 6 May 2010, Law 3847 of 11 May 2010, Law 3863 of 15 July 2010, Law 3865 of 21 July 2010, Law 3866 of 26 May 2010, Law 3896 of 1 July 2011, Law 3986 of 1 July 2011, Law 4002 of 22 August 2011 and Law 4024 of 27 October 2011, Law 4046/2012, 4051 of 28 February 2012, Law 4093/2012 of 12 November 2012, Law 4172/2013. Joint Ministerial Decision 6/28.02.2012

[75] See for a detailed description of the measures adopted, ELSA, International Legal Research Group on Social Rights, Austerity measures and their implications. The role of the European Social Charter in maintaining minimum social standards in countries undergoing austerity measures, July 2015, pp. 646-754.

[76] See for a general reference to Europe, *Poulou A.*, Austerity and European Social Rights: How Can Courts Protect Europe's Lost Generation?, 15 German Law Journal, 2014, pp. 1145-1176; *Jimena Quesada L.,* Adoption and rejection of austerity measures: current controversies under European law (focus on the role of the European Committee of Social Rights), Revista catalana de dret públic, núm 49, 2014, pp. 41-59.

[77] Committee on Economic, Social and Cultural Rights, General Comment No. 19,The right to social security (art. 9), E/C.12/GC/19, 4.2.2008, par. 15.

[78] *Koufaki and Adedy/Greece*, appl. no 57665/12 and 57657/12, Decision 7.5.2013, par. 31, 41, 44-46.

[79] Federation of employed pensioners of Greece (IKA-ETAM) v. Greece (no. 76/2012); Panhellenic Federation of public service pensioners v. Greece (no. 77/2012); Pensioner's Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece (no. 78/2012); Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece (no. 79/2012); and Pensioner's Union of the Agricultural Bank of Greece (ATE) v. Greece (no. 80/2012). All decisions on the merits were rendered on 7 December 2012.

[80] Resolution CM/ResChS(2014)7 et seq. adopted by the Committee of Ministers on 2 July 2014 at the 1204th meeting of the Ministers' Deputies.

[81] C-98, 28.2.2003.

[82] ibid. §95.

[83] With regard to the right to property it stated that it should not be interpreted as giving right to a pension of a determined amount, §33 (with further references to the Court's case-law).

[84] *Five pensioners,* op.cit. §97.

[85] ibid. §98.

[86] ibid. §102.

[87] ibid. §116.

[88] See in that respect the judgment of the European Court of Human Rights in *Koufaki et ADEDY/Greece,* op.cit.

[89] *Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller")/Peru,* C-198, 1.7.2009.

[90] ibid. §147. See, also the Reasoned Concurring Opinion of Judge Sergio García Ramírez.

[91] However, in case *Acevedo Buendía* (§106) that followed it did not find a violation of article 26 ACHR, stating that the issue under consideration was not a measure adopted by the State that hindered the progressive realization of the right to pension but it was rather the non-compliance of the state with the payment ordered by the domestic courts. Therefore, the violated rights were only the right to amparo and the right to property. This was a landmark judgment in that the Court, shortly after the adoption of the Optional Protocol to the ICESCR, emphasized the existence of the "principle of non regression" regarding the limitations in the exercise of a right, *Burgorgue-Larsen L., Úbeda de Torres A.,* op.cit. p. 632-635.

[92] 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; 2 to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases; 3 to recognise the right of men and women workers to equal pay for work of equal value; 4 to recognise the right of all workers to a reasonable period of notice for termination of employment; 5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or

arbitration awards. The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage fixing machinery, or by other means appropriate to national conditions.

[93] General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece (no. 65 and 66/2011), decision on the merits of 23 May 2012, "As such, 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".

[94] Committee of Ministers, Resolution CM/ResChS(2013)3, Adopted by the Committee of Ministers on 5 February 2013 at the 1161st meeting of the Ministers' Deputies.

[95] C-223, 4.3.2011.

[96] ibid. §53.

[97] ibid. §64.

[98] ibid. §82.

[99] ibid. §§84-85. The case was recently closed (21.6.2013), when the last payments were received. The remedies for material and moral damages, costs and expenses, as a whole, amounted to a total of nearly 3 million dollars, see Resolución de la Corte Interamericana de Derechos Humanos, 22.5.2013, Caso *Abrill Alosilla y otros vs. Perú,* Supervisión de Cumplimiento de Sentencia.

[100] There is no doubt that the IACtHR case-law has been influenced a great deal by the enlightened long-year presidency of judge A.A. Cançado Trindade, who is a dedicated figure of the "human face" of international law, see in particular his book, "Le droit international pour la personne humaine", Pedone, Paris, 2012.

[101] Judgment no 1906/2014, 28.5.2014.

[102] Realising the human rights to water and sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque, 2014, Book 6: Access to justice for violations of the human rights to water and sanitation, p. 9.

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