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## Austerity and Human Rights Law: Towards a Rights-Based Approach to Austerity Policy, a Case Study of Greece

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# Austerity and Human Rights Law: Towards a Rights-Based Approach to Austerity Policy, a Case Study of Greece

Katerina Housos

## Abstract

This Note analyzes the legal framework for the protection of the right to work under national and international laws, and the limitations for Greece regarding the implementation of austerity measures that result in causing retrogression in the enjoyment of this right. Part I discusses the background of the Greek financial crisis, the financial assistance mechanisms and the adopted austerity measures. Part II examines the legal framework for the protection of the right to work, as well as the principles of equality, non-discrimination and progressive realization of human rights under the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). Finally, Part III demonstrates how the adopted Greek austerity measures violate international and national laws and advocates for the adoption of a stricter rights-based approach for states willing to implement austerity programs. Part III further argues for a rightsbased approach during times of financial crisis, with a minimum core of human rights obligations to always be respected.

**KEYWORDS:** Austerity; Greek; Debt; Discrimination; Right to Work; Rights-Based Approach; Policy; Bailout

## NOTE

### AUSTERITY AND HUMAN RIGHTS LAW: TOWARDS A RIGHTS-BASED APPROACH TO AUSTERITY POLICY, A CASE STUDY OF GREECE

*Katerina Housos\**

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### INTRODUCTION

Since 2008, Europe was struck by a financial and economic crisis of equal magnitude to the one that began in the United States almost two years earlier.<sup>1</sup> Greece was one of the first Member States of the Eurozone to be dramatically affected, and was soon experiencing financial, political and human rights turmoil.<sup>2</sup> Even though Greece's economy constitutes only a small fraction of the Eurozone's output, its sovereign debt reached an unprecedented 175 percent of the country's gross domestic product ("GDP") and for the first time since the Eurozone's establishment, its survival was

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1. Mark Landler, *The U.S. Financial Crisis Is Spreading to Europe*, N.Y. TIMES, Sept. 30, 2008, <http://www.nytimes.com/2008/10/01/business/worldbusiness/01global.html> (discussing the spreading of the financial crisis from the United States to Europe); Christopher Alessi, *The Eurozone in Crisis*, COUNCIL ON FOREIGN RELATIONS (Feb. 11, 2015), <http://www.cfr.org/eu/eurozone-crisis/p22055> (elaborating on the causes of the financial crisis in Europe).

2. According to Article 3(4) of the Treaty on European Union, "[t]he Union shall establish an economic and monetary union whose currency is the euro." Consolidated Version of the Treaty on European Union art. 3 (4), 2012 O.J. C 326/13, C 326/17. All the Member States of the European Union ("EU") are part of this economic and monetary union, and shall align their economic policies to the economic aims of the European Union. Today, eighteen EU Member States have adopted a single currency, the euro, creating the euro area or Eurozone. Throughout the Note, the terms "European Economic Monetary Union" and "Eurozone" are used interchangeably. *See generally* MARIA LORCA-SUSINO, *THE EURO IN THE 21ST CENTURY: ECONOMIC CRISIS AND FINANCIAL UPROAR*, 27-32 (2013) (describing the structure and evolution of the Eurozone). *See also* Margot Salomon, *Austerity, Human Rights and Europe's Accountability Gap*, OPENDEMOCRACY (Mar. 18, 2014), <https://www.opendemocracy.net/openglobalrights-blog/margot-salomon/austerity-human-rights-and-europe%E2%80%99s-accountability-gap> (discussing Greece being near financial collapse); Cephas Lumina (Independent Expert on the Effects of the Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights), *Report of the Independent Expert on the Effects of the Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights, Addendum Mission to Greece*, U.N. Doc. A/HRC/25/50/Add.1 (Mar. 7, 2014) [hereinafter UN Expert Report 2014] (describing how Greece was led to its current crisis); Manos Matsaganis, *The Greek Crisis: Social Impact and Policy Responses*, FRIEDRICH EBERT STIFTUNG 3 (2013), <http://library.fes.de/pdf-files/id/10314.pdf> ("So deep and drawn out a recession has simply no precedent in the peacetime economic history of most advanced economies.").

critically at stake.<sup>3</sup> In an effort to combat its financial deficit, Greece received financial assistance (“bailouts”) mainly funded by the European Union and adopted a significant number of austerity measures that were attached to the assistance.<sup>4</sup> These bailouts and austerity policies have resulted in a significant reduction of the Greek governments’ expenditures on human rights, development, and social welfare programs, and have challenged the notion of a social, “ever closer [European] Union,” which is progressively fading away.<sup>5</sup>

The right to work has been one of the most severely affected fundamental rights since the beginning of the crisis.<sup>6</sup> The reforms

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3. See Marianna Fotaki, *Greece Gives the EU a Chance to Rediscover its Social Responsibility*, EURACTIV 2 (Jan. 23, 2015), <http://www.euractiv.com/sections/elections/greece-gives-eu-chance-rediscover-its-social-responsibility-311523> (“Greece’s entire economy accounts for three per cent of the Eurozone’s output, but its national debt totals €360 billion or 175 per cent of the country’s GDP and poses a continuous threat to its survival.”); Jon Sindreu, Michael Ovaska & Carlos Tovar, *What Would the Eurozone Look Like Without Greece*, WALL ST. J., July 2, 2015, <http://graphics.wsj.com/eurozone-without-greece/> (noting that Greece accounts for about 1.8 percent of the Eurozone’s economic output); *IMF Chief Warns EU Survival at Stake*, THE NATIONAL (Nov. 17, 2010), <http://www.thenational.ae/business/economy/chief-warns-eu-survival-at-stake> (reporting that the Chief of the International Monetary Fund warned that the survival of the EU was at a critical point).

4. These austerity measures are a set of policies that have been adopted by the Greek government with the aim of reducing government budget deficits, and include increased taxation, public sector wage cuts, social security benefits cuts, and industry-wide wage bargaining suspension. See *The Economic Adjustment Programme for Greece*, Directorate-General for Economic and Financial Affairs, Eur. Comm’n Occasional Paper No. 61, 12-25 (2010), [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2010/pdf/ocp61\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2010/pdf/ocp61_en.pdf) [hereinafter *The First Economic Adjustment Programme*] (providing Greece’s responsibilities in order to receive the first bailout); *The Second Economic Adjustment Programme for Greece*, Directorate-General for Economic and Financial Affairs, Eur. Comm’n Occasional Paper No. 192 (2012), [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2014/pdf/ocp192\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2014/pdf/ocp192_en.pdf) [hereinafter *The Second Economic Adjustment Programme*] (describing Greece’s responsibilities in order to receive the second bailout); *Greece’s Austerity Measures*, BBC (May 5, 2010), <http://www.bbc.com/news/10099143> (outlining the austerity measures that Greece undertook as part of the first bailout).

5. See Charter of Fundamental Rights of the European Union Preamble, 2000 O.J. C 364/1 3648 (“The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.”); Michael Brenner, *Europe and Its Discontents*, THE WORLD POST (July 14, 2014), [http://www.huffingtonpost.com/michael-brenner/europe-and-its-discontent\\_b\\_5584987.html](http://www.huffingtonpost.com/michael-brenner/europe-and-its-discontent_b_5584987.html) (analyzing how the European Union has steadily grown disconnected); Fotaki, *supra* note 3, at 3 (“The immense social cost of the austerity policies demanded by the troika has put in question the political and social objectives of an ‘ever closer union’ proclaimed in the EU founding documents. . . . [T]he ultimate goal of integration was to bring about ‘the constant improvements of the living and working conditions of their peoples.’”).

6. The right to work is recognized in several international legal instruments, such as the International Covenant of Economic, Social and Cultural Rights arts. 6-8, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; Universal Declaration of Human Rights art. 23, ¶ 1, Dec.

introduced in connection with all three bailouts affected a large number of rights integral to the right to work, such as the right to protection from unjustified dismissal, the right to just and fair work conditions, the right to non-discrimination, and the right to collective bargaining.<sup>7</sup> Such labor-related standards are the result of decades of international and national efforts, and are recognized in international and national legal instruments.<sup>8</sup> By 2013, unemployment rates in Greece reached a historic 28 percent among the general population and 60.8 percent among the youth population.<sup>9</sup> Regrettably, the negative impact of the economic crisis and the austerity measures have disproportionately affected the most vulnerable and marginalized social groups, such as female workers, who have faced a significant decrease in their access to work and social welfare programs ever since the beginning of the crisis.<sup>10</sup> By implementing

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10, 1948, 151 B.F.S.P. 604 [hereinafter UDHR]; Convention on the Elimination of All Forms of Racial Discrimination art. 5, ¶¶ e, i Mar. 7, 1966, 660 U.N.T.S. 195; Convention on the Elimination of All Forms of Discrimination against Women art. 11, ¶1(a), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; Convention on the Rights of the Child art. 32, Nov. 20, 1989, Nov. 20, 1989; European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89; Revised European Social Charter of 1996 part II, art. 1, May 3, 1986, 2151 U.N.T.S. 000.

7. See Zoe Lanara-Tzotze, *The Impact of Anti-Crisis Measures, and the Social and Employment Situation: Greece*, EUROPEAN ECON. & SOC. COMMITTEE WORKER'S GROUP (2013), <http://www.eesc.europa.eu/resources/docs/grece-en.pdf> (discussing the reforms to Greek labor laws and collective bargaining provisions); ILO Releases *Report on the High Level Mission to Greece of September 2011*, INTERNATIONAL LABOUR ORGANIZATION, ¶¶ 120-31 (Dec. 16, 2011) [hereinafter ILO Report 2011] (analyzing the impact of austerity on collective bargaining).

8. See *supra* note 6 and accompanying text; *infra* notes 66, 67, 73, 74 and accompanying text.

9. *Greece Jobless Rate Hits New Record of 28%*, BBC (Feb. 13, 2014), <http://www.bbc.com/news/business-26171213> (reporting the unemployment level in Greece as 28 percent in September 2013 and youth unemployment as high as 61.4 percent in February 2013); *Unemployment Statistics*, EUROSTAT (Sept. 2015), [http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics) (reporting that in 2014, among the European Union Member States, the highest jobless rates were recorded in Greece, as 25.8 percent in October 2014).

10. See generally Report of the Office of the United Nations High Commissioner for Human Rights on the Impact of the Global Economic and Financial Crises on the Realization of All Human Rights and on Possible Actions to Alleviate it, U.N. Doc. A/HRC/13/38 (Feb. 18, 2010) [hereinafter HRC Report 2010] (noting that the impact of the adopted austerity measures was disproportionately felt by vulnerable social groups); Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Seventh Periodic Report of Greece, U.N. Doc. CEDAW/C/GRC/CO/7, at ¶ 6 (Mar. 1, 2013) (“The Committee notes with concern that the current financial and economic crisis and measures taken by the State party to address it within the framework of the policies designed in cooperation with the European Union institutions and the International Monetary Fund (IMF) are having detrimental effects on women in all spheres of life.”); Elena Crespi, Sylvain Aubry,

extreme austerity measures, the Greek government is potentially in violation of its legal obligations under numerous international human rights instruments providing for work-related rights.<sup>11</sup>

This Note analyzes the legal framework for the protection of the right to work under national and international laws, and the limitations for Greece regarding the implementation of austerity measures that result in causing retrogression in the enjoyment of this right. Part I discusses the background of the Greek financial crisis, the financial assistance mechanisms and the adopted austerity measures. Part II examines the legal framework for the protection of the right to work, as well as the principles of equality, non-discrimination and progressive realization of human rights under the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). Finally, Part III demonstrates how the adopted Greek austerity measures violate international and national laws and advocates for the adoption of a stricter rights-based approach for states willing to implement austerity programs. Part III further argues for a rights-based approach during times of financial crisis, with a minimum core of human rights obligations to always be respected.

### I. AUSTERITY MEASURES AND THEIR NEGATIVE IMPACT ON THE RIGHT TO WORK IN GREECE

This Part uses Greece as a case study to examine the negative impact of austerity policies on the right to work. Part I.A provides a brief overview of the Greek financial crisis. Part I.B discusses the austerity measures that were tied to the financial assistance mechanisms, as well as their impact on the right to work.

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Mayra Gomez, Bret Thiele & Matthias Sant’ana, *Downgrading Rights: The Cost of Austerity in Greece*, INTERNATIONAL FEDERATION OF HUMAN RIGHTS AND HELLENIC LEAGUE FOR HUMAN RIGHTS (2014), <https://www.fidh.org/IMG/pdf/grece646a2014.pdf> [hereinafter FIDH/HLHR Report 2014] (highlighting that during the crisis, vulnerable social groups, such as women and youth have faced increased barriers to many aspects of their right to work, as for example in accessing the labor market).

11. See FIDH/HLHR Report 2014, *supra* note 10 (analyzing the ways in which the Greek austerity measures are potentially in violation of the international legal frameworks protecting the right to work); European Committee of Social Rights, EUROPEAN SOCIAL CHARTER, 6 (Jan. 2013), <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXX2en.pdf> (The European Committee on Social Rights has found that Greece violated Article 1§1 of the European Social Charter protecting the right to work on the grounds that it had not been established that employment policy efforts had been adequate in combating unemployment and promoting job creation).

*A. A Brief History of the Greek Debt Crisis*

Ever since the historic Lehman Brothers bankruptcy, which greatly intensified the 2007-2008 US financial crisis and significantly roiled the global capital markets, liquidity has faced an acute shortage and both consumer and investor confidence have been shaken.<sup>12</sup> The subsequent euro crisis highlighted the internal imbalances between the various European Union Member States' economies, as well as an absence of such political integration that would enable a coordinated fiscal and monetary approach.<sup>13</sup> Even though a relatively small number of European Member States were seriously affected by the crisis, the Eurozone's financial stability and growth, as well as investor trust, were deeply impacted.<sup>14</sup>

Greece was one of the most highly leveraged Eurozone countries, whose excessive borrowing, overspending, low economic production and competitiveness, government misreporting, deficient tax collection, and high levels of inflation led to overbearing financial distress.<sup>15</sup> At the same time, cross-border cooperation and supervision in the European Union's financial services market have proven to be poorly executed from the very beginning of the Eurozone's establishment.<sup>16</sup> The lack of a strong institutional framework for

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12. See generally *Crash Course*, THE ECONOMIST (Sept. 7, 2013), <http://www.economist.com/news/schoolsbrief/21584534-effects-financial-crisis-are-still-being-felt-five-years-article> (discussing the origins and effects of the financial crisis); John Francesco Guerrero & Michael Mackenzie, 'I Got a Call at 5 O'clock...', THE FINANCIAL TIMES (Sept. 15, 2009), <http://www.ft.com/intl/cms/s/0/0e0248ec-a18e-11de-a88d-00144feabdc0.html> (underlining the negative impacts of the Lehman Brothers' collapse).

13. See Alessi, *supra* note 1 (examining the causes and the evolution of the European crisis); *Crash Course*, *supra* note 12 (noting the imbalances between Southern European and Northern European economies, and how such imbalances fueled the euro crisis).

14. See Alessi, *supra* note 1 (noting the European countries hit by the euro crisis); Alexander Eichler, *The European Debt Crisis*, HUFFINGTON POST (Dec. 21, 2011), [http://www.huffingtonpost.com/2011/12/21/european-debt-crisis\\_n\\_1147173.html](http://www.huffingtonpost.com/2011/12/21/european-debt-crisis_n_1147173.html) (outlining the European debt crisis).

15. See Philip R. Lane, *The European Sovereign Debt Crisis*, 26 J. OF ECON. PERSP. 49, 55-61 (2012) (analyzing the origin and propagation of the European sovereign debt crisis); Georgia Kaplanoglou & Vassilis T. Rapanos, *The Greek Fiscal Crisis and the Role of Fiscal Governance*, *GreeSE Paper No. 48*, HELLENIC OBSERVATORY EUROPEAN INSTITUTE (June 2011), <http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/pdf/GreeSE/GreeSE48.pdf> (examining the factors that lead Greece to its crisis situation); Dimitris Venieris, *Crisis Social Policy and Social Justice: The Case of Greece*, *GreeSE Paper No. 69*, HELLENIC OBSERVATORY EUROPEAN INSTITUTE (Apr. 2013), [http://eprints.lse.ac.uk/50258/1/GreeSE\\_No69.pdf](http://eprints.lse.ac.uk/50258/1/GreeSE_No69.pdf) (outlining the main causes that led to the Greek crisis).

16. See JASON MANOLOPOULOS, GREECE'S ODIIOUS DEBT 162 (2011) ("There was shockingly weak due diligence in assessing the suitability for entry into the euro, and equally

setting up and following the execution of the budget within the Eurozone is a factor that further contributed to the crisis.<sup>17</sup>

Soon after the Greek finance minister's announcement of a revised 2009 budget deficit forecast, which was in fact more than double the previous government's misleading estimate, Greece was the first country member of the Eurozone to verge on insolvency.<sup>18</sup> In order to safeguard the banking system's stability, the European Commission, the European Central Bank, and the International Monetary Fund ("IMF"), typically referred to as the "Troika," agreed to provide Greece with a three-year loan.<sup>19</sup> All parties agreed to the disbursement of three-year loan installments under the condition that the Greek government would enact and fulfill a number of severe austerity policies.<sup>20</sup>

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weak application of the few rules that were supposed to police its operation."); Nikki Tait, *Turmoil Points to Poor Cross-Border Supervision*, THE FINANCIAL TIMES (Dec. 4, 2007), <http://www.ft.com/intl/cms/s/0/1309088a-a20d-11dc-a13b-0000779fd2ac.html> (reporting that top European regulators and policymakers publicly admitted that market turmoil had drawn attention to the need for improvements in cross-border co-operation and supervision among financial supervisors).

17. See Kaplanoglou & Rapanos, *supra* note 15, at 4 (examining some of the main reasons behind the Greek financial crisis); Tait, *supra* note 16 (noting the need for improvements in executing the Eurozone budget).

18. See Kevin Featherstone, *The Greek Sovereign Debt Crisis and EMU: The Failing State in a Skewed Regime*, 49 J. COMMON MKT. STUD. 193, 199 (2011) (stating that Giorgos Papakonstantinou, the Greek Finance Minister, announced a revised 2009 budget deficit forecast of 12.5% of GDP – more than double of the previous Government's misleading estimate); Niki Kitsantonis & Matthew Salmarsh, *Greece, Out of Ideas, Requests Global Aid*, N.Y. TIMES, Apr. 24, 2010, <http://www.nytimes.com/2010/04/24/business/global/24drachma.html>; *Greece Timeline*, BBC (Aug. 11, 2015), <http://www.bbc.com/news/world-europe-17373216> (chronicling the Greek crisis).

19. See The First Economic Adjustment Programme, *supra* note 4, at 14 (detailing the basic facts of the first Greek bail-out); International Monetary Fund, *IMF Approves €30 Billion Loan for Greece on Fast Track*, IMF SURVEY ONLINE (May 9, 2010), <http://www.imf.org/external/pubs/ft/survey/so/2010/new050910a.htm> (reporting that the International Monetary Fund approved a €30 billion three-year loan for Greece as part of a joint European Union-IMF €110 billion financing package to help the country out of its debt crisis).

20. See The First Economic Adjustment Programme, *supra* note 4, at 12-25 (detailing the austerity program that Greece was required to enact in order to receive each loan installment); The Second Economic Adjustment Programme, *supra* note 4 (detailing the second austerity program that Greece was required to enact); Helena Smith, *Greece Approves Sweeping Austerity Measures*, THE GUARDIAN (May 6, 2010), <http://www.theguardian.com/world/2010/may/06/greece-crisis-approves-austerity-measures> (reporting on the austerity measures attached to the Economic Adjustment Programmes).

### B. Austerity Policies as Greek Bailout Conditions

Throughout the financial crisis, the adoption of policies and laws regulating social and economic rights was generally executed in the absence of a coordinated European anti-crisis policy and without the input of the European Social Partners.<sup>21</sup> Pressure from the Troika led to a rushed embrace of radical austerity measures that were imposed on Greece as loan counter-measures and consisted of structural reforms aimed to improve the country's competitiveness, reduce the government deficits and debt accumulation, and achieve long-term fiscal sustainability.<sup>22</sup> However, expert reports have shown that the agreed-upon austerity programs have had a negative impact that was larger than anticipated on Greece's economic growth and development, as well as on human rights.<sup>23</sup>

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21. See Niklas Bruun, *The Economic and Financial Crisis and Collective Labour Law in Europe* 196 (2014) (noting the absence of the European Social Partners from the adopting of austerity programs); see also MARIE-ANGE MOREAU, *BEFORE AND AFTER THE ECONOMIC CRISIS: WHAT IMPLICATIONS FOR THE 'EUROPEAN SOCIAL MODEL'?* 6 (2011) (discussing that some of the main reasons for this policy direction was due to the absence of a unified European labor market *per se*).

22. See *Greece: Letter of Intent, Memorandum of Economic and Financial Policies*, IMF (Mar. 15, 2012) ("The government is fully committed to the policies stipulated in this document and its attachments, to frame tight budgets in the coming years with the aim to reduce the fiscal deficit to below 3 percent in 2014 and achieve a downward trajectory in the public debt-GDP ratio beginning in 2013, to safeguard the stability of the Greek financial system, and to implement structural reforms to boost competitiveness and the economy's capacity to produce, save, and export."); *Fiscal Consolidation Targets, Plans and Measures in OECD Countries*, in *RESTORING PUBLIC FINANCES* (2012), <http://www.oecd.org/eco/public-finance/4.3%20Blondal%20Klepsvik.pdf> (outlining the aims of the fiscal austerity programs); see also Vasilis Monastiriotis et al., *A Very Greek Crisis, Austerity Measures in Crisis Countries - Results and Impact on Mid-term Development Forum*, 48 *INTERECONOMICS* 4 (2013), <http://www.intereconomics.eu/archive/year/2013/1/842/> (analyzing the austerity measures imposed in Eurozone countries in crisis, such as Greece).

23. For an overview of the negative impacts of the austerity measures on economic growth, see International Monetary Fund, *Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-by Arrangement*, IMF Country Report No. 13/156 (2013) (discussing the IMF's acknowledgement that the decline in Greek GDP after the first package of measures (2010-2012) was much greater than anticipated and that the levels of deep recession, exceptionally high unemployment and high public debt required for a debt restructuring, which proceeded in 2012); European Parliament Resolution on the report on Employment and Social Aspects of the Role and Operations of the Troika (ECB, Commission and IMF) with regard to Euro Area Programme Countries, A7-0135/2014, ¶ 6 [hereinafter *European Parliament Resolution 2014*] (noting that the structural character of the crisis had been largely underestimated, leading to failed expectations of job creation and growth through austerity). For an overview of the negative impacts of the austerity measures on human rights see HRC Report 2010, *supra* note 10 (analyzing the impact of the crisis on human rights); Margot E.

The right to work has been one of the most severely affected rights since the beginning of the crisis.<sup>24</sup> In a targeted effort to reduce public spending, drastic cuts have been made to wages, salaries, and pensions both in the public and private sector after several years of continuous increases.<sup>25</sup> The minimum wage, as agreed upon within the National General Collective Agreement, has been systematically lowered by national laws, as low as below the poverty level for the youth population—and in some instances, collective bargaining for wage increases has been explicitly prohibited.<sup>26</sup> In addition, two of the 14 monthly salary payments, which were part of the annual bonus payment policy in the public sector, have been completely abolished.<sup>27</sup>

Moreover, employment policy reform laws that were rapidly adopted to satisfy the Troika's specific demands have dramatically altered Greek labor structures and industrial relations.<sup>28</sup> Specifically, soon after signing the 2010 MoU, the Greek government promptly passed a law that, among other reforms, eliminated the long-standing principle that in the case of a conflict of terms between multiple collective labor agreements that may apply to a specific employment contract, the terms that shall prevail are the ones most favorable to the

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Salomon, *Of Austerity, Human Rights and International Institutions*, LSE Law, Society and Economy Working Papers 2/2015 [hereinafter LSE Report 2015].

24. See *supra* note 6 and accompanying text; HRC Report 2010, *supra* note 10 and accompanying text.

25. See *Greece's Austerity Measures*, *supra* note 4; *What the Greek Austerity Measures Look Like*, CBC NEWS (Nov. 1, 2011), <http://www.cbc.ca/news/world/what-the-greek-austerity-measures-look-like-1.998754> (discussing the Greek austerity measures).

26. See Eleni Patra, *Social Dialogue and Collective Bargaining in Times of Crisis: The Case of Greece* 6, 9-10 (International Labour Organization, Working Paper No. 39, 2012) (defining the Greek National General Collective Agreements); see also *supra* note 25 and accompanying text; *supra* note 7 and accompanying text.

27. See HRC Report 2010, *supra* note 10 and accompanying text; *supra* note 25 and accompanying text.

28. See Nomos (2011:4024) Suntaksiodotikes ruthmiseis, eniaio misthologiovathmologio, ergasiaki efedreia kai alles diatakseis efarmogis tou mesoprothesmo plaiasiu dimosionomikis stratigikis 2012-2015 [Pension arrangements, single payroll, job redundancy and other provisions for the implementation of the medium-term fiscal strategy framework for 2012-2015], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2012, A:226 (Greece) (incorporating into the Greek legal system the MoU labor law reform policies to eliminate the employee-friendly labor relations system that existed in Greece for the previous two decades); ILO Report 2011, *supra* note 7, ¶ 302 (noting that there has been an unprecedented number of reforms introduced in the Greek labor market institutions).

employee.<sup>29</sup> In addition, Troika-backed reforms opted for the allowing of labor pacts to set wage growth below sectoral agreements, as well as for the adoption of laws reforming the bargaining process on wages in the private sector.<sup>30</sup> Furthermore, the collective agreement hierarchy has been altered, allowing for deviations from their provisions, and sectoral collective agreements have been suspended.<sup>31</sup>

Within the European Union, Greece has experienced the highest rates in unemployment amongst the country's general and youth populations, with the jobless rate being as high as an unprecedented 28 percent in September 2013 and an alarming 60.8 percent in February 2013 among the youth population.<sup>32</sup> About 3.5 million people live under 60 percent of the median disposable income, with an increasing number of employed workers falling under this category as a result of the decrease in wages and the taxation policies.<sup>33</sup> These conditions have also given rise to a growing number of worker exploitation, social exclusion, child labor, human trafficking and exploitation of migrant workers instances.<sup>34</sup> Regrettably, due to their

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29. This principle was previously established in Law 1876/1990 and had been in operation for the past twenty years. *See* Nomos (1990:1876) Eleutheres sullogikes diaprimateuseis kai alles diatakseis [Free collective bargaining and other provisions], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 1990, A:27 (Greece) [hereinafter Law 1876/1990]; Nomos (2010:3845) Metra gia tin efarmogi tou mixanizou stiriksis tis ellinikis oikonomias apo ta krati-meli tis Zonis tou euro kai to Diethnes Nomismatiko Tameio [Measures for the application of the support mechanism of the Greek economy by the Euro Member State and the International Monetary Fund], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2010, A:65, art. 2.7 (Greece) (“[T]he terms of occupational and company level agreements may deviate from the respective terms of sectoral collective agreements and national general collective agreements and the terms of sectoral collective agreements”); *see also supra* note 27 and accompanying text.

30. The First Economic Adjustment Programme, *supra* note 4, at 68 (“[T]he government proposes and parliament adopts legislation to reform wage bargaining system in the private sector . . . [and] [a]llow local territorial pacts to set wage growth below sectoral agreements.”).

31. *See supra* note 7 and accompanying text.

32. *See supra* note 9 and accompanying text.

33. *See* Eva Kaili, *Greece at the Tipping Point*, EURACTIV (Jan. 20, 2015), <http://www.euractiv.com/sections/global-europe/greece-tipping-point-311417> (stating that of these 3.5 million people, “21% below the poverty line and the 11% in ‘extreme material deprivation’”); Tanja Milevska, *Trade Unions: ‘20% of Employed Greeks Live below the Poverty Line,’* EURACTIV (Mar. 20, 2014), <http://www.euractiv.com/social-europe/austerity-aggravated-crisis-euro-news-534253> (reporting that twenty percent of Greek workers live below the poverty line).

34. *See* European Parliament Resolution 2014, *supra* note 23, ¶¶ 6, 15 (outlining the negative impacts of austerity); *Severe Forms of Labour Exploitation, Country Report for*

prevalence in the public sector employment field, as well as in informal employment, female workers have been particularly affected by the impact of austerity policies on their access to employment.<sup>35</sup>

## II. *THE RIGHT TO WORK AND STATE OBLIGATIONS UNDER INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS*

Part II analyzes Greece's obligations under international and domestic law regarding the right to work. Part II.A introduces the relevant United Nations and International Labour Organization ("ILO") treaties. Part II.B elaborates on the Greek domestic law governing the right to work.

### A. *The Right to Work under International Law*

Greece is a party to most international human rights conventions that protect the various aspects of the right to work.<sup>36</sup> These obligations exist not only during times of economic growth and stability, but also during periods of recession, when States continue to have the obligation to respect, protect and fulfill economic, social and cultural rights.<sup>37</sup>

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*Greece*, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (2013) (highlighting that persons living in Greece are at risk of becoming victims of severe labor exploitation).

35. See generally *Policy Briefing: The Impact of Austerity on Women*, FAWCETT SOCIETY (Mar. 2012) (arguing that the negative impacts of austerity are not gender-neutral); Greek Ombudsman, *Equal Treatment of Men and Women in Employment and Labour Relations - Special Report 2012: Executive Summary* (Dec. 2012), <http://www.synigoros.gr/resources/gender-and-labour-relations-special-report-2012.pdf> [hereinafter Greek Ombudsman Report 2012] (describing how the work related rights of women have been severely affected in numerous fields, such as contract terminations in maternity protection periods, wrongful imposition of job rotation, moral or sexual harassment); European Parliament Resolution 2014, *supra* note 23 (noting that unemployed women are experiencing higher unemployment than the average national rate).

36. ILO Report 2011, *supra* note 7, ¶ 1 (listing numerous labor-related Conventions that Greece has ratified); see also *supra* note 6 and accompanying text (Greece has ratified all Covenants listed).

37. See *Safeguarding Human Rights in Times of Economic Crisis*, Council of Europe Issue Paper 2013 28-32 (noting that the obligations of Council of Europe Member States to respect, protect and fulfill economic, social and cultural rights exists both during periods of economic growth and stagnation); see also Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Mar. 4, 1997), M.C.H.R. 97-124 (outlining the general obligations of Member States towards economic, social and cultural rights).

### 1. The International Protection of the Right to Work

The Universal Declaration of Human Rights (“UDHR”) and the ICESCR both establish the right to work and specific work related rights, which apply not only to State citizens, but also to all people working in that State, even if they have not acquired permission to do so.<sup>38</sup> The ICESCR, which was adopted in 1966 by the United Nations General Assembly and entered into force in 1976, is the most comprehensive international legally binding instrument protecting economic, social and cultural rights.<sup>39</sup> The ICESCR focuses on the essential obligations of States to ensure the welfare of the people, to respect their inherent dignity, and value the ideal that “free human beings enjoying freedom from fear and want, can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights.”<sup>40</sup>

The right to work reflected in these legal instruments makes for an important part of the specific obligations that State Parties have undertaken towards safeguarding human rights.<sup>41</sup> The ICESCR defines three dimensions of the right to work, which are: first, the purely individual dimension of the right of everyone to have the opportunity to gain a living through access to work that has been freely chosen or accepted; second, the collective dimension of freedom of association, the right to form trade unions and bargain collectively; and third, the right to a safe and healthful work environment.<sup>42</sup> The right to work has been further expanded on in

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38. UDHR, *supra* note 6; ICESCR, *supra* note 6. The language used in the treaties grants these rights to “everyone” or to “all workers,” phrases which include non-citizen workers.

39. See Philip Alston & Gerard Quinn, *The Nature and Scope of States Parties Obligations Under the International Covenant on Economic, Social and Cultural Rights*, HUM. RTS. Q. 9 (1987) (analyzing States Parties obligations under the ICESCR); BEN SAUL ET AL., *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMMENTARY, CASES AND MATERIALS* (2014) (analyzing the ICESCR provisions).

40. See ICESCR, *supra* note 6, Preamble; see also LOUIS HENKIN ET AL., *ECONOMIC AND SOCIAL RIGHTS IN HUMAN RIGHTS* 1373 (2d ed., 2009) (describing the “shift from the minimal state advocated by classical liberalism to the modern activist state that promotes the well-being of all its members out of social solidarity”).

41. ICESCR, *supra* note 6, art. 6 (providing that “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”)

42. See SAUL ET AL., *supra* note 39, at 279-83 (elaborating on the dimensions of the right to work). Three dimensions are also recognized in the Charter of Fundamental Rights of the European Union, in Article 30 (protection in the event of unjustified dismissal), Article 31 (fair and just working conditions) and Article 28 (the right of collective bargaining and action);

General Comment 18 of the United Nations Committee on Economic, Social and Cultural Rights, which defines the right to work as a fundamental right, essential for the realization of other human rights and intrinsic to a high quality of life and human dignity.<sup>43</sup> It encompasses many forms of work, whether dependent or independent, as well as the right to not being unjustly deprived of work, and the right to security against unfair dismissal.<sup>44</sup> Moreover, the right to work shall be protected by providing workers with a fair income that allows them to financially support themselves and their families, and by ensuring both their physical and mental stability.<sup>45</sup>

## 2. The Principles on Progressive Realization and Non-Retrogression

The general overriding obligation of States Parties to the ICESCR is to progressively achieve the full realization of the right to work.<sup>46</sup> Under Article 2(1) of the ICESCR, the component of progressive realization of economic, social and cultural rights requires States Parties 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.”<sup>47</sup> This duty is a continuously evolving effort

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as well as in the European Social Charter, in Article 1 (right to work), Article 2 (right to just conditions of work), Article 3 (right to safe and healthy working conditions), Article 4 (right to a fair remuneration), Article 5 (right to organize) and Article 6 (right to bargain collectively).

43. See Committee on Economic, Social and Cultural Rights (“CESCR”), *General Comment No. 18 on the Right to Work*, U.N. Doc. E/C.12/GC/18 (Feb. 6 2006) [hereinafter CESCR, General Comment No. 18]; Office of the High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on Austerity Measures and Economic and Social Rights*, 14 (2013), [hereinafter OHCHR Report 2013], [http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82\\_en.pdf](http://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf) (elaborating on the content of the right to work and submitted pursuant to G.A. Res. 48/141).

44. See *supra* note 43 and accompanying text.

45. See *supra* note 43 and accompanying text.

46. CESCR, *General Comment No. 3, The Nature of States Parties Obligations under Article 2(1)*, ¶ 9, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter CESCR, General Comment No. 3] (declaring that the progressive realization principle imposes the obligation on State Parties to “move as expeditiously and effectively as possible” towards the full implementation of economic, social and cultural rights); MARY DOWELL-JONES, *CONTEXTUALISING THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: ASSESSING THE ECONOMIC DEFICIT* (discussing the elements of the principle of progressive realization); Alston & Quinn, *supra* note 39, at 165 (analyzing State obligations under ICESCR Article 2(1)).

47. See ICESCR, *supra* note 6, art. 2(1); Alston & Quinn, *supra* note 39, at 165 (analyzing ICESCR Article 2(1)).

towards the realization of these rights, and States Parties have the burden to show that they are taking effective measures and making measurable progress towards the realization in full of this right, notwithstanding their level of development and resources.<sup>48</sup> States Parties are obliged to take appropriate measures, plan and implement, as quickly as possible, policies, programs and frameworks that specifically aim to advance its full enjoyment by all persons.<sup>49</sup>

While the State obligations regarding the right to work are generally achieved progressively over a period of time, States have the immediate obligation to ensure that the minimum essential level of the right to work is in any case always achieved.<sup>50</sup> Even during periods of financial crisis, where limited economic resources render economic and social rights harder to fulfill in full, States must prioritize the use of all available resources towards the achievement of the minimum core content of the right to work and not take retrogressive steps that might reduce the protection and fulfillment of such rights.<sup>51</sup> The minimum core obligations for States Parties regarding the right to work include ensuring access to employment, particularly for vulnerable and marginalized social groups, and abstaining from any measures that would discriminate against such disadvantaged social groups.<sup>52</sup> Further, the minimum standard of wages, which are protected under the right to fair remuneration, should not in any case be lower than a threshold of 60 percent of the national average wage, or a wage agreed upon by collective

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48. Cess Flinterman, *Appendix II: The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 15 NETH. Q. HUM. RTS. 244, 247-49 (1997) (analyzing guidelines 8-10 and 14-15 on the principle of progressive realization of economic, social and cultural rights); Alston & Quinn, *supra* note 39, at 156-229 (analyzing States Parties obligations regarding the progressive realization of the ICESCR rights).

49. *See supra* notes 46-48 and accompanying texts.

50. CESCR, General Comment No. 3, *supra* note 46, ¶¶ 5, 10 (noting that whatever the State level of economic development, it must ensure the satisfaction of a minimum core level of economic and social rights); CESCR, Statement on Allocation of Resources, U.N. Doc. E/C.12/2007/1 (2007) (highlighting that even during times of resource scarcity the achievement of the minimum core levels of economic, social and cultural rights must always be a priority).

51. *See* CESCR, General Comment No. 3, *supra* note 46, ¶ 12 (elaborating on State obligations during times of financial recessions); *see also id.*, ¶ 9 (noting that “any deliberately retrogressive measures in that regard would require 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”); CESCR, Statement on Allocation of Resources, *supra* note 50.

52. *See* CESCR, General Comment No. 18, *supra* note 43, ¶ 31; *supra* note 50 and accompanying text.

bargaining.<sup>53</sup> A State's failure to abide with these minimum core obligations standards is a *prima facie* violation of international law, unless the State can prove that it took all and every effort to use all the resources at its disposition towards the satisfaction of such standards.<sup>54</sup>

Furthermore, States Parties are not permitted to adopt measures that would lead to a retrogressive impact on the right to work.<sup>55</sup> A number of such retrogressive measures have been set out by the Committee on Economic, Social and Cultural Rights to include the restriction of the access to employment to specific social groups on the basis of discrimination, the abrogation of domestic laws and policies which are fundamental to the protection of the right to work, and generally, the adoption of laws and policies that are incompatible with international human rights obligations.<sup>56</sup>

### 3. The Non-discrimination and Equality Principles

In addition to the above core State obligations related to the substantive right to work, the ICESCR further guarantees the cross-cutting principles of equality and non-discrimination.<sup>57</sup> Even during

53. See European Social Charter Committee of Independent Experts, Conclusions XIV-2, Statement of Interpretation on Article 4(1), 50-52 (1998) (outlining the minimum essential levels of the right to work); Alston & Quinn, *supra* note 39, at 192-205 (analyzing the meaning of ICESCR Article 4 provisions).

54. CESCR, General Comment No. 3, *supra* note 46, ¶ 10 (noting that any failure to achieve the minimum essential levels of the right to work would be a *prima facie* violation, except in the case where “every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”); AOIFE NOLAN, ECONOMIC AND SOCIAL RIGHTS AFTER THE GLOBAL FINANCIAL CRISIS 133–45 (2014) (analyzing the prohibition of retrogression and the obligation of progressive realization under the ICESCR).

55. See CESCR, General Comment No. 18, *supra* note 43, ¶ 340 (listing measures that are likely to have retrogressive effects to the right to work); NOLAN, *supra* note 54 at 134-35 (discussing which specific measures fall under the retrogressive measures category).

56. See *supra* note 55 and accompanying text.

57. See generally UDHR, *supra* note 6, art. 2; International Covenant on Civil and Political Rights art. 3, Dec. 16, 1966, 999 U.N.T.S. 171; ICESCR, *supra* note 6, art. 3; CEDAW, *supra* note 6; Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, ¶ 29, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010) [hereinafter CEDAW General Recommendation No. 28]; CESCR, General Comment No. 3, *supra* note 46, ¶ 1; CESCR, General Comment No. 20, Non-discrimination in Economic, Social and Cultural Rights (art. 2, ¶ 2, of the International Covenant on Economic, Social and Cultural Rights), ¶¶ 7, 13, U.N. Doc. E/C.12/GC/20 (July 2, 2009) [hereinafter CESCR, General Comment No. 20]; CESCR, General Comment No. 19, The Right to Social Security (art. 9), ¶ 42, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008).

periods of economic hardship, all States are under the obligation to respect the rights of all groups and individuals in an equal manner.<sup>58</sup> Moreover, there shall be no discrimination in access to and maintenance of employment on the grounds enumerated in Article 2 of ICESCR, namely race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the intention or effect of impairing or nullifying exercise of the right to work.<sup>59</sup> This obligation is not limited to direct discrimination in laws and national policies, but also expands to cases of indirect discrimination through the implementation of seemingly neutral policies or measures, which, however, have a de facto higher negative impact on women.<sup>60</sup> The treaty provides that equitable resources should be allocated to ensure the effective realization of women's rights as well as their broader participation in the decision-making processes.<sup>61</sup> The principle of protecting human rights of women and men equally is also a principle of customary international law, and it is thus a violation for any state to practice, encourage or condone systematic gender discrimination.<sup>62</sup> Therefore, when implementing restrictive austerity policies, States Parties shall not adopt measures that affect the employment of specific social groups more than others and raise issues of non-discrimination and equality.<sup>63</sup>

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58. See Ignacio Saiz, "Rights in Recession? Challenges for Economic and Social Rights Enforcement in Times of Crisis," 1 J. OF HUM. RTS. PRAC. 283 (2009) (noting that retrogressive policies must not be applied in a discriminatory manner); CESCR, General Comment No. 4, The Right to Adequate Housing (Art. 11 (1) of the Covenant), ¶ 11, U.N. Doc. E/1992/23 (Dec. 13, 1991) (emphasizing that "policies and legislation should not be designed to benefit already advantaged social groups at the expense of others").

59. ICESCR, *supra* note 6, art. 2(2). See generally OHCHR Report 2013, *supra* note 43 (elaborating on the prohibition of discrimination under the ICESCR).

60. See CEDAW General Recommendation No. 28, *supra* note 57, ¶ 16; CESCR, General Comment No. 20, *supra* note 57, ¶ 10.

61. See *supra* note 60 and accompanying text.

62. See RESTATEMENT OF THE LAW (THIRD) THE FOREIGN RELATIONS LAW OF THE UNITED STATES, §702, cmt. 1 (noting that the principle of equality is a principle of customary international law).

63. See Elissa Braunstein & James Heintz, *Gender Bias and Central Bank Policy: Employment and Inflation Reduction*, 22 INT'L J. OF APPLIED ECON. 173, 173-86 (2008) (noting that it is found that in some countries, strict monetary policies affect women's employment more than men's, thus raising issues of non-discrimination and equality).

### B. *The Greek Legal Framework Protecting the Right to Work*

Greece has assumed a wide variety of international human rights obligations through the ratification of a number of international and regional human rights treaties, including the ICESCR and the ILO treaties.<sup>64</sup> Therefore, Greece as a ratifying State Party has undertaken binding obligations and duties, which shall be followed in good faith (*pacta sunt servanda*).<sup>65</sup> In addition, under Article 22 of the Greek Constitution, the Greek government is granted the power to determine by law the general working conditions, and the worker's right to supplement labor laws with collective labor agreements is established.<sup>66</sup> Furthermore, Article 23 of the Constitution establishes trade union freedom to negotiate the terms and conditions of their employment agreements.<sup>67</sup> Supplementing the Greek Constitution, Greek Law 1876/1990 sets out the legal structure of the employment and industrial relations in the private sector.<sup>68</sup> This law outlines four separate collective employment agreement types: the national agreement, sectoral agreements, occupational agreement, and firm agreements.<sup>69</sup> Typically, the national agreement is referred to as the National General Collective Agreement, and it defines the minimum set of work standards that are applicable to all private sector

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64. Greece ratified the ICESCR on May 16, 1985.

65. Vienna Convention on the Law of the Treaties, art. 26, May 23, 1969, 1155 U.N.T.S. 331. See Hans Wehberg, *Pacta Sunt Servanda*, 53 AM. J. OF INT'L LAW, 775-86 (1959); James Crawford, *The International Law Commission's Articles on State Responsibility* (Cambridge University Press, 2002) (describing the nature of the obligations imposed on States Parties by international law).

66. 1975 SYNTAGMA [SYN.] [CONSTITUTION] 22 (Greece) ("General working conditions shall be determined by law, supplemented by collective labor agreements contracted through free negotiations and, in case of the failure of such, by rules stipulated by arbitration.").

67. *Id.* art. 23 ("The State shall adopt due measures safeguarding trade union freedom and the unhindered exercise of related rights against any infringement thereon with the limits of the law").

68. See Law 1876/1990, *supra* note 29; Yota Kravaritou, *Greece*, in HISTORICAL, ECONOMIC, AND SOCIAL BACKGROUND IN EMPLOYMENT AND INDUSTRIAL RELATIONS IN EUROPE 91, 91-93 (Michael Gold & Manfred Weiss eds., 1999). It is important to note that collective labor agreements in the public sector are prohibited, and that wages and salaries in the public sector are set by the Greek Government.

69. Law 1876/1990, *supra* note 29, art. 3.1 ("Collective agreements are distinguished into: a. national general agreements covering all workers, b. sectoral collective agreements covering employees of more identical or closely similar enterprises or firms of a certain city or area or the whole of the country, c. firm agreements covering employees of a company, d. national occupational agreements covering those employees of a certain occupation in the country, e. regional collective agreements covering employees of a certain occupation in a city or region of the country."); see also Patra, *supra* note 26, at 6-7.

workers.<sup>70</sup> The General Confederation of Greek Workers, which represents the interests of Greek private sector workers, and the Hellenic Federation of Enterprises, Hellenic Confederation of Professionals, Craftsmen and Merchants, and National Confederation of Hellenic Commerce, which represent the interests of private sector employers, agree upon this national agreement.<sup>71</sup> The way the Greek employment and industrial relations system is established, it is very common that workers' employment agreements fall under multiple collective labor agreements.<sup>72</sup> However, under the principle of favorability, in the case of a conflict of the terms between multiple collective labor agreements that may apply for a specific employment contract, the terms that shall prevail are the ones most favorable to the employee.<sup>73</sup> In addition, it has been established that the sectoral, occupational and firm agreements shall not include terms and conditions that are less favorable for workers than the National General Collective Agreement.<sup>74</sup> While the Greek legal framework was in conformity with the greatest part of international human rights provisions on the right to work until the beginning of the crisis, there is now extensive data from a range of sources detailing that the austerity policies the Greek government has been required to implement have a negative impact on the exercise of socio-economic rights.<sup>75</sup>

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70. Law 1876/1990, *supra* note 29, art. 3.1 ("Collective agreements shall be classified as follows: a national general labor agreement applicable to all workers.").

71. Kravaritou, *supra* note 68, at 93; Patra, *supra* note 26, at 6, 9-10 (defining the Greek National General Collective Agreements).

72. *Id.*

73. Law 1876/1990, *supra* note 22, art. 10 ("Where an employment relationship is governed by more than one collective agreement in force, the agreement containing the terms most favorable to the workers shall prevail."); *see* Patra, *supra* note 26, at 7 (analyzing the principle of favorability).

74. Law 1876/1990, *supra* note 29, art. 3.2 ("Firm, sectoral, and occupational collective agreements may not contain unfavorable working conditions below the National General Collective Agreement.").

75. *See* UN Expert Report 2014, *supra* note 2 (The Independent Expert focuses, amongst other rights, on the right to work and the 'unprecedented rise in unemployment' between 2008-2013, as well as the right to social security whereby he highlights that the priority has been 'fiscal consolidation at the expense of the welfare of the people in Greece.');

LSE Report 2015, *supra* note 23 at 16-17.

### III. TOWARDS A RIGHTS-BASED APPROACH IN THE IMPLEMENTATION OF AUSTERITY POLICIES

In the implementation of austerity policies, the Greek government did not take the necessary steps to adequately assess the repercussions that such policies may have on the right to work, and did not duly weigh the measures against Greece's human rights obligations.<sup>76</sup> Part III.A addresses the abuses to the right to work by the implementation of severe austerity measures by the Greek Government. Part III.B discusses the criteria that must be assessed before the adoption of fiscal adjustment measures that may affect the right to work.

#### A. *Analyzing the Conformity of Greece's Austerity Measures with the International Legal Framework*

The Greek government did not take the necessary steps to adequately assess the human rights implications of austerity, nor the appropriate legislative, administrative, judicial, budgetary, and promotional measures towards the full realization of the right to work.<sup>77</sup> Even though some consideration to human rights was given during the second economic adjustment program, the modest policies adopted to address unemployment, have not been substantial efforts to halt the growing unemployment levels, nor to offer the much needed social support to the families struck by unemployment.<sup>78</sup> The drastic cuts that have been made to wages, salaries, and pensions for both public and private sector employees after several years of continuous increases in the payments and without adequate and reasonable

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76. See ILO Report 2011, *supra* note 7, ¶ 84 (noting that employment objectives were not taken into account when discussing the general framing of macroeconomic policies with the Troika); FIDH/HLHR Report 2014, *supra* note 10 (discussing how the main considerations during the relevant discussions and negotiations between Greece and the Troika were the international economic and financial objectives of the proposed policies, disregarding Greece's obligation to promote the right to work).

77. FIDH/HLHR Report 2014, *supra* note 10 (addressing the inadequateness of the human rights assessment at the adoption of the austerity measures).

78. For the first, second, third and fourth reviews of the Second Economic Adjustment Programme for Greece, see The Second Economic Adjustment Programme, *supra* note 4; *The Second Economic Adjustment Programme for Greece - Second Review*, Directorate-General for Economic and Financial Affairs, Eur. Comm'n Occasional Papers No. 148 (May 2013); *The Second Economic Adjustment Programme for Greece - First Review*, Directorate-General for Economic and Financial Affairs, Eur. Comm'n Occasional Papers No. 123 (Dec. 2012); see *supra* note 11 and accompanying text.

assessments, violated the right to work, and specifically the element of availability of the right to work.<sup>79</sup> This failure to foresee the massive negative impact that austerity measures would have on the labor market and the availability of employment has led to deepening levels of poverty and social exclusion, as well as increased levels of homelessness and lowering of living standards, often leaving them even lower than the international standard of adequate living conditions.<sup>80</sup>

The drastic reduction of employment opportunities caused by public sector job cuts and the massive closings-down of small and medium-size enterprises, has disproportionately affected certain vulnerable groups of the working population, such as women, youth, persons with disabilities, and migrant workers.<sup>81</sup> With the highest rates of youth unemployment in Europe and increased gender-based exclusions, Greece has failed to take the necessary steps to ensure equal access to employment and non-discrimination, putting at risk decades of evolving achievements towards equality.<sup>82</sup>

*B. Ensuring that Human Rights Are Central to all Future Economic Assistance Discussions and Negotiations*

States Parties of international human rights legal instruments are legally bound to incorporate a rights-based assessment in their financial policies and regulations, aiming towards economic growth and development that nurture and promote the realization of all human rights.<sup>83</sup> Therefore, when negotiating with international

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79. See CESCR, General Comment No. 18, *supra* note 43 (stating that States Parties must implement specialized services to provide assistance and support towards identifying and finding available employment); FIDH/HLHR Report 2014, *supra* note 10 (analyzing how the Greek Government has failed to ensure the availability dimension of the right to work).

80. See *supra* note 78.

81. See *supra* note 10 and accompanying text.

82. See *supra* note 41 and accompanying text; European Parliament Resolution 2014, *supra* note 23 (“Notes that international and social organizations have warned that the new pay-scale, grading and dismissals system in the public sector will have a gender gap impact; notes that the ILO has expressed concern over the disproportionate impact of new flexible forms of employment on women’s pay; notes, furthermore, that the ILO has asked governments to monitor the impact of austerity on remuneration of men and women in the private sector; notes with concern that the gender pay gap has ceased to narrow in countries undergoing adjustment, where the disparities are wider than the EU average; maintains that wage inequalities and the falling female employment rate need to receive greater attention in the Member States undergoing adjustment.”).

83. See OHCHR Report 2013, *supra* note 43 and accompanying text.

financial institutions about the implementation of strict austerity measures, Greece bears the burden of proof to provide sufficient justification for the adoption of any retrogressive measures.<sup>84</sup> It must be shown that any such measures have been introduced after careful consideration of all the alternative solutions, and that these measures are necessary, proportionate, reasonable, and non-discriminatory.<sup>85</sup>

This is not to say that the rest of the Member States that participate in such talks and negotiations, as well as the international organizations themselves, such as the IMF and the ECB, are immune from their human rights obligations.<sup>86</sup> The United Nations Committee on Economic, Social and Cultural Rights has repeatedly underscored the human rights obligations of States Parties as members of international financial organizations, where agreements on structural adjustment programs should not hinder their core duties and disregard the impact on rights protected by the Covenant.<sup>87</sup> Overall, the Committee emphasizes that human rights should be an integral part of the decision-making process, when it is foreseeable that the decisions may impact negatively the protected rights.<sup>88</sup>

### CONCLUSION

There is no dispute that some degree of negative impact is inevitable on the right to work during times of dire financial crises. However, the issue is to what extent States Parties that implement austerity measures may depart from complying with their international legal duty to protect human rights. States Parties have a positive obligation to safeguard human rights through adequate economic policies and legislation, with the presumption being that retrogressive measures are not allowed.<sup>89</sup> In order to implement measures with a severe impact on human rights, States Parties shall demonstrate that there are no better alternative solutions and that

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84. *See id.* at 12 (analyzing the human rights compliance criteria for the adoption of austerity measures).

87. *See generally id.* and accompanying text; LSE Report 2015, *supra* note 23.

88. *See* LSE Report 2015, *supra* note 23.

89. *See* CESCR, General Comment No. 18, *supra* note 43; LSE Report 2015, *supra* note 23.

90. *See* CESCR, General Comment No. 18, *supra* note 43; LSE Report 2015, *supra* note 23.

91. *See supra* notes 46, 48, 51 and accompanying text.

these measures are necessary, proportionate, reasonable, and non-discriminatory.<sup>90</sup>

Regrettably, Greece's dire financial state and the government's dependence on the Troika-funded bailouts have been serious impediments to the progressive realization of human rights. However, human rights are universal and they should not cease to exist because of an economic crisis. Even in situations of financial emergencies, States Parties should always maintain at least a minimum set of human rights protections. Finally, there is a need for human rights-based approaches to recovery from financial crises through policies that protect the most vulnerable and ensure the enjoyment of economic, social, and cultural rights by all. The impact of austerity measures on various human rights throughout the Eurozone is ripe for additional research. It is essential for scholars to further assess how governments and international financial institutions can act in conformity with their international legal duties in situations of dire economic crises.

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90. See OHCHR Report 2013, *supra* note 43 and accompanying text.