



European
Social
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

**DECISION ON ADMISSIBILITY
AND ON IMMEDIATE MEASURES**

23 March 2021

Greek Bar Associations v. Greece

Complaint No. 196/2020

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 319th session attended by:

Karin LUKAS, President
Eliane CHEMLA, Vice-President
Aoife NOLAN, Vice-President
Giuseppe PALMISANO, General Rapporteur
Barbara KRESAL
Kristine DUPATE
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 28 May 2020 as number 196/2020, lodged by 56 Greek Bar Associations (“the GBAs”) against Greece and signed by Dimitrios Vervesos, President of the Plenary of Presidents of Greek Bar Associations, President of their Coordinating Committee and President of the Athens Bar Association, as well as Electra Leda Koutra, Counsel, requesting the Committee to find that the situation in Greece is not in conformity with Articles 11, 13, 16, 17, 30 and 31§2 taken in conjunction with Article E of the Revised European Social Charter (“the Charter”);

Having regard to the observations of the Government of Greece (“the Government”) on the admissibility of the complaint and the request for immediate measures, registered on 14 August 2020;

Having regard to the response from the GBAs to the Government’s observations, registered on 30 October 2020;

Having regard to the further response from the Government on admissibility of the complaint and the request for immediate measures, registered on 15 December 2020;

Having regard to the additional observations by the GBAs registered on 18 December 2020;

Having regard to the response from the Government to the additional observations by the GBAs registered on 29 January 2021;

Having regard to the Charter and, in particular to Articles 11, 13, 16, 17, 30, 31§2 and E, which read as follows:

Article 11 – The right to protection of health

Part I: “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”

Part II: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”

Article 13– The right to social and medical assistance

Part I: “Anyone without adequate resources has the right to social and medical assistance.”

Part II: “With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a

social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”

Article 16 – The right of the family to social, legal and economic protection

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

Part II: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: “Children and young persons have the right to appropriate social, legal and economic protection.”

Part II: “With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b. to protect children and young persons against negligence, violence or exploitation;

c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support;

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 30 – The right to protection against poverty and social exclusion

Part I: “Everyone has the right to protection against poverty and social exclusion.”.

Part II: “With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b. to review these measures with a view to their adaptation if necessary.”

Article 31 – The right to housing

Part I: “Everyone has the right to protection against poverty and social exclusion.”.

Part II: “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: (...)

2. to prevent and reduce homelessness with a view to its gradual elimination;

Article E – Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

Having regard to the Rules of the Committee adopted on 29 March 2004 at its 201st Session and revised on 10 September 2019 at its 308th Session (“the Rules”), in particular to Rule 36, which reads as follows:

Rule 36 – Immediate measures

1. At any stage of proceedings, the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure, the adoption of which is necessary to avoid irreparable injury or harm to the persons concerned.

2. In case of a request for immediate measures made by a complainant organisation, the request shall specify the reasons therefore, the possible consequences if it is not granted, and the measures requested. A copy of the request shall forthwith be transmitted to the respondent State. The President shall fix a date for the respondent State to make written submissions on the request of immediate measures.

3. The Committee’s decision on immediate measures shall be accompanied by reasons and be signed by the President, the Rapporteur and the Executive Secretary. It shall be notified to the parties. The Committee may request information from the respondent State on the implementation of the immediate measures.”

Having regard to the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having deliberated on 23 March 2021;

Delivers the following decision, adopted on the above-mentioned date:

1. The GBAs allege that the acts and omissions of the Greek authorities concerning social support given to lawyers during the Covid-19 pandemic have deprived them of their right to protection against poverty and social exclusion (Article 30), to the protection of their health (Article 11), to social security, to social assistance and to benefit from social welfare services (Article 13), to social, legal, and economic

protection for their families (Article 16), to social, legal, and economic protection for their children (Article 17), and their right to housing (Article 31). The GBAs specifically indicate the following acts and omissions of the Greek authorities: the granting of a unique allowance of €600 only once for half of March and April 2020 to lawyers, as opposed to the allowance of €800 given to the other professionals also included by the Government in the scientific sector; the lack of targeted remedial measures; the exclusion from their main source of livelihood, as due to the lockdown courts remained closed from 13 March 2020 to 31 May 2020 and then gradually returned to regular activity as of 1 June 2020; the failure to adopt the necessary measures to physically protect lawyers when acting before courts.

2. Moreover, the GBAs consider that the Government has harassed lawyers practicing in Greece by excluding them from social protection or by providing social protection which is inferior and inadequate compared to that offered to all other affected professional groups. The GBAs state that although allegedly justified by their status as “scientists”, the exclusion owes to their function in society as human rights defenders. The GBAs consider that this difference in treatment amounts to discrimination and is therefore not in conformity with Article E of the Charter.

3. With a view to ensuring adequate social relief measures for lawyers as well as protecting their health and safety at work in the current Covid-19 crisis, the GBAs further ask the Committee to indicate immediate measures to the Government pursuant to Rule 36 of the Committee’s Rules.

4. The GBAs also ask the Committee to give priority to the examination of the complaint, referring to the gravity of the matters complained of and the vulnerable situation of the lawyers and their families alleged in the complaint.

5. In its observations, the Government objects to the admissibility of the complaint. The Government states that the complaint is signed by Greek Bar Associations which cannot be regarded as trade unions. The Government states that according to Greek law, the participation of lawyers in bar associations is mandatory in order to acquire admission to practice law in Greece, which makes the bar associations broadly representative. The Government also states that lawyers are not in a dependent working relationship with the bar associations and therefore bar associations do not enjoy the right to strike. Furthermore, the Government adds that bar associations in Greece are instituted by law and form as “Legal entities of Public Law”, which deprives them of basic trade union prerogatives, including the right to strike. Therefore, the Government considers that the GBAs do not meet the requirement specified in Article 1(c) of the Protocol of being a national trade union, and, as a consequence, they do not have *locus standi* before the Committee under the Protocol.

6. In addition, the Government asks the Committee to find the GBAs’ request for immediate measures to be manifestly unfounded. The Government considers that it has responded to the unprecedented health crisis with due diligence and urgency, as in addition to the restrictive measures adopted at an early stage, it also adopted relief measures to reduce the adverse impact of the health crisis and it continues to do so, including with respect to lawyers, as the crisis unfolds. The Government also details the specific measures adopted in respect of lawyers (the financial support-special purpose compensation of €600 and the distance learning program based on Invitation No. 2/2020) and in the field of justice as a whole for the safety of those working in this

field (measures to facilitate Electronic Issuance and Receipt of Certificates; imposition of the temporary suspension of operation measure for all Courts and Public Prosecutor's Offices throughout the country and the National School of Judicial Officers; measures regarding the Operating scheme for the period from 28.4.2020 to 15.5.2020 for the stipendiary and gratis mortgage registries, the land registry offices of Rhodes, Kos-Leros, the land registry offices of Piraeus, Thessaloniki, as well as the land registry offices and branches of the "Hellenic Cadastre" Body, throughout the territory; extension of the judicial year and planning and promotion of actions for digital transformation and simplification of justice proceedings).

7. In their response to the Government's objections, the GBAs observe that, when determining whether an organisation is entitled to lodge a complaint before the Committee, the latter has avoided excessive formalism in the definition of a trade union and has adopted criteria which refer not so much to the structure of the organisation, but rather concentrates on the function, the representative character of the organisation and the inclusion among the activities of the union of activities that can be considered trade union prerogatives. The GBAs further state that the characterisation of professional associations as entities of public law (NPDD) does not deprive them of trade union functions or activity, as they can take action against the State for the protection of their members' interests. Furthermore, they do not act as a body of public power - except in their ability to impose disciplinary sanctions on their members. The GBAs state that the exclusion of NPDDs from the law governing trade unions in Greece (Law No. 1264/1982) cannot be interpreted as stripping the legal professionals concerned of their right to organise in order to collectively pursue their interests; on the contrary, it serves as a confirmation that for these professionals there are special arrangements for the exercise of their equivalent trade union rights. The GBAs insist that in the case of lawyers their right to organise in order to collectively pursue their interests is achieved through their respective bar associations.

8. Concerning the Government's observations on the request for immediate measures, the GBAs state that the Government has not provided any substantial comments regarding the allegations about the imminence of devastation faced by the most vulnerable among lawyers. The GBAs consider that there is an increasingly urgent need for indication of the immediate measures.

9. In its further response registered on 15 December 2020, the Government reiterates the position expressed in its observations on admissibility as well as on the request for immediate measures.

10. In its additional observations registered on 18 December 2020, the GBAs insist that the Government has continued to exclude lawyers from the "Covid-19 related financial aid to the self-employed". The GBAs consider that the conduct of the Government enhances the image of discrimination against lawyers, who are in an ever more urgent situation. They also state that the only new argument introduced by the Government in its further response concerns Law 4756/2020, by virtue of which lawyers, along with other categories of freelancers, are entitled to a lump-sum financial assistance. The GBAs explain that this measure requires a Ministerial decision to become enforceable and refers to the Special Unemployment Account constituted by lawyers' funds and not by the Government's funds.

11. In its further response to the GBAs' additional observations, registered on 29 January 2021, the Government states that, as of 16 December 2020, several meetings have been held between the President of the Athens Bar Association and representatives of other scientific bodies with a view to obtaining payment of the emergency financial allowance to lawyers and members of other scientific bodies. Furthermore, the Government specifies that on 21 January 2021 the Minister of Labour and Social Affairs committed to the immediate signing of the relevant Joint Ministerial Decision required for the financial measure to be effective.

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As to the admissibility conditions set out in the Protocol and the Committee's Rules

12. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Greece on 18 June 1998 and entered into force for this State on 18 August 1998, the complaint has been submitted in writing and concerns Articles 11, 13, 16, 17, 30, 31§2, provisions accepted by Greece when it ratified the Charter on 18 March 2016, as well as Article E. Greece is bound by these provisions since the entry into force of the treaty in its respect on 1 May 2016.

13. The Committee observes that the complaint lodged on behalf of the GBAs is signed respectively by Dimitrios Vervesos, President of the Plenary of Presidents of Greek Bar Associations, President of their Coordinating Committee and President of the Athens Bar Association, as well as Electra Leda Koutra, the Counsel, authorised to sign documents on behalf of the aforementioned entities' and specifically to sign complaints to international human rights mechanisms. The Committee therefore considers that the complaint complies with Rule 23 of its Rules.

14. The Committee observes that the GBAs indicate for each of the provisions invoked the manner in which they consider that Greece has not ensured the satisfactory application of the Charter. On this basis, the Committee considers that the complaint fulfils the requirements set out in Article 4 of the Protocol.

As to the Government's objections concerning the admissibility

15. As to whether the GBAs can be considered trade unions for the purposes of the collective complaints procedure, the Committee firstly observes that the GBAs exercise their activities within Greece's national legal order.

16. The Committee further observes that pursuant to Article 89 of Law 4194/2013 (Code of Lawyers), bar associations are legal entities under Greek public law, not funded by the State Budget. They have their own property, financial, administrative and managerial autonomy and independence. They are governed by elected boards of directors. More specifically, the Committee notes that with a view to ensuring that the conditions for the proper exercise of the lawyers' profession are met, Article 90 (g) of Law 4194/2013 provides that bar associations may submit "any legal remedy and means of any nature before any court of criminal, civil, administrative or annulment or Audit of any jurisdiction in Greece, in the European Union, as well as before any international court" and any authority (including independent authorities). The Committee further notes that the power to submit a legal remedy extends to any matter

of national, social, cultural, and economic interest and content of interest to the members of the bar associations or the bar in general.

17. The Committee also notes that the GBAs declared a day of abstention from professional duties for their lawyer-members on 28 April 2020. In 2015 and 2016, the GBAs declared periods of abstention from professional duties for longer periods. The GBAs have also initiated many actions before the courts concerning the social security contributions and salaries of lawyers. In the same vein, the Committee notes that individual bar associations have made interventions in defence of lawyers in dismissal cases concerning them. It finally notes that the State authorities have negotiated with the bar associations on issues of professional interest to the lawyers.

18. The Committee has previously held (*Movimento per la liberta' della psicanalisi-associazione culturale italiana v. Italy*, Complaint No. 122/2016, decision on admissibility of 24 March 2017, § 12) that in order to be considered as a trade union for the purposes of the collective complaints procedure, the complainant should engage in activities that could properly be said to amount to core trade union activities, such as participating in collective bargaining, calling strikes, bringing legal proceedings against employers and/or on behalf of its members, taking action in order to support or improve its members' working terms and conditions etc. (see also, *mutatis mutandis*, *Associazione Medici Liberi v. Italy*, Complaint No. 177/2019, decision on admissibility of 6 December 2019, § 11).

19. The Committee notes that bar associations are public law professional associations set up by the law and not on the initiative of their members. The Committee further notes that membership of the GBAs is obligatory in order to exercise the profession of lawyer. Membership of the GBAs cannot be regarded as a manifestation of freedom of association in the sense that trade union membership is.

20. The Committee points out that the role and function of the GBAs and the activities they carry out do not extend to the essential trade union prerogative of conducting proper collective bargaining with a view to concluding collective agreements with employers and/or their organisations. This is due to the fact that collective bargaining would be inconsistent with the licensed professional character of lawyers in Greece.

21. The fact that the GBAs have initiated certain activities with a view to protecting the interests of their members does not as such suffice to justify a conclusion that the GBAs are trade unions in the meaning of the Charter generally and in the meaning of the Protocol more particularly.

22. In view of the above, the Committee holds that the complaint, as submitted, does not meet the requirements of Article 1 (c) of the Protocol.

As to the request for immediate measures

23. As the complaint does not meet the requirements for admissibility, the procedure is closed. The Committee therefore considers that it is not necessary to rule on the request for immediate measures.

24. For these reasons, the Committee, on the basis of the report presented by Aoife NOLAN,

DECLARES BY 13 VOTES AGAINST 1 THE COMPLAINT INADMISSIBLE.

Pursuant to Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisations and the Respondent State of the present decision and to publish it on the Council of Europe's Internet site.

DECIDES THAT IT IS NOT NECESSARY TO RULE ON THE REQUEST FOR IMMEDIATE MEASURES.



Aoife NOLAN
Rapporteur



Karin LUKAS
President



Henrik KRISTENSEN
Deputy Executive Secretary