

research

Observatoire social européen

paper

**Violations of
fundamental rights:
collateral damage of
the Eurozone crisis?**



Ose
PAPER SERIES

Dalila Ghailani

www.ose.be

Violations of fundamental rights: collateral damage of the Eurozone crisis? ⁽¹⁾

Dalila Ghailani

European Social Observatory

The "OSE Paper Series" takes the form of three different publications available in English or French. The "Research Papers" are intended to disseminate results of research by the OSE, associated researchers or colleagues from the OSE network. The "Briefing Papers" contain readily accessible and regular information on a variety of topics. The "Opinion Papers" consist of concise policy oriented opinions.

ISSN 1994-2893

-
1. This Research paper will be published as Ghailani, D. (2016) "Violations of fundamental rights: collateral damage of the Eurozone crisis?" in Vanhercke, B., Natali, D. and Bouget, D. (Eds) *Social Policy in the European Union: State of Play 2016*, Brussels, European Trade Union Institute (ETUI) and OSE, forthcoming.

Table of contents

| | |
|--|----|
| Abstract | 3 |
| 1. Austerity measures and their impact on certain fundamental rights | 4 |
| 1.1 The right to education..... | 5 |
| 1.2 The right to health..... | 7 |
| 1.3 The right to work | 9 |
| 1.4 The right to a pension..... | 13 |
| 2. Denunciation by international human rights bodies | 16 |
| 2.1 Calls to order from the United Nations committees..... | 16 |
| 2.2 Denunciations by the European Committee of Social Rights | 16 |
| 2.3 Recommendations of the Committee on Freedom of Association..... | 18 |
| 3. Towards a body of crisis case law | 19 |
| 3.1 The dynamism of national constitutional courts | 19 |
| 3.2 The reticence of the European courts..... | 20 |
| 4. Member States and the Troika: the tricky question of shared responsibility | 22 |
| 4.1 The Member States | 22 |
| 4.2 The EU Institutions..... | 23 |
| 4.3 The International Monetary Fund | 25 |
| Summary and conclusion | 27 |
| References | 30 |

Abstract

After the 2008 financial crisis, many European governments chose to give absolute political priority to reducing their deficits. The economic adjustment programmes imposed on the indebted States of the Eurozone resulted in austerity policies which had a direct impact on fundamental rights. The need to respect these rights was overlooked in the pronouncements and concerns of governments and financial institutions as they analysed the situation and suggested possible solutions which seemed to suggest that restrictions of such rights were an inevitable, acceptable consequence of the crisis. This research paper lists the austerity measures adopted by a number of Member States, and describes their impact on certain economic and social rights. It then evokes the reaction of international human rights bodies, which denounced these infringements, compares the dynamism of the national constitutional courts to the reticence and timidity of the European courts, and explores the question of liability in cases of violations of fundamental rights. We shall see that, in recent years, the importance given to human rights has dwindled at the same time as state budgets, without, however, the offer of a 'bailout'.

- Key words: crisis, austerity, violation of fundamental rights, denounce, liability.

In 2008, the most serious crisis to strike the global economy since the Great Depression of 1929 began in the United States, before quickly spreading through Europe, affecting most of the economies of the European Union (EU). This crisis revealed the structural weaknesses of some EU Member States and the weaknesses in the governance of the Eurozone (Schmidt 2015). Some experts go as far as to maintain that the crisis 'threatens over six decades of social solidarity, economic integration and expanding human rights protection across Council of Europe Member States' (CommHR 2013).

Under the iron rule of the EU ⁽²⁾, governments mainly responded to the crisis by decreeing anticyclical monetary and fiscal policies aiming to ensure social protection while reintroducing financial stability and stimulating economic demand. In 2010, however, many European governments made deficit-reduction their number one political priority. Reducing public expenditure therefore became the must-have new European dogma. Aid given to the indebted Eurozone countries was made conditional on implementation of economic adjustment programmes in the form of austerity policies. The purpose of the latter was to reduce the scope of social benefits, make labour protection more flexible or even to cut wages and pensions. In some countries, such policies had direct consequences on economic and social rights ⁽³⁾, which led to

-
2. For an analysis of economic governance, see Bekker (2016), Zeitlin and Vanhercke (2015) and Degryse *et al.* (2013).
 3. Civil and political rights were also affected. The use of excessive force against demonstrators in Spain, Portugal and Greece and violation of the freedoms of expression and assembly gave rise to concern.

strong reactions from international and European human rights bodies (Roman 2014). And indeed, governments and the international financial institutions had not taken any real measures to ensure the respect of fundamental rights, which were not referred to and were not taken into account in their analyses and the solutions they proposed. The restriction of rights, particularly economic and social rights, was thus seen as an inevitable, and therefore acceptable, outcome of the crisis (FIDH 2014).

This research describes the austerity measures taken by a number of Member States, some of which were, or still are, subject to the Troika ⁽⁴⁾, and their impact on certain economic and social rights, including education, health, pensions and work (Section 1). The second section looks at how these human rights violations were denounced by international human rights organisations. Section 3 highlights the dynamic approach taken by national constitutional courts in examining austerity measures, compared with the reticence of the European courts. The issue of responsibility for fundamental rights violations is addressed in Section 4. While it is up to each Member State to ensure that these rights are respected and promoted, the question arises of possible shared responsibility between the Member States, the Troika and the IMF, particularly in the case of measures imposed by the Troika. At the end of the chapter, we shall see that in recent years, the importance attached to human rights has declined together with state budgets, but that, unlike national budgets, these rights have not benefited from “bail-out plans”.

1. Austerity measures and their impact on certain fundamental rights

The austerity plans adopted in the wake of the crisis to reduce public expenditure in several EU Member States have had serious consequences for human rights. To illustrate our point, we shall mostly refer to the results of a study commissioned by the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE). This study ⁽⁵⁾, published in March 2015, examines the austerity and crisis measures adopted between 2008 and June 2014 with an impact on a series of rights, including education, health, work, pensions and access to justice. It covers both those Member States subject to the Troika during the period in question, i.e. Cyprus, Greece, Ireland,

Access to justice is threatened by austerity measures: as a result of the crisis in many Member States, judicial budgets have been cut, legal fees raised and legal aid revised downwards (CommHR 2013).

4. The economic and financial crisis had a severe impact in Greece, Ireland, Portugal and Cyprus, which had to ask for financial aid to replenish their funds. These four governments therefore turned to the European Central Bank, the European Commission and the International Monetary Fund, working together in the ‘Troika’.
5. Dalila Ghailani (OSE) and Bart Vanhercke (OSE) contributed to this study as joint authors of the Belgian case study, and quality-controllers for the study as a whole.

Portugal and Spain ⁽⁶⁾, and also Belgium and Italy (Ivankovič Tamamovič 2015). The analysis contained in this chapter will not therefore be exhaustive, given the material and geographical limitations of the study.

1.1 The right to education

In the countries subject to the Troika, the conditions set out in the Memoranda of Understanding (MoU) directly addressed education systems, their effectiveness and financial sustainability. Other Member States also introduced many restrictive measures, sometimes in order to meet international and European commitments to stabilise public expenditure.

The crisis measures adopted included the following: cuts in expenditure on and numbers of education staff; cuts in running costs; school closures and mergers; cuts in or abandonment of school subsidies.

Table 1: Measures affecting the right to education (2008-2014)

| Types of measure | Measures |
|--|---|
| Cuts in expenditure on and numbers of education staff | <ul style="list-style-type: none"> ▪ Pay cuts (of around 40%) in Greece between 2009 and 2014 (Kaltsouni and Kosma 2015); pay cuts of 5% (2010) and pay freeze (2011) in Spain. ▪ 12% cut in teacher numbers in Italy between 2008 and 2014 (Natasi and Palmisano 2015). ▪ Cuts in staff numbers and non-replacement of teachers in Ireland and Spain (2011) (Ivankovič Tamamovič 2015). ▪ Increase in pupil-numbers per class in Portugal (2012) and Italy (2009), and cuts to lesson time in Italy, Portugal (down to 40 hours/week in 2013), in Spain (2012) and in Greece (ibid). |
| Cuts in running costs | <ul style="list-style-type: none"> ▪ 17% cuts in auxiliary and technical staff in Italy since 2008 (Natasi and Palmisano 2015), and abolition of 1570 childcare posts in Greece in 2013 (Kaltsouni and Kosma 2015). ▪ Transport for children living in rural areas was free in Cyprus, but now has to be paid for (since 2013) (10eur/month per child) (Demetriou 2015). ▪ Price increase of 100€ per year for post-primary school transport in Ireland (2014) (Kelly and Nolan 2015) |

6. The Troika's role came to an end in December 2013 in Ireland, May 2014 in Portugal and March 2016 in Cyprus. The aid received by Spain in June 2012 from the European Stability Mechanism (ESM) stopped on 31 December 2013.

| | |
|--|---|
| School closures and mergers | <ul style="list-style-type: none"> ▪ Closure of 1 053 schools and mergers of 1933 more in Greece between 2008 and 2012 (Truth Commission 2015). ▪ Merger of two thirds of schools in Sicily and Sardinia (Ivankovič Tamamovič 2015) ▪ Closure of 9 schools in Cyprus between 2008 and 2012 (Demetriou 2015). |
| Reduction/abolition of school subsidies | <ul style="list-style-type: none"> ▪ Abolition in 2013 of book-buying subsidies, and reduction in subsidies for the purchase of clothes and shoes in Ireland (Kelly and Nolan 2015). ▪ Reduction in school subsidies for families in difficulties in Belgium: 15% cut in 2013 and 15% cut in 2014 (Ghailani with Vanhercke 2015). |

Source: author's own elaboration.

These measures have had repercussions on the quality, accessibility and cost of education, and on school drop-out rates (CommHR 2013).

In Greece, these cuts have made it difficult to ensure that students' basic needs are met. The teacher shortages have not been resolved (shortage of 12 000 primary and secondary teachers in 2014-2015). The reductions in running costs have meant that many schools do without heating (Kaltsouni and Kosma 2015). Insufficient school transport has resulted in discrimination against pupils in isolated areas and Roma pupils. Around 180 000 disabled pupils are currently not receiving education due to a lack of resources (Truth Commission 2015).

In Italy, cuts to the operating budgets mean that some schools cannot maintain their buildings or ensure a minimum level of hygiene (Natasi and Palmisano 2015).

In Spain, declining school outcomes are being interpreted as an indirect consequence of austerity measures, since the abolition of book-buying funds has deprived some children of proper school materials. Teachers have to manage larger classes and have to work harder, while thousands of others are unemployed. The cuts in subsidised school meals have had a negative impact on the nutrition of children from poor families. These children have also been disproportionately hit by the abolition of study bursaries (Lladós Vila and Freixes 2015).

Disabled children have suffered from the budgetary cuts both in mainstream education, where they require suitable support, and in special education. In Portugal, the closure of special schools and transfer of these children to mainstream education has been postponed again and again because of drastic budgetary cuts (Rodrigues Canotilho 2015). In Ireland, a number of these children have had to re-join special schools because of a lack of resources to provide the support they need in mainstream education (Kelly and Nolan 2015).

1.2 The right to health

Ensuring equal access to healthcare was a concern for most European healthcare systems long before the crisis. There were many calls for cost rationalisation and greater efficiency of healthcare systems even before austerity. Health system reforms were also recommended under the European Semester as a way to achieve both budgetary consolidation and efficiency of systems (Baeten and Vanhercke 2016; Eurofound 2014).

The crisis made these reforms even more urgent and more drastic. In Greece, the first memorandum of understanding (2010) restricted public health expenditure to 6% of GDP, whilst the second programme (2012) required an 8% cut in hospital running costs in 2012, and a reduction in spending on pharmaceuticals equivalent to 1% of GDP (7). Draconian measures were taken over a short period of time, and without taking account of patients' needs (Truth Commission 2015). The other Member States followed suit, adopting measures affecting the right to access to healthcare.

These measures took different forms: restrictions on access to care; new or higher patient contributions; cuts in pay and staff; measures relating to the cost of medicines and other services.

The access to and quality of care have been particularly hard hit by the cuts in health expenditure, redundancies in the public health sector, increases in fees and the level of the patient contribution, the reduction in numbers of hospital beds and the gradual drop in state social coverage. The poor and homeless, the elderly, the disabled and their families, women and illegal migrants have been most affected by the measures taken (Ivankovič Tamamovič 2015).

In Spain, for example, (since 2012) and in Greece, illegal migrants are now excluded from the health system, except for emergency care. Citizens of Northern Cyprus and EU citizens working illegally are also excluded from the health system in Cyprus. In Greece in 2015, 2.5 million people, i.e. a quarter of the total population, no longer had health coverage (Kalsouni *et al.* 2015). In Portugal, people in isolated regions find it difficult to access treatment; hospitals have closed and they have to travel distances of up to 150 km to receive care (Rodrigues Canotilho 2015).

7. <http://peter.fleissner.org/Transform/MoU.pdf>
http://crisisobs.gr/wp-content/uploads/2012/12/MoU_December-2012.doc

Table 2: Measures affecting the right to health (2008-2014)

| Types of measure | Measures |
|--|---|
| Restrictions on access to care | <ul style="list-style-type: none"> ▪ In Spain, since 2012, an individual's access to healthcare depends on his employment situation ⁽⁸⁾ (Lladós Vila and Freixes 2015). ▪ Since 2013, access to healthcare in Cyprus is limited to Cypriots and to European citizens with a permanent residence in Cyprus and who have made at least 3 years' contributions to the social insurance system (Demetriou 2015). ▪ Abolition (2009) of medical cards granting universal and free healthcare to the over-70s in Ireland ⁽⁹⁾ (Kelly and Nolan 2015). |
| New or higher patient contributions | <ul style="list-style-type: none"> ▪ Introduction of patient contributions for primary care, specialist out-patient care, laboratory tests and medical and emergency transport in Cyprus, Greece, Italy, Portugal and Spain (Ivanovič Tamamovič 2015). |
| Cuts in pay and staff | <ul style="list-style-type: none"> ▪ Pay reductions and freezes for medical staff in Spain, Ireland (10% in 2009) and Greece (Ivanovič Tamamovič 2015). ▪ Increased mobility of medical staff in Portugal and Greece via the adoption of flexibility arrangements (ibid). ▪ Moratorium on new recruitment in Greece, Ireland, Italy and Spain (ibid). |
| Measures involving the cost of medicines and other services | <ul style="list-style-type: none"> ▪ Requirement for Greek (since 2012) and Portuguese doctors to prescribe generic medicines and issue electronic prescriptions, making it possible to monitor the prescribing of medicines (since 2010 in Greece) (ibid). ▪ Structural measures reducing the amount of medical imaging carried out in Belgium (2013) (Ghailani with Vanhercke 2015). ▪ Contributions made by Greek patients (2010) to the purchase of prescribed medicines ⁽¹⁰⁾ (Ivanovič Tamamovič 2015). |

Source: author's own elaboration.

One direct consequence of the drastic cuts in state hospital budgets (beds, staffing etc.) is that waiting times have increased. In Cyprus, the waiting time for an appointment in a state hospital is

8. Access to healthcare used to be free of charge and universal in Spain.

9. These were replaced in 2014 by cards granting an entitlement to free consultations with a G.P.

10. Including for serious and chronic diseases such as Alzheimer's disease, dementia, epilepsy and osteoporosis (Ivanovič Tamamovič 2015).

now seven months (Demetriou 2015). In 2012, 570 000 people were on the waiting list for surgery in Spain, and 480 000 in Ireland (Eurofound 2014).

In Spain, between 2012 and 2014 the number of medical staff in the public health system fell by 5.6% (Eurofound 2014). As noted by the independent expert on debt, in Greece 'excessive austerity killed the nurses and doctors before turning to the patients' ⁽¹¹⁾. In Ireland, the moratorium on new jobs has led to the loss of 1 500 posts (Kelly and Nolan 2015). In Cyprus, the moratorium on pay encouraged doctors to move to the private sector, depriving state health institutions of medical staff (Demetriou 2015).

Diseases such as malaria and AIDS have been spreading in Greece since 2009 ⁽¹²⁾ (Simou and Koutsogeorgou 2014), whilst in Portugal the number of properly vaccinated children is constantly falling (Lladós Vila and Freixes 2015). Mental health problems, including suicides, increased sharply in Greece between 2009 and 2011 (Eurofound 2014). The human cost of austerity is not yet entirely visible. The future, however, looks risky and expensive. As is emphasised by Petmesidou and Guillén (2015), there could be a boomerang effect on the sustainability of health systems, the very justification for the reforms, and more specific impacts in terms of reduced life expectancy and increased infant mortality in these countries.

Vulnerable groups have been seriously affected by the various measures adopted. Young Belgians below the age of thirty and single-parent families frequently postpone or cancel specialist medical care, dental treatment and the purchase of medicines (Ghailani with Vanhercke 2015). In Greece, the number of people who have postponed a medical examination for price reasons increased by 85% between 2010 and 2013 (Bohoslavsky 2016). People with autism and their families, low-income households, asylum-seekers, the homeless and illegal migrants have also been affected in Cyprus, Greece and Spain. The same is true for people living in rural areas in Ireland and Portugal (Ivankovič Tamamovič 2015).

1.3 The right to work

'Respect for fundamental principles and right at work is non-negotiable: not even in times of crisis when questions of fairness abound. This is particularly important in countries having to adopt austerity measures. We cannot use the crisis as an excuse to disregard internationally agreed

11. http://cadtm.org/spip.php?page=imprimer&id_article=13180

12. Simou and Koutsogeorgou (2014) report that the number of cases of HIV contamination among drug-addicts increased from 10 to 15 cases between 2007 and 2010, then to 256 cases in 2011 and 314 in the first eight months of 2012. This increase is attributed to the ending of prevention programmes.

labour standards' (13). Schömann (2015) rightly points out that this declaration (2011) by Juan Somavia (former Director-General of the International Labour Organization (ILO)) has not prevented the EU institutions from developing anti-crisis measures which violate fundamental rights, nor hindered Member States from adopting them. As early as 2008, the public authorities and national legislators took a series of measures to encourage economic flexibility, including amendments to national labour law. In Greece, Portugal, Ireland and Cyprus, specific structural reforms were negotiated between the Troika and the respective governments (Schömann 2015).

In the context of the European Parliament study mentioned above, the term 'right to work' should be understood in the restrictive sense, as meaning the right to engage in work (Article 15, EU Charter of fundamental rights (EUCFR)), the right to protection against unjustified dismissal (Article 30, EUCFR) and to fair and just working conditions (Article 31, EUCFR) (14).

The measures adopted in the various Member States have included: public sector job cuts; changes to working time and deregulation of atypical contracts with increasing precarity of contracts; simplifying of the conditions governing (collective) redundancy; pay cuts and freezes; and weakening of unemployment protection.

13. Address given by the ILO Director-General to the European Parliament, Strasbourg, 14 September 2011.

14. For a detailed analysis of all labour law reforms, including those affecting industrial relations systems and collective bargaining, see Clauwaert and Schömann (2012).

Table 3: Measures affecting the right to work (2008-2014)

| Types of measure | Measures |
|---|--|
| Public sector job cuts | <ul style="list-style-type: none"> ▪ 28 000 job cuts in the public sector in Ireland between 2010 and 2012 ⁽¹⁵⁾ (Clauwaert and Schömann 2013b). ▪ Abolition of indefinite contracts in the public sector in Greece (Karakioulafis 2015). ▪ Huge staff mobility programmes set up since 2013, aimed at 12 500 Greek workers, largely in the education and health sectors (ibid). ▪ Since 2013, one in three public sector workers in Cyprus has been facing interchangeability (Demetriou 2015). |
| Changes to working time and deregulation of atypical contracts | <ul style="list-style-type: none"> ▪ 50% cuts to overtime pay in Portugal in 2012 (Clauwaert and Schömann 2013d). ▪ 2012 end to the ban on overtime for part-time workers in Spain (Clauwaert and Schömann 2013e). ▪ Extension of the maximum duration of fixed-term contracts, from two to three years in Greece (2011), from six months to three years in Portugal, and to three years in Spain (2010) and Italy (2012) (Schömann 2015). |
| Simplification of conditions governing redundancies | <ul style="list-style-type: none"> ▪ Reduction of the notice period from 30 to 20 days in Portugal in 2011 (Clauwaert and Schömann 2013d). ▪ Weakening of the obligation on employers to inform and consult workers' representatives in Spain (Schömann 2015). ▪ Cuts in severance pay in Greece (2012), Spain (2012) and Portugal (2012) (ibid). ▪ In 2012, easing of sanctions linked to the requirement to take back victims of unfair dismissal in Italy (Clauwaert and Schömann 2013c). |
| Greater precarity of contracts | <ul style="list-style-type: none"> ▪ Introduction, in 2011, of the 'youth contract' for workers under 25 in Greece: pay 20% lower than previous pay, two years' trial period, no unemployment benefit at the end of the contract (Karakioulafis 2015). |
| Pay cuts and freezes | <ul style="list-style-type: none"> ▪ Public sector pay cuts in Cyprus (3% in 2014), Ireland (10% in 2009) ⁽¹⁶⁾ and Greece (Ivankovič Tamamovič 2015). ▪ Average 5% cut in pay in the private sector in Spain, and pay freeze in Belgium in 2013 and 2014 (ibid). ▪ Cuts to holiday pay and Christmas bonuses in Ireland, Greece, Spain and Portugal (ibid). ▪ Abolition of Christmas and Easter bonuses in Greece in 2012 (Schömann 2015). ▪ 14% drop in the minimum wage in Greece between 2008 and 2015 ⁽¹⁷⁾ (Eurostat 2016). |

15. A cut in civil service staffing, with the loss of 24 750 jobs, was one of the conditions set by the Troika in return for the bail-out (Kelly and Nolan 2015).

16. In Italy and Portugal, these cuts only affected higher wages (Ivankovič Tamamovič 2015).

| | |
|---|---|
| Weakening of unemployment protection | <ul style="list-style-type: none"> ▪ Steeper degressivity of levels of unemployment benefits and stricter eligibility conditions ⁽¹⁸⁾ in Belgium (2011) (Ghailani with Vanhercke 2015). ▪ Cuts in training programmes and abolition of training allowances for new job-seekers receiving no benefits in Ireland (2010) (Kelly and Nolan 2015). |
|---|---|

Source: author's own elaboration.

The right to work was the first casualty of the economic crisis and ensuing austerity measures. The impact of these was soon felt. The most visible consequence was a steep increase in unemployment in Europe, from 7% in 2008 to 10.8% in 2013. Economic adjustment programmes in Greece, for example, led directly to a rise in unemployment, following staffing cuts of 26% in the public sector (affecting 234,847 workers) between 2009 and late 2015 (Bohoslavsky 2016).

Since the beginning of the crisis, job insecurity has increased significantly in several European countries, particularly in Greece. In 2007, 8.2% of Greek workers thought they would lose their jobs in the next six months. In 2012, this percentage had increased to 30.6% (Eurofound 2013).

Public sector workers were particularly hard hit by large-scale job cuts. Employment in this sector in Greece, for example, fell from 942,600 to 675,500 between 2009 and 2013 (Kaltsouni and Kosma 2015).

Pay cuts and freezes have had a direct impact on workers' purchasing power. Public sector pay in Greece fell by 25% between 2009 and 2013, and private sector pay has fallen by 15% since 2013 (Truth Commission 2015). In the Spanish private sector, hourly pay has fallen by 1.8% per year since 2009 (Lladós Vila and Freixes 2015). In Ireland, the 2008 national pay agreement, which set out pay increases in the private and public sector of 6% over 21 months, has been abandoned by many employers as they could not afford the agreed pay rises (Kelly and Nolan 2015).

Austerity measures have also helped to increase precarity, in the form of hyper-flexible, underpaid jobs largely occupied by women and young people. The miracle of flexicurity has not always occurred. The percentages of part-time workers and of workers with fixed-term contracts are rising almost everywhere in Europe (Ivankovič Tamamovič 2015).

The crisis has had a disproportionate impact on women, young people, migrants and people with a disability. Part-time work is often carried out by women. For some of these, childcare costs,

17. The Greek minimum wage is 684 EUR, below the poverty line (Ivankovič Tamamovič 2015).

18. As well as stricter conditions, a more restrictive definition of 'suitable employment' was introduced, and intensified follow-up of jobseekers.

particularly in Ireland, prevent them fully entering the labour market (Kelly and Nolan 2015). In Greece, female unemployment rose steeply during the crisis because of their strong presence in the public sector (Kaltsouni 2015).

Youth unemployment in the under-25s is a particular problem in Spain (53%), Portugal (34%) and Greece (48.8%), destroying young people's chances of finding a job (Bohoslavsky 2016). The Spanish employment strategy 2012-2014 ⁽¹⁹⁾ did away with a series of advantages for employers taking on people with a disability, thus reducing their access to the labour market (Lladós Vila and Freixes 2015).

Migrants and travellers are also facing difficulties finding work in Ireland. The unemployment rate for travellers was 84% in 2011, compared to 8.4% in 2006. Migrants, moreover, tend to be in more informal work, often in precarious conditions, which left them vulnerable during the crisis to pay cuts and redundancies (Kelly and Nolan 2015). In Greece, there are increased tensions in the informal sector, which employs around 470 000 'undocumented' migrants, without social protection and in appalling working conditions (Truth Commission 2015).

1.4 The right to a pension

Reform of pension systems was already on the agenda, particularly with regard to adequacy or financial sustainability, well before the crisis. The crisis, however, became a window of opportunity, and was used as an argument to put pressure on the social partners and to speed up the reform process, even, in certain cases, to adopt such reforms without consulting them (Natali 2011).

The measures affecting pension systems are of various types: systemic changes, increases in pensionable age and length-of-service requirements, stricter conditions for early retirement, pension calculation methods, etc.

19. Estrategia Española para el Empleo 2012-2014, [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/DA9C9163D45720BC05257B89006F60E8/\\$FILE/EstrategiaEspanolaEmpleo.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/DA9C9163D45720BC05257B89006F60E8/$FILE/EstrategiaEspanolaEmpleo.pdf)

Table 4: Measures affecting the right to a pension (2008-2014)

| <i>Types of measure</i> | <i>Measures</i> |
|---|---|
| Systemic changes | <ul style="list-style-type: none"> ▪ Reform of the Greek social insurance system, creating a unified multi-level system distinguishing between non-contributory and contributory basic pensions (Kaltsouni and Kosma 2015). ▪ Introduction of a single pension system for new employees entering the Irish civil service after 1 January 2013 (Kelly and Nolan 2015). |
| Increase in pensionable age and length-of-service conditions | <ul style="list-style-type: none"> ▪ Immediate rise in the pensionable age in Belgium, Greece, Spain, Italy, Ireland and Portugal (Ivankovič Tamamovič 2015). ▪ Automatic adjustment, every five years, of the statutory retirement age in line with life expectancy in Cyprus (ibid). |
| Stricter early retirement conditions | <ul style="list-style-type: none"> ▪ Increase in the early retirement age in Spain, Belgium and Greece (ibid). ▪ Reduction in pension levels for early retirement before the age of 62 in Italy ⁽²⁰⁾ (Nastasi and Palmisano 2015.) |
| Pension calculation methods | <ul style="list-style-type: none"> ▪ Calculation based on the last 25 (no longer 10) years of employment in Spain and the last 10 (no longer 5) years in the public sector in Belgium (Ivankovič Tamamovič 2015). ▪ Calculation takes account of average pay throughout the individual's career, rather than most recent pay, in Ireland (Kelly and Nolan 2015). |
| Cuts in pension levels and other benefits | <ul style="list-style-type: none"> ▪ Introduction of a 6% and 10% solidarity levy in Greece on statutory and supplementary public and private sector pensions (Kaltsouni and Kosma 2015). ▪ Gradual introduction of a 3.5%-10% solidarity levy on public service retirement pensions in Portugal (Rodrigues Canotilho 2015). ▪ In Ireland, introduction of a 7% tax on pensions in 2009; 4 to 12% cut in public sector pensions; 0.6% levy on private pension funds (2011), 0.75% in 2014, 0.15% in 2015 (Kelly and Nolan 2015). ▪ Abolition of Easter, summer and Christmas bonuses in Greece (2013), and abolition of Christmas bonuses (2012) and 90% cut in holiday bonus (2013) in Portugal (Ivankovič Tamamovič 2015). ▪ Abolition in Cyprus of free transport and the Easter bonus for pensioners (ibid). |

Source : author's own elaboration.

20. Any worker wishing to retire before the age of 62 has his pension reduced by 1% for each of the two years between 60 and 62, and by 2% for each year before the age of 60.

Cuts in pension levels and in other bonuses have had a direct effect on pensioners' purchasing power in several European countries. In Spain, for example, pensioners lost 0.35% of their purchasing power in 2014. This trend is set to continue, since pensions will rise by only 0.25% between now and 2019, and if inflation begins to rise once more (Ivanovič Tamamovič 2015).

With regard to Greece, the United Nations independent expert emphasises that the cumulative effect of austerity measures has resulted in a major decline in quality of life and living standards for most retired people, and that successive reductions in pension levels have plunged 45% of current pensioners into poverty. Public sector job cuts, moreover, are causing serious delays in managing pension applications, and payments are being held up by as much as two years (Lumina 2014).

2. Denunciation by international human rights bodies

While the austerity plans were supported and/or imposed by the international and European financial and monetary bodies, a very different view was taken by those institutions responsible for protecting human rights (Clauwaert and Schömann 2015 and 2013f; Roman 2014).

2.1 Calls to order from the United Nations committees

The UN Human Rights Council declared as early as 2009 that the economic crises did not diminish the responsibility of national authorities and the international community in the realization of human rights ⁽²¹⁾. In 2012, it welcomed the new guiding principles on foreign debt and human rights, noting that it was up to governments to give priority to human rights concerns when deciding to lend or borrow (Lumina 2012).

The UN committees emphasised that the austerity policies being implemented in Spain or Greece disregarded the state obligations enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) ⁽²²⁾.

Back from his mission to Greece in December 2015, the independent expert on debt, Juan Pablo Bohoslavsky, presented his report to the UN Human Rights Council. This report, although couched in diplomatic language, strongly censures the creditors. The expert stresses that the large-scale violation of the human rights of the Greek people (rights to health, work, housing, food, social protection, to conclude collective agreements etc.) 'are not the product of an "invisible hand"', but are a direct result of the first two Memoranda concluded in 2010 and 2012 between Greece and its creditors (Bohoslavsky 2016).

2.2 Denunciations by the European Committee of Social Rights

In 2013, the Council of Europe's Commissioner for Human Rights painted an alarming picture of the situation in Europe, emphasising that 'the increase in unemployment has a lasting effect on the right to work, while States are not respecting their obligation, under the European Social

21. Resolution S-10/1 of the Human Rights Council, 'The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights', point 5.

22. Concluding observations of the Committee on Economic, Social and Cultural rights 2012, E/C.12/ESP/CO/5, pt. 8; Concluding observations of the Committee on the Elimination of Discrimination against Women, 2013, CEDAW/C/GRC/CO/7, 2013, §40.

Charter, to implement full employment policies, and working conditions in Europe have thus declined considerably' (CommHR 2013).

The European Committee of Social Rights (²³) (ECSR) also condemned the regressions resulting from the Memoranda of Understanding, in terms of the European Social Charter, and declared in 2009 that 'the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter'. Governments should therefore take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most (²⁴).

The Committee, having received collective complaints from Greek trade unions (²⁵) (GENOP-DEI and ADEDY), condemned measures taken to apply the strict conditions attached to European financial aid. It underlined that whilst governments may reasonably respond to the crisis by changing legislation and practice to limit public expenditure or relieve constraints on business activity, these measures should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter. Measures taken to encourage greater work flexibility with a view to combating unemployment should not deprive broad categories of employees of their fundamental rights in the field of labour law, which protect them against arbitrary decisions by their employers or the worst effects of economic fluctuations (²⁶) (Deliyanni-Dimitrakou 2013).

The ECSR also concluded that the setting of a minimum wage below the poverty level for employees under 25 constituted a violation of the Charter (²⁷). This conclusion was repeated a few months later with regard to a series of complaints (²⁸) concerning pension system reforms which had led to a quasi-general reduction in pensions (Nivard 2013) (²⁹). A decision is also expected in the context of a complaint lodged in September 2014 by the General Confederation of Labour

23. The mission of the European Committee of Social Rights within the Council of Europe is to judge whether State Parties are in conformity with the European Social Charter, both in the context of the collective complaints introduced by the social partners and other non-governmental organisations, and of the national reports drawn up by the State Parties.

24. European Committee of Social Rights, Conclusions XIX-2 (2009): General introduction, section 15.

25. European Committee of Social Rights, 23 May 2012, *GENOP-DEI and ADEDY v. Greece*, Complaints no. 65/2011 and 66/2011.

26. European Committee of Social Rights, 23 May 2012, *GENOP-DEI and ADEDY v. Greece*, Complaint nr 65/2011.

27. European Committee of Social Rights, 23 May 2012, *GENOP-DEI and ADEDY v. Greece*, Complaint nr 66/2011.

28. European Committee of Social Rights, 7 December 2012, *ETAM v. Greece, POPS v. Greece, ISAP v. Greece, POSDEI v. Greece and ATE v. Greece*, Complaints nr 76/2012; nr 77/2012; no. 78/2012 ; nr 79/2012; nr 80/2012.

29. For an in-depth analysis see Clauwaert and Schömann (2013g), Ewing (2013) and Bruun *et al.* (2014).

(GSEE) against some austerity measures. These relate mainly to wages, collective bargaining, and dismissal procedures ⁽³⁰⁾.

2.3 Recommendations of the Committee on Freedom of Association

In its report No.365 of November 2012, the International Labour Organization (ILO) Committee on Freedom of Association ⁽³¹⁾, addressing its recommendations to the Greek government, noted many serious violations of the principle of inviolability of freely concluded collective agreements, and a serious lack of social dialogue. It emphasises that the suspension or derogation of collective agreements, systematic decentralisation of collective bargaining and the setting up of less favourable procedures, notably with regard to remuneration, run counter to the ILO's fundamental principles. The Committee thus highlighted the need to promote and strengthen the institutional framework for these fundamental rights and urged that permanent and intensive social dialogue be held on all the issues raised in the complaint, in full conformity with the principles of freedom of association and the effective recognition of collective bargaining and the relative ILO conventions ratified by Greece ⁽³²⁾.

As underlined by Roman (2014), a body of doctrine has emerged from the various resolutions, recommendations and analyses produced by the international human rights bodies. 'This body of doctrine stresses the need to protect human rights against the economic crisis by adopting budgetary and fiscal policies which do not use social rights as an adjustment variable for national economies and international markets' (Roman 2014).

30. European Committee of Social Rights, *GSEE v. Greece*, Complaint n° 111/2014 introduced on September 25th 2014.

31. The mission of the ILO's Committee on Freedom of Association is to examine complaints concerning the rights of employers and trade unions in the field of association, collective bargaining and social dialogue.

32. ILO Committee on Freedom of Association, 365th report, November 2012 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193264.pdf

3. Towards a body of crisis case law

3.1 The dynamism of national constitutional courts

Some national courts, referring to constitution and sometimes to international treaties on human rights, have established arrangements for the monitoring of national austerity measures (Roman 2014).

The Latvian Constitutional Court started the ball rolling in a 2009 ruling ⁽³³⁾. Cuts of 10% in paid-out pensions and 70% in future pensions had been decided in line with the commitments entered into by Latvia vis-à-vis the IMF and the EU. The Court declared that this law was contrary to the individual right to social security guaranteed in the Constitution and the International Covenant on Economic, Social and Cultural Rights (ICESCR), because the Parliament had neither considered less restrictive alternatives nor established gradual measures. The economic crisis and the conditions imposed by international creditors were not sufficient to justify such a violation of constitutionally guaranteed rights.

The Romanian Constitutional Court gave its own opinion in 2010, condemning a law establishing a cut in wages and pensions in order to return to a balanced budget ⁽³⁴⁾. In the view of the court, the government could take restrictive measures since the economic crisis constituted a 'threat to economic stability'. It therefore found the temporary 25% cut in wages to be in conformity with the Constitution, since it was proportionate to the desired purpose. It also, however, ruled that a reduction in retirement pensions, with no indication of the amount or duration of the measure, was disproportionate and therefore anti-constitutional (Roman 2014).

The Greek Council of State began by upholding the regressive measures reducing social benefit levels – measures which were seen as pursuing a legitimate aim in the public interest, proportionate and non-arbitrary ⁽³⁵⁾ (Yannakourou 2015). It nevertheless underlined that Parliament's ability to reduce the level of retirement pensions and public service pay was limited by the need to respect the principles of human dignity and equality. The legislator should not place the whole burden of such measures on retirees and civil servants alone (Psychogiopoulou 2015).

Constitutional courts of other southern countries subject to aid plans developed during case law. According to the Italian Constitutional Court, restrictions on social benefits could be justified by

33. Latvian Constitutional Court, 21 December 2009, case No.2009-43-01.

34. Decisions No.872 and No.874 of 25 June 2010.

35. Greek Council of State, No.668/2012, 23 February 2012.

economic circumstances, as long, however, as they were exceptional, temporary, non-arbitrary and suited to the aims pursued (Tega 2014). It ruled against fiscal measures targeted at specific categories of tax-payers (such as judges), stating that even at times of crisis income tax should be as uniform as possible. On 30 April 2015, it invalidated a measure introduced by the Monti government concerning a temporary freeze on pensions higher than three times the minimum pension level for 2012 and 2013, judging this to be neither proportionate nor fair ⁽³⁶⁾.

The Spanish Constitutional Court concerned itself with the right to health protection, in relation to policies restricting the level of healthcare costs borne by the State and reducing access to care for non-nationals with no legal right of residence (Roman 2014). It assessed the advantages and disadvantages of the measures taken, referring to the link between protecting the right to health and protecting the right to life ⁽³⁷⁾. In 2013, the Court of Justice of the European Union (CJEU) ruled against contractual clauses imposed upon a debtor who had been evicted from his house due to insolvency ⁽³⁸⁾. This decision led the Spanish Supreme Court to annul a number of measures relating to contractual interest rates, and to establish criteria applicable to future disputes (González Pascual 2014; Roman 2014).

The Portuguese Constitutional Court censured a number of austerity measures adopted at the request of the Troika and reducing the level of pay, social health-insurance benefits and unemployment benefits ⁽³⁹⁾. While emphasising the margin of discretion of the legislator, it reaffirmed the need to respect equality between workers in the public and private sectors, and, moreover, the requirement to respect the principle of proportionality (Cisotta and Gallo 2014; Roman 2014).

3.2 The reticence of the European courts

Unlike the national constitutional courts, the EU courts and the European Court of Human Rights (ECHR) have been hesitant to examine austerity measures from the perspective of fundamental rights (Koukiadaki 2015).

Early on in the crisis, two cases were brought to the General Court of the European Union (EGC) by the Greek public sector union (ADEDY), challenging two Council decisions directed specifically

36. Italian Constitutional Court, 8 October 2012, judgment No.223/2012; 3 June 2013, judgment No.116/2013; 30 April 2015 judgment No.70/215.

37. Spanish Constitutional Court, 21 May 2013, decision 122/2013; 4 June 2013, decision 142/2013; 12 December 2012, decision 239/2012.

38. CJEU, 14 March 2013, *Mohamed Aziz v. Catalunya Caixa*, C-415/11.

39. Portuguese Constitutional Court, 20 September 2013; 5 July 2012, *Acórdão* No.602/2013; 30 May 2014, *Acórdão* No.353/2012, No.413/2014; 5 April 2013, *Acórdão* No.187/2013 and 30 May 2014 and *Acórdão* No.413/2014.

at Greece with a view to reinforcing and deepening budgetary surveillance, and giving it notice to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit. In the view of *ADEDY*, these decisions infringed the principle of conferral of competences, since they went beyond the limits of the competences conferred upon the Council of the EU to attain the objectives enshrined in the treaties (Article 5(2) TEU). The Court dismissed these actions, arguing that the applicants had not been able to prove that the contested acts were of direct concern to them, and that they were therefore not eligible to bring the action. The measures were judged to be general in nature and requiring implementing measures from the Greek authorities, who had broad margin of discretion to this effect ⁽⁴⁰⁾.

Until now, the Court of Justice of the EU (CJEU) has been unwilling to refer to the EU Charter of Fundamental Rights in cases directly linked to austerity measures implementing requirements in the Memoranda of understanding (Koukiadaki 2015). In the case *Sindicato dos Bancários do Norte and others v. BPN* ⁽⁴¹⁾, concerning compatibility of public sector pay cuts with the ban on discrimination, the Court rejected the reference for a preliminary ruling, explaining its decision by stating that the relevant provisions in Portuguese law were not intended to implement EU law in the sense of Article 51(1). Kilpatrick (2014) points out that by acting in this way, the Court was contradicting its own constant case law, in which it has tended to reformulate questions to give greater benefit of the doubt as to their EU law relevance, and has only refused to look at questions which have absolutely no link with EU law.

Despite this *BPN* order, a question was again referred by a Portuguese court to the CJEU for a preliminary ruling, concerning an infringement of Article 31(1) of the Charter of Fundamental Rights – the right to working conditions which respect the dignity of the worker. However, the Court again ruled, on 26 June 2014, that it had a clear lack of jurisdiction ⁽⁴²⁾.

The ECHR also acts with caution when assessing the lawfulness of austerity measures in terms of the European Convention on Human Rights. The competence of the Court is limited by the content of the rights protected by the Convention, which largely disregards social rights but does include property rights ⁽⁴³⁾ (Fines 2014). When asked, however, the Court declared applications from persons whose retirement pensions ⁽⁴⁴⁾ had been reduced to be inadmissible. In its decision *Koufaki and ADEDY v. Greece* concerning a ban on public sector pay increases, the Court noted

40. EGC, Order of 27 November 2012, *ADEDY and others v. Council*, Case T-541/10, OJ C 26/45 of 26 January 2013.

41. CJEU, Order of 7 March 2013, C-128/12. See also order of 10 May 2012, *Corpul Național al Polițiștilor*, C-134/12; order of 14 December 2012, *Cozman*, C-462/11.

42. CJEU, Order of 26 June 2014, *Sindicato Nacional dos Profissionais de Seguros e Afins v. Fidelidade Mundial-Companhia, de Seguros, SA*, C-264/12, OJ C.

43. By application of Protocol 1 Article 1 of the Convention.

44. ECHR, 8 October 2013, *da Conceição Mateus v Portugal* and *Santos and Januario v. Portugal*.

that the adoption of these measures was 'justified by the exceptional crisis, unprecedented in the recent history of Greece' (45).

On 1 September 2015, the Court continued with this approach and unanimously declared another application to be inadmissible. This was an application against a Portuguese finance law requiring retirees to pay an 'extraordinary social contribution' designed to speed up reductions in public expenditure in a context of budgetary crisis. Noting the overall public interests at stake in Portugal and the limited and temporary nature of the measures applied to the applicant's pension, the Court ruled that the reduction in her pension was a proportionate restriction of the applicant's right to protection of property in order to achieve medium-term economic recovery in the country (46).

4. Member States and the Troika: the tricky question of shared responsibility

The Member States bear the main responsibility for violations of fundamental rights resulting from the various measures adopted in response to the crisis. Nevertheless, when these measures have been imposed upon them by the Memoranda of Understanding and loan agreements, creditors also bear some responsibility for these violations. This is the case for the lending Member States of the Eurozone, signatories to several human rights instruments, such as the ICESCR and the Council of Europe's Social Charter. Moreover, when taking part in these programmes, the European Commission and the European Central Bank should also have taken account of the provisions of the EU Charter of Fundamental Rights (EUCFR), the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Finally, by virtue of international law, the IMF and its members are obliged to respect human rights and fundamental freedoms when they impose adjustment programmes (Truth Commission 2015).

4.1 The Member States

The measures adopted and implemented under the Memoranda and the bail out plans have resulted in a series of fundamental rights violations. If each Member State is responsible for protecting and promoting the human rights of all persons within its jurisdiction, it can be considered as bearing the main responsibility for these violations. Arguing that these measures were imposed by creditors through loan agreements is not sufficient to dismiss all responsibility for the violations resulting from these measures. Pursuant to Article 103 of the United Nations Charter, 'in the event of a conflict between the obligations of the Members of the United Nations

45. ECHR, 7 May 2013, *Koufaki v. Greece* and *ADEDY v. Greece*.

46. ECHR, 1 September 2015, *Da Silva Carvalho Rico v. Portugal*.

under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail' (Truth Commission 2015; FIDH 2014). As we emphasised in Section 3, the European Committee for Social Rights has pointed out that Greece could not invoke obligations such as those resulting from international agreements such as loan agreements and Memoranda to justify measures which have as a consequence violation of human rights.

As parties to loan agreements and Memoranda of understanding, the Eurozone Member States are still, moreover, bound by legislation on State responsibility and by the legal consequences of any violations of their international obligations. The EU Member States are party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which imposes obligations on every State party, even outside its national territory. Several UN bodies have declared that States must not do together, in an intergovernmental context, what they are not permitted to do when acting alone (Salomon 2015). The conditions imposed on Member States receiving assistance, and the resulting non-respect of socio-economic rights, therefore constitute a violation of human rights obligations by all the (lending) Eurozone Member States who are signatories to the ICESCR, and run counter to their obligations under the United Nations Charter (Truth Commission 2015).

4.2 The EU Institutions

In order to properly address the issue of the possible responsibility of the EU institutions, we need to remember that within the Eurozone, assistance programmes are based either partially on EU law, or entirely on three types of international agreements adopted by the States (Koukiadaki 2015).

For Ireland and Portugal, the programmes were based on the European Financial Stabilisation Mechanism (EFSM) ⁽⁴⁷⁾, itself based on Article 122(2) TFEU, and on the intergovernmental European Financial Stability Facility (EFSF) ⁽⁴⁸⁾. The European Stability Mechanism (ESM) ⁽⁴⁹⁾, an intergovernmental treaty, was used to provide financial assistance to Cyprus and Spain.

Finally, the Eurozone Member States arranged bilateral loans, in addition to a confirmation agreement from the IMF, for the first Greek programme in 2010. The second Greek programme in 2012 was based on the EFSF, and the third, in 2015, on the ESM. A number of Council decisions

47. The EFSM is an emergency financing programme supervised by the Commission and supported by the 27 EU Member States. The Commission can raise up to 60 billion euros.

48. The EFSF is an intergovernmental arrangement which makes it possible to provide financing to Eurozone Member States, up to an amount of 440 billion euros.

49. The ESM is a European scheme for managing Eurozone financial crises. Since 2012 it has replaced the EFSF and the EFSM. The treaty setting up the ESM has created an international financial institution which can raise up to 700 billion euros on the financial markets. It can only be used for the Eurozone.

were also adopted on the basis of Articles 126 (6) and (9) and 136 TFEU. The European Commission and the European Central Bank were also heavily involved in the setting up, implementation and monitoring of the programmes (Koukiadaki 2015).

The issue of direct applicability of the EU Charter of Fundamental Rights to programmes implemented on the basis of the intergovernmental EFSF and bilateral loan agreements was raised before the CJEU. In the *Pringle* ⁽⁵⁰⁾ judgment, the Court found that conclusion of the European Stability Mechanism (ESM) did not violate the principle of judicial protection enshrined in Article 47 of the EUCFR because 'the Member States are not implementing Union law, within the meaning of Article 51(1) of the Charter ⁽⁵¹⁾, when they establish a stability mechanism such as the ESM where the EU and FEU Treaties do not confer any specific competence on the Union to establish such a mechanism'.

Another issue deserving of close attention is the immunity of Community institutions acting on behalf of the Member States under the ESM Treaty. As highlighted by Koukiadaki (2015), the issue of the non-opposability of the Charter has only been raised with regard to the Member States. The Court has said nothing as to the possible opposability of the EUCFR on the EU institutions in the context of the ESM Treaty. According to Advocate-General Kokott, 'the Commission remains, even when it acts within the framework of the ESM, an institution of the Union, and is such is bound by the full extent of European law, including the Charter of Fundamental Rights' ⁽⁵²⁾. This seems to imply that the EU institutions are bound by the EUCFR, even if they are acting outside the context of EU law.

The Charter also applies to instruments which are either European as such, or have been repatriated in European law following Council decisions adopted on the basis of Articles 126 (6) and (9) or 136 of the TFEU ⁽⁵³⁾. One example is Regulation (EU) No.472/2013 which sets out conditions to be applied to Eurozone countries subject to strengthened surveillance ⁽⁵⁴⁾ (Romainville 2014). Its adoption had two immediate consequences. Firstly, after 30 May 2013, even the financial mechanisms established beforehand, outside the context of EU law, were given a legal framework in EU law by virtue of Article 136 TFEU and of the regulation itself. As the

50. The Court ruled in response to a request from the Irish Constitutional Court, on a case where the applicant challenged Ireland's ratification of the ESM Treaty, arguing that this was incompatible with Irish constitutional law and Community law. CJEU, judgment of 27 November 2012, *Pringle v. Ireland*, C-370/12, Rec. 2012-756.

51. Article 51 (1) of the Charter stipulates that: 'The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law'.

52. View of AG Kokott delivered on 26 October 2012, para.176.

53. In accordance with Article 51§1 of the Charter.

54. Regulation of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJ L 140/1 of 27 May 2013.

measures adopted in the context of the regulation become part of EU law, they must respect the requirements of the Charter of Fundamental Rights. The regulation confirms this, by emphasising the requirement that any measure taken must be in compliance with Article 28 of the Charter guaranteeing the right to negotiate collective agreements and take collective action. Finally, the regulation sets out its own requirements. Firstly, the European Commission must evaluate the sustainability of government debt (Article 6). Also, the Member States subject to strengthened surveillance must ensure that trade unions and civil society organisations are involved in the adoption of macroeconomic adjustment measures (Article 8) (Truth Commission 2015).

European creditors, moreover (both Member States and institutions) must respect the TEU, and in particular Articles 2, 3 and 9 on the values and objectives of the Union ⁽⁵⁵⁾.

4.3 The International Monetary Fund

The European Court of Human Rights has recalled on several occasions that whilst their obligations under the European Convention on Human Rights do not preclude States cooperating in certain areas of activity, the obligations of the contracting parties continue even after a State has transferred certain competences to international organisations. Member States may not be exonerated from all responsibility since the guarantees set out in the Convention could be limited or excluded on a discretionary basis, and thus lose their binding, specific and effective character. The State remains responsible vis-à-vis the Convention for commitments entered into under the treaties after the date of the entry into force of the Convention ⁽⁵⁶⁾. IMF Member States are therefore bound to meet their human rights obligations, including when acting under the auspices of the IMF (Salomon 2015).

The IMF is bound by any obligation placed upon it by the general rules of international law, its own constitution or the international conventions to which it is a signatory ⁽⁵⁷⁾. It must therefore refrain from taking measures which could jeopardise the ability of a borrowing State to meet its own national and international human rights obligations. As a UN specialised agency, the Fund is also bound by the general objectives and principles of the United Nations Charter (Articles 57 and

55. Art.2: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights (...); Art.3: 'It shall promote economic, social and territorial cohesion, and solidarity among Member States'. Article 9 TFEU states that 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health'.

56. ECHR, judgment of 18 February 1999, *Matthews v. United Kingdom*, application no. 24833/94; judgment of 30 June 2005, *Bosphorus v. Ireland*, application No.45036/98.

57. International Court of Justice, Interpretation of the agreement of 25 March 1951 between the WHO and Egypt, advisory opinion of 20 December 1980, ICJ Reports 1980, 37, 89-90.

63), which include universal respect for and observance of human rights and fundamental freedoms (Fischer-Lescano 2014; Truth Commission 2015).

The IMF has sought to minimise its responsibility for the loans granted, claiming that it could neither preclude nor contribute significantly to violations of international obligations by loan beneficiaries. States could always choose to ignore loan conditions. This line of argument has nevertheless been seriously challenged, as shown by the reports from the Hellenic League for Human Rights (FIDH) (2014) and the Greek Debt Truth Commission (2015). These reports emphasise that 'Greece could not ignore the loan conditions set out in its Exchange of Letters with the IMF if it expected continued disbursement of funds'. Moreover, 'the policy prescriptions conditioning access to IMF funds are in no way "general" but are in fact focused, clearly measurable and strictly monitored. In these circumstances, it is difficult for the IMF to claim that it has no responsibility for the effects that such policies have had on the people of Greece' (ibid).

Summary and conclusion

Fundamental rights must be guaranteed by the Member States, particularly at a time when citizens need them the most. They are not a luxury reserved for times of prosperity. The eight years which have gone by give us a striking perspective on the outcome of the strict austerity policies introduced in Europe. These have often been presented as the only possible response to the crisis, although in 2012 the IMF admitted that the economic damage caused by austerity measures in the countries which applied them has been far greater than foreseen by the experts (IMF 2012).

The most dramatic and lasting consequences of austerity have been on economic and social rights. The right to work was the first major casualty of the economic crisis and the austerity measures stemming from it: unemployment, particularly long-term unemployment, increased massively in Europe between 2008 and 2013-2014, restrictive budgetary policies dampened growth prospects and the foundations of collective bargaining were shaken (ILO 2013). The right to social security and social protection was eroded: many Member States were faced with an exponential increase in demand for social protection, without being able to meet that demand because of a drop in the income of the social security funds, combined with austerity and fiscal consolidation. The cuts in education budgets had a direct impact on the quality, accessibility and cost of education. Although it is, at this time, impossible to measure the full scale of this impact, the long-term consequences are bound to be disastrous. Finally, cuts in healthcare expenditure affect the right to health. There are clearly-established links between austerity measures, on the one hand, and declining mental health, increases in drug addiction and suicides, reduced life expectancy and increased infant mortality in some of these countries (WHO 2011 and 2013).

There have been differing, sometimes contradictory, evaluations of these violations of fundamental rights. The European Committee of Social Rights has, on several occasions, condemned the regressions resulting from the Memoranda negotiated between the loan recipients and the Troika. Such backwards steps can only be justified if they are adequate, strictly necessary and proportionate to the objective pursued.

The UN committees have been just as firm. The letter, for example, sent by the Chairperson of the Committee on Economic, Social and Cultural Rights to all the States parties to the ICESCR insists that although not every regression in the enjoyment of economic and social rights is necessarily a direct violation of these, a series of criteria must nevertheless be respected: the policy must be a temporary measure covering only the period of crisis; it must be necessary and proportionate to

the situation; it must not be discriminatory; and it must identify and protect a minimum core content of rights or a social protection floor ⁽⁵⁸⁾.

The firmness of the calls to order from the UN bodies is probably related to the fact that their decisions are non-binding.

In any case, this firm international stance is in sharp contrast with the hesitancy of the European Court of Human Rights, which has opted for a more ambiguous position, wishing to spare those Member States which could be hard hit by firmer judgments. The same is true for the EU Court of Justice, which has proved somewhat unwilling to engage in an examination of austerity measures in the light of the Charter of Fundamental Rights. If it had acknowledged competence for ensuring respect of the Charter, the consequences could have been disastrous for the European institutions. It would have implicitly raised the question of responsibility for the violations, even for the damage caused (Romainville 2014).

Finally, as recalled by the European Parliament in its 2015 resolution, Union institutions as well as Member States which implement structural reforms in their social and economic systems are always under an obligation to observe the Charter and their international obligations, and are therefore accountable for the decisions taken. It also calls on them, when adopting and implementing corrective measures and budget cuts, to conduct an impact assessment on fundamental rights (EP 2015). The Commissioner for Human Rights (2013) had already underlined that whilst the European Commission and the IMF carry out an annual assessment of the economic situation in many European countries to check that these are applying the budgetary rules, no mechanism has been established to monitor, systematically, the social consequences of economic policies. Taking note of this, the Commission, in August 2015, published a social impact assessment in the context of preparations for the third adjustment programme for Greece (European Commission 2015). It must be said, though, that this programme does not meet expectations. It does not make any reference to human rights, recommendations by the Greek National Commission for Human Rights, or to the Greek national report produced as part of the European Parliament study, to which we referred in Section 1 of this chapter. As underlined by the United Nations independent expert on the effects of debt, the Commission has disregarded the Council of Europe opinions and the recommendations from the UN committees, and fails to draw any lessons from the first two adjustment programmes (Bohoslavsky 2016).

58. Letter of 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural rights to the States parties to the International Covenant on Economic, Social and Cultural Rights, HRC/NONE/2012/76.

The importance attached to human rights has declined in recent years at the same time as state budgets throughout Europe. Unlike national budgets, however, there are no international human rights “bail-out plans” (FIDH 2014).

References

- Baeten R. and Vanhercke B. (2016) 'Inside the black box: The EU's economic surveillance of national healthcare systems', *Comparative European Politics*, 21 March 2016, doi: 10.1057/cep.2016.10.
- Bekker S. (2016) 'Is There Flexibility in the European Semester Process? Exploring Interactions between the EU and Member States within Post-Crisis Socio-Economic Governance', *Tilburg Law School Research Paper*, 10/2016.
- Bohoslavsky J.P. (2016) *Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his mission to Greece*, N.Y., United Nations Human Rights Council, A/HRC/31/60/Add.2.
- Bruun N., Lörcher K. and Schömann I. (2014) *The Economic and Financial Crisis and Collective Labour Law in Europe*, Brussels, European Trade Union Institute.
- Cisotta R. and Daniel Gallo D. (2014) 'The Portuguese Constitutional Court Case Law on Austerity Measures: A Reappraisal', LUISS Academy, Working Paper, 4/2014.
- Clauwaert S. and Schömann I. (2015) 'Protecting trade union rights via litigation at international level', *Benchmarking Working Europe 2015*, Brussels, European Trade Union Institute, 53-55.
- Clauwaert S. and Schömann I. (2013a) *The crisis and national labour law reforms: a mapping exercise, Country report: Greece*, Brussels, European Trade Union Institute.
- Clauwaert S. and Schömann I. (2013b) *The crisis and national labour law reforms: a mapping exercise, Country report: Ireland*, Brussels, European Trade Union Institute.
- Clauwaert S. and Schömann I. (2013c) *The crisis and national labour law reforms: a mapping exercise, Country report: Italy*, Brussels, European Trade Union Institute.
- Clauwaert S. and Schömann I. (2013d) *The crisis and national labour law reforms: a mapping exercise, Country report: Portugal*, Brussels, European Trade Union Institute.
- Clauwaert S. and Schömann I. (2013e) *The crisis and national labour law reforms: a mapping exercise, Country report: Spain*, Brussels, European Trade Union Institute.
- Clauwaert S. and Schömann I. (2013f) 'Workers' rights, worker mobilisation and workers' voice', *Benchmarking Working Europe 2013*, Brussels, European Trade Union Institute, 89-104.
- Clauwaert S. and Schömann I. (2013g) 'The protection of fundamental social rights in times of crisis: a trade union battlefield' in Daübler W. and Zimmer R. (2013) *Arbeitsvölkerrecht. Festschrift für Klaus Lörcher*, Baden Baden, Nomos Verlag, 239-256.
- Clauwaert S. and Schömann I. (2012) 'The crisis and national labour law reforms: a mapping exercise', *Working Paper*, 2012.04, Brussels, European Trade Union Institute.
- CommHR (2013) *Safeguarding human rights in times of economic crisis*, Council of Europe Commissioner for Human Rights, Strasbourg, Council of Europe publications.
- Degryse C., Jepsen M. and Pochet P. (2013) 'The Euro crisis and its impact on national and European social policies', *Working Paper 2013.05*, Brussels, European Trade Union Institute.
- Deliyanni-Dimitrakou C. (2013) « La Charte sociale européenne et les mesures d'austérité grecques: à propos des décisions nos 65 et 66/2012 du Comité européen des droits sociaux fondamentaux », *Revue de Droit du Travail*, 7-8 (2013), 457-471.
- Demetriou C. (2015) *The Impact of the Crisis on Fundamental Rights across Member States of the EU – Country Report on Cyprus*, Brussels, Policies, DGFI & Affairs, European Parliament.
- Eurofound (2014) *Access to healthcare in times of crisis, Luxembourg*, Publications Office of the European Union.

- Eurofound (2013) *Impact of the crisis on working conditions in Europe*, Luxembourg, Publications Office of the European Union.
- European Commission (2015) *Assessment of the Social Impact of the new Stability Support Programme for Greece*, Brussels, European Commission, Staff Working Document (2015)162 final, 19 August 2015.
- Ewing K. D. (2013) 'Austerity and the importance of the ILO and the ECHR for the Progressive development of European labour law: a case study from Greece', in Daübler W. and Zimmer R. (2013) *Arbeitsvölkerrecht. Festschrift für Klaus Lörcher*, Baden Baden, Nomos Verlag, 361-367.
- European Parliament (2015) European Parliament Resolution of 8 September 2015 on the situation of fundamental rights in the *European Union (2013-2014)*, Brussels, European Parliament, 2014/2254 (INI).
- Eurostat (2015) 'National minimum wages in the EU', *News release*, 35/2015.
- Fines F. (2014) 'L'atteinte aux droits fondamentaux était-elle le prix du sauvetage de la zone Euro?', *Revue des droits et libertés fondamentaux*, Chronique, 20.
- Fischer-Lescano A. (2014) Human Rights in Times of Austerity Policy, The EU institutions and the conclusion of Memoranda of Understanding, Bremen, Centre of European Law and Politics, University of Bremen.
- Ghailani D. with Vanhercke B. (2015) *The impact of the Crisis on Fundamental Rights Across Member States of the EU, Country Report on Belgium*, Brussels, Policies DGFI & Affairs, European Parliament.
- González Pascual M. (2014) "Welfare Rights and Euro Crisis – The Spanish Case", *European Journal of Social Law*, 1/2014.
- Greek Debt Truth Commission (2015) *Preliminary report*, http://www.cadtm.org/IMG/pdf/Raport_FR_23-07.pdf [Accessed 22.10.2016].
- FIDH (2014), *Downgrading rights: the cost of austerity in Greece, report*, International federation for Human Rights and the Hellenic League for Human Rights.
- IMF (2012) World economic outlook. Coping with high debt and sluggish growth, World economic and financial surveys, N.Y., International Monetary Fund, October 2012.
- Ivankovic Tamamovic A. (2015) *The impact of the Crisis on Fundamental Rights Across Member States of the EU Comparative Analysis*, Brussels, Policies DGFI & Affairs, European Parliament. [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU\(2015\)510021_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU(2015)510021_EN.pdf) [Accessed 22.10.2016].
- Kaltsouni S. and Kosma A. (2015) The impact of the Crisis on Fundamental Rights Across Member States of the EU Country Report on Greece, Brussels, Policies DGFI & Affairs, European Parliament.
- Karakioulafis C. (2015) 'Les plans d'austérité imposés à la Grèce: impact sur les droits sociaux et syndicaux et réactions syndicales', *Revue Interventions économiques*, 52 (2015), 1-19.
- Kelly G. and Nolan A. (2015) *The impact of the Crisis on Fundamental Rights Across Member States of the EU Country Report on Ireland*, Brussels, Policies DGFI & Affairs, European Parliament.
- Kilpatrick C. (2014) "Are the Bailouts Immune to EU Social Challenge Because They Are Not EU Law?", *European Constitutional Review*, 10 (3), 393-421.
- Koukiadaki A. (2015) 'La crise économique et les droits collectifs des travailleurs en Europe', *Revue française des affaires sociales*, 3/2015, 53-73.
- Lladós Vila J. and Freixes T. (2015) *The impact of the Crisis on Fundamental Rights Across Member States of the EU, Country Report on Spain*, Brussels, Policies DGFI & Affairs, European Parliament.
- Lumina C. (2012) *Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. Guiding principles on foreign debt and human rights*, 10 April 2012, A/HRC/20/23
- Natali D. (2011) 'Pensions after the financial and economic crisis: a comparative analysis of recent reforms in Europe', *Working Paper*, 2011.07, Brussels, European Trade Union Institute.
- Natasi G. and Palmisano G. (2015) *The impact of the Crisis on Fundamental Rights Across Member States of the EU, Country Report on Italy*, Brussels, Policies DGFI & Affairs, European Parliament.

- Nivard C. (2013) 'Seconde condamnation des mesures d'austérité grecques par le Comité européen des droits sociaux', *Lettre Actualités Droits-Libertés du CREDOF*, 11 May 2013.
- Petmesidou M. and Guillén A. (2015) 'Economic crisis and austerity in Southern Europe: threat or opportunity for a sustainable welfare state?', *OSE Paper Series*, 18/2015, Brussels, European Social Observatory.
- Psychogiopoulou E. (2014) 'Welfare rights in crisis in Greece: The role of fundamental rights challenges', *European Journal of Social Law*, 1/2014, 12-24.
- Rodrigues Canotilho M. (2015) *The impact of the Crisis on Fundamental Rights Across Member States of the EU, Country Report for Portugal*, Brussels, Policies DGFI & Affairs, European Parliament.
- Romainville C. (2014) *Austérité européenne, déséquilibres constitutionnels et droits fondamentaux*, www.jus.uio.no/english/research/news-and.../w12-romainville.pdf [Accessed 22.10.2016].
- Roman D. (2014) 'La jurisprudence sociale des Cours constitutionnelles en Europe: vers une jurisprudence de crise?', *Nouveaux cahiers du Conseil Constitutionnel*, 45, 63-75.
- Salomon M. (2015) 'Of Austerity, Human Rights and International Institutions', LSE Law, *Society and Economy Working Papers*, 2/2015.
- Schmidt V. (2015) 'Changing the policies, politics, and processes of the Eurozone in crisis: will this time be different?' in Natali D. and Vanhercke B. (eds.) *Social policy in the European Union: state of play 2015*, ETUI-OSE, Brussels, 33-64.
- Schömann I. (2015) 'Réformes nationales du droit du travail en temps de crise: bilan alarmant pour les droits fondamentaux et la démocratie en Europe', *Revue Interventions économiques*, 52/2015, 1-20.
- Simou E. and Koutsougounou E. (2014) 'Effects of the economic crisis on health and healthcare in Greece in the literature from 2009 to 2013: A systematic review', *Health Policy* 115, Issue 2-3, 111-119.
- Tega D. (2014) 'Welfare rights and economic crisis before the Italian Constitutional Court', *European Journal of Social Law*, 1/2014, 63-74.
- WHO (2013) *European Health Report 2012: charting the way to well-being*, World Health Organization Regional Office for Europe Denmark.
- WHO (2011) *Impact of economic crises on mental health*, World Health Organization Regional Office for Europe Denmark.
- Yannakourou M. (2014) 'Challenging austerity measures affecting work rights at domestic and international level. The case of Greece', *European Journal of Social Law*, 1/2014, 25-36
- Zeitlin J. and Vanhercke B. (2015) 'Economic governance in Europe 2020: socializing the European Semester against the odds?' In Natali D. and Vanhercke B. (eds.) *Social policy in the European Union: State of play 2015*, ETUI-OSE, Brussels, 65-95.