



ΕΛΛΗΝΙΚΗ
ΔΗΜΟΚΡΑΤΙΑ

ΠΑΝΕΠΙΣΤΗΜΙΟ
ΜΑΚΕΔΟΝΙΑΣ



**MSc law &
economics**

DEPARTMENT of ECONOMICS,
UNIVERSITY of MACEDONIA
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ARISTOTLE UNIVERSITY of THESSALONIKI



Τμήμα Οικονομικών

Επιστημών

Αριστοτέλειο Πανεπιστήμιο

Θεσσαλονίκης

Νομική Σχολή

**ΔΙΔΡΥΜΑΤΙΚΟ ΠΡΟΓΡΑΜΜΑ ΜΕΤΑΠΤΥΧΙΑΚΩΝ ΣΠΟΥΔΩΝ
ΔΙΚΑΙΟ ΚΑΙ ΟΙΚΟΝΟΜΙΚΑ**

Διπλωματική Εργασία

**HUMAN RIGHTS UNDER RISK IN TIMES OF ECONOMIC CRISIS:
EMPHASIS ON HUMAN DIGNITY**

Υποβλήθηκε ως απαιτούμενο για την απόκτηση του Μεταπτυχιακού Διπλώματος
Ειδίκευσης Δίκαιο και Οικονομικά

ΧΡΙΣΤΙΝΑ ΠΑΡΛΑΠΑΝΗ

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Νοέμβριος 2018

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List of principal abbreviations

EU	European Union
ECHR	European Convention of Human Rights
ESC	European Social Charter
RESC	Revised European Social Charter
CFR	Charter of Fundamental Rights of the European Union
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ILO	International Labor Organization
MoU	Memorandum of Understanding
ESM	European Stability Mechanism
IMF	International Monetary Fund
ECB	European Central Bank
EAP	Economic Adjustment Program

Introduction

Choosing my master thesis's subject was not challenging for me; I knew right from the start that I wanted to further explore the area of fundamental human rights. I also knew that what I was experiencing as a citizen since the crisis burst out has never left me uninterested, especially on a humanitarian level. But when started searching and reading again, and then reading even more, about the not so much days of yore, that was challenging.

Being a student of a Law and Economics Master gave me the opportunity to get a glimpse of the vast world of economics and also inspired me to see how this world interacts with the science of Law, my field of studies. Economy and law are closely linked together; accordingly, economy and Human Rights. Human Rights are a *sine qua non* condition for an effective economic activity, but the more power this activity gains, the more it becomes a threat for the enjoyment of human rights¹.

In the context of my thesis I examine some of the most important texts, conventions and treaties that allow us to be today able to refer to human rights at that extent, on international, European and national level. Citing afterwards how the economic crisis was 'translated' into our national legal order and the discussion around this, I continue on examining a part of the Council of State's jurisprudence, indicative of the 'memoranda era'. In the second part, I focus on the notion of human dignity, and its relation with human rights, under the spectrum of an economic crisis.

The aim of this thesis was to underline that human rights are not a theoretical concept but an existing reality, behind of which their subject, every single human being, stands sometimes unable to enjoy them freely; in times of economic crisis barriers separating people from what they deserve become even higher. The first step towards finding a solution to a problem is always realizing its existence, admitting that it needs to be solved, stopped, and never be repeated again. That was also the main purpose of my thesis.

I would like to thank everyone that helped me out through this voyage of my thesis, my first attempt to enter the scientific community, and especially my supervisor professor and my family. I promise I will be getting better and better.

¹Tulkens F., The Contribution of the European Convention on Human Rights to the poverty issue in times of crisis, European Court of Human Rights-European Judicial Training network, Strasbourg, available at www.etjn.eu

CHAPTER I HUMAN RIGHTS

1. A brief historical retrospective

Human rights were born together with the modern 'state'. Thomas Hobbes (1588-1679) in his masterwork 'Leviathan', published in 1651, argues on what has come to be known as the first 'social contract theory', the method of justifying political principles or arrangements by appeal to the agreement that would be made among rational, free, and equal persons². The important for the philosopher was that there was a deal, a contract, that has been made between the people and the ruling class and that it is the sovereign people that provide this power, whether it is to a single monarch, aristocracy or oligarchy.

But the first documentation of human rights comes a bit later in England, in 1689, as a result of a settlement between the people and the king that followed the Glorious Revolution (1688-1689): *The Bill of Rights*, formally *An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown* (1689)³. The Bill of Rights sets out limits to the power of the Monarch as well as basic civil rights, so that individuals could for the very first time appeal against him, and includes also the prohibition of cruel and unusual punishment, permitting only punishments already existing within the rule of law⁴.

The spiritual progress and the new political theories lead to the American Revolutionary War (1775-1783) and the application of the ideas that the Enlightenment has given birth to. Inspired by the English Bill of Rights (1689), the first ten amendments to the U.S. Constitution, known collectively as the *Bill of Rights*, became law on December 15, 1791⁵. The term of the 'nation' was introduced for the first time along with many other liberties, such as the freedom of the press, freedom of religion and the principle of 'ne bis in idem' of the penal law, prohibiting double penalization of the same crime.

²Lloyd, Sharon A. and Sreedhar, S., "Hobbes's Moral and Political Philosophy", The Stanford Encyclopedia of Philosophy (Summer 2018 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/sum2018/entries/hobbes-moral/>

³Britannica : Bill of Rights, available at <https://www.britannica.com/topic/Bill-of-Rights-British-history>

⁴Bill of Rights 1689, available at https://en.wikipedia.org/wiki/Bill_of_Rights_1689

⁵ Facts about the bill of rights, available at <http://www.history.com/news/facts-about-the-bill-of-rights-on-its-220th-anniversary>

In 1789, the French Revolution burst out and the French National Assembly published the *Declaration of the Rights of Man and of the Citizen* (French: *La Déclaration des droits de l'Homme et du citoyen*, 1789)⁶. In its 17 articles, the Declaration points out the equality of all people (1st article – Les hommes naissent et demeurent libres et égaux en droits), recognizes basic “natural” rights like liberty (2nd article - Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression) and grants the nation the ultimate and complete power (3rd article - Le principe de toute souveraineté réside essentiellement dans la nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.)⁷.

As the world was entering the 20th century, most would agree that the humanity had already made a great progress compared to the previous, dark at many times, ages; The evolution that has been marked in the fields of philosophy, letters and sciences has led to a new era; the historical texts adopted after the American and the French revolution helped in changing the world's perception of society and the individual's status and role in it. Establishing the civil rights was a procedure that took time but had already marked the birth of the ‘first generation rights’, called also as ‘classic’ ones.

While First and Second World Wars were chapters of unspeakable tragedy in this globe's history, with millions of victims including civilians too, it was however the turning point for the humans towards realizing and protecting more efficiently the once again at stake human value and existence. The confluence of ideological influences, political conjunctures and the new economic and social challenges has thus lead inevitably into the constitutional recognition of social rights⁸.

2. Definition of Human Rights

Professor D. Tsatsos sets the definition of the ‘right’ as: “the power that the legal system provides to an individual or a group of individuals in order to fulfill a special

⁶Britannica, the Declaration of the Rights of the Man and of the Citizen, available at <https://www.britannica.com/topic/Declaration-of-the-Rights-of-Man-and-of-the-Citizen>

⁷La Déclaration des droits de l'homme et du citoyen, available at <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789>

⁸Stergiou A., Search for the enforcement of social rights, ToS 4/1993, p. 703

interest of them, granting it a legal status”⁹. This being given, the fundamental rights are not simple declarations of principles, but legal rules that generate new rights and new responsibilities as well¹⁰, defining the relations of the individual or of a group of them with the official State. It is necessary to mention too that the use of term ‘fundamental rights’ is equal with other terms like “human rights”, “civil rights”, “fundamental freedoms” or ‘constitutional rights’, used to refer to the same theme.

1. The three “Generations” of Human Rights.

This division of human rights into three generations was introduced in 1979 by Czech jurist Karel Vasak. It needs to be mentioned that ‘separating’ rights in ‘generations’ does not implement that ones are inferior than the others. As mentioned in the Teheran Meeting and then affirmed by the Vienna Declaration of 1993, in Chapter 1 par. 5, “*All human rights are universal, indivisible and interdependent and interrelated*” while in the introduction it is affirmed that “*Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms*”¹¹.

1.1. First Generation of Human Rights: civil and political rights

The fundamental rights of this generation are individual liberties that exist already and reside into the natural and unique existence of each person. They belong to each and one of us, as a consequence of being human; we do not create them; instead we are born with them. What the societies have fought for was their initial recognition and then their establishment by law. Based on the principles of individualism and non-interference, they tend to be “negative” rights, both the civil and the political ones: they aim to protect the natural existence of the individual from any restriction that society

⁹Tsatsos D., Constitutional Law, Vol.3 - Fundamental Rights, Ant. N. Sakkoulas Publications, 1988, p. 19-24

¹⁰Ibid.

¹¹The 1993 Vienna Declaration, available at

<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

could set against them. In other words, they are constructed to protect the individual from the state.

According to the theory of *status* that derives from the German constitutional tradition of the beginnings of the 20th century that traditionally divides human rights into civil, social and political rights, civil rights are, as mentioned above, characterized by the demand for non-interference of the State into the constitutionally recognized private sphere (*status negativus*)¹². They can be therefore enforced judicially. In this way, they transform the individual to a subject of the law, finally transforming him to a *citizen*, and not just a simple national¹³. As when first officially established, the civil rights are restraining the -at other times- unlimited power of the State, telling what the State authorities *cannot* do.

Political rights are the rights that guarantee the *active* participation of the citizen in forming the public will while the State is obliged to allow, accept and facilitate citizens in their role in the political scene and them interfering in the State's functions (*status activus*). They refer to the ability of elect and being elected, participating to the public service and administration. What makes the difference between civil and political rights is that –with exceptions- the political rights are not bestowed upon foreigners; legislation that forbids foreigners to run for the parliamentary elections is therefore not violating fundamental rights¹⁴.

3.2. Second Generation of Human Rights: economic, social and cultural rights

Georg Jellinek was adding at the end of the 19th century next to the *status negativus* and *status activus* of the classical negative and political rights, the *status positivus* of the social rights¹⁵. Social rights are part of the “second generation” rights along with the economic and cultural rights, as their recognition occurred later, only at the beginnings of the 20th century. What distinguishes those from the civil and political rights (first generation rights) is that in order for the citizens to actually enjoy them, the State needs to act positively (*status positivus*). The right to work (access to a working environment), the right to education and health, all need previous relevant regulations

¹²Chrysogonos K., Civil and Social Rights, Nomiki Vivliothiki, 2006, p.30-34

¹³Dagtolglou P., Civil Rights, Sakkoulas Publications, 2012, p.6-7

¹⁴Roukounas E., International Protection of Human Rights, Estia, 1995, p.17

¹⁵Dagtolglou P., The social restrictions of civil rights, Nomiko Vima, Vol.33, 6/1985, p.721-727

and institutional acts, like national medical care program or education program. Individuals do not possess them in a direct way; instead, these rights constitute positive duties upon the State to respect them and care for their fulfillment. In this perspective, as Prof. D. Tsatsos states, social rights and personal liberties are two opposite needs; social rights signify the need for security, hence the intervention of the authorities while civil rights the need for autonomy, hence the abstention of the authorities¹⁶.

3.3 Third Generation of Human Rights: solidarity rights

According to Karel Vasak (1979), the rights of solidarity “*express a specific perception of common life and cannot be realized but with the common efforts of all social parties, individuals, States, and other public or private institutions*”. They have first been officially acclaimed as an element of the international conventional law in 1981, when they were integrated into the African Charter of human rights and of people (1981)¹⁷.

Those rights have both a personal and a collective dimension. The right to peace, to development, the right to enjoy a clean environment: they concern each individual but the international community as well. They are therefore called “solidarity rights”, as the element of fraternity is what mostly characterizes them. The lack of solid legal foundation causes difficulties in enforcing these rights, despite them being widely discussed in documents such as the 1992 Rio Declaration on Environment and Development¹⁸.

4. The Protection of Human Rights

Following the end of the First World War, in 1919, the first world international organization was created, as a result of the Paris Peace Conference that officially ended the war: the League of Nations, a real international organization with general missions. Together with the League of Nations, the International Labor Organization (ILO) was

¹⁶Tsatsos D., Constitutional Law, Vol.3 - Fundamental Rights, Ant. N. Sakkoulas Publications, 1988, p.81-93

¹⁷Roukounas E., International Protection of Human Rights, Estia, 1995, p.35-38

¹⁸The three generations of human rights, <http://www.globalization101.org/three-generations-of-rights/>

founded on the same year and exists till nowadays, forming the most ancient institution of the United Nations.

The principal mission of the League of Nations as stated in the preamble of the Versailles Treaty of June 28, 1919 was to “*promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war by the prescription of open, just and honorable relations between nations by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another Agree to this Covenant of the League of Nations*”¹⁹.

The International Labor Organization (ILO) promoted world peace based on social equity and emphasized on setting labor standards and promote decent work for women and men²⁰.

4.1. The United Nations

The United Nations is a global organization founded in 1945 after the termination of the Second World War, replacing the ineffective League of Nations. The Charter of the UN was signed in San Francisco, U.S.A., on June 26th 1945 and declares the belief in the rights of the humans, equality and dignity of the human being, values that have been challenged during the previous years. It was time for a change and this change could not occur without establishing in a permanent and more efficient way this time the protection of fundamental rights. The war might have come to an end but all of the involved states were facing issues regarding their internal organization as well as their external relations, as interests of each one were not necessarily the same. The purposes of the United Nations, as set in the Article no. 1 of the Treaty, were to maintain international peace and eliminate threats to the peace at the same time, develop friendly relations between the nations, and achieve international cooperation in solving major common problems such as economic or social problems (Art.1, Charter of the

¹⁹The Versailles Treaty of June 28, 1919, available at <http://avalon.law.yale.edu/imt/parti.asp>

²⁰International Labor Organization, <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>

United Nations, 1945)²¹. 51 countries have initially signed the Treaty whereas today 193 countries are part of the United Nations Organization²².

All the organs established by the Charter – the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat (Art.7 par.1 of the Charter) are responsible to supervise human rights status when executing their duties. There are also subsidiary bodies founded under the Charter, with the most important being the Commission on Human Rights based in Geneva.

4.1.1. The Universal Declaration of Human Rights

It was in 1947 when the United Nations Human Rights Committee (UNHRC), created by the Economic and Social Council in 1946 according to art. 68 of the UN Charter got engaged into the redaction of a human rights declaration. The Universal Declaration of Human Rights²³ was adopted unanimously by the General Assembly on December 10th, 1948²⁴. In its 30 articles a wide range of civil, political, social, economic and cultural rights is guaranteed, none of which however being absolute, allowing to the State as mentioned in the Article no. 29 to set restrictions in their enjoyment²⁵. Despite the fact that the legal enforcement of the Declaration has been much doubted even at the time of its voting²⁶, and that many of its declarations are simple statements with no legal enforcement, it marked the start of a new era for the human rights protection and its value for the international legal order was and remains until our days precious, as it is still used as a base for many of the United Nations documents²⁷.

²¹Charter of the United Nations, 1945, available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf/>, Charter of the United Nations, Chapter I : Purposes and Principles, Article 1 <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

²²About the United Nations, https://www.unric.org/el/index.php?option=com_content&view=article&id=16&Itemid=10

²³The Universal Declaration of Human Rights, available at <http://www.un.org/en/universal-declaration-human-rights>

²⁴Perrakis S., Dimensions of the International Protection of Human Rights, Sideris Publications, 2013, p.83

²⁵Naskou-Perraki P., Human Rights: Global and regional protection, Sakkoulas Publications 2016, p.51-55

²⁶Perrakis S., Dimensions of the International Protection of Human Rights, Sideris Publications, 2013, p.84-85

²⁷Roukounas E., International Protection of Human Rights, Estia, 1995, p.70-74

4.1.2. The International Covenants of 1966.

What led to the creation of two separate Covenants in 1966 was, apart from the Cold War, the inability of the states to agree on the enforcement of the rights; the Covenants are acts that oblige States to make commitments and not simple declarations, so whether the social or economic rights would demand a different level of commitment for the States was crucial²⁸. The two covenants are compulsory acts, and the States should respect the procedures that have been determined, including the submission of periodical essays²⁹.

The two Covenants are Treaties of high importance especially due to their general character and they were both voted, after long discussions, by the UN General Assembly on December 16th, 1966³⁰. Both are often called as the “Bible” of the human rights, and the member states shall respect the rights proclaimed by the two covenants, otherwise they are liable to the international community.

4.1.2.1. The International Covenant on Civil and Political Rights

The above Covenant did entry into force in 1976 (March 23), in accordance with article 49, being today validated by 168 member states³¹. It is accompanied by the First Optional Protocol, that did entry into force also in March 23rd 1976³² and allows the “individual communication”, and the Second Optional Protocol adopted by the UN General Assembly on December 15th, 1989 that aims at the abolition of death penalty³³. According to professor Ms Naskou-Perraki, it is the most important international act of human rights protection on a worldwide level³⁴.

The Covenant proclaims a wide catalogue of fundamental rights applicable to all the individuals within the territory of a state party without distinction of any kind such as race, sex, national or social origin (Part II, Article 2,1). The right to life (Part III, Art.

²⁸Roukounas E., *ibid*.

²⁹ Levin L., *Human Rights: Questions and answers*, Themis Publications, 2013, p. 52-53

³⁰Perrakis S., *Dimensions of the International Protection of Human Rights*, Sideris Publications, 2013, p.101

³¹ The International Covenant on Civil and Political Rights, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³²The optional Protocol to the International Covenant on Civil and Political rights, available at <https://www.ohchr.org/en/professionalinterest/pages/opccpr1.aspx>

³³ The second optional Protocol to the International Covenant on Civil and Political Rights, available at <https://www.ohchr.org/en/professionalinterest/pages/2ndopccpr.aspx>

³⁴Naskou-Perraki P., *Human Rights: Global and regional protection*, Sakkoulas Publications, 2016, p.112

6,1), the interdiction of torture and cruel, inhuman or degrading treatment or punishment (Art. 7), the prohibition of all forms of slavery and slave-trade (Art.8), the right to liberty and security (Art.9), the right to be treated with humanity and with respect (Art.10), the ban of imprisoning for personal debts (Art.11), the right to liberty of movement and freedom to the choice of residence (Art.12), the prohibition of a non-legitimate deportation of foreigners (Art.13), the right to a fair trial (Art.14), the prohibition of the retroactive effect of the penal law (Art.15), the right to the personality (Art.16), the right to respect of privacy, family and home (Art.17), the freedom of thought, conscience and religion (Art. 18), the right to hold opinions (Art.19), the prohibition of any war propaganda (Art.20), the right of peaceful assembly (Art.21), the freedom of association (Art.22), the right to family (Art.23), the right of a child to measures of protection, to a name and to a nationality (Art.24), the right to take part in the conduct of public affairs (Art.25), the equality before the law (Art. 26) and the rights of people that belong to minorities (Art.27), all are shall be respected of all the member states, along with the right of self-determination, as stated in Article 1.

There are three procedures that monitor the right application of the Covenant by the member states, with the most important of them being the right of “individual communication” as mentioned above, (the two other are the examining of essays submitted by the member-states and the state-to-state complaints) according to Art. 1 of the First Optional Protocol of the Covenant: “*A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.*”³⁵ However the Human Rights Committee does not accept claims from non-governmental organizations or associations. This right of individual communication along with the importance of the rights listed above gives the Covenant a unique role in the international scene of human rights protection, despite the fact that none of the decisions taken by the Committee can be enforced into member-states³⁶.

³⁵ The optional Protocol to the International Covenant on Civil and Political rights, available at <https://www.ohchr.org/en/professionalinterest/pages/opccpr1.aspx>

³⁶Naskou-Perraki P., Human Rights: Global and regional protection, Sakkoulas Publications, 2016, p.141

4.1.2.2. The International Covenant on Economic, Social and Cultural Rights

The international Covenant on Economic, Social and Cultural Rights did entry into force on January 3rd, 1976³⁷, validated today by 160 countries, including Greece³⁸ and is completed by the Optional Protocol of 2008, that gives the individuals the right to submit communications regarding violation of their rights protected by this Covenant³⁹.

The first article of this Covenant is identical with Article 1 of the Covenant on Civil and Political Rights and guarantees the right of all peoples to self-determination, extremely important considering the fact that at that time many states were still colonies. Another similarity is that all rights concern all people equally, with no distinctions based on nationality or origins (Art.2) and what is more, shall be applied equally to men and women, the equality of whom is guaranteed in Art.3. The following rights are listed : the right to work (Art.6), the right to enjoyment of just and favorable conditions of work (Art.7), the right to form and participate in trade unions (Art.8), the right to social security and social insurance (Art. 9), the right to a family and the right of mothers and children to a higher level of protection and care (Art.10), the right to an adequate standard of living (Art.11), the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Art.12), the right of everyone to education (Art. 13 and 14), the right to take part in cultural life (Art.15).

The application or not of the Covenant is controlled by the Committee of Economic, Social and Cultural Rights, which is not mentioned in the text of the Covenant. The Committee examines the essays that shall be submitted by the states, dialogues with the states and makes efforts to help them when dealing with the rights protected by the Covenant, and publishes general comments. As for the communications, the Committee receives the individual communications as well as communications from one state towards another one.

³⁷The ICESCR, available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

³⁸ 16/8/1985, N.1432/1985, FEK A'45

³⁹The Optional Protocol to the International Protocol on Economic, Social and Cultural Rights, available at <https://www.ohchr.org/en/professionalinterest/pages/opcescr.aspx>

4.2. European Continent

The first half of the 20th century has been more than dramatic for Europe⁴⁰. The two World Wars have been devastating for the whole world by their cruelty and their cost in human lives, political and social life, but the period between 1914 and 1945, named also as “the new 30-year war” has been particularly intense for the European continent. In the wake of the Second World War, the Europeans decide to put an end to conflicts that lead to the massacres of the previous years and block forever the chance of their repeat. However, Europe separates into West and East, as the Cold War started and would last for 40 years.

4.2.1. The Council of Europe

In 1949, ten nations⁴¹ of the Western Europe create the Council of Europe⁴², a wide regional organization aiming to the political reconstruction of the continent and to the cooperation of its members. It was the first step of a further cooperation in the future based on mutual understanding and peace. Today it is considered to be the biggest and the most important political international organization of the continent, with 47 member states⁴³.

4.2.1.1. The European Convention of Human Rights and Fundamental Freedoms

The recognition and respect of the human rights and values has been an essential part of the European completion right from the start, when the idea of a reconciled and united Europe that would evolve in peace was born. The protection of human rights after the Second World War was no longer an exclusive mission of each State. It was in 1950 that the Council of Europe adopted the “European Convention of Human Rights

⁴⁰Sachpekidou E., European Law, Sakkoulas publications, 2011, p.6

⁴¹Those were: Denmark, Sweden, United Kingdom, Norway, Ireland, Italy, Luxembourg, France, Netherlands and Belgium.

⁴² The Council of Europe, <https://edoc.coe.int/en/an-overview/6966-the-council-of-europe-an-overview.html>

⁴³The 47 members of the Council of Europe are: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom.

and Fundamental Freedoms” (hereinafter the “ECHR”), signed the 4th of November 1950 in Rome, initially by 15 states. As cited to the preamble of the Convention, “*the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realization of Human Rights and Fundamental Freedoms*”⁴⁴. The Convention, that contains 53 articles, is completed by overall 16 Protocols, of which 14 of them are valid today⁴⁵. The Convention, indeed, is a living instrument to be interpreted in the light of the present-day conditions⁴⁶.

4.2.1.2. The European Court of Human Rights

What makes the ECHR a pioneering convention of great importance for the protection of human rights is the jurisdictional mechanism that controls its implementation: The European Court of Human Rights, responsible to examine interstate applications as well as individual applications from citizens, nongovernmental organizations or group of people against member states, for violation either of the Convention or of its Protocols, according to articles 33 and 34 of the Convention. And it is exactly this right of individual appeal the element that affirms the level of protection that the Convention offers, as it was the first time in the international society’s history that individuals have been given the right to appeal against a state that has violated rights guaranteed by an international act⁴⁷.

The ECHR has direct application to the countries that have adopted her⁴⁸, which all of them have their own distinct legal order. The national rules shall be in line with the level of protection that the Convention offers and it is the Court the final judge to verify the compliance of each state’s rules, after interpreting them, with the Convention⁴⁹. The member states shall respect the rights and freedoms protected by the

⁴⁴The European Convention of Human Rights, available at https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴⁵The 15th, concerning technical modifications, and 16th, about the consultations, Protocols were signed in Strasbourg, France, in 2013 but are not yet valid.

⁴⁶Tulkens F., The Contribution of the European Convention on Human Rights to the poverty issue in times of crisis, ECHR, Strasbourg 8/7/2015, p.8

⁴⁷Naskou-Perraki P., Human Rights: Global and regional protection, Sakkoulas Publications, 2016, p.400

⁴⁸Greece validated the treaty along with the first Protocol in 1953 (law 2329/1953) being the only state that has ever terminated the convention in 1969, November 12th and re-validated it again in 1974 (law 53/1974), after the fall of the dictatorship, as in Perrakis St., The “greek case” before the international organizations(1967-1974)- Sakkoulas Publications, 1997, p. 16

⁴⁹Papadimitriou G., Constitutional Studies, Vol. I, Sakkoulas Publications, 2007, p. 150

ECHR and provide free access to the National Justice System. The ECHR sets 2 conditions that need to be met before appealing to the Court, according to art. 35: first, the applicant has to use all the domestic legal procedures before applying to the Court and second, the application must be admitted in a period of 6 months after the date that the decision of the national court has been judged as final. The role of the Court is thus subsidiary⁵⁰, yet of great importance, and gives priority to the Judicial Institutions of each member-state while every year an impressive number of individuals appeals are submitted to the Court.

4.2.1.3. The European Social Charter

As any social rights were guaranteed in the ECHR⁵¹, the member states of the Council of Europe adopted at Turin, Italy on October 18th, 1961 the European Social Charter. The Charter has been completed by three additional Protocols (1988, 1991, 1995) and was revised in 1996⁵². The Revised European Social Charter replaces the original 1961 Charter and broadens even more the range of fundamental social and economic rights, as ‘a counterpart’ to the ECHR⁵³. Moreover, the additional Protocol of 1995 (that did entry into force in 1998) provides for a system of collective complaints, aiming to improve the effective enforcement of social rights, thus recognizing the right of organizations like trade unions, nongovernmental organizations and representative national organizations of employers to complain directly for violation of the rights protected by the Charter.

The states agree to guarantee rights like the to work (Art.1) and the right to just conditions of work (Art.2), the right to bargain collectively (Art.6), the right of children and young people to protection (Art.7), the right to protection of health (Art.11) and the right to social security (Art.12), the right of migrant workers and their families to protection and assistance (Art.19). As declared in the preamble, “the enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin”. However the Charter

⁵⁰Naskou-Perraki P., Human Rights: Global and regional protection, Sakkoulas Publications, 2016, p.412

⁵¹The European governments were not willing at the time that followed the end of the Second World War to undertake the enforcement of social and economic rights, leading to their omission from the ECHR, Roukounas E., International Protection of Human Rights, Estia, 1995, p.204-206

⁵² The European Social Charter, available at <https://rm.coe.int/168048b059>

⁵³ Information on the European Social Charter available at <https://www.coe.int/en/web/turin-european-social-charter>

only protects people that have legal residence or are legally working in the territory of the contracting parties. The European Committee of Social Rights, the Governmental Committee and the Committee of Ministers monitor the application of the Charter by the contracting parties⁵⁴.

4.2.2. European Union

4.2.2.1. The Charter of Fundamental Rights of the European Union

The European Union is a unique form of political and economic cooperation of 28 Countries⁵⁵. What initially started as an economic union is now an organization engaged in areas like climate, growth, security, justice, external relations and of course, human rights. European Union is formed on the basis of the values of respect of the *human dignity*, of freedom and democracy, equality and rule of law, as well as of the *respect of human rights*. The EU made a major step towards protecting more efficiently human rights by recognizing in the Treaty of Lisbon the rights protected in the EU Charter of Fundamental Rights; according to Article 6, 1 of the Treaty of Lisbon (signed December 13th, 2007, entry into force December 1, 2009), “*The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties*”⁵⁶. So the CFR became legally binding after the Treaty of Lisbon amended the Treaty of the European Union⁵⁷.

⁵⁴Gavalas N., The European Social Charter as a mechanism of protecting fundamental work and social rights, *Revue of Labor Law*, Vol. 70, 2011, p. 449-472.

⁵⁵By year of entry, the member countries of the EU are the following: 01/01/1958 : Belgium, France, Germany, Italy, Luxembourg, Netherlands, 01/01/1973 : Denmark, Ireland, United Kingdom, 01/01/1981 : Greece, 01/01/1986: Portugal, Spain , 01/01/1995: Austria, Finland, Sweden, 01/05/2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, 01/01/2007 : Bulgaria, Romania, 01/07/2013: Croatia , https://europa.eu/european-union/about-eu/countries_en#tab-0-1

⁵⁶ The Treaty of Lisbon, article 6, available at <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/8-article-6.html>

⁵⁷ The Treaty of Lisbon, available at <http://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon>

The Charter of Fundamental rights of European Union⁵⁸ was the result of an initiative to unite in one and single treaty all the civil, political, economic and social rights that were till then established by different documents and with different level of legal enforcement. The Charter was proclaimed on December 7th, 2000 at Nice by the European Parliament, the European Commission and the Council and contains rights and freedoms divided into 6 “titles”: *dignity, freedoms, equality, solidarity, citizen’s rights and justice*. The Charter contains rights protected also by the ECHR; According to Article 52, 3: “*In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention*”. This provision shall not prevent Union law providing more extensive protection”⁵⁹.

4.3. Hellenic Republic

4.3.1. The Constitution of Greece

On the break of 19th century, Greece was still under Turkish occupation. However, the ideas of the Enlightenment started to spread and the American and French revolution gave the Greeks the necessary spiritual fund and motivation to start their fight for independence. The first “revolutionary” text, published in 1797 by Rigas Velestinlis was clearly influenced by the French Constitutions of 1793 and 1795; soon the people would riot against the occupant, starting a war for freedom and most of all, the recognition of human rights⁶⁰. Hence, people was aware that this guarantee would come only by the establishment of an Institution. Human rights have been part of all the Greek Constitutions: civil rights were the first to be enshrined, in the Constitution of Epidavros, of January 1st 1822, (property, personal security, equality before the law),

⁵⁸The Charter of Fundamental rights of the European Union, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

⁵⁹Fragkakis N., Human Rights and European Integration, Nomiko Vima, Vol. 50, 2002, p.1413-1425.

⁶⁰Anastasiadis G., Political and Constitutional History of Greece, 1821-1941, Sakkoulas Publications, 2001, p.1-5

while the first civil rights of common act were recognized in 1864 and the first social rights in the constitution of 1927⁶¹.

The current Constitution of Greece [1975/1986/2001/2008] recognizes in Part II (Articles 4-25) most of the civil, political and social rights: the principle of equality (Art.4), the right to personality (Art.5), the freedom of expression (Art. 14) , the protection of the property (Art.17), the right to work (Art.22). The importance of those rights being guaranteed by the Constitution lies right to its superior legal status. Only by an amendment, a highly typical and official procedure could the text of the Constitution be modified and there are even articles that cannot be changed even with the procedure of amendment. No law can arbitrary abolish the rights recognized by the Constitution, and that reaffirms the principle of the rule of law and its fundamental role in our regime. Limits are set to the power as expressed by the government, defining if, how and when the executive power can act, preventing this way any illegal interference to the fundamental freedoms and rights⁶².

According to the principle of the rule of law, power is restrained by the Constitution and by laws. Combined with two other fundamental principles, the principle of Separation of the Powers and the principle of the superior legal status of the Constitution, the sources of the fundamental rights are prioritized: Constitution, law, administration legislative measures.

All the Treaties and Conventions that the Greek State has signed would be of no meaning however without the existence of Art. 28, par 1 of the Constitution: “*The generally recognized rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity*”. All the international conventions signed and validated by the Greek State by a typical law are a part of the Greek Legislation and have the same legal value as the internal legislation, being also a source of human rights, no matter if they were validated before or after the Constitution of 1975.

⁶¹Chrysogonos K., Civil and Social Rights, Nomiki Vivliothiki, 2006, p.30-34

⁶²Tsatsos D., Constitutional Law, Vol. III, Fundamental Rights, I. General Part, Ant.N. Sakkoulas Publications, 1988, p. 111-141

Indeed, all of the international acts that Greece has ever validated are binding the state. There is a controversy however whether the rules of the international law have a higher legal status than the Constitution or not. The Text of the Constitution clearly and explicitly states that the rules of international law prevail than any other provision of law, excluding the Constitution. On the opposite side of this opinion lies the opinion of a part of legal scientists believing that the rules of international law are in any case superior to the Constitution as well. The criteria remains the highest possible protection for the individual and his rights, and the demand for a harmonization between the international and the Greek law; if it the Constitution offers higher protection than the international law, shall it prevail, and the inverse. Greek state also recognizes the relationship with the international law in Art. 2, par. 2⁶³ of the Constitution⁶⁴.

As for the European Law, that constitutes also a source of law, its supremacy over the national typical law and the administration legislative acts is undoubted, also on the basis of Article 28, 2 of the Greek Constitution. It is certainly not allowed to intensively implicate law that is not in accordance with the community law; Community law prevails in any case, even of the Constitution, in case of controversy as the opposite would put at stake the whole efficiency of the community law⁶⁵.

⁶³Article 2, 2: "2. Greece, adhering to the generally recognized rules of international law, pursues the strengthening of peace and of justice, and the fostering of friendly relations between peoples and States.", <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

⁶⁴Roukounas E., International Law, Part I, Ant. N. Sakkoulas Publications, 2004, p.73-83

⁶⁵Chrysogonos K., Civil and Social Rights, Nomiki Vivliothiki, 2006, p.21-23

CHAPTER II THE ECONOMIC CRISIS IN GREECE AND THE MEMORANDA OF UNDERSTANDING

1. Globalization

The fall of the Berlin Wall (9/11/1989) marked the end of the Cold War and the collapse of the “Iron Curtain”, and the beginning of a new era characterized by huge and rapid reclassifications. New global forces would arise; the transnational spread of capital and the formation of global markets entailed the replacement of national economies that have been highly fragmented into new, large areas of investment⁶⁶, as the barriers that existed so far would fall.

Globalization has many aspects apart from the economical one; certainly for many economists, it has many good effects on humanity too, like those on the global commerce⁶⁷. But inevitably, the transformation of state law by global processes had an immense impact on the sovereign state. New actors, institutional and non-institutional ones, appear: intergovernmental organizations (IGOs), international non-governmental organizations (INGOs), transnational corporations (TNCs). These actors have assumed greater political and economic power and importance, by penetrating into national legal systems in a way that today seems irreversible. Transnational economic organizations are implementing their own commercial rules, overhauling national legislations (Seattle 1999) while through transnational political organizations (eg. NATO) political decisions concerning the future of a State are subject to other factors too, apart from their compliance to the national governmental policy⁶⁸. As a result, the States are no longer the sole legislators and legal enforcers. The continuous rise of such non state regulation of issues previously monopolized by state legal control sets major issues on Sovereignty and Democracy, as the National Constitution still stands as the ultimate expression of self-determination of the people⁶⁹.

⁶⁶Eric. C. , *Globalization and the future of the law of the sovereign State*, Oxford University Press 2010, p. 3

⁶⁷Tsaousi A., *Law and Cooperation: a new approach*, Papazisi Editions, 2013, p. 435

⁶⁸Sotirelis G., *Constitution and Democracy in the era of economic crisis* , Sakkoulas Publications, 2000, p. 59

⁶⁹Eric C., *ibid*, and Sotirelis G., *ibid*

Globalization and the international cooperation on a basis of the continuous forming of a transnational rule law did not put an end to major problems our world continues to face. On the contrary, as many economists underline, it rather seems that its effects are devastating for many people⁷⁰. Markets may be thriving to maximize their profits but at the same time many on this planet still experience *extreme poverty*⁷¹. When it comes to the economic crisis, it is democracy itself and the democratic values that are being at stake. The extreme austerity and the measures taken to prevent possible bank failures or state bankruptcies have led to a severe diminution of the protection of social rights. Human dignity and respect to the human being are rather secondary compared to the expectancy for more profit. Economists that share the opinion of a growth that comes not only in numbers but also social development, underline the need for social policies and measures that need to be taken seriously into account⁷².

Despite the phenomenon of globalization, the wealth generated on this planet by the global forces is not equally dispersed, as seen before, neither its benefits. First and third world countries are not equally benefited, and inequalities appear also among countries of the north and the south. Unfortunately, the distinction between the wealthy and prosperous north and the degraded south exists also among the countries being members of the constructed on the basis on unity and mutual understanding, European Union⁷³. Greece, along with other countries of the EU was not left unaffected by the global economic crisis of 2008, but being part of the European ‘north’, already deprived and not of a great value to preserve, made things even worse. Greece was “officially” and “undeniably” a little “pig” of the EU⁷⁴, and the Greek nation became worth disgracing as the country was entering the throes of the economic crisis.

1.1 An introduction to the crisis

The Financial Crisis of 2007-2009 was a world crisis originated from the United States of America, as a result of the destruction of the US mortgage market⁷⁵. The collapse of the American investment bank Lehman Brothers was a shock for the global community and the financial markets. So when the world financial crisis officially hit,

⁷⁰Tsaousi A., *ibid*, p. 447

⁷¹World Bank data, <https://www.worldbank.org/en/topic/poverty>

⁷²Tsaousi A., *ibid*, p. 477

⁷³Tsaousi A., *ibid*, p. 458-469

⁷⁴Acronym used to refer to: Portugal, Italy, Ireland, Greece, Spain: ‘PIIGS’

⁷⁵Galbraith J., *Welcome to the poisoned Chalice*, Yale University Press, 2016, p. 3

the reaction of the governments in order for their countries and their national banking system to avoid a collapse too was to increase their budget deficits and European banks, closely linked to the American ones, would ask for help from the national governments. The global crisis had hit EU as a whole.

2. The Greek Case

In Greece, first signs of the problem started to be evident in 2009, as a result of combination of multiple causes: the consequences of the international financial crisis, the institutional weakness of the euro currency, as well as the long-term corruption-based policies applied by Greek governments and their therefore inability for an efficient long-term policy, the dramatic public finance situation which had been hidden for years and the given economic imbalances among the state members of the Economic and Monetary Union (EMU) of the EU⁷⁶. The crisis in Greece broke out formally in 2010, and it was the first of the crises of the euro-zone economies.

Greece was among the developed countries of the globe and being part of the European Union and later part of the euro-zone gave the country the ability to have easy access to borrowing. However, after the revelation in 2009 by the Government of revised, previously misreported, data that upgraded significantly the national debt and deficit, a crisis of confidence towards the greek bonds erupted⁷⁷. The greek bonds stopped to be an option for the capital markets, while euro-zone countries were not interested in buying them either. Greece was already, since 2009, under the Excessive Deficit Procedure of the European Central Bank⁷⁸, when first Bank of Greece and IMF began to warn for the possible harm, what has lead to the deterioration of its credit rating⁷⁹. In March 2010 the greek borrowing cost rose to unsustainable levels⁸⁰. The

⁷⁶Verde A., The Greek Debt Crisis: Causes, Policy Responses and Consequences, in Europe and the Financial Crisis, edited by Pompeo Della Posta and Leila Simona Talani, New York: Palgrave MacMillan, 2011, p. 143-164

⁷⁷Glavinis P., The Memorandum of Greece in the European, International and national rule of law, Sakkoulas Publications, 2010, p.1-12, Mantzoufas P., Economic Crisis and Constitution, Sakkoulas Publications, 2014, p. 13, Mavroudeas S., Troika's Economic Adjustment Programs for Greece : why do they systematically fail, in "The internal impact and external influence of the greek financial crisis", Edited by John Marangos, Palgrave Macmillan , 2017, p. 23-45

⁷⁸ The excessive deficit procedure, European Central Bank, available at <https://www.ecb.europa.eu/mopo/eaec/html/excessive.en.html>

⁷⁹Argalias P., The Economic and Monetary Union and the Greek Memorandum, DiSke & Agora, 2/2010, p. 58-64

⁸⁰Program timeline for Greece, available at https://www.esm.europa.eu/assistance/greece#programme_timeline_for_greece

sovereign debt was proving impossible to finance and at the same time the national banking system was deeply invested in those State debts; a solution should be found to avoid the disastrous consequences of its possible collapse as the country was considered to be close to default⁸¹; in such a scenario, it was highly probable that other weak European countries and mainly the ones forming the “PIIGS” were risking to be contaminated. Amongst those weakest States however the greek case was particularly dangerous as only Greece had high fiscal deficit and high debt too⁸².

It was obvious that Greece could not face the problem on its own; instead, state was forced to appeal for outside help⁸³. On April 11, 2010 the members of the Euro-zone agreed “*upon the terms of the financial support that will be given to Greece, when needed, to safeguard financial stability in the Euro area as a whole*”, declaring that the States were ready to provide financing aid to Greece, along with aid from the International Monetary Fund (IMF)⁸⁴. Twelve days later, on April 23rd 2010 Prime Minister George Papandreou officially announced the appeal for help from the European Support Mechanism that has already been created⁸⁵. From the press reactions around the globe that very day, I choose to cite this one, as written by the correspondent of Time in Athens: “*This is a humiliating moment for Greece, a country that prides itself on being the cradle of Western civilization but that has spent much of its modern history buffeted by foreign powers. Now Greece finds itself at the mercy of its European partners and the IMF, both of whom are likely to demand their pound of flesh in return for aid*”⁸⁶.

⁸¹Galbraith J., *Welcome to the Poisoned Chalice*, Yale University Press, 2016, p.3- , and Lynn M., *Bust: Greece, the euro and the sovereign debt crisis*, Bloomberg Press, 2011, p. 1-8

⁸²Verde A., *ibid*.

⁸³Glavinis P., *ibid*, p. 43 - , Lynn M., *ibid*.

⁸⁴The EU statement of the 11/4/2010, available at http://europa.eu/rapid/press-release_MEMO-10-123_en.htm

⁸⁵Glavinis P., *ibid*, p. 12-16

⁸⁶Time Magazine, article of Apr. 23, 2010, “Greece asks for a bailout, but at what cost?”, available at <http://content.time.com/time/business/article/0,8599,1984192,00.html>

3. The Memoranda Era

3.1. The first Economic Adjustment Program

The first Economic Adjustment Program (EAP)⁸⁷, a bailout and also structural transformation program, formalized in a Memorandum of Understanding (MoU), was submitted to the Greek Parliament as a matter of the utmost urgency on May 6th, 2010, according to art. 76 par.4 of the Greek Constitution and art.109 of the Parliamentary Regulation. It was voted on the same day, with 172 votes for, in a total of 300 deputies and then the Law 3845/2010 was published, entitled “*Measures for the application of the support mechanism for the Greek Economy by Euro area Member States and the International Monetary Fund*”⁸⁸. The Statement of Reasons, an essay on the motifs, that accompanies the latter, a document of 65 pages briefing the causes of the deadlock, also finds that asking for help through the European bailout program was “*the ultimate solution to avoid the state bankruptcy*”⁸⁹.

Was it though? Greek society was confused or rather frozen, as the people were trying catching up with the rapid changes and tons of new information coming out every day, when trying to understand complicated economical terms that would hear for the first time. What was wrong with the numbers suddenly? Who had done wrong, and most of all, who have finally lied? And what would the rescue plan change? It was really the ultimate moment to save the country?

Syntagma Square would gather protestors against what was being planned for them, without them, and principally at their expense. The cradle of Democracy was at a rather crucial moment of its modern history, and there was much fear that dark moments of the past would be repeated. The whole idea of the EU and the protecting feel of being part of it, and later the idea of having a strong common currency replacing the old national one seemed to fall apart. Columnists would warn the people about the bleak future of austerity and about the fact that apparently, control of the country has been

⁸⁷The First Economic Adjustment Program for Greece, available at <https://publications.europa.eu/en/publication-detail/-/publication/64c89a77-ddc4-46f4-9bb0-18d7e80f6f0c/language-en>

⁸⁸Law no 3845/2010, Government Gazette (FEK)A'65/6.5.2010

⁸⁹Statement of Reasons (aitiologiki ekthesi) in greek, of Law no 3845/2010, available at <https://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/E-ELOIK-EIS.pdf>

now handed to the International Monetary Fund and the European Union, and people would start to call general strikes⁹⁰.

The EAP was the joint EC-ECB-IMF program for Greece: a 110 billion euro bailout loan, 80 billion by the EU – provided by bilateral loans from the euro area member states⁹¹- and 30 billion by the IMF, to be disbursed over a period of 3 years, from May 2010 to June 2013, and a structural transformation program. The main short-term objectives of the program were the ‘urgently needed’ enhancement of fiscal consolidation and the need to avoid default by assuring banking system liquidity, while in long term the objective was to improve competitiveness and restore credibility for private investors.

The Memorandum, a term that was meant to haunt people’s reality and everyday life for the next, many as proven, years, contained the economic policy conditions. It was the basis on which government was committed to vote Laws that would realize the commitments the Greek state undertook by signing the deal. Greeks would have to do ‘great sacrifices to avoid catastrophe’, as the Prime Minister himself has stated at the televised address to the people on April 23rd, 2010. Major massive-scale cuts to wages, pensions and benefits; reformation of social security and measures aiming to reduce the primary deficit in Greece in a strict deadline was part of the program, also targeting to set an end to the easy-money culture that had taken root in the country over the past years⁹².

The first EAP, that underwent five reviews ⁹³ was however not very successful; program implementation was poor, also because of the two parliamentary elections in one year (2012) and the results, as well as and the assumed effects had not appeared yet. Greece made mediocre progress while the objectives of the first adjustment program were rather ‘ambitious’.

⁹⁰Lynn M., *Bust: Greece, the Euro and the Sovereign debt Crisis*, Bloomberg Press, 2010, p.2-6

⁹¹The 2010/320/EE decision for Greece, available at <https://www.constitutionalism.gr/2361-apofasi-2010-320-ee-ee-l-145-tis-11-6-2010-eidopoi/>

⁹²Lynn M., *ibid*, p. 3-4, Mantzoufas P., *ibid*, p.19-25

⁹³The 5 reviews are available at https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-greece_en#first-programme-for-greece

3.2 .The second economic adjustment program

As a result of the failure of the first EAP to stabilize greek economy, a second one was initiated in February 2012⁹⁴. The second EAP, containing an additional bailout package of 130 billion Euros for the period 2012-2014 plus the undisbursed amounts of the first package and even more severe austerity policy, was accompanied by the Private Sector Involvement (PSI) agreement, the initiative for the voluntary restructuring of the greek debt⁹⁵. The Law no. 4046/201⁹⁶ approved the Second Economic Adjustment Program, as a result of the continuous aggravation of the greek economic situation, also underlined in the report of the Hellenic Parliament that accompanies the law⁹⁷. Three laws were voted to implement reforms on social security system, transports, public constructions, pensions, and other urgent reformatations needed⁹⁸.

The second program would not be financed on the basis of bilateral loans by the euro area member states, but by the European Financial Stability Facility (EFSF) that was completely functional since 2010. In total, the second program provided a financial assistance of 164,500 million euros until the end of 2014. The main aims were fiscal consolidation and changes in order to improve competitiveness of the greek economy, therefore austerity measures would be now necessarily expended to the private sector. Healthcare and pension reforms, reforms to the public administration, reduce to the number of employees of the public sector, privatizations, changes in the collective bargaining framework and reform of the judicial system were some of the measures agreed between Greek state and its lenders.

Notwithstanding, the harsh austerity measures once more did not lead to an improvement and despite the PSI, tax reforms and labor market deregulation, the target of 120% public dept/GDP seemed yet unachievable; Moreover, IMF stated in its 2013 report that “psi exerted opposite effects on debt sustainability” and that “public debt

⁹⁴The Second Economic Adjustment Program for Greece, available at

http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/op94_en.htm

⁹⁵However as the IMF reports “the PSI further weakened a system that was already impaired by heavy deposit outflows.”, IMF 2017 Country Report/Greece, available at

<https://www.imf.org/en/Publications/CR/Issues/2017/02/07/Greece-2017-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-44630>

⁹⁶Law no 4046/2012, Government Gazette A’28/14.02.2012

⁹⁷The statement of Reasons (Aitiologiki ekthesi) in greek, available at

<https://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/E-DANEIA-eis.pdf>

⁹⁸Law 4051/2012, Government Gazette A’40/29.02.2012 , Law 4052/2012, Government Gazette A’ 41/01.03.2012 , Law 4070/2012, Government Gazette A’82/10.04.2012

overshot program projections by a large margin”⁹⁹. In July 2013, unemployment rate peaked at 27.9% and the rescue program continued not to perform as expected¹⁰⁰. The first and second structural adjustment program resulted into deepening even more the recession of greek economy.

3.3 The third economic reform program

The period of the second EAP program funded by the European Financial Stability Fund (EFSF) was extended to 30 June 2015. After government’s negotiations with the EU and the IMF failed, the Greek Government made a formal request for support from the European Stability Mechanism (ESM) on July 8, 2015¹⁰¹. Negotiations were initiated once again, and lead to the third Memorandum of Understanding (MoU)¹⁰² between Greece and the European Commission alone this time, acting on behalf of the ESM. The “Financial Assistance Facility Agreement”¹⁰³ was signed August 19th, 2015¹⁰⁴. Main objectives were to restore fiscal sustainability, modernize the state and the public administration while enhancing competitiveness and growth.

4. The Greek rescue programs : between constitution and reality

The EAP and its internal influence was a real challenging issue for the theoreticals of the constitutional Law to comment on. First issue concerned the character of the treaties signed, whether it was “soft law”, international agreement or a simple “arrangement”. As noticed, what is summarized in the term “Memorandum” consists of a complex series of arrangements, containing European law, IMF and ECB

⁹⁹The IMF Country Report No. 13/154 – Greece article IV Consultation, available at <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Greece-2013-Article-IV-Consultation-40637> as stated in Mavroudeas, *ibid*, p. 33

¹⁰⁰Mavroudeas St., Troika’s Economic Adjustment Programs for Greece : Why do they systematically fail? in “The Internal Impact and External influence of the Greek Financial Crisis”, edited by Marangos J., Palgrave MacMillan, 2017, p. 23-45

¹⁰¹For further details see the European Parliament Briefing of 17 July 2015 on the bailout and reform of Greece, available at <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-565887-Bail-out-and-reform-FINAL.pdf>

¹⁰²The Memorandum of Understanding no 3 : https://ec.europa.eu/info/sites/info/files/01_mou_20150811_en1.pdf

¹⁰³ The Financial Assistance Facility Agreement, available at <https://www.esm.europa.eu/sites/default/files/2015-08-19gr-esm-ffapublicationversion.pdf>

¹⁰⁴The Council of the European Union implementing Decision that approved the Stability Support Program: <https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A32015D1411>

chart rules, acts and rules of the national and the international legal order¹⁰⁵. The question was also whether the program and the regulations included in that, were violating the Greek Constitution and even the European legislation and the International law, and whether the procedure followed by the Greek Parliament was illegal or not leading to invalid proceedings and thus to a groundless agreement. The discussion on theoretical level was really wide and rich especially in the first year that followed the newly-introduced to the greek reality MoU, and it is worth to present hereby some of the opinions expressed regarding the issues that arose in the aspect of constitutional law and compliance with the Greek Constitution.

The «Memorandum of Understanding» is a form of international agreement, made between States, or States and institutions. They are often used as a form for international deals as they are faster and more flexible in terms of procedural formalities than the classic international treaties, however the level of international commitment for the parties is lower than the one found in an international Treaty¹⁰⁶. As mentioned before, the MoU signed was the basis on which the Government would vote typical laws with the parliamentary procedure regulated by the Constitution. The fact that the MoU were added to the Law 3845/2010 as annexes, started a conversation about whether this annexation granted the MoU itself the legal status of a typical law.

Opinions were divided, as many argued that the MoU and the Loan Facility Agreement were indeed International agreements binding the Greek state and should therefore be submitted to the procedure of ratification by the Greek Parliament, by enhanced majority of 3/5 of the Parliament members, according to art. 28 par. 2 and 3 of the Greek Constitution¹⁰⁷, in conjunction with art. 36 par. 2¹⁰⁸. To this opinion the Law

¹⁰⁵Manitakis A., The constitutional issues of the Greek Memorandum, DtA, no 51/2011, p. 690, Venizelos E., National Constitution and sovereignty, Efim DD 1/2011, p. 5

¹⁰⁶Roukounas, International Law, Vol. I, Sakkoulas Publications, 2004, p. 153-157

¹⁰⁷Article 28 par 2: 'Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law ratifying the treaty or agreement , Art 28 par. 3 : Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.

<http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggluko.pdf>

¹⁰⁸Article 36 par 2 : 'Conventions on trade, taxation, economic cooperation and participation in international organizations or unions and all others containing concessions for which, according to other provisions of this Constitution, no provision can be made without a statute, or which may burden the Greeks individually, shall not be operative without ratification by a statute voted by the Parliament',

3845/2010 that was voted with normal majority instead of the enhanced one, that would be on the basis of the article 28 par. 2, art 28 par. 3 and 36 par. 2, was for this reason violating the Greek Constitution and should therefore be considered as no valid law at all¹⁰⁹.

According to the opposite part, the MoU signed by Greek state and its lenders is a ‘non-official’ international agreement, or “arrangement”¹¹⁰, according to the international term, that has no direct legal application in the Greek rule of law and therefore it is not subject to any court appeal¹¹¹. The MoU are soft law, an ‘hybrid’, part of the government’s economic policy and by being annexed to the Law 3845/2010 is not being transformed into a typical law and this cannot be considered as ratification of this non-official international agreement; hence the article 28 par. 2 of the Constitution of Greece is not applicable¹¹².

The above statement was confirmed by the decision 668/2012 of the Greek Supreme Administrative Court, the Council of State, who did put an end to the discussion of the legal status of the MoU. The above judgment accepted the legal claims of the Greek State that the annexation of the MoU in Law 3845/2010 aimed simply in publishing in an official way the context of the deal, thus informing the members of the Parliament and the public; According to the decision, the MoU is not an international treaty, but a governmental program that does not hand any kind of power to international organizations and has no direct application in the Greek State, but in order for the directions described therein to be implemented, special laws should be voted by the Parliament; therefore it should not be ratified according to the procedures of 28 par

Conventions on trade, taxation, economic cooperation and participation in international organizations or unions and all others containing concessions for which, according to other provisions of this Constitution, no provision can be made without a statute, or which may burden the Greeks individually, shall not be operative without ratification by a statute voted by the parliament.

<http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

¹⁰⁹Kasimatis G., “The Loan Agreements between Greece, the EU and the IMF; Direct violations of the international and European law and the Greek Constitution, DSA, Athens 2010 . Also look Marias N., The Greek Memorandum and the other way, Livanis Publications, 2011, p. 241-243.,

¹¹⁰Manitakis A., *ibid*, p. 690-693, Kasimatis G., *ibid*, p. 14-15

¹¹¹Gklavinis P., The Greek Memorandum of Understanding in the European, international and greek rule of law, Sakkoulas Publications, 2010, p. 100-102

¹¹²Manitakis A., *ibid*, p. 19-20, Pavlopoulos, P., Notes on the legal Status and the legal impacts of the Greek Memorandum, www.constitutionalism.gr, <https://www.constitutionalism.gr/1786-paratiriseis-ws-pros-ti-nomiki-fysi-kai-tis-ennome/>, Chrysogonos K., The lost ‘pride’ of the Greek Democracy (Chameni Timi ths Dhokratias), p.10-12, <https://www.constitutionalism.gr/1809-i-hameni-timi-tis-ellinikis-dimokratias-o-mihanism/>

2 and 36 par 2 of the Constitution¹¹³. Claims of the applicants of violation of the art 28 par 3 of the Constitution were rejected and the Court reaffirmed that the Government preserves the -according to art 82 par 1 of the Constitution¹¹⁴- control over setting the country's general policy¹¹⁵.

4.1. The European Loan Facility Agreement

Part of the whole EAP, but a separate treaty, signed by Greece and the members of the euro zone, the loan agreement of 8.5.2010 was itself problematic in terms of content according to constitutionalists. The contract contains terms, such as the one of article 14 (5), "are immune on the grounds of sovereignty or otherwise", for an immunity because of sovereignty, while the law applicable is only the British Law and the only Court that could judge on issues deriving from the agreement is the Court of the European Union. It is made clear that Greek Government had no other solution than signing this agreement, even though it directly violates the Greek Constitution and threatens the foundations of the Greek republic as it was supported¹¹⁶. The introduction of such conventions containing terms directly violating equality of parties and the European ideals of all-equal member states, shows how the future of our country-and not only ours- is pre-written, restraining the governmental economic policy in just introducing to the Greek people decisions already pre-approved and pre-formed-by others.

Even though opinions were rather divided concerning the legal status of the MoU, mostly unanimously it is accepted that this particular document too consisted of an agreement that handed the duty of the government to schedule the national economy policy to our lenders (EU-ECB-IMF)¹¹⁷. In this case it was officially Greece that asked

¹¹³The Council Of State (StE) 668/2012 decision, par.27-33, available at (in greek)

<http://www.dsnet.gr/Epikairothta/Nomologia/668.htm>

¹¹⁴Art 82 par 1: "The Government shall define and direct the general policy of the Country, in accordance with the provisions of the Constitution and the laws."

<https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

¹¹⁵Comments on the Council of State (StE) 668/2012 :Avgerinou Ch., The Public Interest- positions of the Greek State in Recent Trials in the Council of State plenary and The Supreme Special Court, Nomiko Vima, Vol. 60, 2012, p. 2779-2791, Emmanouilidis D.,-Skandali M., The public interest and the Council of State's jurisprudence, Nomiko Vima, Vol.60, 2012, p. 2762-2778

¹¹⁶Chrysogonos K., The lost 'pride' of the greek democracy, p. 13-18, available at

<https://www.constitutionalism.gr/1809-i-hameni-timi-tis-ellinikis-dimokratias-o-mihanism/>

¹¹⁷Chrysogonos K., ibid, where he refers to a "de facto" concession of the Greek State's external economical sovereignty.

for help. But the help, as many notice was rather heading –as scheduled by our lenders - to the European banks and their rescue, while the burden was transferred to the Greek citizens; it was, as Prof. K. Chrysogonos states, the “borrowers” of the greek state, the workers, pensioners, and all these people who pay their taxes those who would finally carry the burden for the rescue of the banks¹¹⁸; because a state is its people. But were these people rescued?

¹¹⁸Chrysogonos, K., *ibid.*

CHAPTER III JUDICIAL RESPONSE IN GREECE

1. The Jurisprudence of the Greek Supreme Administrative Court

The judgments delivered by the Greek Supreme administrative Court, the Council of State (Symvoulío tis Epikrateias, StE) during the economic crisis were highly affected by this reality. The cases brought before the Court were, at first, of a completely different nature than the ones it had to deal with before the crisis. The austerity measures and the impact of the financial crisis had directly affected many aspects of the social and everyday life of the Greek citizens and as the crisis continued to deepen even more, demands would multiply, challenging the function of the Court¹¹⁹.

1.1. The Council of State 668/2012

The first judgment directly referring to the constitutionality of the Memorandum of Understanding under the First Economic Adjustment Program of May 2010 was judgment 668/2012, of the Greek Supreme Administrative Court. The case was brought before the Court by citizens and legal entities on July 26, 2010 demanding the cancelation of acts that were legislated in compliance with the international commitments of the Greek Government¹²⁰. The Court ruled in favor of the constitutionality of the measures and the Memorandum. Based on the situation of the greek economy, the directives of the MoU and the goals it set, it found that the reductions of wages and pensions were not in breach of the Greek Constitution and the European Convention on Human rights, judging that “the cut of wages, benefits and pensions adopted, aims at facing the immediate need of financing the economic needs of the country and at the improvement of its future fiscal and financial situation as well, that is serving goals that consist primarily of serious public interest reasons”. Regarding the necessity of the specific measures adopted, the Court judged that “those measures do not stand inadequate, not even manifestly, for the attainment of the goals they have been legislated for, nor it can be considered that they were not necessary”. According to the

¹¹⁹Pikrammenos P., *The impact of the crisis on the Supreme Administrative Court, Theory and Action of Public Law*, 2012, p. 1049 ep.

¹²⁰The Council of State (StE) 668/2012, available at <http://www.dsanet.gr/Epikairothta/Nomologia/668.htm>

Court's reasoning, the measures at issue ensure balance between the demands of public interest and the need for protecting property rights of the workers and the pensioners.

On the other hand, the Court did also set limits to the actions of the legislator, mentioning that the ability to set cost-cutting measures should not violate art. 4 par. 5 of the Constitution of Greece, according to which Greek citizens contribute without distinction to public charges in proportion to their means, nor the protected in art. 2 par. 1 principle of respect and protection of the value of the human being¹²¹. The Court utilized the Jurisprudence of the European Court of Human Rights (ECtHR) for the right to property, protected by art. 17 of the Greek Constitution and art. 1 of the First Additional Protocol to the ECHR, judging that there is no violation as the right is only limited by the measures and does not lead to a complete deprivation of property¹²². However the Court underlined that its judgments were based on the situation at the time the law was published, back in 2010, when the future of the greek economy was uncertain and urgent reforms should apply.

This judgment, the first of such a vast importance and impact judgment of the post-memorandum era of the Greek courts, gave rise to a new meaning of public interest, while it used the construction of the 'doctrine of necessity' to justify its statements. Both notions will be further examined hereby.

2. The Doctrine of necessity

The law of necessity was traditionally a tool applied by the Courts when examining the compliance of certain legal measures with the Constitution of Greece. The political institutions of Greece in the 20th century, and even before, were going through a period of great instability¹²³, often leading to the need for exceptional legislative measures. Therefore, a form should be found to evaluate those measures, the establishment of which was often linked with severe consequences for the Greek people. According to the jurisprudence, the doctrine of necessity justifies the short derogations from the constitutional rules; exactly like in penal law the serious danger of

¹²¹Pikrammenos P., *ibid.*, European Parliament, Country Report on Greece, 2015, p. 142-143

¹²²See Kasimatis G., Criticizing this position in "The basic principles of the Council of State 668/2012", ToS 1-2012, p. 113-119.

¹²³Like the German occupation of 1940-1944, the Civil Wars, the Colonel's 1967 Coup and the following 7-years dictatorship, which ended in 1974.

a legal interest can justify the act of a person committing a crime¹²⁴. However, given the economic crisis, and its special characteristics, the doctrine of necessity was now not crucial as a justification for the short derogation from the Constitutional rule but as a reason for a different interpretation and implementation of the latter¹²⁵.

The crisis of the economy can be seen as a rapid and severe aggravation of the so far normally functioning financial system of the country, that brought up unprecedented difficulties concerning the ability of the state to finance its debt and the essential public expenditures. The catholic and direct impact of the greek crisis, because of its causes – the loan overdose and lack of the equivalent macroeconomic performances – , on the welfare state resulted to the offence of fundamental values previously well secured¹²⁶. Consequently, without an official declaration of a national emergency situation as regulated by the Constitution, the doctrine of necessity was nevertheless used as a way to grant legality to regulations drastically deteriorating the enjoyment of human rights and ultimately the democratic principles of the State too¹²⁷.

The Ministry of Economics, in its statement submitted to the court prior to the hearing of the case that lead to Judgment 668/2012, argued that “the measures of laws 3833 and 3845/2010 constitute a doctrine of necessity law established for the protection of the national interest and particularly the protection of the greek economy from default and in order to ensure the financing of the public policies in the fields of national security, education, health and social security”¹²⁸.

The above principle was also reflected in the jurisprudence of the post-memorandum era, like in the judgment 693/2011 of the Greek Supreme Administrative Court. The case concerned the compliance of art 18 of Law 3758/2009 implementing an extra fee on the revenue of the previous economic year 2007, along with the art.78 par. 2 of the Constitution. The majority claimed that the above rule was indeed violating the Constitution as no exceptions from the ban the art. 78 par. 2 sets can be accepted. But the minority had a different opinion, according to which “the constitution sets at a first level regulations for the state functioning under normal circumstances. Specific

¹²⁴Kamtsidou I., A state of exception not exceptional at all, DtA 73/2017, p. 687-710.

¹²⁵Drosos G., Issues of Constitutional Organization, judicial protection and democracy in the era of today's crisis, available at <https://www.constitutionalism.gr/2463-zitimata-syntagmatikis-organwsis-dikastikis-prosta/>

¹²⁶Pikramenos P., *ibid*.

¹²⁷Kamtsidou I., *ibid*.

¹²⁸ <https://www.constitutionalism.gr/1755-dikaio-ektaktis-anagkis-to-mnimonio/>
cited by Kamtsidou I., *ibid*,p. 591.

regulations are predicted for certain exceptional needs, like in art. 48, for the event of a war but neither from the text of the Constitution nor from the discussion made in the Parliament can it be assumed that there was any kind of prediction for such a disastrous recession¹²⁹. For the first time the Court arguments on what could be called the new “law of necessity” or emergency state law against the Constitution, that clearly questions principles guaranteed in it¹³⁰.

3. The transformation of the public interest

Constitutionally, the public interest is mentioned in art. 17 par. 1 as a direct restriction of the right to property: “*Property is under the protection of the State; rights deriving there from, however, may not be exercised contrary to the public interest*”, and in art. 106 par. 1 as a “permission” to the State to regulate economic activity in the country, “*in order to consolidate social peace and protect the general interest*”. While public interest notion is considered to be a “restriction of the restrictions” of the fundamental rights, it was rather used –even before the economic crisis- in order to justify restrictions on them¹³¹.

The public interest is a vague legal standard, referring to the interests of the whole or a part of the society, being formally organized to a State¹³². It is different from the private interest, without being necessarily opposed to it¹³³. It has not a stable meaning and it may be formed according to the economic and social circumstances that are different at every time, but it should always be based on the Constitution and specified by the legislator when applied in laws; the specific public interest being protected every time should be clear when introducing a new law, in order to accurately justify the choices of the legislator and thus enable the judge to control its compliance with the Constitution¹³⁴. Besides, the Courts always take into consideration the reasoning of the law, the parliamentary discussion before its voting, and even the precepts of common experience before deciding on whether a law provision that is

¹²⁹Emmanouilidis V., -Skandali M., Public Interest and the Council of State’s Jurisprudence, Nomiko Vima 60/2012, p. 2762-2778.

¹³⁰Giannakopoulos K, Public Interest in times of economic crisis, Efm DD 1/2012, p. 105

¹³¹Chrysogonos K., ibid, p 84-89

¹³²Dagtoglou P., cited by, Giannakopoulos, ibid, p. 100

¹³³Kamtsidou I., L’intérêt public aux temps de crise, p.95, available at <https://www.recherches-internationales.fr/RI96/RI96Kamtsidou.pdf>

¹³⁴Manztoufas P., ibid, p. 116-123

considered to violate constitutionally protected fundamental rights is serving the public interest or not¹³⁵.

The economic crisis, the loss of control over public fiscal policy and the bonds with the international and principally the European community lead to a progressive alteration of the perception of the public interest. The latter is no more considered to be the “narrow” interest of the people organized in a sovereign state, but rather the interest of the nation in compliance with the interest of the member states of the euro zone¹³⁶. Judgment StE 1620/2011 was the first one in which the Court explicitly states that the public interest equals the interest to the fiscal balance of the State. Taking into account the serious deadlock of the national economy, and given the international reality too, the Court states that reducing sovereign debt is not just a fiscal goal but a national issue as the crisis, due to its phenomenal extension has the character of a national crisis, to continue that “securing the fiscal balance at first and thus avoiding a national economic meltdown” is an aim of ‘great national interest’¹³⁷.

In the Council of State 668/2012, concerning the first EAP, the Court clarified this new perception of the public interest. Claimants complained that the major cuts on wages and benefits led to violation of fundamental rights but the Court judged that any restrictions to the enjoyment of those rights was justified as a part of a broad reform program, aimed at facing immediate financing needs and improving future fiscal situation of Greece as well, namely “serious matters of public interest and at the same time, goals of common interest of the member states of the euro area, regarding the obligation of fiscal discipline established by the EU legislation and the preservation of the stability of the euro area as a whole”¹³⁸. It is therefore concluded that the ultimate public interest was the “fiscal interest”, in compliance with the goals that all the euro area member states have in common¹³⁹. In other words, the public interest was now being formed under the scope of European and international rules, the respect of which was crucial for saving the country, even by overhauling democratic procedures long respected¹⁴⁰.

¹³⁵Avgerinou Ch., The Public Interest- positions of the Greek State in Recent Trials in the Council of State plenary and The Supreme Special Court ,Nomiko Vima, Vol. 60, 2012, p. 2779-2791

¹³⁶Mantzoufas P., Economic Crisis and Constitutional Institutions, DtA 64/2015,p.320-321

¹³⁷Emmanouilidis V., -Skandali M., *ibid*, Avgerinou Ch., *ibid*, Drosos G., *ibid*.

¹³⁸Avgerinou Ch., *ibid*, p. 2784 , Kamtsidou I., A state of exception..., *ibid*, p. 601-603

¹³⁹Emmanouilidis V., - Skandali M., *ibid*, p.2769

¹⁴⁰Kamtsidou I., L'intérêt public aux temps de crise, p.12-16

4. Other important jurisprudence

4.1. The Council of State 1972/2012

Another significant judgment concerning the measures taken in the frame of the first EAP was the Supreme Administrative Court judgment 1972/2012¹⁴¹ (plenary), concerning the compliance or not with the Greek Constitution of an exceptional special fee for electricity-supplied surfaces, introduced by art. 53 of Law 4021/2011. The Court, focusing on the exceptional and temporary character of this fee, and despite the fact that it was an additional burden for the taxpayers and a fee irrelevant with the electricity supply conventions but still meant to be paid through them, having however qualities of a tax, stated that it is not opposed to the Constitution, repeating once again that the urgent need to stabilize the greek economy and help reduce the sovereign debt prevails. Thus, art. 17 of the Constitution (right to property), art. 78 par. 1 and 4, art. 25 par. 1, and art.4 par. 1 and 5, art. 1 of the First Additional Protocol to the ECHR were according to the Court not violated. On the other hand, the Court judged that cutting off power to the households as a result of non-payment of the fee, as regulated by art. 53 par. 11 of the Law 4021/2011, is not in compliance with the Constitution, as it is considered to be an unreasoned intervention in the contract between the consumer and the supplier, violating art. 5 par. 1 of the Constitution, especially because the aim of the fee is irrelevant with the electricity supply. Moreover, 5 members of the Court had the opinion that the above measure is also violating art. 2 par. 1 of the Constitution, the protection of the State of the value of the human being, as the power cut leads to deprivation of an essential good that ensures an adequate standard of living, and thus to a non respect to the human dignity¹⁴².

4.2. The Council of State 2307/2014¹⁴³

After the introduction of law 4046/2012 in February 2012 and the second EAP, 9 trade unions asked for the cancelation of the measures introduced into the greek legal order before the Greek Supreme Administrative Court, what lead to the issue of

¹⁴¹The Council of State (StE) 1972/2012, commented by Kaidatzis A., available at <https://www.constitutionalism.gr/2387-ste-ol-1972-2012-syntagmatikotita-eidikoy-teloys-a/>

¹⁴²For extensive comments on the decision, Mantzoufas P., *Economic Crisis and the Constitution*, Sakkoulas Publications, 2014, p 162-171, Emmanouilidis V. –Skandali M., *ibid*, p. 2771-2775, Avgerinou Ch., *ibid*, p.2786-2787

¹⁴³The Council of State (StE) 2307/2014, available at <http://www.dsanet.gr/Epikairothta/Nomologia/ste%202307.htm>

judgment 2307/2014. The main legal question was whether the measures of a specific decision of the Minister (P.Y.S. 6/2012) were in compliance with the freedom of collective bargaining and freedom of trade unions as protected by the art. 22 par. 2 of the Constitution, art. 25 par. 1 and art. 23 par. 1 and 2¹⁴⁴. The Court admits that there are serious restrictions of the enjoyment of the collective autonomy and that the worker's position is weakened, however these are justified by the recession of the greek economy and the need to preserve national fiscal balance and debt sustainability. The Court underlines that the measures restricting the right to work are part of a wider program in favor of the general public interest, and where taken under extreme conditions, aiming solely in facing the financial crisis¹⁴⁵. Despite the constitutionality of the termination literally of collective labor agreements and the term of permanency, the Court judged however that the abolishment of the right of unilateral appeal to the arbitration is violating art. 22 par. 2 of the Constitution, and that the arbitration award can regulate apart from the wage, the total of working hours as well¹⁴⁶.

4.3. Jurisprudence after Law 4093/2012

Law 4093/2012¹⁴⁷ introduced provisions for cuts for multiple categories of public sector employees being remunerated on the basis of special payrolls, in order to fulfill commitments the Greek State undertook by signing the EAP 2¹⁴⁸. Judges, diplomats, doctors, academic staff of the Greek universities, members of armed military and security forces and retired officers as well; the categories affected appealed to the Court against the measures taken to quell financial unrest, what lead to the issue of important decisions¹⁴⁹.

4.3.1. Court of Article 87 of the Constitution: the 88/2013

¹⁴⁴Par.21-39.

¹⁴⁵Giannakourou S., Comments on the Council of State 2307/2014, available at www.academia.edu

¹⁴⁶Kazakos A., The trade Unions have the power again, available at <http://www.avgi.gr/article/10951/3159928/aris-kazakos-ta-syndikata-echoun-kai-pali-te-dynatoteta>

¹⁴⁷ Official Journal issue 222/A'/12-11-2012

¹⁴⁸ Law no 4046/2012

¹⁴⁹Anthopoulos Ch., Economic Crisis and Special Payrolls, available at <https://www.constitutionalism.gr/%CE%BA%CF%81%CE%AF%CF%83%CE%B7-%CE%BA%CE%B1%CE%B9-%CE%B5%CE%B9%CE%B4%CE%B9%CE%BA%CE%AC-%CE%BC%CE%B9%CF%83%CE%B8%CE%BF%CE%BB%CF%8C%CE%B3%CE%B9%CE%B1-2/>

The section V of the Greek Constitution is dedicated to the Judicial Power (articles 87-100A). In article 88, par 2, it is specified that the resolution of legal issues arising towards the remuneration of all magistrates shall be resolved “by the special court of article 99”. The above Special Court issued judgment no. 88/2013 in which the cuts in remuneration of the magistrates legislated according to Law 4093/2012 were judged by the majority as unconstitutional, for violating the constitutionally protected special salary treatment of the magistrates justified by their distinctive role and mission, specified by art. 26, art 87 par. 1 and 88 par 2 of the Constitution, violating also art 4 par 5 of the Constitution. In particular, in order to preserve their independence and their high status as organs of the third power, a stable remuneration status shall be ensured throughout the years, without abrupt and repeated cuts, equal to the one of the two other State Powers. This way, the magistrates can be confident of possessing the means for an adequate standard of living, making them immune to any dependence on political choices and thus securing their dependence, the element that substantially legalizes the Judicial Power as the third State power¹⁵⁰. In that case however, the particular cut combined with three previous cuts was considered violating the art. 4 par. 5 of the Constitution, as the magistrates, remunerated by the public sector, were disproportionally affected combined to other categories, like self-employed people; it was considered also possible to cause magistrates insecurity and concern regarding the fulfillment of their obligations, it was not proven to be necessary, inevitable and moreover it was not proven either that the State had examined other solutions that could bring the same results before imposing the cuts on magistrate’s remuneration system¹⁵¹.

4.3.2. The Council of State 2192-2196/2014

Judgments 2192-2196/2014¹⁵² concerned the demands submitted to the court by serving members of armed military and security forces as well as retired officers against the ministerial act that, based on Law 4093/2012, imposed the refund of salaries and pensions already received, for the reason of wage-reduction policy applying also on them. The Court declared that the above provisions were indeed violating the

¹⁵⁰Akrivopoulou Ch., The ex-post reduce of the magistrate’s salary is unconstitutional, DtA, 62/2014, p. 939-944

¹⁵¹Fatourou Ch., The reduce of magistrate’s remuneration because of the economic crisis is unconstitutional, DtA 62/2014, p. 935-938, Akrivopoulou Ch., *ibid*.

¹⁵² The Council of State (StE) 2192/2014, available at <http://www.dsnet.gr/Epikairothta/Nomologia/steol%202194.htm>

Constitution and the concerned ministerial act should be annulled. Based on a rather contested justification¹⁵³, the Court underlined in paragraph 12 of the decision that there is a principle of special salary conditions for this category, indirectly deriving from the combination of art. 45, 23 par 2 and 29 par. 9 of the Constitution. The Court includes in paragraph 11 the military forces within the “core” competences of the state authority that should be protected by the legislator, certainly because of their special aim and mission being so closely related to the preservation of the state itself¹⁵⁴.

The Court also judged that the restrictive measures were in breach of the art.4 par. 5 and 25 par. 4 of the Constitution as, despite the fact that the legislator has the discretion to take measures towards specific social groups to reduce the public deficit, he should however respect the constitutional principles of proportionality, equality and respect for human dignity. Apart from the fact that the lawmakers did not take into account the specific circumstances of their mission and the impact of the cuts on their standard of living that could exactly affect this important mission, the measures were considered to be unequal and not proportional due to their accumulative effect. And it is this justification that gives this decision a significant meaning as for the first time the Court seems to develop a new rule, opposing to the one formed by decision 668/2012: according to this rule the previous cuts and encumbrances legislated for the adjustment of the national economy, when added to the new ones, they can lead to serious violation of the limits set by the Constitution, and thus this cumulative effect should be really taken into consideration onwards¹⁵⁵.

4.3.3. The Council of State 4741/2014

One more judgment regarding the special payrolls and whether the provisions of the law 4093/2012 were in conformity with the Constitution or not was the decision no 4741/2014¹⁵⁶. In Particular, it concerned the compensation status of the academic staff of the country’s Higher Education Institutions. The Council of State found that the

¹⁵³Christoforidou St., Comments on the Council of State (StE) plenary 2192/2014, available at <https://www.constitutionalism.gr/stc-2192-2014-perikopes-entolon/>, Kamtsidou I., A state of exception not exceptional at all, DtA 73/2017, p. 687-710.

¹⁵⁴Akrivopoulou Ch., Comments on the Council of state 2192/2014, available at <https://www.constitutionalism.gr/stc-2192-2014-akrivopoulou/>

¹⁵⁵Kaidatzis A., Comments on the Council of State (StE) 2192/2014, available at www.academia.edu

¹⁵⁶ The Council of State 4741/2014, available at <http://esdep.web.auth.gr/wp-content/uploads/2015/01/StE-4741-2014.pdf>

contested measures for the additional cuts on remuneration were unconstitutional, as they failed to comply with article 16 of the Constitution and they were furthermore in breach of the constitutional principles of proportionality and equality when it comes too public burdens (art. 4 par. 5). More specifically, according to the majority of the magistrates, the legislator is ought to provide remuneration to the academic staff that corresponds to the significance of their assignment and the importance of their role; it should be therefore proven to be suitable for the effective fulfillment of their duties and at the same time be high enough so that to attract in perpetuity staff of high level of academic expertise. The Court argued that the aforementioned condition forms the basis of their special salary treatment which is being violated when a measure is applicable to all public servants, without distinction of their special mission. The Court underlined that, as deriving from the interpretation of art. 4 par. 5, 25 par. 1 and 4, 79 par. 1 and 106 par. 1 of the Constitution the legislator can impose measures on certain social groups in times of crisis and when there is a need of fiscal consolidation, like in that case, yet the burden should not be always imposed on the same social group. Inevitably, the cuts made were deteriorating the standard of living of the country's academic staff due to their cumulative effect and the addition of the recent cuts to the previous ones¹⁵⁷.

4.4. The Council of State 2287/2015

Judgment 2287/2015¹⁵⁸ was one of a great importance that marked the start of the second era of the greek crisis case law, by actually formalizing the changes that had already been made in the previous decisions concerning the special payrolls and stating that the provisions of Laws 4051/2012 and 4093/2012 concerning cuts made on pensions, both main and supplementary, and which followed the cuts of the previous Laws 3845/2010, 3986/2011, 4024/2011 were in breach of the Constitution¹⁵⁹. More precisely, after the demand of a pensioner of the IKA-ETAM social security institution to be refunded the amount of pension she has lost since the beginning of the crisis, the

¹⁵⁷Prevedourou E., Comments on the Council of State (StE) 4741/2014, available at <https://www.prevedourou.gr/%CE%B1%CE%BD%CF%84%CE%B9%CF%83%CF%85%CE%BD%CF%84%CE%B1%CE%B3%CE%BC%CE%B1%CF%84%CE%B9%CE%BA%CF%8C%CF%84%CE%B7%CF%84%CE%B1-%CF%84%CF%89%CE%BD-%CF%80%CE%B5%CF%81%CE%B9%CE%BA%CE%BF%CF%80%CF%8E%CE%BD/>

¹⁵⁸The Council of State(StE) 2287/2015, available at http://law-constitution.web.auth.gr/lina/files/StE.%CE%BF%CE%BB%CE%BF%CE%BC%CE%B5%CE%BB%CE%B5%CE%B9%CE%B1_2287-2015.pdf

¹⁵⁹Karavokyris G., Comments on the Council of State (StE) Plenary 2287-90/2015, available at www.academia.edu

Council of State stated that the cuts made were violating art. 25 par 4, 4 par. 5 of the Constitution as well as art 1 of the 1st additional protocol to the ECHR. The restrictions on pensions were also against art. 22 par. 5 of the Constitution¹⁶⁰.

According to the justification of the Court, the legislator should have first examined the results that further cuts would have on the people's living standard, especially when combined with the parallel augmentation of taxation, what could lead to a serious deterioration of the protection of their adequate living conditions. Furthermore, this should be formalized in a study that would take into consideration the existing situation of the people as formed by the measures taken so far, the current status of the greek economy and predictions and planning for the future as well. No relevant study however was executed and the only parameter examined was the level of contribution of the provisions on the public deficit and fiscal consolidation¹⁶¹. Nor did the legislator adequately specify the measures taken; instead the cuts were made horizontally, neglecting constitutionally protected human rights and principles and by unjustified use of the emergency state since Greece was no more in the outset of the crisis¹⁶².

4.4.1. The importance of the Council of State 2287/2015 for the Court's jurisdiction.

The Council of State 2287/2015 marks the turning point of the judicial approach towards the greek crisis, the measures legislated in order to face it and the conformity of them to the Constitution. In the first remarkable decision regarding the first EAP, 668/2012, the need for protecting the greek economy prevailed and the severe crisis led to the conclusion of conformity of the first EAP to the Constitution; on the contrary, the crisis was no longer an excuse so as to justify the continuing through the second EAP austerity measures, leading to the proclamation of its unconstitutionality and to the redefinition of the Court's basic theories, as they have been formed through the previous years.

In fact, the Court considered that the crisis was no longer of a sudden and as threatening and urgent as in the past and therefore the simple justification by using the

¹⁶⁰Michalopoulou A., The impact of the Memoranda on social rights, available at <https://www.constitutionalism.gr/mihalopoulou-mnimoniokoinonika-dikaiomata/>, p. 24

¹⁶¹Paparrigopoulou-Pechlivanidou P., Thoughts on StE 2287/2015, p.. 3 , available at http://scholar.uoa.gr/sites/default/files/paparigo/files/skepseis_me_aformi_ti_ste_ol_2287_2015.pdf

¹⁶²Michalopoulou A., *ibid*

fact of the economic crisis was no more sufficient for the limitless restrictions imposed by the legislator; in other words, it was the legal basis that was now modified, the ‘qualification’, as the reality was not the same either¹⁶³. In that regard, and as the fiscal situation was no milder, the Court did change its criteria and consequently, its jurisprudence¹⁶⁴. The continuation of the crisis and the further recession caused in the meantime, since its first decision, led to the intensification of the judicial control of the legislator and of the monitoring the application of the principle of proportionality as well towards a more efficient protection of human rights¹⁶⁵.

The most recent Council of State 431/2018¹⁶⁶, also found that reductions made on remunerations of doctors of the National Health Care System were unconstitutional. Underlining the obligation of the State to respect the right of the citizens to health and also the special status of the doctors working for the public sector, concluded that the wage cuts regarding this category of public sector employees were in breach of art. 21 par. 3 of the Constitution: “*The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy*”; it was also found that the principle of proportionality and the equal participation to the public burdens were violated as well.

¹⁶³Karabokyris G., *ibid*, p. 6

¹⁶⁴However, Council of State 734/2016 judged that certain cuts (of the “efapaks”) were constitutional, as cited by Theochari A.

¹⁶⁵Theochari A., *The Evolution of the Jurisprudence during the “memoranda time”*: from the Council of State (StE) 668/2012 to the Council of State (StE) 1125/2016, available at www.academia.edu

¹⁶⁶ The Council of State (StE) 431/2018, available at http://www.dsnet.gr/Epikairothta/Nomologia/steol%20431_2018.htm

CHAPTER IV ANALYSIS OF THE IMPACT OF CRISIS ON HUMAN RIGHTS WITH EMPHASIS ON HUMAN DIGNITY

1. Etymology of Human Dignity

Dignity has become a notion of great prominence in recent years. Its latin etymology refers at the latin word of feminine gender, *dignitas-atis*, a word which has been translated in various ways. But the general notion reveals mainly the particular quality of a subject or a thing that is visible and deserves to be respected: one single principle, but with various aspects, including the fact of deserving something as well as the sentiment of dignity and honor¹⁶⁷. During those roman times, *dignitas* was characteristic of the social and political status of the individual, a meaning finally transformed so as to mark the high status of the people as part of the nature¹⁶⁸. In the greek language, there are two different roots, one deriving from the root –axio and one of the root *semnotes-etos*, which did not have however any continue in the modern language. In the greek etymology, the word *axioma-atos* is presented as the synonyme of the latin word *dignitas* and the adjective *axios*, as a direct translation of the latin *dingus*, as a, um. All the words composed by the word ‘axios’ encompass the idea of a certain value, that can be attributed the meaning of be worthy of something, or honored¹⁶⁹, while today honor and worth are two words sometimes used as a synonym for dignity or as terms of a meaning equivalent to the meaning of word dignity¹⁷⁰. But both latin and greek etymology are in consistency; dignity is presented as an important quality of a special value, and the being that possesses this value should be respected and recognized for his special worth¹⁷¹.

¹⁶⁷Poisson, J.-F., *La dignité humaine*, Les études hospitalières editions, 2004, p 44-46

¹⁶⁸Vassiloyannis P. K., *Human dignity as a subject of law: a philosophic comment on the history of a legal term*, p. 134 , available at <http://users.uoa.gr/~pvassil/12Vassiloyannis.pdf>

¹⁶⁹Ibid, p. 46-48

¹⁷⁰Dan-Cohen M., in Waldron, J., *Dignity, Ranks and Rights*, Oxford University Press, 2012, p. 3-5, where a further analysis of the words honor and worth is made and it is précised that those terms are not “symmetrical”, since “honor is an ordinary term, and its philosophical use is for the most part in keeping with its common usage” and worth is “a more specialized term, deriving its meaning in the present context primarily from Kant’s moral theory”. Also for honor and worth: Bonefeld W., Psychopedis K., *Human Dignity: Social Autonomy and the Critique of Capitalism*, Ashgate, 2005, p. 4

¹⁷¹ Poisson, *ibid*, p. 48

2. The notion of human dignity

2.1 The philosophical approaches

Defining dignity could certainly not be achieved by a simple definition, and even if only one existed it is doubted that it would be unanimously accepted. So many different meanings have been given to the modern term, that is difficult to make out what one means by applying the word 'dignity'. But the idea of dignity, seems today as a historically significant step towards the humanization of the legal processions and the rehabilitation of the judicial humanism¹⁷².

The history of the notion of dignity of the human being covers a large part of the eternal battle of the human against nature and against the various powers that wish to conquer the human kind, by gaining its obedience¹⁷³. As the human kind would evolve during time, the perception of its own value as an individual, and as part of a group, would start to be traced, also among religions and their teachings¹⁷⁴. The philosopher Emmanuel Kant (1724-1804) was the one that set the solid philosophic foundations of the principle of human dignity, in his "Critique of the Pure Reason" (1781)¹⁷⁵ and also in his "Groundwork of metaphysics of morals"(1785), where he introduced his definition of dignity, a definition meant to become one of the best-known philosophical theories¹⁷⁶. For Kant, dignity should be seen as a potentiality, as a consequence of each human's actions and not as something inseparable from the human nature. Kant's categorical imperative had the meaning of "act in such a way that you recognize humanity in your person and in all other persons always as a purpose, never as a means"¹⁷⁷. In that regard, it is possible that one has no dignity at all throughout his life, if he does not live accordingly¹⁷⁸. Human beings have the fundamental duties to do what is moral, so for them to live with dignity and also respect other human being's dignity, as the condition to demand for respect of their own dignity¹⁷⁹. The above definitions continue to cause a whole discussion around them, often divided, but for

¹⁷²Pavia, M.-L., La découverte de la dignité de la personne humaine, in Pavia M.-L., Revet T., La dignité de la personne humaine, Editions Economica, Paris, 1999

¹⁷³Benchikh, M., La dignité de la personne humaine en droit international, in Pavia M.-L., Revet T., La dignité de la personne humaine, Editions Economica Paris, 1999, p.37

¹⁷⁴Like the roman-catholic teaching on human dignity, see Waldron J., Dignity, Rank and Rights, Oxford University Press, 2012, p. 27-30

¹⁷⁵Chouvardas, G., The Constitutional protection of the human dignity, Athens 1990, p. 6

¹⁷⁶Dignity ranks and rights p. 23 for a brief analysis of kant, also in Poisson, p. 64-68

¹⁷⁷Bonefeld W., Psychopedis K., Human Dignity. Social Autonomy and the Critique of Capitalism, Ashgate, 2005, p.168

¹⁷⁸ Poisson, *ibid*, p.66, Chouvardas G., *ibid*

¹⁷⁹Chouvardas, G., *ibid*, p. 10, Vassiloyannis, *ibid*, p. 135

some the Kant's theory of dignity has little to offer to the modern constitutional practice and jurisprudence.

Instead, French philosopher Pierre-Joseph Proudhon (1809-1865), contrary to Kant, considers -in an approach that is more coherent with the modern constitutional theory- that human dignity as a value is incorporated into the existence of all human beings and thus does not depend from each individual's moral or not choices during his life¹⁸⁰. For Proudhon, the respect of the human existence is the source of all rights and all obligations¹⁸¹; if all people should have equal access to Justice, then human dignity, that equals Justice, should be also granted to everybody¹⁸². Philosopher Ronald Dworkin (1931-2013) suggests that human dignity is based on two principles; first the self-respect and the need for everybody to take life and its objective value seriously, and second the special responsibility that every human being has for his own path of life¹⁸³.

2.2. Contemporary Perception of Human Dignity

The crimes of the Second World War and their cruelty demonstrated how the very existence of a human could be degraded, at a point where it valued nothing more than a simple object does. Humans against humans, of civilized nations, but any sort of humanity or civilization was absent in that case, as massive crimes were organized and no respect was shown for the human life. In the aftermath of the tragedy, a society shocked by its own disastrous power and results of the loss of control, shall find new ways to protect its existence. It was then that the application of the term human dignity was also introduced.

The insertion of the term of human dignity in the political and judicial scene after year 1945 was initially rather reserved¹⁸⁴. At the beginning the essential was to give an end to any possible re-birth of such dangerous ideas and eliminate the chances of repetition, and the principle of dignity represented perfectly all the reasons that such crimes should never be repeated again – it was a moral demand, an ethic barrier that the global community was now setting to protect its own existence and most of all, the human value. In our days, human dignity stands as the first -and probably the only-

¹⁸⁰Ibid, p. 10-14

¹⁸¹ Pavia M.-L., Revet T., *ibid*, p. 54

¹⁸²Chouvardas G., *ibid*

¹⁸³Cassia P., *Dignité(s)*, Editions Dalloz, 2016, p. 29 , Waldron, J., *ibid*, p. 22-23

¹⁸⁴Cassia P., *ibid*, p. 65

contemporary globalised legal notion, meaning that its recognition is universal and knows no borders, sex or religion barriers¹⁸⁵.

During the second half of the 20th century the international law of human rights and humanitarian law would start to develop and acquire supremacy over national law¹⁸⁶. The universal character of the principle of human dignity being re-discovered is confirmed by its presence into various international treaties; the European Court of Human Rights in its decision *Bouyid vs. Belgium*, 28/9/2015 numbers twenty international conventions, related to human rights, that refer to the principle of human dignity since 1946¹⁸⁷.

Initially, the word ‘dignity’, without any further precisions, was used by a text delivered by Franklin D. Roosevelt on 29 March 1944, criticizing the brutalities of the Nazis and their Japanese allies, to be then also mentioned into the ILO Declaration of Philadelphia of May 10th, 1944, article II¹⁸⁸. The Charter of the United Nations of June 26th 1946, refers to the “dignity and the value of the human being” in its preamble, but no further definition is given. The most powerful introduction in the legal world however of the term of dignity was made in 1948, by the Universal Declaration of Human Rights (UDHR) of the United Nations and then in 1966, by the two UN covenants¹⁸⁹.

The UDHR, December 10th of year 1948, was the first international text concerning human rights to sanction the term of human dignity, even though it was more in an ethical way rather than in a legal one¹⁹⁰. Firstly, it is mentioned in the preamble that “*the recognition of the inherent dignity [...] is the foundation of freedom, justice and peace in the world*”, and then in Article 1 as well: “*all human beings are born free and equal in dignity and rights*”¹⁹¹. It could be then concluded that, according to the declaration, human dignity does not constitute a human right, but it is mostly linked to the ontological status of the human existence, as we can assume also by the fact that the human rights and liberties are separately numbered and detailed in the text that follows¹⁹². Human dignity is therefore unique and common for all the people; it is

¹⁸⁵Ibid, p. 67

¹⁸⁶Guimaraens, L., Michel Foucault et la dignité humaine, L’Harmattan, 2014, p. 96

¹⁸⁷Cassia, ibid, p. 67

¹⁸⁸Cassia, ibid, p.67-68

¹⁸⁹Pettiti, L.-E., La dignité de la personne humaine en droit européen, in Pavia M.-L., Revet T., ibid, p.55

¹⁹⁰Guimaraens, L., ibid, p. 118

¹⁹¹The UDHR, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

¹⁹²Cassia P., ibid, p. 70

the principle on which the realization of economic, social and cultural rights is based according to art. 22 of the UDHR : *“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”* and to justice and favorable remuneration of his work according to art 23 par 3: *“Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”*. But dignity alone as a principle was not yet meant to be applied on a legal context on her own, like human rights, being still more a philosophical or political than a legal term¹⁹³.

The International Covenant of Civil and Political rights of 1966 also mentions in its preamble that the *“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”*. Again, the distinction is made between dignity and rights while it is underlined that the rights of the Covenant *“derive from the inherent dignity of the human person”*; in other words, humans have rights because they already possess dignity. Consequently, since dignity is the origin of all rights, the does not have a solid normative content on his own, what could justify that its use is more political than legal¹⁹⁴.

In Europe, and particularly in the European Convention of Human Rights (ECHR) there is no certain definition of the ‘human being’ and the articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion) and 10 (freedom of expression) do not contain the word ‘dignity’; protection of dignity was instead substantially achieved in terms of the prohibition of torture of article 3 of the Convention¹⁹⁵. The Charter of Fundamental Rights of the EU (CFR), states in its preamble that *“the Union is founded on the indivisible, universal values of human dignity”*, while the first part is titled after ‘Dignity’, and Article 1 pointedly recognizes and protects human dignity: *“Human dignity is inviolable. It must be respected and*

¹⁹³Cassia P., *ibid*, p. 71

¹⁹⁴Cassia P., *ibid*,p. 73

¹⁹⁵Pettiti L.-E., *ibid*, p. 55

protected". Moreover, in CFR article 31 par. 1 it is stated that "*Every worker has the right to working conditions which respect his or her health, safety and dignity*"¹⁹⁶.

In Greece, the Constitution states in Art 2, par 1 that "*Respect and protection of the value of the human being constitute the primary obligations of the State*"¹⁹⁷. While the legislator did not use the term "dignity", it is assumed, by the etymology of the term, and by the close relationship with the German Constitution, that it is indeed the "human dignity" that the legislator wants to protect in this article, by including it into the State's fundamental principles¹⁹⁸. This principle however presented as an obligation for the State, causes difficulties in terms of interpretation, and also when needed to answer the question whether the protection of the human dignity prevails as the only and unique obligation of the State or not¹⁹⁹. According to an opinion, we should rather accept though that the principle is mainly a moral and political one, and it establishes not a right but a basic guideline, yet still engages the State and its powers to respect it and promote it in all their actions²⁰⁰. In that case, dignity provides people with an "immunity" that prioritizes its protection over the one of the other constitutionally protected rights, and so no deliberation between interests or rights should take place²⁰¹. Human dignity stands as the general "concept" in which the rights-conceptions exist²⁰².

2.3. The use of the term

On the use of dignity itself as a term, and the various versions of it, I choose to cite the distinction in which Paul Cassia concludes²⁰³, after pointing that there is not only one 'dignity' existing, but more. When it comes to dignity and people (and not dignity and the social functions for which he arguments too), he ascertains that there are two "versions" that should -but they are unfortunately not- be distinguished: the individual dignity, that belongs to a certain human being, or dignity of the personality (*dignité de la personnalité*) and the dignity that belongs to everybody and is common for

¹⁹⁶The Charter of Fundamental Rights of the European Union, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

¹⁹⁷The Constitution of Greece, available at <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

¹⁹⁸For a further analysis of the German Constitution on the term of dignity and the term persistency, see Chouvardas G., *ibid*

¹⁹⁹Vassiloyannis, F., *ibid*, p. 136

²⁰⁰Vassiloyannis F., *ibid*

²⁰¹*Ibid*.

²⁰²*Ibid*.

²⁰³Cassia P., *ibid*, p. 29-58

all human beings (*dignité de la personne humaine*). When applying the term “dignity” alone, we refer to the dignity that is separated from any judicial approach and characterizes a human in a moral, ethical way, hence according to Cassia, to the *individual dignity*; this dignity is subject to the individual’s behavior and can therefore be lost and found again, leading to someone being occasionally considered as admirable (fr: digne) or not. Depending on each and one’s behavior this dignity is not unique for all the human kind, contrary to the second type of dignity, the *human dignity* (*dignité de la personne humaine*). The latter is based on the “common foundations of humanity”, and is attributed to every human being as a consequence of its existence, thus being the same for all the homo sapiens, unique, absolute and eternal. Despite them being of different nature, the two notions are related since -according to Paul Cassia- a continuous and serious violation of the personal dignity could lead through to an abuse of the human dignity²⁰⁴.

On a legal aspect, for human dignity rather being a new term in the science of law, different meanings are given to the term and subsequently, various applications. It is either treated as a value, a morality or as a human right. As the authors of the Charter of Fundamental Rights of the EU stated in the Explanations relating to it, “*the dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights*”²⁰⁵. Being the ground, or basis, for human rights, the term is inevitably inserted into a legal habitat and should not be treated only as a moral idea, but as part of the legal system too, as Jeremy Waldron states²⁰⁶. Nevertheless, as he underlines, no “canonical definition” of dignity in law is today firmly established and its usage is seriously confused, as it often happens with the term of “democracy”, for which he makes an analogy²⁰⁷. He proposes that, despite the existing distinction between dignity as the ground of rights and dignity as the content of rights, the human dignity could be “the overall *telos* of rights in general”²⁰⁸.

²⁰⁴For the meaning of the word dignity and his argumentation, see Cassia P, Dignité(s), Dalloz 2016, p. 29-58

²⁰⁵Explanations relating to the Charter of Fundamental Rights, (2007/C 303/02), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007X1214%2801%29>

²⁰⁶Waldron J., *ibid*, p. 13-15

²⁰⁷*Ibid*, p. 15-19

²⁰⁸For the whole analysis see *ibid*, p. 15-19

3. Dignity and Human Rights

Paul Cassia sees the core, the “noyau dur”, of the fundamental human rights as the substance of the human dignity²⁰⁹. Undermining human rights and their enjoyment could put dignity at stake. A degrading treatment against an individual and his own dignity, can be a threat for the human dignity if constantly repeated, in breach for example of article 3 of the ECHR²¹⁰. In the same way, a repeated violation of a certain right or its perpetuate negation affecting more than one individual can put human dignity under risk.

It is rather undoubted that the economic crisis, the way in which it was treated or attempted to be “curated” in the particular case of Greece, the following era of austerity and the legislation born because of this new absolute “directive” had a without-precedent in the history of the 3rd Greek Republic negative effect on the enjoyment of human rights. More precisely, fundamental human rights were often put aside, neglected and finally violated.

Such violation of human rights, when it consists in rights like the right to social security, health, work or education, can unconditionally lead people to a state of poverty. But poverty stands as a barrier, refraining the individual from the absolute enjoyment of fundamental human rights, civil and political, but also economic, social and cultural, rights that are the ones that allow people to participate actively in the society, in its development and growth²¹¹. It leads to social exclusion and marginalization, and especially under the signalization as extreme, it leads through the breach of fundamental human rights, to, inevitably, a negation of human dignity²¹².

4. Austerity

In the context of the economic and financial crisis that hit Greece, severe austerity measures were as mentioned before implemented, as a way to help to the recovery of the national economic situation. However, austerity measures were harsh and have undermined human rights in several ways, whether by preventing government

²⁰⁹Cassia P., Dignité(s), Dalloz, 2016

²¹⁰Ibid, p. 54

²¹¹Ibid, p. 107

²¹²French Human Rights Commission and the International Movement ATD Fourth World, Protection of the poorest people's rights in the European Union, Proceedings of the study day, Paris, 28 March 2011, p.7

from investing into essential fields like social security and health protection, or by aggravating the already difficult situation of some particularly vulnerable groups, like children or elderly²¹³. Indeed, the social groups that were mostly and disproportionately influenced-in a negative way- by the economic crisis, were the groups that were already vulnerable before its burst²¹⁴. People that had not a permanent job or that were working part-time, having interim contracts were those that were before indicated as the groups with the highest poverty rates, a situation that did aggravate during crisis²¹⁵. Also people with disabilities, a particularly vulnerable group, they have experienced too cuts that lead to a lower level of health care supplied and thus to a worse standard of living²¹⁶.

The severe economic crisis that hit Greece had an immense impact on many aspects of social, economical and political life as well. The Memoranda of Understanding, that were, as mentioned above, incorporated into the greek legal order contained the obligations that Greece should meet in order for each tranche of the loans to be disbursed. Under this pressure, numerous laws introducing even more harsh austerity measures were voted, leading to a huge volume of new legislation characterized by lack of clarity and coherence²¹⁷. The political system and its functions, the Institutions, and finally the protection of human rights were at stake.

The meltdown of the global financial system has not only affected Greece however; As the Council of Europe Commissioner for Human Rights observes, the financial crisis was transformed into “a new political reality of austerity” that was now threatening the “over six decades of social solidarity and expanding human rights protection across Council of Europe member states”²¹⁸. Austerity was the main policy against the financial crisis not only for Greece but for many other European countries too, that would towards this direction, and with the support of European and

²¹³ COE, publication of an issue paper, 4/12/2013 https://www.coe.int/en/web/commissioner/test/-/asset_publisher/Rm1SRoqfe8BH/content/austerity-measures-across-europe-have-undermined-human-rights?_101_INSTANCE_Rm1SRoqfe8BH_viewMode=view/

²¹⁴The Greek Ombudsman, Annual Report 2015 , available at <https://www.synigoros.gr/?i=stp.el.annreports&yearFilter=2015>

²¹⁵Ibid, p. 29

²¹⁶ Coe, Visit to Greece, publication 08/07/2016 <https://www.coe.int/en/web/commissioner/-/greece-progress-in-combating-racism-but-concerns-remain-about-the-impact-of-austerity?desktop=true>

²¹⁷European Parliament, Policy Department C: Citizen’s Rights and Constitutional Affairs, Study for the LIBE Committee, The impact of crisis on fundamental rights across Member States of the EU, Country Report on Greece, 2015 , p. 20-28, available at

[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)

²¹⁸ The Council of Europe Commissioner for Human Rights, Issue Paper , Safeguarding Human Rights in times of economic crisis, 2013, available at <https://rm.coe.int/safeguarding-human-rights-in-times-of-economic-crisis-issue-paper-publ/16806daa3f>

international economic governance institutions, often “side-step regular channels of participation and accepted democratic balances”²¹⁹. In general, austerity reflects in four areas of action: a) public budget contraction that affect social spending, b) regressive taxation measures, c) labor market reforms and d) structural reforms to pension plans²²⁰.

4.1. The impact of austerity on human rights

Adjustment programs and austerity measures were sure to bring changes in society and the way it was functioning till that time. But unfortunately, “many Governments in Europe imposing austerity measures have forgotten about their human rights obligations, especially the social and economic rights of the most vulnerable” as the Council of Europe Commissioner for Human rights would note²²¹. Whilst the State has the obligation to respect, protect and fulfill human rights, in other words the obligation to avoid interfering to the exercise of a guaranteed right, to not accept abuses and to provide the means for an effective exercise of human rights, - a typology that can be applied to all rights and not only the civil and political ones- it is uncertain that that was the case in Europe during the crisis, for Greece particularly²²². Concern was expressed about the consequences of the strict austerity measures in national, European and international level, by entities that examined the measures and whether they were breaching or not international human rights standards, as the adjustment programs progressively increased unemployment, lead to job losses, cuts to health services and medicines, and consequently a high risk of poverty and social exclusion whereas no specific measures to protect the most vulnerable groups seemed to be seriously taken into consideration²²³.

The Council of Europe Commissioner for Human Rights, Dunja Mijatovic, in the context of a visit to Greece, noted that several human rights have been affected by

²¹⁹Ibid.

²²⁰Ibid.

²²¹Muiznieks N., Council of Europe Commissioner for Human Rights of the Council of Europe, Report 2013, available at <https://rm.coe.int/16806db80a>

²²²Tulkens F., The Contribution of the European Convention on Human Rights to the poverty issue in times of crisis, ECHR, Strasbourg 8/7/2015

²²³European Parliament (2014, February 21) Report on aspects of employment and social aspects of the role and work of Troika (ECB, Commission and IMF) for the euro area countries subject to the fiscal adjustment program. cited by Katseli C., Pantazis V., Gounela K., Human Dignity during the period of Economic and Social Crisis in Greece, Mediterranean Journal of Social Sciences, Vol. 7, No 4, July 2016, p. 464 and Papandreu M., The Greek Austerity measures in the light of international human rights law, available at www.lse.ac.uk

the austerity measures, and especially rights to health and to education, following major expenditure cuts for those particular public sectors. Concerning the right to health, what made the situation even worse is that parallel cuts in patients' wages and pensions have been made, preventing in this way effective access to health care, especially at a moment where it was proving to be more than necessary for the Greek population, counting an augmenting number of patients suffering from mental health illnesses-in link with the economic crisis consequences²²⁴. As for education, it is noted that the 'consequences of austerity on the right to education have also been severe', since 'school units, cuts in budget and staff, and reduction of teaching hours have raised important issues regarding both the access to education and the quality of the education during the economic crisis''²²⁵.

The austerity programs applied in Europe-and not only in Greece- raised also questions about the democratic processes and the social rights standards in the states of the Continent. In resolution 1884/2012 adopted by the Parliamentary Assembly, austerity measures are standing as 'a danger for democracy and social rights'. In particular, the parliamentary assembly underlined that the 'implementation of austerity measures is often linked to bodies whose character raises questions of democratic control and legitimization', giving the example of the 'so called 'troika' of the International Monetary Fund, the European Commission and the European Central Bank'. Moreover, the Assembly expressed its concerns on budgetary cuts in social expenditure, as, according to the resolution, "they may not reach their objective of consolidating public budgets, but risk further deepening the crisis and undermining social rights"²²⁶. But most importantly, the Assembly acknowledges that the budgetary cuts "mainly affect lower income classes and the most vulnerable categories of the population"²²⁷.

Economic crisis and austerity challenged the whole spectrum of human rights; economic, social and cultural rights have undergone a 'triple attack' as professor Sotiropoulos notes; an attack against the holders of those rights-as their number tends to shrink and be limited to a group of socially marginalized people-, their normative

²²⁴ Council of Europe, Commissioner for Human Rights, Country Visit, publication 29/06/2018, available at <https://www.coe.int/en/web/portal/-/greece-immediate-action-needed-to-protect-human-rights-of-migrants>

²²⁵ Ibid.

²²⁶ Resolution 1884/2012, Parliamentary Assembly, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18916&lang=en>

²²⁷ Ibid.

content –as no legal enforcement seems to be whatsoever granted to these rights anymore-, and their constitutional foundations too, mentioning that it is their very establishment as a result of social solidarity that is being threatened²²⁸.

I choose to cite four of the fundamental rights the enjoyment of which was –or still is - at stake: the right to work, the right to social security, the right to education and the right to health.

4.1.1. The right to Work

Austerity measures were particularly harsh and combined with the reforms imposed by Greece's lenders in the labor market, they lead to a serious threat of the enjoyment of the right to work, probably the most affected fundamental right during the crisis²²⁹. On an international scale, the ICSECR protects more explicitly than all the other international conventions- the right to work in articles 6-8. In Europe, RESC protects the right to work, in art 1-6 and art 24, while CFR provides protection for fair and just working conditions (art 31), collective bargaining (art 28) and protection against unjustified dismissal (art.30). In Greece, the right to work is protected also by the Greek Constitution, art. 22, par 1-4. The state's commitment consists in creating working conditions for those wishing and being able to work, while it does not provide the individuals the right to act against the State and demand for a specific job²³⁰. All workers shall be entitled to equal pay for work of equal value, while discrimination regarding payments and compulsory work are prohibited.

The ECSR did more than once conclude to non-conformity of the austerity measures with the ESC labor rights that resulted to workers facing poverty, while concerns have also been expressed by several ILO bodies²³¹. At the same time, trade union and collective bargaining rights were severely affected, as the State would usually interfere to manage bargaining, by substantially replacing the collective organs and violating the autonomy of social partners²³². Unemployment rates were extremely high (27,5% in 2013) and the measures had a disproportional effect on the youngest part of

²²⁸Sotirelis G., Social Rights in the time of the economic crisis, Efim DD 3/2013, p. 298-302

²²⁹European Parliament, The impact of crisis on fundamental rights across Member States of the EU- Country Report on Greece, 2015, p. 60

²³⁰Chrysogonos K., Civil and Political Rights, *ibid*, p. 555

²³¹Greek National Commission for Human Rights, (GNCHR), Report submitted to the UNCHR Universal Periodic Review of Greece, September 2015, p. 5

²³²*Ibid*, p.5

the population while women were also disproportionately affected, facing a particular high unemployment rate ²³³. Corruption, ethnic or racial discrimination, labor exploitation and insufficient inspection of working conditions were factors that were mentioned as highly likely to lead to a breach of the right to work and to just and favorable conditions of work too²³⁴. Measures legislated under the pressure of the State's lenders aiming at facilitating the dismissal of employees and their placement in a labor reserve and other mobility schemes were particularly harsh as well. In his report published in 2016 the UN Independent Expert would notice that about one million jobs have been lost since the beginning of the crisis, to add that the significantly low level of minimum wage was not sufficient to provide workers and their families a decent living, thus violating article 7(a) (ii) of the International Covenant on Economic, Social and Cultural Rights²³⁵.

4.1.2. The right to Social Security

The right to social security is guaranteed in the greek rule of law by article 22 par 5²³⁶ of the Constitution of Greece and “even though it does not contain detailed State obligations it establishes a relevant social *acquis*”²³⁷. The social security system in Greece was right from the start at the epicenter of the reforms that were considered necessary in order for the goals of the financial support program to be achieved. A certain reform however, the PSI, lead to losses of more than 50% of the bonds possessed by the greek social security institutions, affecting even more the already

²³³ United Nations Human Rights Council, Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, Greece, 7/3/2016, A/HRC/WG.6/25/GRC/2, p.11, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/043/23/PDF/G1604323.pdf?OpenElement>

²³⁴ United Nations Human Rights Council, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, Greece, 22/2/2016, A/HRC/WG.6/25/GRC/3, p.8-9 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/032/46/PDF/G1603246.pdf?OpenElement>

²³⁵ Report of the Independent Expert of the United Nations on the effects of foreign debt and other related international obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece, A/HRC/31/60/Add.2, p.15-16, available at <http://www.undocs.org/A/HRC/31/60/Add.2>

²³⁶ Article 22 par.5 : “The State shall care for the social security of the working people, as specified by law. “, <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

²³⁷ European Parliament, The impact of crisis on fundamental rights across Member States of the EU-Country Report on Greece, 2015, p. 88

fragile system²³⁸. Successive cuts imposed by multiple laws have led to a significant cumulative effect: whilst austerity measures are on a first level imposed horizontally on a group of social policy determining factors, if the progress made is not adequate to the pre-fixed standards, new measures- having the form of expenditure cuts- are imposed; and when added to the previously existing ones the result is that the already vulnerable group is becoming even more vulnerable²³⁹. That was the case with the cuts made to the national pension system, for which the ECSR have repeatedly found in breach of the article 12 par 3 of the ESC for the right to social security²⁴⁰. To cite one example, of the decision of the 07.12.2012 of the ECSR, the Committee considers that “the cumulative effect of the restrictions [...] is bound to bring about a significant degradation of the standard of living and the living conditions of many of the pensioners concerned”,²⁴¹.

4.1.3. The right to Education

Another fundamental right seriously undermined due to the crisis and the austerity measures was the right to education, constitutionally protected by the article 16 of the Constitution of Greece, enhanced by its protection universally in various treaties and covenants, like the article 2 par. 1 of the ECHR and the article 13 of the ICESCR²⁴². Major expenditure cuts, including cuts on the employee’s salaries and also for recruitments, and at the same time an increase in the student contribution created concerns at the right’s application. Between 2009 and 2013, spending budget on secondary schools in Greece decreased by 28.6%²⁴³. The State tried to ‘rationalize’ the system also by shutting down school units or by merging them, however as the Greek Federation of Secondary Education State School Teachers of Greece (OLME) claimed, these practices ‘lead to large classes of 30 students, renders access to education more

²³⁸Ibid, p. 98-99.

²³⁹Poulou A., Austerity Measures and Charter of Fundamental Rights of the European Union, DTA no 62/2014, p. 861-862

²⁴⁰Ibid, p. 861-862

²⁴¹ECSR, Complaint no 76/2012, Federation of employed pensioners of Greece (IKA-ETAM) vs Greece, decision 07.012.2012, par. 78f, cited by Fischer-Lescano A., Human Rights in times of austerity policy, Volume 68, Nomos, Baden-Baden 2014, p. 51

²⁴²European Parliament, The impact of crisis on fundamental rights across Member States of the EU- Country Report on Greece, 2015, p. 30-31 and Fischer-Lescano A., Human Rights in times of austerity policy, Volume 68, Nomos, Baden-Baden 2014, p. 52-53

²⁴³United Nations Human Rights Council, 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, 21/4/2016, A/HRC/31/60/Add.2, par. 36, p. 11, available at <http://www.undocs.org/A/HRC/31/60/Add.2>

difficult for children of underprivileged areas and creates employment uncertainty for professors’²⁴⁴.

4.1.4. The Right to Health

The Right to health is protected by, among others, Article 35 CFR, article 12 of the ICESCR and also article 11 of the ESC while the Greek Constitution protects the right to health as a social right on article 21 par. 3²⁴⁵. The measures taken under the obligations laid down by the MoUs resulted in a “highly-fragmented non-consolidated and, in some cases, confusing legal framework for the regulation of the right to access to healthcare – which could be considered as impeding, in practice, the enjoyment of the right”, as the Country Report on Greece for the impact of the crisis on fundamental rights across member States of the EU published by the European Parliament mentions²⁴⁶. The UN Independent Expert on the effects of foreign debt Cephas Lumina underlined on a statement of 26.04.2013 that “the public health system has become increasingly inaccessible, in particular for poor citizens and marginalized groups, due to increased fees and co-payments, closure of hospitals and health care centers and more and more people losing public health insurance cover, mainly due to prolonged unemployment”, adding that the fees have been increased also for non-resident foreigners and irregular migrants²⁴⁷. Furthermore, the UN Independent expert on his report of 2015 stated that the right to health was jeopardized ‘in all its dimensions, including accessibility, affordability, acceptability and quality’²⁴⁸. It is also important to mention that economic crisis resulted in an augmentation of mental health issues and depression, which is also proven statistically: the percentage of calls to a specific helpline to ask for help for problems related to the crisis raised from 1,8% in the period July-December 2008 to 8,4%, and 26.9% over the same period in 2009 and 2010

²⁴⁴‘OLME reactions to the merger and closure of schools’, Eleftherotypia Newspaper, 14 November 2014, <http://www.enet.gr/?i=news.el.article&id=259369> cited by European Parliament, The impact of crisis on fundamental rights across Member States of the EU- Country Report on Greece, 2015, p. 39-40

²⁴⁵European Parliament, The impact of crisis on fundamental rights across Member States of the EU- Country Report on Greece, 2015, p. 42

²⁴⁶Ibid, p.43

²⁴⁷Cephas Lumina, United Nations 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, statement 26.04.2013, cited by Fischer-Lescano A., Human Rights in times of austerity policy, Volume 68, Nomos, Baden-Baden 2014, p. 52

²⁴⁸ Report of the Independent Expert of the United Nations on the effects of foreign debt and other related international obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece, A/HRC/31/60/Add.2, par.35, p.11, available at <http://www.undocs.org/A/HRC/31/60/Add.2>

respectively²⁴⁹. In the national report submitted by Greece to the UN Human Rights Council in 2016 for the universal periodic review and considering the right to health, it is stated that the health system of Greece is “under-financed”, that “it is estimated that there are 2,500,000 uninsured citizens” and that ‘a large part of the population live below the poverty line’²⁵⁰.

5. Poverty as a consequence of austerity through the violation of human rights

5.1. Definition of Poverty

Manifestations of poverty vary, with the first coming in mind to be the lack of a basic income that leads to inability of possessing basic goods, a situation that is usually being transferred from one generation to another. However, it should be rather accepted that in our society today poverty is -under a broader conception- the lack not only of income, but of the “basic capabilities to live in dignity”²⁵¹. Whereas in this way poverty’s broader parameters like hunger and social exclusion are being recognized, poverty may be defined as a “human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political, and social rights”²⁵². A human being facing poverty certainly faces difficulties in accessing rights like education, healthcare, housing, public and private services²⁵³. That is why for measuring poverty also non-money indicators count a lot and

²⁴⁹Bourikos, D., & Sotiropoulos, D. (2014). Economic Crisis, Social Welfare and Civil Society, The impact of the economic crisis on the formal and informal civil society actors in the field of social solidarity and new constraints of social citizenship in the period of economic crisis. Athens: ELIAMEP. Observatory for Crisis, cited by Katseli C., Pantazis V., Gounela K., Human Dignity during the period of Economic and Social Crisis in Greece, Mediterranean Journal of Social Sciences, Vol. 7, No 4, July 2016, p. 465

²⁵⁰ United Nations Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Greece, 22/2/2016, A/HRC/WG.6/25/GRC/1, par.17, p.6 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/032/55/PDF/G1603255.pdf?OpenElement>

²⁵¹ United Nations Economic and Social Council, Substantive Issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International covenant on economic, social and cultural rights, Statement adopted by the Committee on Economic, Social and Cultural rights on May 4 2001, 10/5/2001, E/c.12/2001/10, par.7, available at <https://undocs.org/en/E/C.12/2001/10>

²⁵²Ibid.

²⁵³Kjaerum, M., Poverty and Social Exclusion in the European Union – a fundamental rights perspective, in French Human Rights Commission and the International Movement ATD Fourth World, Protection of the poorest people’s rights in the European Union, Proceedings of the study day, Paris, 28 March 2011

are very important towards understanding poverty's multiple dimensions and complex nature²⁵⁴.

Concerning extreme poverty, it can be defined as “the combination of income poverty, human development poverty and social exclusion”²⁵⁵. According to Joseph Wresinski, the “lack of basic security” is crucial for the definition of extreme poverty: *“a lack of basic security is the absence of one or more factors that enable individuals and families to assume basic responsibilities and to enjoy fundamental rights. Such a situation may become more extended and lead to more serious and permanent consequences. Chronic poverty results when the lack of basic security simultaneously affects several aspects of people's lives, when it is prolonged, and when it severely compromises people's chances of regaining their rights and of resuming their responsibilities in the foreseeable future”*²⁵⁶. The notion of “extreme poverty” was introduced in the greek legal world by the law 4093/2012, that established a pilot program of a Guaranteed Minimum Income, while mentioning that its application would address people and families that live under conditions of extreme poverty²⁵⁷.

5.2. Poverty and Human Rights

In 2015, the Independent Expert of the United Nations on the effects of foreign debt and other related international obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights conducted an official visit to Greece. In the conclusions of the his report, Juan Pablo Bohoslavsky highlighted the fact that at that time, more than one million persons in Greece have fallen below income levels indicating extreme poverty, mainly as a result of the austerity measures implemented since 2010. Furthermore, it is noted that “extreme poverty in Greece is pervasive, taking into consideration the fact that currently, 1 of 10 persons (or 10.4 percent of the population) is living under such conditions”²⁵⁸. In addition, according to

²⁵⁴World Bank on Poverty, <http://www.worldbank.org/en/topic/poverty/brief/global-poverty-line-faq>

²⁵⁵Guiding principles on extreme poverty and human rights, par. 2 available at <https://www.ohchr.org/en/issues/poverty/pages/dgpintroduction.aspx>

²⁵⁶Wresinski, J., Chronic Poverty and Lack of Basic Security Report, cited by Renoux M.-C., Speaking out against human rights violations caused by extreme poverty, in Protection of the poorest people's rights in the European Union, Proceedings of the study day organized in Paris by the French Human Rights Commission and the International Movement ATD Fourth World, 28 March 2011, p.

²⁵⁷The Greek Ombudsman, annual Report 2015, *ibid*, p. 29

²⁵⁸Report of the Independent Expert of the United Nations on the effects of foreign debt and other related international obligations of States on the full enjoyment of all human rights, particularly

the data of the Hellenic Statistical Authority exposed in the report, 3.8 million people, 36% of the population, were at risk of poverty or social exclusion in Greece, the highest rate in the Eurozone, whereas over one million people were considered to be extremely poor during year 2014²⁵⁹. This percentage was the highest during the years of crisis, since 2008, while the most recent statistics (year of reference is 2016) show that 34,8% of the population (3.701.800 people individuals) were at risk of poverty or social exclusion in 2017²⁶⁰.

Eurostat, the statistical office of the European Union, published a news release on October 17th, 2018 according to which 22,5% of the population of the European Union were during year 2017 at risk of poverty or social exclusion²⁶¹. Conforming to the report, that means that they were at least in one of the three following conditions: income poverty²⁶², severe material deprivation²⁶³ or living in households with very low work intensity²⁶⁴. Greece (34,8%) was among the three member states in which more than a third of the population was at risk of poverty or social exclusion, along with Bulgaria (38,9%) and Romania (35.7%), not to mention that Greece is also the State in which the highest increase in the EU of the people at risk of poverty or social exclusion has been recorded : from 28,1% in 2008 – the first year when the global economic crisis burst out- to 34,8% in 2017, what makes an augmentation of 6,7 percentage points²⁶⁵. What is more, at risk of poverty in Greece was also the 19,7% of the population with a tertiary education Union (levels 5-8, according to the International Standard Classification of Education- ISCED 2011) -when in France for example the

economic, social and cultural rights on his mission to Greece, A/HRC/31/60/Add.2 , <http://www.undocs.org/A/HRC/31/60/Add.2>

²⁵⁹Ibid, p. 16

²⁶⁰Report of the Hellenic Statistical Authority on the income and living conditions (SILC) 2017, <http://www.statistics.gr/el/statistics/-/publication/SFA10/2017>

²⁶¹ Eurostat news release 159/2018 <https://ec.europa.eu/eurostat/documents/2995521/9310033/3-16102018-BP-EN.pdf/16a1ad62-3af6-439e-ab9b-3729edd7b775>

²⁶²Equals living in a household with an equivalised disposable income below the risk-of-poverty threshold which is set at 60% of the national median equivalised disposable income (after social transfers). The equivalised income is calculated by dividing the total household income by its size determined after applying the following weights: 1.0 to the first adult, 0.5 to each other household member aged 14 or over and 0.3 to each household member aged less than 14 years old. , *ibid*.

²⁶³Equals living conditions constrained by a lack of resources and experience at least four out of the nine following deprivation items: cannot afford 1) to pay rent/mortgage or utility bills on time; 2) to keep home adequately warm; 3) to face unexpected expenses; 4) to eat meat fish or a protein equivalent every second day; 5) a one week holiday away from home; 6) a car; 7) a washing machine; 8) a colour TV; or 9) a telephone (including mobile phone). , *ibid*

²⁶⁴Those are the people aged 0-59 who live in households where on average the adults (aged 18-59) worked less than 20% of their total work potential during the past year. Students are excluded., *ibid*.

²⁶⁵*ibid*

same percentage is 8,1%, Greece has again the highest percentage among the countries of the European Union²⁶⁶.

5.3. Poverty as a negation of human dignity

As Bonefeld and Psychopedis are questioning, how can it be possible for humanity “to walk upright in dignity” when we and our lives are being formed into an irrational economic system that produces poverty in a world of plenty?²⁶⁷

Poverty is a multidimensional phenomenon and should not be treated one-dimensionally as an economic issue; poverty equals not only deprivation from basic income but also from the basic capabilities to live in dignity²⁶⁸. Extreme poverty, as well as social exclusion, “constitute a violation of human dignity”, according to the declaration adopted by the World Conference on human rights in Vienna on 25 June 1993, par. 25 ²⁶⁹.

Human dignity can be considered as the basis of human rights, the very foundation of them or the one fundamental principle that encloses them all. Human dignity is in other words inevitably related to human rights and cannot be enjoyed without their fulfillment. It reinforces their foundation and legitimacy, by being their source²⁷⁰. And human rights can be violated by the state of poverty, the latter being both the cause and the result of such violation²⁷¹.

As human rights are characterized by the principles of interdependence, indivisibility and interrelatedness, poverty comes to demonstrate this relation in a very straight way: people who live in poverty experience a daily violation of their civil, political, economic, social and cultural rights, leading to an interaction that

²⁶⁶<https://ec.europa.eu/eurostat/news/themes-in-the-spotlight/poverty-day-2018>

²⁶⁷Bonefeld W., and Psychopedis K., *Human Dignity: Social Autonomy and the Critique of Capitalism*, Ashgate 2005, p. 2-3

²⁶⁸United Nations Human Rights Council, Final draft of the Guiding Principles on extreme poverty and human rights, submitted by Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 18/7/2012, A/HRC/21/39, available at <https://undocs.org/A/HRC/21/39>

²⁶⁹The Vienna Declaration of 1993, <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

²⁷⁰Phillips B., *Dignity and Human Rights. A missing dialogue?* Bellagio: PWESCR, 2011

²⁷¹Dassé, M., (discussion) in *Protection of the poorest people's rights in the European Union*, Proceedings of the study day organized in Paris by the French Human Rights Commission and the International Movement ATD Fourth World, 28 March 2011, p. 84

unfortunately brings much at stake²⁷². Living in extreme poverty can be the cause and the consequence at the same time, of violations of fundamental rights; in that way poverty can be the reason for which the people suffering from it are being deprived from having an effective access to those fundamental rights²⁷³. And at the same time, it is exactly this lack of efficient access to the enjoyment of fundamental rights, like education and employment, that can lead to poverty. As stated in the report submitted by the Special Rapporteur on extreme poverty and human rights of the United Nations Magdalena Sepulveda, poverty is characterized by “*a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce each other*”²⁷⁴. However, living in dignity assumes that each can fully and equally enjoy all fundamental human rights.

5.3.1. Adequate Standard of Living

We should agree that “*one’s inherent dignity may become mired in suffering and degradation if it is not matched by living conditions that make dignity a reality*”²⁷⁵. Back in 2013, the UN independent Expert was worried about the fact that the minimum wage was pushed below poverty thresholds and that way the living standards of the population was seriously affected. The labor market reforms imposed since 2010, aiming to increase competitiveness of the greek economy, have lead to serious reductions of minimum wages, particularly in respect of young worker’s salaries²⁷⁶ (P.Y.S 6/2012, according to law 4046/2012art 6, par 1: reduction by 32 % for those aged under 25 years, when 22% for workers over 25 years). Measures like the above, result of the austerity policies, leading to the formation of wages not sufficient to

²⁷²United Nations Human Rights Council, Final draft of the Guiding Principles on extreme poverty and human rights, submitted by Special Rapporteur on extreme poverty and human rights, Magdalena Sepulveda Carmona, 18/7/2012, A/HRC/21/39, available at <https://undocs.org/A/HRC/21/39> and Brillat, R., Is sufficient use made of the European’s Social Charter’s potential in the struggle against poverty?, in Protection of the poorest people’s rights in the European Union, Proceedings of the study day organized in Paris by the French Human Rights Commission and the International Movement ATD Fourth World, 28 March 2011

²⁷³Renoux, M.-C., Speaking out against human rights violations caused by extreme poverty, *ibid*,

²⁷⁴ United Nations Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepulveda Carmona, 11/3/2013, A/HRC/23/36, available at <https://undocs.org/A/HRC/23/36>

²⁷⁵Phillips B., *ibid*, p.11

²⁷⁶Law n. 3845/2010, art 2, par 9-e regulates that the minimum salary of young people under 25 years old entering the labor market can be determined by a presidential act.

provide a decent living, urged the independent expert to underline that a violation of standards set out by treaties in which greek state is a party was highly possible.

The Independent expert also mentioned the decision of the European Committee of Social Rights of the Council of Europe which judged, among else, that the provision contained in Act No. 3863 of 15/7/2010²⁷⁷ (that was replaced by the P.Y.S 6/2012, art.1), concerning the employment of new entrants to the labor market aged under 25 violates article 4 par. 1²⁷⁸ of the ESC, in conjunction with article 1 par. 2²⁷⁹ of the 1961 Charter²⁸⁰. Apart from the above complaint, no. 66/2011, the General Federation of employees of the national electric power corporation (GENOP-DEI) and the Confederation of Greek Civil Servants' Trade Unions (ADEDY), submitted also complaint no. 65/2011, both through the collective complaints procedure²⁸¹ monitoring the implementation of the European Social Charter. Both were declared admissible and judged, and led to the decisions no. 65/2012²⁸² and 66/2012²⁸³. The ECHR concluded to multiple violations of the European Social Charter deriving from the austerity measures and the legislation implementing these measures into the greek rule of law. The ECHR commented additionally that 'the economic crisis should not have as a consequence the reduction of the protection of the rights recognized by the Charter'

²⁷⁷And specifically art 74, par 8. of law 3863/2010 : <http://www.ggka.gr/latest/n3863-2010.pdf>

²⁷⁸Article 4 - The right to a fair remuneration ,Part I: "All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families."Part II: "With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake: §1. To recognize the right of workers to a remuneration such as will give them and their families a decent standard of living; (...)"

²⁷⁹Article 1 – The right to work, Part I: "Everyone shall have the opportunity to earn his living in an occupation freely entered upon."Part II: "With a view to ensuring the effective exercise of the right to work, the Parties undertake: (...)§2. "to protect effectively the right of the worker to earn his living in an occupation freely entered upon; (...)"

²⁸⁰Complaint No. 66/2011, Decision on the Merits, 23 May 2013, www.coe.int/t/dGHI/monitoring/Socialcharter/Complaints/CC66Merits_en.pdf, cited by United Nations Human Rights Council, 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, Cephias Lumina, 27/3/2014, A/HRC/25/50/Add.1, available at <http://www.undocs.org/A/HRC/25/50/Add.1> paragraphs 34 -35

²⁸¹ Procedure introduced by the Additional Protocol providing for a system of collective complaints, adopted in 1995 , <https://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure>

²⁸² Decision on the merits, [https://hudoc.esc.coe.int/eng/#{%22ESCDcIdentifier%22:%22cc-65-2011-dmerits-en%22%7D}](https://hudoc.esc.coe.int/eng/#{%22ESCDcIdentifier%22:%22cc-65-2011-dmerits-en%22%7D)

²⁸³ Decision on the merits, [https://hudoc.esc.coe.int/eng/#{%22ESCDcIdentifier%22:%22cc-66-2011-dmerits-en%22%7D}](https://hudoc.esc.coe.int/eng/#{%22ESCDcIdentifier%22:%22cc-66-2011-dmerits-en%22%7D)

and that ‘such measures should not excessively destabilize the situation of those who enjoy the rights enshrined in the Charter’²⁸⁴²⁸⁵.

As the country was experiencing an even greater recession, the level of the minimum wage was not proving to be sufficient to provide workers and the families with a decent living and also the young workers were disproportionately affected²⁸⁶. The same year, Greek jurisprudence would however deny that a violation of art 2. par. 1 of the Constitution of Greece protecting the value of the human being occurred, as a result of the huge wage cuts, because as exposed in thought no. 35 of the judgment, no minimum level of income or pension is secured by the Constitution. On the other hand, a minority of six judges stated that indeed the cuts on benefits for certain categories of pensioners and workers could lead to “a violation of the minimum level of decent living imposed by art 2 par 1 of the Constitution”²⁸⁷, without however making a precision on what this level of decent living consists of²⁸⁸.

The guarantee for a decent living certainly means more than a simple guarantee of a basic income, as its recognition and pursuit aims not only to provide a minimum salary to each individual, but also to cover needs of human being having an active role into a society, being not deprived from the access to proper housing or education and social security²⁸⁹. Material deprivation is to taken seriously under consideration too, even though it also concerns part of the population that is not at poverty risk and not only the poor²⁹⁰; As Amartya Sen notes, “being poor has clearly much to do with being

²⁸⁴Par. 12 and 13, *ibid*

²⁸⁵For an analysis of both cases, see Gavalas N., The European Social Charter as a mechanism of protection for fundamental labor and social rights, *Labor Law Revue*, 70/2011, p. 449-472, and also of Gavalas N., Strasbourg denies regulations of the memorandum (Anachoma se mnimoniakes rythmiseis apo to strasvourgo), *Labor Law Review*, 71/2012, p. 1561-1574, Deligianni-Dimitrakou C., The decisions of the ECHR on the greek austerity measures and their effectiveness, *constitutionalism.gr*, <https://www.constitutionalism.gr/2538-oi-apofaseis-tis-eyrwpaikis-epitropis-koinwnikwn-d/>

²⁸⁶ United Nations Human Rights Council, Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, Greece , 7/3/2016, A/HRC/WG.6/25/GRC/2, par 62, page 11 , available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/043/23/PDF/G1604323.pdf?OpenElement> and United Nations Economic and Social Council, Concluding observations on the second periodic report of Greece, 27/10/2015, E/C.12/GRC/CO/2 , par.19, p.5 available at <http://www.undocs.org/E/C.12/GRC/CO/2>

²⁸⁷The Council of State (StE) 668/2012, par.36

²⁸⁸Mantzoufas P., *Economic Crisis and Constitution*, Sakkoulas Publication, 2014, p. 153-159

²⁸⁹Sotirelis G., *Social Rights during economic crisis*, speech published on www.hlhr.gr

²⁹⁰United Nations Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Greece, 22/2/2016, A/HRC/WG.6/25/GRC/1, par.3, p. 2, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/032/55/PDF/G1603255.pdf?OpenElement>

deprived”²⁹¹; it results as a barrier to each one’s personal development, of his personality, and therefore to the final contribution of every individual to the society he lives in²⁹². In the greek rule of law the guarantee can be excluded when combining both the article 2 par 1 of the Constitution²⁹³ and article 25 par 1, 2 and 4 of the Constitution²⁹⁴ that introduces the principal of the welfare State, as well as the principles of national and social solidarity; this combination leads to the conclusion that one should only have his ‘living’ protected by the State, but instead a living in dignity, or a decent living²⁹⁵.

The Federal Constitutional Court of Germany in a 2012 judgment concerning asylum seekers and the benefits they were receiving from the State, were -especially when compared to the benefits granted to non-asylum seekers-, insufficient to allow them to have a life of dignity, whereas two years earlier the same Court had recognized a right to participate to the public life in order to be able to have social relations as a fundamental right of the minimum living standard²⁹⁶. In the European Union, the directive 2003/9/EC, of 27 January 2003, laying down minimum standards for the reception of asylum seekers, mentioned in its preamble and specifically in paragraph 5, that the fundamental rights recognized by the Charter of Fundamental Rights shall be respected and that “the European Union seeks to ensure full respect for human dignity and to promote the application of Articles 1²⁹⁷ and 18²⁹⁸ of the said Charter”²⁹⁹. That

²⁹¹Sen A., *Poverty and Famines*, Clarendon Press, Oxford, 1981, p.15-17

²⁹²Phillips B., *Dignity and Human Rights. A missing dialogue?* Bellagio: PWESCR, 2011, p. 13

²⁹³Article 2: 1. Respect and protection of the value of the human being constitute the primary obligations of the State” <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

²⁹⁴Article 25: 1. The rights of the human being as an individual and as a member of the society and the principle of the welfare state rule of law are guaranteed by the State. All agents of the State shall be obliged to ensure the unhindered and effective exercise thereof. These rights also apply to the relations between individuals to which they are appropriate. Restrictions of any kind which, according to the Constitution, may be imposed upon these rights, should be provided either directly by the Constitution or by statute, should a reservation exist in the latter’s favor, and should respect the principle of proportionality. 2. The recognition and protection of the fundamental and inalienable rights of man by the State aims at the achievement of social progress in freedom and justice. 3. The abusive exercise of rights is not permitted. 4. The State has the right to claim of all citizens to fulfill the duty of social and national solidarity” <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

²⁹⁵Mantzoufas P., *ibid*

²⁹⁶Cassia P., *Dignité(s)*, Dalloz, 2014, p. 104-105

²⁹⁷Article 1-Human Dignity: Human dignity is inviolable. It must be respected and protected., <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

²⁹⁸Article 18 -Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as ‘the Treaties’). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

directive was repealed by directive 2013/33/EU³⁰⁰ in which again the need for full respect to be ensured for human dignity and the application of art. 1 of the Charter during the procedures concerning the applicants for international protection is repeated³⁰¹.

Besides, and not in the frame of the asylum seekers' protection, the legislation produced by the European Union has repeatedly insisted on making sure that people have the treatment and also the resources they deserve in order to live in dignity. In the Council Recommendation of 24 June 1992, the Union recommends to the Member States to "recognize the basic right of a person to sufficient resources and social assistance to live in a manner compatible with human dignity as part of a comprehensive and consistent drive to combat social exclusion" and to fix "the amount of resources considered sufficient to cover essential needs with regard to respect for human dignity, taking into account of living standards and price levels"³⁰². EU recognizes the basic role that a minimum income can play against poverty and a decent living, and underlines that "poverty and social exclusion constitute violations of the human dignity and the human rights"³⁰³.

5.4. Insult to the Human Dignity

Fundamental constitutional principles and guaranteed human rights have been undermined and violated, along with the constitutionally protected *value of the human being*, which the State is committed to respect, its obligation deriving from article 2 par. 1 of the Constitution but also from the international and European conventions and treaties that Greece has ratified and bind the state³⁰⁴.

²⁹⁹Directive 2003/9/EC <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF> , cited by Cassia P., *ibid*.

³⁰⁰ The 2013/33/EU Directive: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0033>

³⁰¹Preamble, par. 35 of the 2013/33/EU directive: "This Directive respects the fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly".

³⁰²Council Recommendation 92/441/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992H0441&from=EL> , cited by Mantzoufas P., *ibid* , Cassia P., *ibid*

³⁰³Cassia P., *ibid*.

³⁰⁴Greek National Commission for Human Rights (GNCHR) Statement on the impact of the continuing austerity measures on human rights, 15/07/2015, nchr.gr

A research was conducted in 2014-2015 in Greece trying to answer whether the latter was plausible or not³⁰⁵. The basic hypothesis made was that “the “Economic Crisis” and more specific the reductions that have occurred in the “Incomes” of Greek citizens affects their “Dignity” in such an extent so that they feel that they have sustained an “Insult to their Dignity”.” As it is precised in the research paper, the survey “sought to focus on the impact of the economic and social crisis on the preservation of the dignity of citizens in a social sedimentation climate and a humanitarian crisis, on the social policy pursued by the state and the importance of the welfare state in times of economic recession”’.

The conclusions in which the researchers ended up demonstrate that in Greece, ‘a large portion of the population has suffered an insult to their dignity’³⁰⁶. Women and especially those belonging to the age groups 55- 65+ were among the most affected and the people with not a tertiary education were principally suffering from a deterioration of living standards³⁰⁷. Lack of a certain amount of income, the living conditions, the health status and the social exclusion were associated with this insult to dignity³⁰⁸.

³⁰⁵Research paper, by Katseli C., Pantazis V., Gounela K., Human Dignity during the period of Economic and Social Crisis in Greece, *Mediterranean Journal of Social Sciences*, Vol 7, No 4, July 2016

³⁰⁶*Ibid*, p. 472

³⁰⁷*Ibid*, p. 472

³⁰⁸*Ibid*, p. 472

Conclusions

The crisis, economic, political, social and moral left her mark on the greek society that experienced and still continues to experience great difficulties in all fields of life. Inadequate housing-many, single adults or entire families, had also to quite their houses as they could not afford to pay the rent or the bills and returned to their parental house, what often lead to over-crowded houses where relationships can be more easily challenged- , low income –or income below the poverty thresholds-, inadequate health care – as cuts both on personnel and on expenditures affected the quality of services and prevented many from early access to health care, leading to urgent and thus more expensive solutions later³⁰⁹- and incapability of efficiently participating in social and cultural life lead to a progressive social exclusion for a big number of greek citizens that would see their life incline³¹⁰; a life that was no more the same and had nothing to do with the prosperity-even though based on apparently unstable grounds- of the past years.

Fundamental rights, apart from the right of equal access to education, the right to work, the right to social security and the right to health were indeed under risk: the right to property, the right of access to Justice, the right of freedom of assembly and expression, the right to housing, the right of contribution of citizens to the public charges in proportion to their means as well as the principal of social solidarity and the principal of protected public trust towards State institutions³¹¹. Violation concerned the guarantees established by the Constitution of Greece as well as the international and European human rights law, and was affirmed by monitoring bodies and judicial mechanisms too, both national and supranational³¹². It has also been supported that the Memoranda of Understanding themselves, they are an ‘encroachment on fundamental rights’³¹³. In Greece however the impact of the crisis was so severe that the crisis lead apart from a human rights crisis to a humanitarian crisis too ³¹⁴.

³⁰⁹Ibid, p. 464

³¹⁰Greek Ombudsman, annual report 2015, p. 29

³¹¹Greek National Commission for Human Rights (GNCHR), Statement on the impact of the continuing austerity measures on human rights, 15/7/2015, p. 6, available at www.nchr.gr

³¹²Ibid, p.6

³¹³See Fischer-Lescano A., Human Rights in times of austerity policy, Volume 68, Nomos, Baden-Baden 2014, p.56-62

³¹⁴United Nations Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Greece, 22/2/2016, A/HRC/WG.6/25/GRC/1, par.15, p.5, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/032/55/PDF/G1603255.pdf?OpenElement>

The Council of Europe Commissioner for Human rights in his 2013 report concerning not only Greece but the whole Europe, stipulates that “human rights violations related to austerity can also have long-term and intergenerational effects”³¹⁵, an aspect of the crisis that was rather neglected during the implementation of financial aid programs as the emphasis was given on austerity as a policy choice. As reported by the Commissioner, *“the loss of a decent job without an effective social protection program in place can quickly lead to eviction from housing and homelessness, and ultimately result in ill health and even death. Children exposed to poverty and malnutrition in their families may suffer from stunted physical growth and lasting social and health effects into adulthood. In addition, their educational achievements are likely to be inhibited, hindering their potential as human beings in society. An increasing number of children are dropping out of school to find employment and support their families, risking life-long setbacks in educational achievement. This creates the conditions for job insecurity coupled with the re-emergence of child labor and exploitation. As a result, Europe risks producing a “lost generation” of disillusioned young people with potentially grave consequences for intergenerational solidarity, social cohesion and long-term political stability”*³¹⁶.

For Europe to balance between fiscal interest and stabilization of the European economy and the promotion of the founding principles of the Union proved to be very challenging as the time was passing by, mostly under recession for the greek economy in particular. The president of the European Parliament during the period 2012-2017, Martin Schulz has made a statement indicative of the situation on the Old Continent : ‘while we are all in a prolonged global economic slowdown that forces governments to stringent budgetary cuts, those values guaranteed in the Lisbon Treaty should in no way be undermined’³¹⁷.

Austerity measures violated human rights standards and exacerbated poverty among the population³¹⁸. A large part of the people became even more vulnerable, left alone with no serious hope for a rise to come because of their sacrifices. Poverty and extreme poverty resulted in prohibiting access to first-need goods, services and social

³¹⁵Council of Europe, Commissioner for Human rights, Safeguarding human rights in times of economic crisis, 2013, p. 25

³¹⁶Ibid, p. 25

³¹⁷Tulkens F., The Contribution of the European Convention on Human Rights to the poverty issue in times of crisis, ECHR, Strasbourg 8/7/2015, p. 12

³¹⁸Papandreou M., The greek austerity measures in the light of international human rights law, www.lse.ac.uk,

life, thus to a non adequate standard of living. Combined with the refugee crisis that burst out in 2015 and particularly affected Greece³¹⁹, fear and anxiety already caused by the economic crisis, resulted in the creation of a wave of xenophobia³²⁰. The rule of law, democracy political stability and social cohesion have been challenged in Greece but also in the whole continent³²¹. The insult to human dignity was confirmed, in research and in theory, as a result of the crisis and the consecutive limitations of the enjoyment of their fundamental rights³²².

Suggestions

According to Emmanuel Decaux, “if the diagnosis is the systematic violation of all human rights, then the cure should be sought in the effective enjoyment of all human rights”³²³. He stresses that the human rights may belong to everyone equally, but ‘this equality should not just be abstract – it must be effective’³²⁴.

To ensure equality in rights, it is enough to ‘fully apply the principal of equal dignity to the interpretation of the law’³²⁵. Besides, that is exactly what the UDHR declares: “all human beings are equal in dignity and in rights”³²⁶. People experiencing poverty should enjoy all human rights, as all human rights- civil, political, economic, social and cultural-apply to all human beings, with no exceptions made in detriment of the poor, as they are “citizens like everybody else and are equal in dignity”³²⁷. Access to fundamental rights should be for them secured the same way it is secured for non-poor people.

³¹⁹Greek National Commission for Human Rights (GNCHR), Report submitted to the UN Human’s Rights Council’s Universal Periodic Review of Greece, September 2015, p. 6

³²⁰Center for Economic and Social Rights, Human Rights and the Global Economic Crisis: Consequences, Causes and Responses, 2009, p. 3

³²¹Steering Committee for Human Rights (CDDH), Feasibility Study, The impact of economic crisis and austerity measures on human rights in Europe, Council of Europe, 2015, p. 7

³²²By Katseli C., Pantazis V., Gounela K., Human Dignity during the period of Economic and Social Crisis in Greece, Mediterranean Journal of Social Sciences, Vol 7, No 4, July 2016, p. 472

³²³Decaux E., in the Protection of the poorest people’s rights in the European Union, Proceedings of the study day organized in Paris by the French Human Rights Commission and the International Movement ATD Fourth World, 28 March 2011, p. 91

³²⁴Ibid, p. 92

³²⁵Bouchet P., Equal dignity. An underlying principle of the civic fight against poverty in the Protection of the poorest people’s rights in the European Union, Proceedings of the study day organized in Paris by the French Human Rights Commission and the International Movement ATD Fourth World, 28 March 2011, p. 41

³²⁶Ibid, p. 40

³²⁷Ibid, p. 42

Measures should be taken to help the most affected and vulnerable groups of society, in order to obtain equal rights and to be able to fully enjoy them³²⁸. Compliance with human rights standards will contribute to a sustainable recovery of the society but the economy as well, as it will contribute into establishing conditions for stability and the adequate functioning of the rule of law, that are both essential for economic growth³²⁹. Giving motivation for active participation in the society of marginalized people will help towards enhancing the contribution in the political life in Greece and raise more awareness about the common problems and how common solutions benefiting equally all parts of society could be found and applied. Greek society should primarily overcome the psychological fatigue all these years have brought, rise up and act for the country's and the nation's better future instead of, as Juan Pablo Bohoslavsky mentioned when addressing the need for a debt relief, 'remaining over several decades in an economically and politically unhealthy dependence on creditor institutions'³³⁰. Towards this direction the training of legal professionals should emphasize on the rights of the citizen and 'address how people think', and that could be crucial for a change of society's attitude in the future³³¹. Also in terms of accounting education, training of the new professionals should aim to help them become more competent and ethical as well; as accounting education and its drawbacks have contributed to the greek breakdown, attention should be paid already from the education stage, towards preventing future economical crises³³².

To conclude that a violation of human dignity is real means that no further reason presented to justify the act that causes this violation, no political or national interest can be accepted³³³. For human dignity to be real and not just a concept and a principle, human rights should be universally and in real terms fulfilled³³⁴. As citizens have the right to demand from the State to take action so as to protect them, each one

³²⁸Nyst C., in the Protection of the poorest people's rights in the European Union, Proceedings of the study day organized in Paris by the French Human Rights Commission and the International Movement ATD Fourth World, 28 March 2011, p. 89

³²⁹Tulkens F., The Contribution of the European Convention on Human Rights to the poverty issue in times of crisis, ECHR, Strasbourg 8/7/2015, p. 4

³³⁰Juan Pablo Bohoslavsky, Office of the High Commissioner of the Un, statement of 2/6/2015, Geneva, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032>

³³¹D'Harcourt Laurence, in the Protection of the poorest people's rights in the European Union, Proceedings of the study day organized in Paris by the French Human Rights Commission and the International Movement ATD Fourth World, 28 March 2011, p. 45

³³²Siskos D., Marangos J., Restructuring accounting education: the key to avoiding another financial crisis in Greece, in Marangos J. (ed.), The internal impact and external influence of the greek financial crisis, Palgrave Macmillan 2017, p. 209

³³³Cassia P., *ibid*, p. 96

³³⁴Phillips B., *ibid*, p. 5

individually and the whole society as a group, the State has the obligation to take positive measures to protect human dignity, an obligation that derives also from the art 2 par 1 of the Constitution of Greece³³⁵. The European Union should also take action in order to secure the values on which it was founded and is committed to protect: ‘the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging in minorities’³³⁶.

Law 4320/2015 that introduced measures aiming to fight the ‘humanitarian crisis’ and targeting to enable access to goods and services for people living under extreme poverty³³⁷ as well as law 4368/2016 that provided free access to the public health system for uninsured individuals and also members of particularly vulnerable groups, are positive steps towards healing some of the pain caused, but a more holistic approach should be attained, based also on solidarity and shared responsibility, that will re-engage people with the vision of a prosperous and democratic State³³⁸.

³³⁵Tsevrenis V., Human Dignity: it’s functional use in legal thought, Doctoral thesis, Sakkoulas publications, 2011, p. 57

³³⁶Treaty of the European Union, preamble and art. 2, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>, cited by Council of Europe, Commissioner for Human rights, Safeguarding human rights in times of economic crisis, 2013, p. 32

³³⁷ United Nations Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Greece, 22/2/2016, A/HRC/WG.6/25/GRC/1, par.15, p.5, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/032/55/PDF/G1603255.pdf?OpenElement>

³³⁸Justitia et Pax, Protecting Human Dignity at a time of economic crisis: final statement of the international workshop of Justice and Peace Europe, October 2014

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