

Conclusion

The legality of public pension reforms is grounded in the lawful implementation of pension policies, which guarantees the sustainability of the public pension system and public finances as well as the protection of the pensioners' civil and social rights. Questions of legality arise as the sustainability of the public pension system and public finances is further endangered, in times of financial and economic crisis. It is undeniable that the financial and economic crisis brought attention to the correlation between the problem of sustainability of the public pension system (which pre-existed the crisis) and the sustainability of the public finances and *vice versa*. The Greek legislature adopted a procrustean solution to confront these two problems, by reducing the current pension benefits and introducing retrogressive pension reforms, thus affecting both the current and prospective pensioners.

My inquiry concentrated on the legality of the public pension reforms and reductions introduced in Greece as a first reaction to the Greek financial and economic crisis. The most important and pressing legal question, dealt with in this book, lies in the extent of the necessity and usefulness of this procrustean solution. The present book was confronted with this legal question, taking into regard the new and strong need to contain public spending. In light of the recent economic recession and alarming forecasts of rapidly increasing public pension spending, the sustainability of the public pension system dominated public debate and political discourse. This was the main focus of the Greek state, as well as the demands made by its international creditors namely by the other Member States of the EMU and the IMF. The adoption of pension reforms and old-age pension benefits reductions under the framework of the external financial assistance became besides the financial crisis a further pressing tool on the legislature to introduce restrictions on pensioners' rights. This book highlighted a number of pension reforms issues that have emerged after the crisis, and made some suggestions as to the legal recourse paths which the pensioner's rights may take, in order to develop a case against the restriction of their rights in times of financial and economic crisis.

Starting with chapter one, I attempted to explore the relationship between the financial and economic crisis and the retrogressive public pen-

sion reforms; challenging the often-made assumption that public pension schemes can be radically reformed in times of crisis, since in crisis periods the public opinion becomes very sensitive to the burden of pension expenditures on the public budget and thus it is more possible to accept sacrifices from their present income.⁹³¹ Obviously, sovereign public debt is one of the most effective tools to implement domestic economic and social policy.⁹³² The overall unsustainable economic situation of Greece and the urgent need for the reduction of public deficit led to strong pressures on the Greek state to adopt pension reforms as well as an easy and effective in short-term policy measure, as the old-age pension benefits reductions is. Even if Greece was not directly obliged to reduce the pension expenditures, it is impossible to consolidate public finances without touching upon the problem of sustainability of the public pension system. The element of urgency for public deficit reduction created further pressure on the Greek legislature to reduce public pension expenditures. Chapter two moved on to the public pension reforms adopted after the outbreak of the domestic financial crisis and the conditional financial facility agreements signed in the period 2010-2012. Chapter three laid down potential individual rights and principles that may protect the existing and future positions of the pensioners, and thus providing them with justiciable claims. Chapter four addressed the question relating to the role of the economic and financial crisis and the conditional financial assistance on the justification of the restrictions on the pensioners' legal positions. The financial crisis and its distinctive element of conditionality appears to play an important role on whether the aims of the legislature to improve the sustainability of the fiscal interests of the state and the public pension system as well as to ensure the proper functioning of the EMU are legitimate. The aims pursued by the legislature may acquire a special gravity through the urgent need of the external financial support. In chapter five, I concluded with some outcomes on the judicial protections of pensioners' rights in times of financial crisis and the new role of the right to social insurance as well as on recommendations for both the constitutional courts and national legislatures, concerning the proper legal reaction to public pension reforms being introduced, by using case-studies as examples.

931 *Jallade*, in: *Ferge / Kolberg* (eds.), *Social Policy in a Changing Europe*, p. 44.

932 *Bohoslavsky / Cernic*, in: *Bohoslavsky / Cernic* (eds.), *Making Sovereign Financing and Human Rights Work*, p. 1.

In these concluding pages, I reflect on the relationship between the presented pension reform cases and my underlying analytical framework. In this thesis, it is argued that the recent domestic financial and economic crisis, as well as the stringent conditional financial assistance that Greece received by its international creditors, acted as the main driving force for sweeping cuts to public pension expenditures in order to face pre-existing problems, such as population ageing and the fiscal imbalances of the public pension funds. This argument has, primarily, obvious implications for the manner in which the Greek public pension system was reformed. The public pension reforms were introduced in a hasty manner, without prior conduction of actuarial studies which would clearly provide proof of some of the advantages of the pension reforms. The high public pension expenditures were dealt with through cost containment measures. The adopted pension reforms were not actually innovative but parametric. This is because, firstly, the reforms were based on the pre-existing PAYG system. Namely, the public pension system continues to be financed on a PAYG basis, the retirement age was increased, a less generous calculation formula and stricter link between contributions and pension benefits were introduced and the only innovation is the establishment of an almost universal flat-rate basic pension. At the same time the occupational and private pension schemes were not encouraged to function as a counterbalance to the income loss. These policies may put the future adequacy of pension benefits at risks, moving the negative impact especially younger generations (even for individuals with exceptionally continuous and long careers).⁹³³ However, the real influence of the financial crisis and the subsequent financial assistance are more obvious on the reductions in payments of the current pensioners. This measure constituted the main rash reaction to the financial crisis.

Against this background, retrogressive public pension reforms seem to affect pensioner's rights. The legislature's obligation to adopt public pension reforms in accordance with the law needs to be fulfilled. I consider, firstly, that pensioners who have established legal positions should be in a situation that demands stronger legal protection than that of prospective pensioners, who are still performing their contributory career and have not contributed the substantial requirements to a pension entitlement. Secondly, the state is obliged, by a number of constitutional norms, to meet

933 *Natali / Stamati*, South European Society and Politics 2014. p. 236.

certain prerequisites in order to achieve the lawful implementation of pension rights. Namely, the present thesis concluded that the right to old-age benefits may be protected either as essential corollary of the right to property or through the expansive application of the principle of legitimate expectation, the principle of non-discrimination or through direct constitutional entrenchment of the right to social insurance. Thirdly, in terms of international law obligations, although Greece has ratified a range of instruments making provision for social rights, these rights may have little or no domestic impact. Greek jurisprudence has held that these international obligations must firstly be incorporated into domestic law, in order for them to be enforceable before the national courts. However, in terms of national law, a subjective dimension must be provided to the right to social insurance when the substance of the social insurance system, as an institution, is refuted.

In addition, I have argued that the aims of the reforms were: the reduction of the public deficit and creation of sustainable public finances, associated with a sustainable public pension system and the proper functioning of the EMU. I considered that the crisis and the conditional financial assistance are not the aims of the reforms but legitimised the aims of the fiscal interests of the state, which were not held as legitimate by the courts in the past. Due to the crisis and the conditional financial assistance, the concept of “*public interest*” was re-interpreted; the simple fiscal interests of the state to eliminate the public budget deficit and sustain public finances became a more important, national interest; one which may legitimately lead to intensive and radical reductions in the amount of old-age pension benefits. Moreover, they strengthened the severity and importance of the other two aims pursued (sustainability of public pension funds and the proper functioning of the EMU) setting them able to outweigh even severe interference with the pensioners’ rights.

In addition, the present book concluded that public pension regulations are liable to changes and a judicial decision cannot be relied on as a guarantee against such changes in the future.⁹³⁴ However, the state may not interfere with these rights in an arbitrary manner. The reductions in pension benefits induced by the financial crisis must be administered in a legal way. More specifically, in a manner that is balanced, equal and proportion-

934 ECtHR, *Sukhobokov v. Russia*, Judgment of 13 April 2006, No. 75470/01, at para. 26.

al amongst all pensioners, both current and future. Any such restrictions must be implemented according to the law; and in a way that complies with the requirements of the principle of proportionality. Namely, the legislature must take into account that a proportional relationship must be established between the importance of the legitimate aims pursued and the severity of the interference with the pensioners' rights. I considered a number of parameters, which the legislature must take into consideration separately or cumulatively when introducing restrictions on pensioners' rights. The criteria for pension reductions must be undertaken properly and comprehensively and in a non-discriminatory manner. The main challenge lies in ensuring the sustainability of the public pension system in the short and long-term; also taking into account the principle of protection of the sustainability of the public finances, while at the same time guaranteeing its adequacy and the compatibility with the protection of the pensioners' established rights.

New pension policy goals were being re-discussed between the new coalition Greek government and its international creditors in the year of 2015. More particularly, Greece signed a third financial assistance facility agreement with the ESM Board of Governors which works over three years (2015-2018).⁹³⁵ On the 19th of August 2015, the Greek authorities signed, with the European Commission (on behalf of the ESM), a Memorandum of Understanding to specify the policy conditions.⁹³⁶ The Third Economic Adjustment Programme for Greece aimed for a medium-term primary surplus of 3.5 percent of GDP to be achieved through a combination of reforms, including the reform of the pension system.⁹³⁷ Due to the high unemployment rate and the fact that many individuals opted to retire early, the Greek authorities committed to properly implement the previous pension reforms, accompanied by the First and Second Economic Adjustment Programme and proceeded with further reforms to strengthen long-term sustainability targeted at making savings of 0.5 percent of GDP in 2015 and 1 percent of GDP by 2016.⁹³⁸ Consequently, the Greek authorities reported on 19th August 2015 in the MoU for a three-year ESM programme, that Greece will adopt further pension reforms: "*a) specific de-*

935 The respective document can be retrieved from http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/index_en.htm.

936 *EU-COM*(2015).

937 *Ibid.*, p.5.

938 *Ibid.*, p. 13.

sign and parametric improvements to establish a closer link between contributions and benefits; b) broaden and modernize the contribution and pension base for all self-employed, including by switching from notional to actual income, subject to minimum required contribution rules; c) revise and rationalize all different systems of basic, guaranteed contributory and means tested pension components, taking into account the incentives to work and contribute; d) the main elements of a comprehensive consolidation of social security funds, including the remaining harmonization of contribution and benefit payment procedures across all funds; e). The reforms will also reduce the overreliance on the pension system as a last resort income support for the working age population. That role will be taken up by the guaranteed minimum income scheme to be rolled out in 2016. A minimum income scheme is much better placed to support the participation in the labour market, notably through its link to active employment measures and support services.”⁹³⁹

In light of this report, the Greek Minister of Employment, Social Insurance and Social Assistance established an Experts’ Committee to propose a new social security system.⁹⁴⁰ In general terms, the Committee proposed the unification of the diverse social insurance funds in one and set of unified rules, regarding entitlement conditions and contribution percentages, while a minority opinion suggested the existence of at least three social insurance organizations, due to professional and insurance particularities: one for dependent employees and workers, one for the self-employed, and one for farmers. In addition, the Committee proposed a PAYG system based on defined contributions supported by a minimum state pension and a new capital fund that should be built up from the state budget and the property of the social insurance funds in order to cover the system’s deficit during the transitory period.⁹⁴¹

In light of the committee’s proposals and after long delegation period, the Greek legislature reformed once more the public pension system on

939 EU-COM(2015), p. 14.

940 Ministerial Decision, 37564/D910327/21.08.2015.

941 The Committee’s proposal can be retrieved from <http://www.opengov.gr/minlab/>. For a description of the committee’s proposal in English see Kremalis, Greek System of Social Security, Country Report No. 05/2016, Max-Planck Institute for Social Law and Social Policy.

May of 2016.⁹⁴² In general terms, the structure of the public pension system remained the same, based on a basic pension which is financed by the state, and a proportional pension which is financed by the funds in accordance with the paid contributions; whilst the pensionable age remains 67. The innovation of the new legislation is that it unified the diverse funds into one hyper-fund organisation, and equalised the rules for all insured. The unification of the system extends also to the subsidiary social insurance pensions. In addition, the legislature increased the years of minimum pensionable service for the establishment of a basic pension from 15 to 20 years, while the payable amount was increased from 360 Euros to 384 Euros. In addition, the accrual rates for the calculation of the proportional pension are changed from 0.8 – 1.5 percent to 0.77 – 2 percent. By doing this, the Greek legislature focused on rewarding the insured who contributed 40 years to the system.

According to experts, the 2016 pension reform is a step in the right direction, since “*it is actually an elaborate face-lift of the 2010 reform*”⁹⁴³ which was described in the present book. It completes the organisational and administrative reconstruction of the Greek public pension system, by introducing a unified system of social insurance for the entire working population. The unification of the rules is, on the one hand, necessary for the rationalisation of the systems’ functioning. Indeed, the extended fragmentation of the system created social inequalities among the working population, as it resulted in similar situations being treated differently. However, certain aspects of the 2016 pension reform may raise further questions of constitutionality. For example, the unification of the calculation system used to determine the amount of contributions for all of the

942 Law No. 4387 of 2016, Official Gazette of the Hellenic Republic 85/A/12.05.2016. In addition, indirect pension reductions of the current pensioners’ old-age pension benefits were introduced also in the year of 2015 as a prerequisite for the sign of a third financial assistance within the framework of the ESM. More particular, the Law No. 4334 of 2015 “*Emerging Regulations for the Negotiations and Sign of Agreement with the European Stability Mechanism*”, increased health contributions of pensioners from 4 percent to 6 percent on their main pension benefits and applied health contributions of 6 percent to supplementary pension benefits. In this way the nominal amount of the main and supplementary old-age pension benefits were further reduced by 6 percent. See Art. 1(31), Law No. 4334 of 2015, Official Gazette of the Hellenic Republic 80/A/16.07.2015.

943 Simeonidis, Social Protection and Labour 2016, p. 27.

working population, irrespective of their occupation, may raise the question of compatibility of the measure with the constitutional right to equality. This is because those such as self-employed persons and farmers are under substantially different legal, financial and situational conditions of employment and activity, when compared to the other employees. This issue, as well as further legal issues, shall be dealt with in the near future by the Council of State, which will carry out the challenging but necessary task of ensuring a balance.