THE ROLE OF INTERNATIONAL SOCIAL SECURITY STANDARDS

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THE ROLE OF INTERNATIONAL SOCIAL SECURITY STANDARDS

An in-depth study through the case of Greece

Proefschrift

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To my lost brother,

who reminds me every day that
those with disabilities
know better how to fight for life,
for as long as they live …

as well as

To Mania and Assimakis,

they both know very well why …

Preamble

'*Whereas* it is essential, if man is not to be compelled
to have recourse, as a last resort,
to rebellion against tyranny and oppression,
that human rights should be protected by the rule of law …'

Article 22

'Everyone, as a member of society,
has the right to social security and is entitled to realization,
through national effort and international cooperation (…),
of the economic, social and cultural rights indispensable
for his dignity and the free development of his personality'

Universal Declaration of Human Rights
Adopted and proclaimed by General Assembly
Resolution 217 A (III) of 10 December 1948

PREFACE

In most English dictionaries a 'dissertation' is, for academic purposes, defined as a '*long formal piece of writing on a particular subject*'. I would rather define my doctoral thesis somewhat differently, borrowing words from the Greek poem *Ithaca* by C.P. Cavafy (1911): 'a long journey, full of adventure, full of discovery … through which you come into harbours seen for the first time, stop at Phoenician trading stations to buy fine things, visit many Egyptian cities to learn and learn again from those who know..., but keeping Ithaca always in your mind, because arriving there is what you are destined for: and wise as you will have become, you will have understood, by then, what these Ithacas mean...'.

A few years ago, at Tilburg University, a research programme *Europe and Social Security* began. A team was set-up, consisting of four researchers coming from a variety of European countries – Belgium, Greece and the Netherlands – and having different academic backgrounds and research expertise, as well as employment and life experiences. We started working together on this programme, which encompassed social security from various aspects.

From an early stage it became apparent to me that the international social security standards (ISSS) developed by the International Labour Organisation (ILO) and the Council of Europe (CoE) are not only relevant, but are in fact decisive for the further advancement of social cohesion and social stability. Their purpose is to act as protective measures and guarantee a decent level of social security for all. However, after completing the required literature review, I detected that over the years obstacles have emerged which have prevented them from achieving those things. Having from a young age an urge to understand disfuctionalities and try to place things in good order, I took up the subject matter of *international social security standards' blockage* and I began by asking the question: 'what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system?'. In this doctoral thesis – which is actually my own journey to Ithaca – I have aimed not only to identify and describe those obstacles, but also to analyse them, to show which of them have overall proved the greatest and why, to demonstrate their interrelation and ultimately, I hope, to trigger further discussion and make suggestions about how these obstacles may be overcome.

Many people have been well-wishers during the process of bringing my research work to its culmination and have accompanied me through this journey, offering comfort and confidence. I would like to warmly thank them all for their support and contributions, whether direct or indirect. In this preface, however, I can mention only a few.

First, I would like to offer my sincere gratitude to my supervisor, Prof. dr. F.J.L. Pennings, for giving me the opportunity to start this doctoral thesis and be appointed Ph.D. Researcher/Doctoral Candidate in an internationally recognised University – the *Universiteit van Tilburg*. He went through my entire research work with dedication and care. He made pertinent remarks, punctual corrections, and followed-up closely the different stages until its completion, constantly providing food for thought. Frans, thank you for showing me that there are two sides to every coin and for staying by my side in both the good and the bad times.

The Department of Social Law and Social Policy in Tilburg, which hosted our *Europe and Social Security* programme, provided me with very good facilities for the conduct of high-level research. Sincere thanks to all my colleagues there for their interest in my work, many fruitful discussions and for creating such a pleasant academic atmosphere. Tineke Dijkhoff, Barbara Hofman and Saskia Montebovi though hold a very special place in my heart. Girls, I feel I have been truly blessed to be surrounded by you and to have worked with you. Apart from having excellent research skills, you possess a high degree of personal and professional integrity. It is this combination that makes me sure we are going to see great things from you. And, 'natuurlijk', I would like to acknowledge the valuable assistance of Kees Boos. Kees, dank je wel om me eraan te herinneren 'que le mieux est l'ennemi du bien' (Voltaire, 'La Begueule, conte morale' (1972)). Moreover, I am absolutely grateful to Instituut Gak, and its team, for financing our research programme in such a benevolent manner, and especially to Dr. Boudien Krol for her kindness, unwavering belief and enthusiasm for my research, which means a lot to me.

I wish to express my deep appreciation to the highly-esteemed members of my Ph.D. committee for agreeing, in the first place, to assess the manuscript I handed in, for dedicating time and energy to read it, as well as for their positive and helpful feedback. Among them, I owe particular thanks and I am indebted to: my Greek mentor, Prof. dr. G.S. Katrougalos, for believing in my potentiality, for consistently supporting and encouraging me over all these years and helping me maximise my strengths and to limit my weaknesses. He had faith in me, even at moments when I had lost faith in myself, and he has always been there, eager to discuss and reflect with me on various new ideas, inspiring me and stimulating further research brainstorming. I hope that he will also continue to do so after the defence of my thesis; Prof. dr. P. Schoukens, not only for his crucial comments

and suggestions, which improved and enriched the final outcome of my thesis, but also for triggering me to explore and touch upon aspects of my research that if they had been left uninvestigated, would have weakened the thesis. He was the one who introduced me – back in 2005, as a post-graduate student at the *Katholieke Universiteit Leuven* – to the mysteries of the worlds of law and politics. By supervising my Master's thesis, obligatory in order to obtain my Master's degree, he taught me how to question, reason, interpret and justify my research findings, as well as principles and beliefs; Prof. dr. G.J. Vonk, for being willing to get into legal, political and socio-economic discourse on the research problem addressed in my thesis, and to talk about several critical points in the presentation, as well as the analysis of my research factual findings. He was the first to make me understand that academic research and writing is not fun unless it is a roller-coaster ride; Prof. dr. F.H.R. Hendrickx whose role has been decisive, since the several discussions I had with him, moved away worries that occasionally clouded my mind, by reassuring me how beneficial a single country study can be, not only for the academic community, but also beyond.

The help of both Prof. dr. ing. W.J.H. van Oorschot and Prof. dr. H. Oost was vital as well. They made me understand the importance of formulating a clear-cut and well-reasoned research methodology. Their guidance enabled me to mark out the interdisciplinary approach of my research. Thanks are also due to Prof. dr. N. Aliprantis. I am honoured to have met him and indebted to him for sharing with such alacrity his knowledge, and his academic, as well as practical, experience on human/social rights, feeding even more my desire to learn, comprehend and do the same for others. And finally, Prof. dr. A.C.J.M. Wilthagen who, at a crucial moment of writing, kindly approached me and advised me that sometimes it is better to make the blackboard white and start over.

I will be forever thankful to my Professors at the Democritus University of Thrace – where I obtained my first university degree. Especially, Prof. dr. D. Venieris who kept on reminding me that calmness, self-esteem and clear mind are key ingredients both to good writing and the good life, as well as Prof. dr. M. Petmesidou, Prof. dr. X.I. Contiades and Dr. C. Dikeos, who made me love research and writing from an early stage of my academic career and taught me always to see the forest for the trees. Although a bit far from me, it felt you were near.

I would also like to thank all the interviewees who agreed to have face-to-face discussions with me and took time to share their work experience and professional expertise. To do my interviews I visited Greece three times. I had informative, as well as really intriguing and thought-provoking meetings with people involved in the field of social security, and coming from different backgrounds: civil servants/officials, trade union representatives, academics, lawyers, judges, independent

social security experts, *etc*. I ought though to note that the collaboration with Mrs A. Panourgia-Stamadianou, Mrs K. Beka and Mrs E. Bage-Michou was especially beneficial. I sincerely thank them for their advice and the great effort they went to help me gather important requested materials. From the contacts I had with the international and regional organisations, I want also to thank sincerely Mrs A. Gomez-Heredero for providing significant input and clear answers to various questions I posed, as well as for providing useful documentation. I truly recognise that without the direct contribution of all the afore-mentioned people, it would not have been possible to complete this research in a proper academic way.

Over the last two years of writing my doctoral thesis, I have been working in parallel with the Marie Curie Actions (MCAs) Human Resources and Mobility (HRM) activity of the European Commission. I consider myself extremely fortunate to be part of this team, since I have been surrounded by persons with direct experience of the research subject-matter, and who, above all, have shared my desire to complete my academic work and have supported me to this end in every possible way. I owe exceptional thanks to my ex-Head of Unit, Dr. Didier Gambier, who offered me, when required, the luxury of time, and who stood by me every step of the way. My warmest thanks go also to my ex-Head of Sector, Dr. Karim Berkouk, my ex-Coordinators, Dr. Renata Bachorczyk-Nagy and Dr. Aleksander Kedra, Dr. Florent Bernard, Dr. Rodrigo Martin-Galan, Dr. Pablo Martinez-Lozano Sinues, my second ex-Head of Sector, Dr. Sergio Di Virgilio and Mrs Agata Stasiak, who helped me keep my thoughts raised high.

A big thank you also goes to Brian Jones for his remarkable editorial work, as well as to Ilona Papagrigorakis for her meticulous and professional translation of the decisions of the Hellenic Council of State into English. My collaboration with them, in different stages of this research work, has been indeed wonderful. Also, kind thanks to Fiona McGrath and Rebecca Pound for their valuable editorial contribution, and last but not least to An Vermaercke, who has been extremely helpful and so great at communicating with me throughout the entire review and publication process of my doctoral thesis.

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where you have been, accepts what you have become, and still, gently allows you to grow' (William Shakespeare (1564-1616)).

Words cannot express the feelings I have for my parents, Aristotelis and Magdalini. Their many sacrifices gave me my passport to the academic world. Their hard and decent work ethic has been an example to me, which I will always try to follow. Mania and Assimakis occupy a distinct place in my life and heart for helping me survive the writing process with my sanity intact and keeping alive the meaning of life.

I would like to end this preface by mentioning my late brother, Vaggelis, whose life ran for the years he was alive as just a preface to life. I hope he would be proud of me.

Maria Korda,
Brussels, 17 March 2013

CONTENTS

LIST OF ABBREVIATIONS

ADEDY	Greek Civil Servants' Trade Unions
AKAGE	Insurance Fund for Solidarity between Generations
AMKA	National Social Insurance Number
AUOs	Arduous and Unhealthy Occupations
BG	Bank of Greece
C	Convention of the International Labour Organisation
C17	ILO Convention No. 17 on Workmen's Compensation (Accidents) (1925)
C35	ILO Convention No. 35 on Old-Age Insurance (Industry, etc.) (1933)
C36	ILO Convention No. 36 on Old-Age Insurance (Agriculture) (1933)
C37	ILO Convention No. 37 on Invalidity Insurance (Industry, etc.) (1933)
C38	ILO Convention No. 38 on Invalidity Insurance (Agriculture) (1933)
C39	ILO Convention No. 39 on Survivors' Insurance (Industry, etc.) (1933)
C40	ILO Convention No. 40 on Survivors' Insurance (Agriculture) (1933)
C42	ILO Convention No. 42 on Workmen's Compensation (Occupational Diseases) (1934)
C70	ILO Convention No. 70 on Social Security (Seafarers) (1946)
C71	ILO Convention No. 71 on Seafarers' Pensions (1946)
C102	ILO Convention No. 102 on Social Security (Minimum Standards) (1952)
C103	ILO Convention No. 103 on Maternity Protection (Revised) (1952)
C118	ILO Convention No. 118 on Equality of Treatment (Social Security) (1962)
C121	ILO Convention No. 121 on Employment Injury Benefits (1964)
C128	ILO Convention No. 128 on Invalidity, Old-Age and Survivors' Benefits (1967)

C130	ILO Convention No. 130 on Medical Care and Sickness Benefit (1969)
C157	ILO Convention No. 157 on Maintenance of Social Security Rights (1982)
C168	ILO Convention No. 168 on Employment Promotion and Protection against Unemployment (1988)
C183	ILO Convention No. 183 on Maternity Protection (2000)
CCACR	Conference Committee on the Application of Conventions and Recommendations
CEACR	Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation
CoE	Council of Europe
Committee	(Greek) Committee of Experts
Committee of Ministers	Committee of Ministers of the Council of Europe
CPI	Consumer Price Index
CS-SS	Committee of Experts on Social Security of the Council of Europe
DEI	Public Power Corporation
DIKKI	Democratic Social Movement (Political Party)
DL	Democratic Left (Political Party)
DLOEM	Distributive Fund for Employees Family Allowances
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice
ECoHR	European Court of Human Rights of the Council of Europe
ECSS	European Code of Social Security of the Council of Europe
ECSR	European Committee of Social Rights of the Council of Europe
ECHR	European Convention on Human Rights of the Council of Europe
EDOEAP	Inclusive Journalistic Organization for Auxiliary Care Insurance
EE	Workers' Foundation
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EKAS	Social Solidarity Allowance for Pensioners
EKEP	National Centre for Vocational Orientation
EKLA	Special Common Account for Unemployment
ELEPEE	Special Account for the Enhancement of the Professional Training Program

ELTA	Hellenic Post Staff
EOKF	National Social Care Organisation
EOPYY	National Health Services Organisation
EP	European Parliament
ERT (S.A.)	Hellenic Broadcasting Corporation
ESC	European Social Charter of the Council of Europe
ESPA	National System of Protection against Unemployment
ESYKF	National Council for Social Care
ETAA	Insurance Fund for Independent Professionals
E.T.A.O.	Occupational Insurance Fund of the Economists
ETAP-MME	Mass Media Workers' Insurance Fund
ETAT	United Insurance Fund of Bank Employees
ETUC	European Trade Union Confederation
ETVA	Hellenic Industrial Development Bank
EU	European Union
G8	Group of Eight
G20	Group of Twenty
GAD	Government Actuary's Department of the United Kingdom
GB	Governing Body of the International Labour Organisation
GDP	Gross Domestic Product
GENOP-DEI	Greek Federation of Employees of the National Electric Power Corporation
Great War	First World War
GRULAC	Group of Latin America and Caribbean Countries
GSEE	Greek General Confederation of Labour
HCS	Health Care System
ICESCR	International Covenant on Economic, Social and Cultural Rights
IKA	Social Insurance Institute
IKA-ETAM	Social Insurance Institute for the Private Sector
IKA-ETAM-ETEAM	Special Supplementary Insurance Section of Legal Entities of Public Law
IKA-ETEAM	Supplementary Insurance United Fund
IKA-TEAM	Supplementary Insurance Fund for Employees
ILC	International Labour Conference of the International Labour Organisation
ILO Bureau	International Labour Office of the International Labour Organisation
ILO	International Labour Organisation
ILOLEX	Acronym of the International Labour Organisation database on international labour standards
IMF	International Monetary Fund
ISAP	Athens Piraeus Electric Railways

ISSA	International Social Security Association
ISSS	International Social Security Standards
ITUC	International Trade Union Confederation
KAPI	Centres for the Open Protection for the Elderly
KKE	Communist Party of Greece (Political Party)
LAEK	Account for Employment and Professional Training
LPEAE	Account for the Protection of Employees from Unreliable Employers
MDGs	Millennium Development Goals
MPLs	Minimum Pensions' Limits
MPs	Members of the Parliament
NAA	National Actuarial Authority
NAT	Seamen's Retirement Fund
NBG	National Bank of Greece
NGOs	Non-Governmental Organisations
NHS	National Health System
ND	New Democracy (Political Party)
NORMLEX	Information System on International Labour Standards
OAED	Manpower Employment Organization
OAEE	Liberal Professionals' Insurance Organisation
OECD	Organisation for Economic Co-operation and Development
OEK	Workers' Housing Organization/Organization for Housing Benefits
OGA	Agricultural Insurance Organization
OMC	Open Method of Coordination
OPA-DEI	Insurance Organization of the Public Power Corporation
OSE	Hellenic Railways Organisation
OTE S.A.	Hellenic Telecommunications Organisation
PASOK	Pan-Hellenic Socialist Movement (Political Party)
Protocol to the ECSS	Protocol to the European Code of Social Security of the Council of Europe
PR	Political Spring (Political Party)
R	Recommendation of the International Labour Organisation
R43	ILO Recommendation No. 43 on Invalidity, Old-Age and Survivors' Insurance (1933)
R67	ILO Recommendation No. 67 on Income Security (1944)
R69	ILO Recommendation No. 69 on Medical Care (1944)
R121	ILO Recommendation No. 121 on Employment Injury Benefits (1964)
R131	ILO Recommendation on Invalidity, Old-Age and Survivors' Benefits (1967)
R191	ILO Recommendation No. 191 on Maternity Protection (2000)

R194	ILO Recommendation No. 194 on the List of Occupational Diseases (2002)
Revised ECSS	Revised European Code of Social Security of the Council of Europe (1990)
Revised ESC	Revised European Social Charter of the Council of Europe (1996)
SAS	Social Assistance System
SB	Standard Beneficiary
SE	Southern European
SIS	Social Insurance System
SRM	Standards Review Mechanism
StE	Greek Council of State
SYN	Coalition of the Left and Progress (Political Party)
SYRIZA	Coalition of the Radical Left (Political Party)
TADKY	Municipal and Community Staff Insurance Fund
TAE	Storekeepers' Insurance Fund
TAISYT	Owners and Editors of the Press as well as Press Employees
Tameio Nomikon	Legal Professionals' Fund
TANPY	Maritime Agents' and Employees' Insurance Fund
T.E.A.-E.E.K.E.	Occupational Insurance Fund of Greek Air Traffic Controllers
T.E.A.-E.L.T.A.	Occupational Insurance Fund of the Hellenic Post Staff
T.E.A.-E.T.D.E.A.	Occupational Insurance Fund of the Greek Department of the International Police Officers Union
T.E.A. - Inter-American	Occupational Insurance Fund of the Inter-American Staff
T.E.A.-J&J/JC	Occupational Insurance Fund of the Johnson and Johnson Hellas S.A. and the Janssen-Cilag Pharmaceutical S.A. Staff
T.E.A.-YP. OIK.	Occupational Insurance Fund of the Workers in the Ministry of Economy and Finance
TEAAPAE	Supplementary Insurance Fund of the Insurers and Insurance Enterprises Staff
TEAEIGE	Supplementary Insurance Fund of Pedagogues in Private General Education
T.E.A.GE	Occupational Insurance Fund of the Geo-Technical's
TEAIT	Supplementary Insurance Fund for the Private Sector
TEAPEP	Supplementary Insurance Fund of the Oil-Products Enterprises Staff
TEPAET	Provident Fund of the Cements' Companies Staff
TAPEAPI	Free-lancers of the Hippodrome Insurance Fund
TAPEM	Metal Employees Fund
TAPIT	Fund of Providence for Private Sector Employees
TAPOTE	Hellenic Telecommunications Organization Staff

TAPEL	Provident Fund of the Harbour Employees Staff
TAPPEL	Fertilizers Companies Fund
TATTA	Press-Technicians of Athens
TAYTEKO	Insurance Fund of Bank Employees and Public Utilities Services
TAXY	Hotel-Employees Insurance Institute Fund
TEAA	Bakers' Supplementary Insurance Fund
TEADY	Supplementary Insurance Fund of the Public Sector
TEAIE	Supplementary Insurance Fund of Electricians
TEAPASA	Fund for Supplementary Insurance and Providence for Employed in Public Safety Forces
TEAP-EYDAP	Athens Water Supply and Sewerage Company Staff
TEAPOKA	Supplementary Insurance Fund of the Social Insurance Organizations Staff
TEAPOZO	Supplementary Insurance Fund of the Wine-Beer-Alcohol Incorporated Company Staff
TEAYFE	Pharmaceutical Works Staff Supplementary Fund
TEAYEK	Commercial Stores Staff Supplementary Fund
TEBE	Fund for Craftsmen and Small Entrepreneurs
TEC	Treaty of the European Communities
TEPEAPI	Provident and Supplementary Insurance Fund of Hippodrome (Race) Staff
TPDY	Providence Fund for the Public Sector Employees
TPPOETH	Provident Fund of the National Theatre Organisation Staff
TPPOLTH	Harbour Organization of Thessaloniki Fund
TPPOYTH	Water Supply Organization of Thessaloniki Fund
TSA	Motorists' Fund
TSAY	Health Professionals' Pension Fund
TSEYP	News-Vendors and Agencies Employees of Athens and Thessaloniki
TSMEDE	Civil, Electronic and Mechanical Engineers' Pension Fund
TSPEATH	Athens and Thessaloniki Newspapers Staff
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
US	United States
WB	World Bank
WHO	World Health Organisation
WWII	Second World War

CHAPTER 1
INTRODUCTION

Wonder is the beginning of all science … – Aristotle

Wisdom begins in wonder … – Socrates

Always desire to learn something useful … – Sophocles

1.1 HISTORICAL INSIGHTS AND MEMORABLE HIGHLIGHTS

Traditionally, states have been sensitive about transferring parts of their sovereignty[1] both at international and European levels. Put differently, states tend to be rather cautious about embracing new regulatory policies, particularly in areas that are perceived as being at the heart of their national authority.[2]

Social security has been, and remains, one of these areas. In fact, social security is regarded as being one of the matters best dealt with domestically.[3]

Over time, though, and as a result of several circumstances, developments and changes in economics, politics, society and culture that took place globally, and particularly after the two World Wars (the Great War (WWI) and the Second World War (WWII)), international law and later on European (regional) law gradually increasingly impacted on domestic social security affairs. In particular, with respect to international law, this also correlates, in a sense, with the development and adoption of common international social security standards (ISSS) (see Section 1.2, below).

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1 The term *sovereignty* actually refers to the (legal) power or capacity that a country has to govern itself; put another way, to the competence (right or authority), quality and condition of being (legally) qualified to enact and enforce law (i.e. an act), as well as the ability to make proper arrangements in respect of the different domestic policy areas.

2 They have also been particularly interested in the preservation and safeguarding both of their territorial integrity and statehood.

3 See also Chatzistavrou, F. (2011), pp. 356, 358–359; Korda, M. and Schoukens, P. (2006), pp. 12–15. See also Pieters, D. (1993), p. 121.

1.1.1 THE INTERNATIONAL LABOUR ORGANIZATION (ILO) AND SOCIAL SECURITY

In the aftermath of WWI,[4] the Treaty of Versailles (Treaty of Peace between the Allied and Associated Powers and Germany) was signed (1919). 'When the Peace Conference met in 1919, one of its first acts was to appoint a Commission on "international labour legislation" to draw up proposals for the inclusion in the Treaty.'[5] 'The text it drafted became Part XIII of the Treaty of Versailles, thus creating the International Labour Organization (ILO)[6] as a permanent section of the League of Nations (…).'[7]

It should be noted that the principal characteristic of this international organization has been tripartism.[8] It is composed of three main bodies[9] – the International Labour Conference (ILC), the Governing Body (GB) and the International Labour Office (ILO Bureau). The first two bodies consist not only of government representatives, but also of employers' and workers' representatives, while the third consists solely of the Member States' civil servants (in other words, officials).[10] Furthermore, with a view to fostering government, worker and employer cooperation, and in order to achieve social and economic progress simultaneously, the ILO began to promote *social dialogue* as a means of constructing 'consensus-building and democratic involvement of those with vital stakes in the world of work.'[11]

The Preamble to the ILO Constitution (1919), by emphasizing first that 'universal and lasting peace can only be established if it is based upon social justice',[12] referred to the following goals in the field of social security, which, among the other goals set out in the Preamble, would contribute to the prevention of the existence of labour conditions that would involve 'such injustice, hardship and deprivation to large numbers of people as to produce unrest so great that the

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4 It is interesting to note that during WWI trade unions in certain countries of Western Europe, 'notably England, France and Germany, as well as in the United States (US), adopted resolutions calling for the creation of an international congress of worker and employer representatives to oversee the creation of common standards on working time, occupational health and safety and child labour'' see Johnson, A. (2005), p. 147.

5 Joyce, J.A., (1980), p. 28.

6 'The Russian revolution of 1917, which took place shortly before the creation of the ILO, confirmed to the founders of this organization in their view that measures had to be taken in order to raise the standards of living in the world'; see Pennings, F. and Schulte, B. (2006a), p. 1.

7 Joyce, J.A., (1980), p. 28.

8 See also Rodgers, G., Lee, E., Swepston, L. and Van Daele, J. (2009), p. 1.

9 See, for analysis, Johnson, A. (2005), p. 148.

10 See ILO (2005), p. 11; Czucz, O. (1999), pp. 49–50; Johnson, A. (2005), p. 148; Wisskirchen, A. (2005), p. 254–258; Pennings, F. and Schulte, B. (2006a), p. 2.

11 See, for analysis, ILO (2007a), pp. 6–7.

12 See also Rodgers, G., Lee, E., Swepston, L. and Van Daele, J. (2009), p. 1.

peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required':[13]

> the *prevention of unemployment*, the *protection of the worker against sickness*, *disease* and *injury arising out of his employment*, *provision for old age and injury*, as well as *protection of the interests of workers when employed in countries other than their own*.[14]

The Declaration of Philadelphia (1944) placed much more emphasis on the human rights element of social policy in general, as well as on the importance of proper international economic planning. It is interesting to note that the plurality of the requests of the Declaration were the product of a partnership of American and Western European Labour unions and the ILO Bureau. The Declaration was annexed to the ILO Constitution.[15]

The ILO 'was the only element of the League of Nations to survive the Second World War',[16] and it became a specialized agency of the United Nations (UN) in 1946 with the purpose of international standard-setting activity,[17] also in the field of social security. Other international organizations later became equally involved – apart from raising standards of living worldwide – in advancing this standard-setting activity,[18] however, it could be said that the ILO has led the way in this respect.[19]

Through the Universal Declaration of Human Rights (UDHR) (1948), and bearing in mind the turmoil and the horrors brought by the world wars, particularly the second (WWII), the recognition of social security as a human right also came to the fore, and its value was somewhat strengthened. Its incorporation into the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966[20] was also a step forward. All the same, the concretization of the right to social security, as well as of its legal substance, is mainly attributed to the international social security instruments adopted by the ILO and the relevant standards set therein[21] (see Section 1.2, below).

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13 The text of the ILO Constitution is available on the website of the ILO – ILOLEX Advanced Query Form.

14 See also Korda, M. (2009), p. 508.

15 See also Dufty, N., F. (1972), pp. 481–482; Dijkhoff (2011), p. 3.

16 See Johnson, A. (2005), p. 147.

17 The commonly known standard-setting activity of international organizations by no means corresponds simply to a compilation of already adopted legislation, but to a global promotion of measures with respect to social (security) protection; see Otting, A. (1992), pp. 129–134.

18 Actually, it could be said that this standard-setting activity, as a whole, represents the outline of social and labour policy drawn up at a global level.

19 See Korda, M. (2009), pp. 503–505.

20 It came into force on the 3rd January 1976.

21 See also Schoukens, P. (2007), p. 79; Dijkhoff (2011), pp. 3–4.

'Because of the resistance of American labour representatives to binding legislation at the time of the ILO's creation, the ILO's legislative capacity is a compromise between binding and advisory opinions.'[22] Moreover, the standard-setting activity of the ILO is based on two forms of international legal instruments: Conventions and Recommendations. Conventions are legally binding international treaties, however, national legal obligations apply only from the moment a Member State ratifies them. Recommendations are non-binding legal instruments that set out guidelines directing national policy and action.[23]

As far as the supervision of the ILO Conventions is concerned, in order to ensure that the national legal obligations in respect of these instruments – once ratified – are being kept, ILO has employed a system for monitoring their implementation. A specific reporting procedure has been established in respect of the ratified Conventions, according to which Member States have to submit reports periodically on the relevant instruments, proving their compliance with the standards set and referring to any further action taken.[24]

The reports are examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR),[25] which is made up of 20 independent experts. The CEACR 'is used to assign to each of its members the responsibility for a group of conventions. As a result one expert is responsible for social security conventions.'[26] No power has been given to the CEACR allowing it to impose strong legal sanctions in cases of improper implementation on the part of the states. In principle, the tactic pursued by the ILO is a *diplomatic* one. Put another way, the ILO tries to persuade governments, through continuous dialogue, to bring their national social security legislation into line with the accepted instruments. The conclusions drawn by the CEACR are brought before the Conference Committee on the Application of Conventions and Recommendations (CCACR).[27] Then the Conference discusses selected cases of discrepancies and its report is presented to the ILO ILC, which is the principal body for drawing conclusions and making decisions.[28]

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22 See Johnson, A. (2005), p. 148.
23 See Korda, M. (2009), p. 506.
24 See Korda, M. (2009), p. 507.
25 With respect to the establishment and terms of reference, see, for analysis, Wisskirchen, A. (2005), pp. 271–277.
26 See, for analysis, Pennings, F. and Schulte, B. (2006a), p. 19.
27 With respect to the establishment and terms of reference, see, for analysis, Wisskirchen, A. (2005), pp. 278–282.
28 For a more detailed description on the supervision of the ILO conventions, see Korda, M. and Pennings, F. (2008), pp. 136–137; Pennings, F. (2007), p. 8. Pennings, F. and Schulte, B. (2006a), pp. 15–20; Wisskirchen, A. (2005), pp. 269–283.

Additionally, for Member States that have not ratified a particular Convention, at appropriate time intervals a report is requested on the position of national law and practice with regard to the matters dealt with in the Convention, in order for the country to show the extent to which effect has been given, or is intended to be given, to any of its provisions, as well as to state the difficulties which prevent or delay its ratification. This way, the ILO indirectly puts pressure on its Member States to justify the reasons why the ratification of certain Conventions is hindered, while at the same time, making Member States aware that they have not ratified certain Conventions. So, this way, the possibility of re-opening discussions remains.[29]

Last, the ILO has also launched programmes for *technical assistance*[30] in an effort to provide expertise, assistance, as well as guidance, to governments, workers and employers on a worldwide scale. This has been mainly attributed to the fact that there was an enormous growth of the ILO's membership, particularly in the decades following WWII, which unavoidable brought lots of changes within the context that this organization has been operating.[31] Currently the ILO counts 185 countries.

1.1.2 THE COUNCIL OF EUROPE (CoE) AND SOCIAL SECURITY

On 19th September 1946, at the University of Zurich, Sir Winston Churchill gave a speech (also known as the *Zurich speech*) on European Unity that was greatly received. Apart from expressing his views concerning the European future, he also expressed his wish for *a kind of United States Europe*. His speech could be regarded the beginning of a movement in favour of a united post-war Europe. The creation of a Council of Europe (CoE) was also one of the main elements of his speech.[32]

Later on, and based on the adoption of the UDHR in 1948, 'governments expressed their determination never again to suffer violations of fundamental freedoms (…)'.[33]

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29 See Korda, M. (2009), pp. 507–508.
30 See also Korda, M. and Pennings, F. (2008), p. 132.
31 See also ILO (2007a), p. 2.
32 Actually, he had already spoken of a Council of Europe in 1943, in a radio broadcast; see also Centre Virtuel de la Connaissance sur l'Europe (CVCE) (2011a), p. 1.
33 See Benelhocine, C. (2012), p.7.

It was one year later, on 5th May 1949 that the CoE was founded by the Treaty of London (1949). The CoE is a regional organization.[34] The original signatories were Belgium, Denmark, France, the Republic of Ireland, Italy, Luxemburg, the Netherlands, Norway, Sweden, and the United Kingdom (UK), followed by Greece and Turkey in August 1949. The Treaty of London is referred to as the Statute of the CoE.[35] Currently, the CoE is made up of 47 European countries.

Unlike the ILO, in the CoE 'only the representatives of individual member states can take part in its work directly.'[36] The Committee of Ministers of the CoE (Committee of Ministers), 'made up of the ministers of foreign affairs of each Member State, or their representatives',[37] is the intergovernmental body of the CoE, which – apart from deciding on the political objectives of the organization and setting out the budget – also fulfils a supervisory role.

The work of the CoE concentrates – one could also say relies – on co-operation between the European countries. 'Membership of the Council requires commitment to the protection of human rights, pluralistic democracy and the rule of law. Moreover, the founding Statute of the Council of Europe requires the Council to promote European Unity through "economic and social progress."'[38] Legal standards and cultural cooperation are also CoE areas of interest. The development and advancement of social rights are equally part of the CoE general framework policy activity.

Despite the fact that the CoE has drawn up a great number of Conventions, in several policy areas,[39] 'it is known first, and foremost, for its two flagship Conventions',[40] namely the European Convention on Human Rights (ECHR) (1950) and the European Social Charter (ESC) (1961).[41] The European Court of Human Rights (ECoHR) is the main body that enforces the ECHR,[42] and where appropriate, issues advisory opinions. The European Committee of Social Rights

34 It is also cited as an intergovernmental European organization; see, for example, Schoukens, P. (2007), p. 73.

35 See the website Council of Europe Instruments – Treaty Office.

36 See Czucz, O. (1999), p. 50.

37 See Benelhocine, C. (2012), p.9 (for more information on how the CoE operates see pp. 8–10).

38 See Gomez-Heredero, A. (2007a), p. 51.

39 See the list of international instruments adopted by the CoE in the website Council of Europe Instruments – Treaty Office.

40 See Benelhocine, C. (2012), p. 11.

41 See also Venieris, D. (2009), pp. 371–372, 375–378; Aliprantis, N. (2002), pp. 15–16; Gomien, D., Harris, D. and Zwaak, L. (1996), p. 14.

42 It is also known as the Convention for the Protection of Human Rights and Fundamental Freedoms.

(ECSR)[43] examines whether state parties are in conformity both in law and in practice with the requirements set in the ESC.[44]

Unlike the ECHR,[45] explicit reference to the right to social security is made in the ESC[46] under Article 12, which is also regarded as one of its most significant rights. In particular, under the second paragraph of this Article special mention is made to ILO Convention No. 102 on Social Security (Minimum Standards) (1952) (C102). Since C102 goes into much more detail than the ESC with respect to the right to social security, and also preceded it by almost a decade, it seems rather logical for the creators of the ESC to have insisted upon the rule that any state which has ratified the ESC, and Article 12 in particular, is bound to provide social security protection in the country, at a level which at least corresponds to the requirements set in C102. Moreover, the ESC 'makes use of the ILO's expertise, in the form of an observer from the organization who sits on the European Committee of Social Rights'.[47] The CoE, approximately three years after the signing of the ESC, also adopted 'other more specific instruments that elaborate, in concrete terms and with concrete guarantees, on the right to social security recognized by the Charter'[48] (see Section 1.2, below).

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43 For the national reports, the Committee adopts conclusions; and for the collective complaints, decisions. It is composed of 15 independent, impartial experts, elected by the Committee of Ministers (the Turin Protocol stipulates that members of the ECSR are to be elected by the Parliamentary Assembly; this is the only provision which has still not been applied) for a 6-year term of office (renewable once). It elects the members of its Bureau, composed of the President, one or more Vice-Presidents and a General Rappporteur, to serve for a two-year period (renewable). See the website Council of Europe – Human Rights and the Rule of Law. See also Venieris, D. (2009), pp. 373–374.

44 'The European Social Charter was open for signature in 1961. Yet its preparatory work may be traced back to 1951, the actual negotiations having lasted from 1953 until 1961. If we compare this to the speed with which the European Convention on Human Rights was framed – it was resolved only a year after the foundation of the Council of Europe – we clearly see some of the difficulties involved in incorporating fundamental social rights into the West European system of human rights protection. Even after the signing of the Charter (18 October 1961), it took nearly four years for it to enter into force (26 February 1965)'; see Ohlinger, T. (1996), p. 43. For a circumstantial analysis of the European social rights recognized and safeguarded by the ESC, as well as of its *social dynamics,* see Venieris, D. (2009), pp. 371–399.

45 'The rights guaranteed by the Convention and the protocols to it enjoy extensive protection and, while they are essentially civil and political rights, "many of them have implications of a social and economic nature". Both the Court and the European Commission of Human Rights (herein- after "the Commission") took the view that there was "no water-tight division" separating the sphere of economic and social rights from the ambit of the Convention. The Convention is thus "permeable" to social rights if it is interpreted in a dynamic and constructive manner. While social security rights are not explicitly mentioned in the ECHR, they nonetheless fall within its scope'; see, for analysis, Gomez-Heredero, A. (2007b), pp. 6–7. See also Laborde, J.P. (2005), p. 65.

46 As stated the CoE 'in the European Social Charter and the revised European Social Charter, it possesses high-level instruments for the protection of human rights that establish social security as a fundamental human right'; see Gomez-Heredero, A. (2009a), p. 5.

47 See Benelhocine, C. (2012), p. 35. See also Venieris, D. (2009), p. 373.

48 See Gomez-Heredero, A. (2009a), p. 5.

1.2 THE DEVELOPMENT OF INTERNATIONAL SOCIAL SECURITY STANDARDS (ISSS): A REVIEW

Before presenting the 'state-of-the-art' in relation to the ISSS (see Section 1.3, below) and elaborating on, as well as describing, the research problem addressed in this doctoral thesis (see Section 1.4, below) it has been considered appropriate to present hereunder – so as for the reader to gain a better understanding – a review of the key elements pertaining to the development of the ISSS, their potential, and reasons for their existence.

1.2.1 THE INTERNATIONAL LABOUR ORGANIZATION STANDARDS IN THE FIELD OF SOCIAL SECURITY

To commence, the standard-setting activity[49] of the ILO has been ongoing for several decades – actually approximately for 93 years now. It could be also defined as a system of international labour standards in all work related matters, among them, social security.[50]

Thus, it is this specific activity that contributed significantly and influenced the establishment of social security systems around the globe, or their reconstruction, as well as the work of the ILO descendants in the field (i.e. the CoE, as described below, Sub-Section 1.2.2). Put another way, the ILO has helped the development of social security at a national level through multilateral instruments in the field of harmonization,[51] by setting minimum, but also higher, standards.

In essence, the standards actually evolved from a growing international concern that specific action needed to be taken on a particular subject at a particular moment in time.[52] This was also the case with the ISSS. Three generations of standard-setting activity in the field of social security emerged over time, corresponding to different approaches.[53]

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49 See, for analysis, Wisskirchen, A. (2005), pp. 256–258.

50 Within the framework of the ILO, and bearing in mind that this organization has social policy as one of its principal interests, social security is seen as a part of the wider concept of social protection.

51 For a comprehensive analysis see Tamburi, G. (1981).

52 Hence, the standards possess the following main features: *universality*, *flexibility*, *specificity* and *comprehensiveness*. See, for analysis, Pennings, F. and Schulte, B. (2006a), pp. 12–13; Wisskirchen, A. (2005), pp. 259–261; ILO (2005), p. 16.

53 It should be noted that there is a difference in the duration specified for each of the generations between the information provided in the report of the CEACR in 2011 (International Labour Office (2011a) and that in international literature. All the same, this does not contradict the approaches followed under each generation of standards and their context, as subsequently described.

The *first generation*,[54] which actually followed WWI, lasted from 1919 to 1939. The Conventions and Recommendations adopted at that time referred either to particular contingencies (social risks)[55] or to particular categories of workers or activities. This was the so-called *social insurance*[56] period – establishment of compulsory insurance schemes with the purpose of improving the economic, social and health conditions of workers and their families.

After WWII, the *second generation*[57] was inspired by the *broader concept of social security* developed in the Beveridge Report,[58] and lasted from 1944 to 1964. The Declaration of Philadelphia (1944) redefined the ILO's objectives by extending social security measures to include the provision of a basic income to all in need of such protection and comprehensive medical care.[59] Thus, protection was no longer limited to employees.

This conception also inspired the ILO ILC when it adopted C102 (1952). This remains today the cornerstone Convention of social security standard-setting, encompassing the nine traditional branches of social security and providing *minimum standards*.[60] Despite the fact that only three Conventions and four Recommendations[61] were the product of the *second generation*, they are still

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54 See International Labour Office (2011a), pp. 9–10. See also Chapter 2, Sub-Section 2.1.1 and 2.1.2, as well as Korda, M. and Pennings, F. (2008), p. 133; Pennings, F. and Schulte, B. (2006a), p. 6; Bartolomei de la Cruz, H.G. (1994), pp. 11–12; Supiot, A. (2006), p. 113. Pennings, F. (2006a), p. 653. Czucz, O. (1999), pp. 51–58.

55 In particular: maternity, employment injury, occupational disease, sickness, old age, invalidity, survivorship and unemployment. See the complete list of these Conventions and Recommendations in International Labour Office (2011), p. 9.

56 'This "organizing power" of social insurance Conventions was described by Albert Thomas in 1931 as "the regulation of social insurance based on those principles in national systems which have best stood the test of time, it is a synthesis of all the characteristic trends of the insurance movement. It stimulates States to fresh progress and prevents any tendency to slip back. It is the point round which the national movements are coordinating their progress slowly or occasionally with rapidity, as is proved by recent history'; see International Labour Office (2011), pp. 9–10.

57 See International Labour Office (2011), pp. 10–11. See also Chapter 2, Sub-Section 2.1.2, as well as Korda, M. and Pennings, F. (2008), p. 133; Pennings, F. and Schulte, B. (2006), pp. 6–8; Pennings, F. (2006), p. 653; Bartolomei de la Cruz, H.G. (1994), p. 12; Czucz, O. (1999), pp. 51–58.

58 This report, published in 1942 at the request of the British government, proposed a radical reform of social legislation. The new system would not be based on either social assistance or social insurance exclusively covering employees. It would take the form of a universal and uniform system of social benefits financed through contributions and unified through a single public sector service under the direct authority of the government; see Humblet, M. and Silva, R. (2002), pp. 1–2.

59 See also Kulke, U. and Lopez Morales, G. (2007), p. 92.

60 Namely: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. For a comprehensive analysis of the ISSS on the basis of C102, see Dijkhoff, T. (2011), pp. 23–107. See also Chapter 2, Sub-Section 2.1.2.

61 Namely: the Income Security Recommendation, 1944 (No. 67); the Social Security (Armed Forces) Recommendation, 1944 (No. 68); the Medical Care Recommendation, 1944 (No. 69);

considered to be of major importance, since the validity of their substance has aggrandized as yet.[62]

Concluding, from 1965 to 1988 a *third generation*[63] was born.[64] The standards belonging to this generation have increased the level of social security protection to be provided by the Member States in several respects (persons to be protected, types of benefits and rates of replacement, *etc.*). The Conventions containing higher international social security standards[65] have been modelled on C102.[66]

The standards set in the Conventions falling under the *second* and *third* generations refer in more concrete terms to the content of a national social security system (i.e. personal scope of application, material scope of application, as well as conditions for entitlement to a benefit, level and duration of a benefit, administration, financing, *etc.*),[67] and they provide Member States with greater flexibility. In other words, the Conventions consider different social security arrangements as equally valid, as long as they abide with the embodied basic principles and (legal) requirements.[68] Thus, they 'do not restrict any standard law, award, custom or agreement which provides for more favourable conditions to the beneficiaries concerned than those outlined in the social security conventions.'[69]

In a nutshell, at the time of their adoption, as well as to the moment of speech, the global standards developed by the ILO, and in particular those on social security (with a major emphasis on those developed after WWII), had great potential and serve the following vital purposes: promoting the right to social security for everyone, defining its legal essence and substance, building up strong national social security foundations on an equal footing, advancing domestic levels of protection and preventing them from being lowered, recognizing that social

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the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Maternity Protection Convention (Revised), 1952 (No. 103) and the Recommendation (No. 95); and the Equality of Treatment (Social Security) Convention, 1962 (No. 118) (not taking into account the seamen's social security standards).

62 See, for analysis, International Labour Office (2011a), pp. 10–11. See also Chapter 2, Sub-Section 2.1.2.

63 See, for analysis, International Labour Office (2011a), p. 11. See also Chapter 2, Sub-Section 2.1.2.

64 ILO Convention No. 128 on Invalidity, Old-Age, and Survivors' Benefits (C128) belongs to this *third generation*. A comprehensive analysis of the ISSS on the basis of C128 follows in Chapter 2.

65 See the complete list of the Conventions and Recommendations corresponding to higher standards in International Labour Office (2011a), p. 11.

66 See also Chapter 2, Sub-Section 2.1.2.

67 See Korda, M. (2009), pp. 508–509.

68 The principles 'are not laid down in particular documents, but follow from the texts of the conventions adopted thus far'; see Korda, M. and Pennings, F. (2008), pp. 134–135; Pennings, F. and Schulte, B. (2006a), pp. 14–15.

69 See Kulke, U. (2006), p. 27. See also ILO (2006), p. 7. In other words, 'the standards are not of an "absolute: level'; see Schoukens, P. (2007), p. 80.

justice is a matter to be dealt collectively and not solely between individual states, preventing social dumping (pricing policy), preventing adverse international commercial competition for the working population groups and their dependants, as well as economic competition in the field of wages, proving that labour is not a commodity and should by no means be treated as such, and last reminding governments and social partners that without social security any economy will malfunction.[70]

1.2.2 THE COUNCIL OF EUROPE (CoE) STANDARDS IN THE FIELD OF SOCIAL SECURITY

The CoE, after WWII, took the standard-setting activity of the ILO in the field of social security harmonisation as a *paradigm* and commenced its own work in the creation and establishment of ISSS at a regional (European) level.[71] These are laid down in three primary instruments:[72] the European Code of Social Security (ECSS), the Protocol to the European Code of Social Security (Protocol to the ECSS), as well as the Revised European Code of Social Security (Revised ECSS).

The ECSS was signed in Strasbourg, on 16th April 1964,[73] aspiring to establish a higher level of social security protection than that already established by C102 on *minimum standards*. In other words, the contracting parties wanted to consolidate *minimum standards*, which would, however, raise those standards already set in C102.[74] This instrument includes the same nine traditional branches of social security as those in C102[75] and has equally 'played an important role in

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70 See also Dijkhoff (2011), pp. 4–5; Korda, M. and Pennings, F. (2008), pp. 131–132; Kulke, U. and Lopez Morales, G. (2007), p. 91; International Labour Office (2011a), p. 198.

71 In other regions C102 has provided guidance to countries, even where they have not proceeded with its ratification. See International Labour Office (2011a), p. 28.

72 'The first two instruments belong to the *second generation of standards*, while the third lies closer to the *third generation of standards* (based on the description given earlier; see Sub-Section 1.2.1, above). This is mainly because by the time the CoE was founded, international doctrine had stopped the practice of regulating individual institutions or social groups, and the comprehensive approach to social protection had become standard practice' see Czucz, O. (1999), p. 58.

73 'The Preamble of the Code especially recognises the collaboration of the International Labour Office in the preparation of this instrument, which was aimed "to encourage all Members to develop further their system of social security"'; see International Labour Office (2011a), p. 28. See also Czucz, O. (1999), p. 59.

74 See also Watson, P. (1980), p. 25; Dijkhoff (2011), p. 5; Amitsis, N., G. (2001), p. 234; International Labour Office (2011a), p. 28.

75 See Korda, M. and Pennings, F. (2008), p. 135. A thorough description and analysis of the ECSS content and its provisions is available in Schoukens, P. (2007), pp. 79–84; Gomez-Heredero, A. (2009a), pp. 20–24; Nickless, J. (2002), pp. 1–81.

the development of welfare states all over the world, thus contributing to a level playing field in terms of labour costs.'[76]

The Protocol to the ECSS was accepted at the same time as the ECSS, and it is an instrument that amends and supplements the ECSS by setting even higher standards.[77] Actually, 'in 1952 the Committee of Ministers of the Council of Europe asked those preparing the Code to "…consider the desirability of drafting a Protocol involving a higher level of social security to which those members that are able to do so may adhere and which will constitute the European level of social security which all members will strive to achieve". Thus the Protocol was duly attached to the final draft of the Code'.[78]

After the enforcement of the ECSS and its Protocol,[79] it began to emerge that some of their provisions did not coincide with certain new legislative inclinations in national, as well as international, social security law. Thus, the Committee of Ministers – urged by the Committee of Experts on Social Security (CS-SS) – decided to revise these two instruments. 'Many years of research and intra-organizational co-operation, which included comments from the Council of Europe Parliamentary Assembly, led to the production of a draft Revised Code that was placed before the Ministers' Deputies at their 422nd meeting on 6 November 1990.'[80] The Revised ECSS – despite the fact that it was opened for signature since 6th November 1990 – has not been enforced yet.[81] It has a similar structure to that of the ECSS.[82] Overall, it has three goals: the advancement of the standards set in the ECSS and its Protocol, the achievement of greater flexibility,[83] and neutrality with respect to issues relating to gender (gender equality).[84]

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76 See Dijkhoff (2011), p. 5. The norms in the provisions of the ECSS have been recognized in several cases so clear and concrete that certain courts – among them the Dutch court (the CRvB) – have attributed direct effect to some of the provisions; see for analysis Korda, M. and Pennings, F. (2008), pp. 144–146.

77 The ILO Bureau significantly contributed both to the preparation and the final formation of these standards. See also International Labour Office (2011a), p. 28.

78 See Nickless, J. (2002), p. 7. See also Gomez-Heredero, A. (2009a), p. 21.

79 They both came into force on t 17th March 1968.

80 See Nickless, J. (2002), p. 12.

81 The enforcement of the Revised ECSS requires ratification by at least two states. So far, only the Netherlands has ratified it (on 22nd December 2009).

82 It should be noted, though, that the ISSS belonging to the *third generation* (see Section 1.2.1, above) were thoroughly taken into account when the Revised ECSS was being drafted. This becomes apparent if one reads the explanatory report to the Revised ECSS. See Council of Europe (1998), pp. 1–142.

83 The ECSS had been also criticized for not being sufficiently flexible; see also Korda, M. and Pennings, F. (2008), p. 135.

84 See, for analysis, Gomez-Heredero, A. (2009a), pp. 30–31; Nickless, J. (2002), p. 12.

Like the ILO,[85] for all the three instruments 'an international system of supervision based on national reports, which produces annual resolutions of the Committee of Ministers in respect of each Member State'[86] was formulated. With respect to the ECSS and its Protocol, however, close collaboration takes place with the ILO on monitoring and supervising their application. The CEACR is entitled, as the most suitable body of the ILO, to cross-examine the reports on the ECSS and to transfer its observations and conclusions to the CoE for further consideration.[87] It should be noted, however, that for the Revised ECSS 'a specially set up Council of Europe committee of independent experts will replace the ILO committee of experts.'[88]

1.2.3 THE EUROPEAN UNION (EU), SOCIAL SECURITY AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS (ISSS)

From 1952 to 1972, the form of communication between the ILO and the European Commission ranged between an initial period of rather acute and deeply perceptive formal cooperation, which was, however, followed by a progressive, but steady decline, and the appearance of *ad hoc* arrangements characterised by unproductive cooperation.[89]

The ILO, for a decade (1952–1962), assisted the newly created European Economic Community (EEC) (1958) significantly with emerging queries pertaining to several social security and labour mobility matters. As a matter of fact, the founders of the Treaty of Rome (signed on 25th March 1957) based their *legal inspiration* on two reports: an economic one produced by the ILO (known as the Ohlin Report)[90] and another economic-political report conducted in Brussels (known as the Spaak report),[91] both concluded in 1956.[92] Moreover, the founding governments expressly asked for an ILO expert committee to be established in order to advise them on the social competencies to be given to the EEC.[93]

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85 See Sub-Section 1.1.1, above.

86 See Gomez-Heredero, A. (2007b), p. 7.

87 Concerning the supervisory procedure, see, for analysis, International Labour Office (2011a), pp. 28–30, as well as Gomez-Heredero, A. (2007a), pp. 56–58.

88 See Gomez-Heredero, A. (2009a), p. 31.

89 All the same, it is true that 'in the 1952–1972 period the ILO was the senior institution of the two, with a well-developed network of researchers and experts that had taken the lead in developing international legislation in the social field'; see Johnson (2003), p. 8.

90 See ILO (1956).

91 See Spaak, P., H. (1956).

92 See Hellsten, J. (2005), p. 5.

93 See Johnson (2003), p. 9. Of particular importance is the following statement included in the Ohlin Report: 'so long as we confine our attention to international differences in the general level of costs per unit of labour time, we do not consider it necessary or practicable

Despite the fact that ILO and EEC cooperation was extensive at the time, the result was *de rigueur;* meaning that the outcome of the reports was that any general harmonisation in the social sphere would be unnecessary, since the market could stand on its own merits against any unwanted effects of competition. Put in another way, both reports reflected the belief that higher productivity would counteract the cost that better social standards could bring.[94]

This is, more or less, the case even today, at least as far as social security is concerned. Complementary competence[95] has been given to the European Union (EU) in this field, which actually emphasises once more that 'Member States have the principal authority to organise their social security systems.'[96] Put another way, there is still a lack of EU competence in the field of social security harmonisation.

What is particularly interesting, though, is the fact that the Ohlin Report (1956) had proposed using the ILO Conventions as a means of combating problematic social issues arising from closer future economic cooperation at a European level.[97] ILO C102 (1952) was among the list of the Conventions to be taken into consideration. Belgium was the country that had placed the use of international labour standards as a basis for the development of social policy within the framework of the EEC on the discussion table. The Belgian proposal was scrutinised by the Common Market sub-committee on social issues; be that as it may, it was eventually rejected.[98] Instead, a sub-committee on social problems in the common market was created between the six founding countries with the purpose – apart from establishing and promoting European collaboration – of resolving social issues and examining specific questions on the functioning of the common market.[99]

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that special measures to 'harmonise' social policies or social conditions should precede or accompany measures to promote greater freedom of international trade as such differences reflect variations in productivity'; see ILO (1956), pp. 40–41 cited also in Johnson, A. (2005), p. 155 (see, for further information, pp. 223–224, as well as Johnson (2003), p. 9 (esp. footnote No. 6)).

94 'The Ohlin report anyway noted the economic impact of differences in social legislation and benefits that might justify harmonisation in certain limited areas such as equal pay and working time. In the case of harmonisation, the report foresaw that clarity would be required. Otherwise trade would be seriously distorted and the harmonising measures would not be directed against the essential prerogatives of the States concerned'; see Hellsten, J. (2005), p. 6; see also Dijkhoff (2011), p. 5.

95 As Wallace had already pointed out back in 2000, responsibilities in the general field of social policy within the EU 'are not neatly divided between country and European arenas, but rather (…) waver between the two'; see Wallace, H. (2000), p. 43.

96 See, for analysis, Korda, M. and Schoukens, P. (2006), pp. 12–15.

97 See ILO (1956), p. 116, cited also in Johnson, A. (2005), p. 156.

98 See Johnson, A. (2005), p. 156.

99 See, for analysis, Doublet, M.J. (1955), pp. 1–10.

From this, it is apparent that particularly in the early years of the EEC, the chances of it acceding to existing international social law obligations were slim,[100] and one can see a clear preference for the establishment of an autonomous, self-directed and self-reliant European regional system; by the mid-1970s, the cooperation that existed between the ILO and the EEC in the beginning of the 1950s had changed.[101]

What is rather intriguing, however, and regardless of the aversion on the part of the EEC (later the European Community) to access to the proposed ILO Conventions in 1957, is that the initial states (also known as the *inner six*) that signed the Treaty of Rome (1957), ratified, on their own initiative (by government decision), ILO C102 (or parts of it)[102] in the period 1956 to 1974.

By way of illustration, Italy (in 1956), (West) Germany (in 1958), Belgium (in 1959), the Netherlands (in 1962), Luxemburg (in 1964) and France (in 1974); while other states that became members of the Communities at a later date, and belonged to the so-called group of *old Member States*, ratified C102 even earlier. For example: Sweden (in 1953), the United Kingdom (in 1954), Denmark and Greece (in 1955).[103]

Thus, each country indeed designed and developed its own social security system based on its own political, economic and social heritage, but the ratification of C102 added to this by providing substantial guidance and a normative context to social security. Actually, what the ILO wanted, particularly with the *second* and *third generation of standards*[104] was 'to encourage Member States to improve their levels of social protection and thus to contribute to social harmony and avoid new conflicts.'[105] At this point, it is also worth noting that *national welfare state regimes*[106] have been shown to hold 'a very low explanatory power in ILO ratification records among the EU-15 Member States.'[107]

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100 Academic discourse to this end has already taken place. See, for analysis, Nielsen, R. and Szyszczak, E. (1991); Vogel-Polsky, E. (1990), pp. 65–80.

101 See, for analysis, Johnson, A. (2003), p. 12; see also Hellsten, J. (2005), p. 10.

102 The ratifications of the ECSS and the Protocol to the ECSS by certain Member States came – as expected – quite later, since these international legal instruments were only signed in 1964.

103 Austria followed (in 1969) and Spain, as well as Portugal, subsequently (in 1988 and in 1994, respectively). In Annex – Part I, the ratification status of all (up-to-date) ILO Conventions and CoE instruments in the field of social security is presented, as well as the dates of ratification.

104 See Sub-Section 1.2.1 above.

105 See Korda, M. and Pennings, F. (2008), pp. 131–132.

106 For Tables on the typologies of the welfare state and the Esping-Anderson's classification of welfare states, see Pinch, S. (1997), pp. 13–14. See also, for analysis, Marquardt, V. (2008).

107 'The national labour laws of the Member State – which may be more or less predisposed to international legislation in setting standards in the labour market as opposed to other legal forms, such as national statutes and collective bargaining – is one possible explanation for the gap between expected and actual behaviour. Another explanation maybe that southern welfare

Perhaps, this is also one of the reasons why, from the 1970s onwards,[108] the EEC started slowly to look somewhat more at *social affairs*, since ILO C102, as well as the ECSS and its Protocol (subsequently, after 1964),[109] had been ratified by most of its members. However, it was only in 1997, through the Amsterdam Treaty, that the right to social security was recognized as a fundamental right, when the Chapter on Social Policy was included in the Treaty of the European Communities (TEC), and under ex-Article 136 it was expressly stated that the Community and its Member States should respect fundamental social rights such as those included also in the ESC of the CoE.[110] As already noted,[111] the ESC, in respect of social security, requires compliance with C102. Indeed, that was – and still is – a really positive development, since such an explicit reference to the ESC at least indicates that at a European level that policy-making should not go against the rights recognized under the ESC.[112]

Nevertheless, and particularly towards the end of the 1980s, a decline in the number of ratifications of the minimum and higher ISSS, developed both by the ILO and the CoE, began.[113]

The following phenomenon actually gradually emerged: countries considered to have established progressive social security systems began to show disinterest in the ratification of new ISSS, even those setting higher levels of protection (i.e. some of the *old Member States* of the EU); while other countries that joined the EU at a later stage, during its fifth[114] and sixth[115] enlargements, as well as those

state(s) have turned to the global level to provide minimum standards in order to modernize weak national systems'; see Johnson, A. (2005), pp. 151–154; Johnson (2003), pp. 4–7.

108 In the 1970s the social dimension began to play a rather more important role and attention to this gradually increased. It started to be recognized that every worker of the European Community should have a right to adequate social protection, as well enjoy an adequate level of social security benefits. Persons unable to enter or re-enter the labour market and with no means of subsistence ought to receive sufficient resources and social assistance, in keeping with their particular situation. All the same, legislative progress was actually still slow. A comprehensive analysis on the *Europeanisation of social policy* is available in Von Maydell, B., et. al, (2006), pp. 18–23.

109 See Annex – Part I.

110 In Annex – Part III, the ratification status of the ESC, as well as of the Revised ESC of the CoE, is presented, with the dates of ratification.

111 See Sub-Section 1.1.2 above.

112 However, 'the reference to the Social Charter within the *acquis communautair* does not entail any legal obligation for the Member States to actually accept its provisions'; see Dijkhoff (2011), p. 6.

113 It has been noted that 'as the EU legal regime increasingly comes to resemble a federal legal system with federal and state (in this case EU and national) laws, ILO ratifications may decline'; see Johnson, A. (2005), p. 154.

114 The fifth enlargement took place on 1st May 2004. The countries were: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

115 The sixth enlargement took place on 1st January 2007. The countries were: Bulgaria and Romania.

with an acceding status,[116] candidate status,[117] or potential candidate status,[118] began to ratify (at least) the minimum ISSS in the late 1980s and early 1990s;[119] the same counts for the ratification(s) of the ESC and the Revised ESC.[120] As a matter of fact, and as subsequently discussed (see Sub-Section 1.4.3, below) the strong EU support for bringing national law and practice into line with European social standards and requirements laid down in C102 has been claimed to be one of the main reasons for the increase in the number of ratifications by these latter countries (at least for this instrument).[121]

Hence, not only at an EU level, but also globally, a kind of *haziness* emerged in the last two decades in relation to the developed ISSS. There have been fluctuations in how the ISSS have been regarded by different parties in different situations and in different time periods. A complexity and variance in aspirations currently prevails, and this, despite the fact that these standards have played a determinative role, not only in safeguarding a decent level of protection on a global scale, but also in mapping out the route for a potential future establishment of a *Social Europe*. As described underneath (see Section 1.3), under such circumstances a *recapitulation* of the ISSS began, as well as international discourse on their present and future role.

1.3 THE 'STATE-OF-THE-ART'

Social security has been an important matter for the international community and has not been left off the global agenda. However, and particularly during the last decade, there has been a notable increasing interest in its future role and evolution. This is apparent – as described below – from a series of events and initiatives undertaken at an international level, where particular emphasis has been placed on targets such as the further realization of the acknowledged right to social security, the extension of social security coverage worldwide, and the need of reinforce the existing level of social security protection. To this end, much attention has been focused on the international labour standards developed by the ILO (and by extension, of the CoE) in the field of social security, and on whether these standards can still serve as the main mechanism in meeting the set targets, as well as on how they could be improved so as to further strengthen

116 The seventh enlargement is planned for 1st July 2012. Country: Croatia.
117 The current candidate countries are: Iceland, The Former Yugoslav Republic of Macedonia (FYROM), Montenegro, Serbia and Turkey.
118 The potential candidate countries are: Albania, Bosnia and Herzegovina and Kosovo.
119 See Annex – Part I.
120 See Annex – Part III.
121 See ILO (2008), pp. 35, 37.

social cohesion, and provide a sound basis for human, social and economic development, universally.

To start with, in the mid-1990s, the question of revising all the international labour standards adopted by the ILO ILC since 1919 was raised.[122] The Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards of the ILO GB (also known as the *Cartier Working Party*) examined, on a case-by-case basis, all the standard-setting instruments based on their level of ratification and on their current relevance to meeting the needs of the international community in each policy field, with a view to strengthening the coherence and impact of its standard-setting system.[123] Consequently, in 2002 a new list of the so-called up-to-date Conventions, Recommendations and Protocols was compiled.[124]

With regard to social security, eight ILO Conventions were found to be suitable, still, for addressing the major concerns in the field, comprising both *minimum* and *higher* (more advanced, in other words) social security standards.[125] As a matter of fact, between 2000 and 2001, written consultations were sent to the ILO constituents in order to obtain information on the obstacles and difficulties encountered that might prevent or delay ratification of these Conventions, on methods for improvement, but also on a possible need for revision.[126] Finally, it was decided that the ratification of these eight ILO Conventions should still be promoted, and it was stressed that any initiative undertaken in future with a view to adopting new social security standards must take their content thoroughly into

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122 See also Korda, M. (2009), pp. 510–511.

123 See the Report of the Chairperson of the ILO GB to the ILC for the period 1995–96 in ILO (1996), pp. 3–5. See also the information note on the progress of work and decisions taken regarding the revision of standards in ILO (2002), pp. 1–45.

124 See ILO (2010), pp. 1–6.

125 These Conventions are the following: ILO Convention on Social Security (Minimum Standards), No. 102 (1952) (C102); ILO Convention Equality of Treatment (Social Security), No. 118 (1962) (C118); ILO Convention on Employment Injury Benefits, No. 121 (1964) (C121); ILO Convention No. 128 on Invalidity, Old-Age, Survivors' Benefit (1967) (C128); ILO Convention No. 130 on Medical Care and Sickness Benefits (1969) (C130); ILO Convention No. 157 on Maintenance of Social Security Rights, (1982) (C157); ILO Convention No. 168 on Employment Promotion and Protection against Unemployment (1988) (C168); ILO Convention No. 183 on Maternity Protection (2000) (C183). It should be noted here, though, that the Member States that have ratified ILO Convention No. 44 on Unemployment Provision (1934) (C44), and have not denounced it, still remain bound by it. However, this Convention has been revised by the above-mentioned C168. The same is true for C103, although this Convention has been succeeded by the above-mentioned C183. ILO Convention No. 48 on Maintenance of Migrants' Pension Rights (1935) (C48) continues to apply, since its successor, C157, has not received (to date) the appropriate number of ratifications for it to come into force. See also Pennings, F. and Schulte, B. (2006a), pp. 10–11; Humblet, M. and Silva, R. (2002), pp. 4–5.

126 See, for analysis, ILO (2001), pp. 1–78.

account, as they are the main tools for realizing and advancing the basic human right to social security.[127]

Taking into account the ILO Decent Work Agenda (1999) and its third objective of enhancing the coverage and effectiveness of social protection for all,[128] during the ILO ILC held in 2001, governments, employers, and trade unions reached a *new consensus*[129] on social security and decided, among others,[130] that a major campaign should be launched in order to promote the extension of social security coverage to those who have none. For the achievement of this target it was once again emphasized that any ILO activities in this field should be rooted in the relevant ISSS.[131]

The Global Campaign on Social Security and Coverage for All was indeed launched by the ILO in 2003, with the extension of social security coverage as its focal point.[132] Actually, this campaign was also an ILO contribution towards the achievement of the so-called Millennium Development Goals (MDGs),[133] where

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127 'In a legitimate search for consistency and effectiveness, the drafting of new standards will be preceded by an exhaustive analysis of existing standards and their synergies and omissions'; see Javillier, J.C. (2003), p. 6.

128 See the Report of the Director-General: Decent Work, International Labour Conference, 87th session, Geneva, June 1999, in ILO (1999).

129 However, it should be borne in mind that the *new consensus* reached in the document entitled *Social Security: A new consensus* (ILO (2001b), pp. 1–120) has a rather political, and not legal, importance. Put differently, and legally speaking, it is simply an opinion document in which *a new consensus* was reached, formed by the different points of view expressed during a general discussion held on social security. A similar line of thought followed the discussions held during the research visit that took place in the ILO Social Security Department in Geneva (17–18/01/2008).

130 This *new consensus* involved many key issues and priorities concentrating – apart from promoting the extension of social security coverage to all those in need – on the underlying importance of security, not only for the well-being of workers, their families and the community as a whole, but also in enhancing productivity and supporting economic development; recognizing that the ageing of the population affects directly not only pay-as-you-go pension systems, but also funded ones, therefore, solutions should be sought, through measures of increasing employment rates and strengthening the role of social partners in the management of social security. See, for discussion and analysis, ILO (2001b), pp. 1–120.

131 However, to this end 'The Committee expressed very high expectations for future ILO action on social Security. It did not make any recommendation about future standards-related activities'; see ILO (2001b), p. v. See for analysis ILO (2001b), pp. 1–120. See also the Report VI to the ILC, 89th Session, in ILO (2001c).

132 Regarding the policy vision of the ILO, which underpins its activities in the context of the 'Global Campaign on Social Security and Coverage for All', see, for analysis, ILO (2009), pp. 1–58.

133 The MDGs developed out of the eight chapters of the UN Millennium Declaration (8th Plenary Meeting, 08/09/2000); see UN (2000). In order to achieve social inclusion and cohesion, income, employment and social protection are essential. Developing countries are typically characterized by unemployment, underemployment, lack of social protection, large informal economies and increasing working poor and marginalization, particularly among women and young people. Reducing poverty by enhancing employment, employability, social protection, as well as promoting decent work, feature high in the EU's development and cooperation policies. More information is available on the UN website on the MDGs.

universal access to health care and the guarantee of a basic income security for all was set as a priority. Besides, in 2002 the ILO had already affirmed the need for increased international solidarity and progress in the development of national social protection systems through the establishment of the World Commission on the Social Dimension of Globalization.[134]

The ILO concern about how to provide a meaningful form of social security to the majority of the world's population, and to ensure that the human right to social security becomes a reality, was also shared by the broader international community. During the Group of Eight (G8) Conference on 'Shaping the Social Dimension of Globalization'[135] in 2007, the Labour and Employment Ministers from the G8 countries,[136] the European Commissioner for Employment, Social Affairs and Equal Opportunities, together with representatives of the ILO and the Organization for Economic Development and Cooperation (OECD), highlighted social protection as a key concern and a crucial tool in combating poverty and promoting economic and social development universally.

Gradually, and taking into account the above described shift of interest towards the *universality* of social security, certain queries started to appear concerning the utility and effectiveness of the existing up-to-date ISSS, their international appraise and future course.

Therefore, in 2008, urged by the Dutch and German governments, both of them pioneers in the field of international social security law,[137] the ILO Bureau presented a technical paper[138] dealing with the present situation regarding the ratification of ILO social security Conventions, as well as their contribution to the ongoing Campaign on Social Security and Coverage for All. The final draft of this technical paper was based on a research workshop on Strengthening ILO Social Security Standards, organized by the ILO Social Security Department in 2007, with the aim of obtaining academic input through the participation

134 See ILO (2002b), p. 1.

135 See, for analysis, G8 Information Centre (2007), pp. 1–9. In a recent edition of Peter I. Hajnal, the reader can find analytical information on the origins and characteristics of the G7 and G8 system, its evolution over time, as well as the role of its formation and several discussion agendas. It also touches upon its processes and complexities, including a systematic survey of its components, while at the same time analysing suggestions and presenting actions with respect to the reform of expanding the G8/G20 system; see Hajnal, P., I. (2007).

136 The G8 is composed of the following countries: Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States.

137 As already mentioned (see Sub-Section 1.2.3, above), Belgium, from a very early stage (since the middle 1950s), has supported the use of the ISSS developed by the ILO, including C102, as a basis and guidance for national social policy development, and has been insisting on the need for proper deliberations about the social aspects of economic integration, particularly at the European level.

138 See, for analysis, ILO (2008), pp. 1–92. A summary of this technical paper is also available. See ILO (2008b), pp. 1–13.

of internationally recognized experts[139] in the field of social security and legal standard-setting, and through consultations with the ILO constituents.[140]

The question of 'whether existing social security instruments are effective tools for promoting the extension of social security coverage to all those in need, and hence for fulfilling the ILO's mandate with regard to social security' was explored 'by examining the relevance of these instruments to providing adequate guidance for national legislation and practice in view of the changing concept of social security from the standpoint of: (a) their level of ratification and prospects for future ratifications; and (b) the different options available to rectify identified weaknesses and improve the level of ratification.'[141]

This question generated further questions and an even wider mobilization concerning the future of social security standard-setting in the ILO. During an ILO Tripartite Meeting of Experts on Strategies for the Extension of Social Security Coverage,[142] which took place in early September 2009, the elements and possible form of an additional mechanism to guide improvements in social security coverage in Member States of the ILO was discussed.[143] The need for a basic set of essential social transfers was confirmed,[144] also in the framework of the Global Jobs Pact[145] adopted by the ILO ILC in 2009, while the basic social security package for all residents in a country – namely[146] 'access to basic and essential health care, including services for maternity protection; income security for children, facilitating access to nutrition, education and care; some

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139 Discussions took place with the following experts: Christian Courtis, Prof. Dr. Kaseke, Stephen Kidd, Jürgen Matthes, Prof. Dr. María Patricia Kurczyn Villalobos, Prof. Dr. Angelika Nussberger, Isabel Ortiz, Prof. Dr. Marius Oliver, Dr. Ravi P. Rannan-Eliya, Prof. Dr. Eibe Riedel, Prof. Dr. Felician S.K. Tungaraza and Prof. Dr. Gijsbert Vonk.

140 The constituents included regional government coordinators, employers, workers and members of the Group of Latin America and Caribbean Countries (GRULAC).

141 See ILO (2008), p. 10.

142 See all the relevant papers of this meeting on the ILO website on the Global Extension of Social Security (GESS).

143 The agenda of this meeting was as follows: '(a) to examine recent trends and developments on various policies aimed at extending social security coverage and building universal, comprehensive and fiscally sustainable social security systems; (b) to analyze options for the extension of social security coverage to all along the lines outlined in the ILO's Constitution and relevant social security Conventions for countries with different economic and social conditions to serve as a basis for the design of appropriate policies within the framework of the Global Campaign; (c) to identify strategies to promote a set of basic social security guarantees that will provide the basis for the gradual move to reach higher levels of protection, which will represent a major contribution to the achievement of the Millennium Development Goals, the fulfillment of the commitment of the Organization to "the extension of social security to all' as renewed in the Declaration on Social Justice for a fair Globalization, and strengthening the Global Campaign'; see ILO (2009b), pp. 1–2. A draft for discussion was prepared; see for analysis ILO (2009c), pp. 1–133.

144 See Kulke, U. (2009), p. 6.

145 See ILO website on the Global Jobs Pact.

146 See ILO (2008b), pp. 4–5.

social assistance to poor or unemployed persons; income security through basic pensions for old or disabled persons' – was seen as a foundation for the development of higher levels of protection when the fiscal space expands due to further economic development.[147]

Thus, the international discussion concentrated on how to enforce social security standards. It is affirmed that the world needs the existing minimum and higher ISSS; however, it seems that a new mechanism is also needed so as to complement them and to meet the target of providing universal access to a basic social benefit package,[148] as mentioned above. To this end, various options started to be examined, such as:[149] promoting a wider application and ratification of existing standards; developing a new stand-alone social security Convention providing a universal right to a basic benefit package for everyone; developing a new instrument linked to C102 providing for a universal right to a basic benefit package for everyone; modernizing C102; consolidating the existing up-to-date ILO social security instruments into a single, new overarching Convention; developing an overarching Recommendation setting out core social security principles; and defining the elements of a global social security floor.

Moreover, it has been argued that the existing minimum and higher ISSS can provide so-called *vertical coverage extension*, which is 'very much related to the implementation of social insurance coverage standards as defined by the current Conventions and Recommendations.'[150] However, *horizontal coverage extension*, which 'corresponds to the "minimum core content"' of the basic human right to social security and 'consists of an essential level of social security',[151] is still to be achieved.

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147 See ILO (2009d), p. 6.

148 In essence, the standard-setting policy followed all these decades by the ILO is still regarded as an effective tool for preventing a lowering of social security systems worldwide, and C102 is seen, among other things, as a useful model for income replacement benefits. However, despite the pivotal importance of C102 and the need for its continuous promotion, other existing social security Conventions setting higher standards (i.e. Conventions Nos. 121, 128, 130, 168, 183) (and Recommendations) have not been found to be sufficient in order to achieve universal coverage through the implementation of a basic social security floor. Despite the fact that they are part of the so-called up-to-date ISSS, their unsuitability was based on the fact that they do not require ratifying states to provide a benefit under each respective branch for all persons falling under the contingency – with the consequence that a coverage gap still remains – and the level of their ratification is low. That is actually why, as an alternative to existing instruments, an effective way of meeting this objective could be the adoption of a new instrument, which would accompany existing ones, and which would provide for a basic benefit package to all in need.

149 See ILO website on the Global Extension of Social Security (GESS). See also Korda, M. and Pennings, F. (2008), p. 133.

150 See ILO (2009d), pp. 1–2.

151 See Kulke, U. (2009b), p. 7.

Social Security was further discussed in the Recurrent Review at the ILO ILC in 2011,[152] while within the framework of the ILO Declaration on Social Justice for a Fair Globalization (2008),[153] a General Survey concerning social security instruments[154] was prepared,[155] based on the feedback given by the ILO Member States on the position of national law and practice,[156] as well as on the information transmitted by the employers' and workers' organizations in this respect.

It should also be noted that the academic community did not remain passive either, and quite early on – following the developments in the international social security field, as well as the new issues raised – it showed particular interest in the matter. For example, in 2006, at an international symposium on the 'Role and Interpretation of International Social Security Conventions', organized by the University of Tilburg (the Netherlands), experts of several international organizations, academics, governmental and trade unions' representatives, and other agents[157] discussed the role and meaning of the ISSS, touched upon the sensitive, but crucial, issue of their interpretation, expressed certain concerns regarding their current influence in law and policy formulation, shared problems they encountered, and made certain suggestions that could contribute to their improvement.[158] Likewise, in 2007, the CS-SS of the CoE reflected on the general trends and problems in the development of the European social security systems, and touched equally upon the issue of promotion of social security standards in Europe.[159] In 2008, in collaboration with the ILO, at the 'Decent Work for All'

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152 'The Office Report for the ILC 2011 will be based on the outcome of the Tripartite Meeting of Experts on Strategies for the Extension of Social Security Coverage (Geneva, September 2009) and it will also reflect on the nature of a possible mechanism to support the formulation of national social security extension strategies'; see Kulke, U. (2009), p. 6. See also ILO (2009d), p. 4.

153 This Declaration recognizes the ILO solemn obligation to further, among the world nations, global programmes that will achieve the objective of the extension of social security measures to provide a basic income to all in need, along with all the other objectives set out in the Declaration of Philadelphia. See for analysis ILO (2008c), pp. 1–22.

154 The instruments under examination have as follows: the C102, the C168, as well as the R67 (1944) and the R69 (1944).

155 See, for analysis, International Labour Office (2011a), pp. 1–284.

156 See, for analysis, International Labour Office (2009), pp. 1–9.

157 Speakers (names and status): *Angelika Nußberger* – Prof. of Public and Social Security Law, Member of the Committee of Experts of the ILO, University of Cologne/Institut für Ostrecht (Germany); *Ana Gomez Heredero* – Council of Europe (CoE)/Social Policy Department (France); *Paul Schoukens* – Prof. of Social Security Law, Katholieke Universiteit Leuven/Institute of Social Law (Belgium); *Teun de Vries* – Judge/Central Appeals Court (The Netherlands); *Onno Brinkman* – Ministry of Social Affairs & Employment/Directorate for International Affairs (The Netherlands); *Lauri Leppik* – Social Policy Analyst, Member of the European Committee of Social Rights, PRAXIS Centre for Policy Studies (Estonia), *Leontine Bijleveld* – Consultant, Former FNV Employee (The Netherlands); *Frans Pennings* – Prof. of International Social Security law/Tilburg University and of European and Comparative Social Security Law/Utrecht University.

158 The outcome of this international Symposium is presented in Frans Pennings (Ed.) (2007b).

159 See, for analysis, Council of Europe (2007), pp. 1–32.

conference, organized by the Dutch Ministry of Employment and Social Affairs (SZW *Ministerie van Sociale Zaken en Werkgelegenheid*) certain alternatives for the ILO to set social security standards were proposed.[160] While in 2009, during the 'International Setting of Standards and Innovation in Social Protection in Low Income Countries' international workshop, organized by the Max Planck Institute for Foreign and International Social Law and the University of Tilburg, international experts[161] touched upon the issue of the utility of the existing international social security legal framework, as well as the present social security needs at the international level.[162]

Taking all the above into account, and primarily the fact that the world needs international standards in the field of social security, since they indeed formed the basis leading to the development of organized social security systems around the globe, and they still continue to do so, it was deemed essential that proper attention be paid to their further promotion and on eliminating factors overshadowing it.

This may sound like a simple task, but in practice it is not, particularly if one considers the fact that lately the ISSS do not seem to enjoy much enthusiasm at a national level, even though they are still supported by many countries.

This doctoral thesis intends to contribute to the current international discussion and to enrich it from an academic point of view, by addressing in a manifold way, and through the use of a single, but in-depth, country study, the subject matter of the *blockage of international social security standards,* as illustrated in detail beneath (see Section 1.4, Sub-Section 1.4.1.), which has affected critically, all along, any attempt at their advancement, as well as the functioning of the ILO (and the CoE) standard-setting system in the field of social security as a whole.

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160 See, for analysis, Vonk, G. (2008), pp. 1–6.

161 Speakers: Prof. Dr. Becker, Ulrich – Max Planck Institute for Foreign and International Social Law; Prof. Dr. Pennings, Frans – University of Utrecht/University of Tilburg; Prof. Dr. Pautassi, Laura – University of Buenos Aires; Prof. Dr. Midgley, James – University of California; Prof. Dr. Tapiola, Kari – International Labour Organization (ILO); Prof. Dr. Dupper, Ockert – Stellenbosch University; Prof. Dr. Li Ling – Beijing University; Ass. Prof. Dr. Mpedi, George – University of Johannesburg; Dr. Ackson, Tulia – University of Dar es Saalam; Prof. Dr. Olivier, Marius – International Institute for Social Law and Policy; Prof. Dr. Ruiz Moreno, Guillermo – University of Guadalajara; Dr. Loewe, Markus – Deutsches Institut fur Entwicklungspolitik; Prof. Dr. Rajeev, Ahuja – The World Bank; Prof. Dr. Tungaraza, Felician – University of Dar es Saalam; Prof. Dr. Leisering, Lutz – University of Bielefeld; Prof. Dr. Kaseke, Edwell – University of Witwatersrand; Ossio, Lorena – Max Planck Institute for Foreign and International Social Law.

162 To this end, a second Workshop on 'International Standard Setting and Innovation in Social Security' was organized by the Max Planck Institute for Foreign and International Social Law in May 2011.

1.4 THE RESEARCH PROBLEM

1.4.1 DEFINING THE LEADING RESEARCH QUESTION

As is apparent from the previous description, the way in which things eventuate the last period in relation to the existing *minimum* and *higher* ISSS reveals, on the one hand, and from an international perspective, that they are still regarded as a valuable tool for extending the so-called *vertical dimension* of social security relating to the provision of increased benefit coverage and levels of benefits, and that they can act as a yardstick for the tenability of reforms; even if they are not totally suitable for the fast extension of social security coverage to all,[163] it is affirmed that in a legitimate search for consistency and effectiveness, the drafting of any new standards should be preceded by an exhaustive analysis of the existing ones, their interaction and omissions.[164] On the other hand, and from a national perspective, the low number of their ratifications is seen as reflecting the lack of interest in these standards, or in their relevance in fulfilling domestic social protection needs; at the same time, however, their contribution to the development of social security as an institution has never been disputed.

Bearing these two perspectives in mind, the international and the national, but also the history and the reasons for development of the ISSS (see Sections 1.1 and 1.2, above),[165] one comes to the following presumption: *there is a use in the existent international social security standard-setting framework; however, it is imperative to illuminate present weaknesses so as to give it full substance, improve further its impact at a national level, and by extension its contribution to any impending international social security standard-setting approach.* Thus, there is a current normative starting point[166] in relation to the international social security standard-setting framework, which still, however, needs further consideration.

This becomes even more relevant on account of the current phenomena resulting from the globalization of the economy and the liberalization of labour markets, because, in parallel to the advantages they may have brought, they have simultaneously jeopardized social protection of workers and of the world population in general. Accordingly, it should not be forgotten that as far as the promotion of the basic rights of people in the field of employment is concerned, the reassurance of the right to social protection – and the right to social security in particular – is a cardinal obligation of both the international and the national

163 See, for analysis, ILO (2008b), pp. 1–13.
164 See Javillier, J.C. (2003), p. 6.
165 See, also, Korda, M. and Pennings, F. (2008), pp. 131–132.
166 For example, the use of the ISSS to protect against cuts in the levels of social security protection, *etc*.

communities.[167] Therefore, even when competition becomes fierce, a high level of social security protection should not be seen as a competitive disadvantage, but as a competitive advantage.

To this end, it was decided to focus this doctoral thesis upon the crucial subject matter of *international social security standards' blockage*, which is conceived as the existence of obstacles to their further promotion.

Thus, the leading research question (research problem) and point of departure is the following: '*what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system*'?

For clarity, I would like to point out that in my view the further promotion of the current up-to-date *minimum* and *higher* ISSS relates to several (multiple) aspects, such as: increasing their ratification level; ensuring their actual implementation by countries that have already adhered to them through the (legal) process of ratification and the conformity[168] of national laws and regulations with the international requirements set by them; enhancing their initial cause of existence, which concerns, among others, the establishment of a (at least minimum) satisfactory level of social security protection at the national level, its preservation and gradual improvement, as well as elevating their role, appraisal and utility in guiding – both at the national and international level – the adoption and application of any new social security arrangements, or the altering of existing ones.

Obstacles to further promotion of the ISSS do exist – this is undeniable. Nevertheless, it should be noted that these obstacles can vary in type, they can appear in different spheres, and they can be caused by dissimilar circumstances. Moreover, the obstacles to further promoting the ISSS should not only be considered as those preventing or delaying the process of their ratification, or put differently, the factors resulting in the disinclination on the part of a country to ratify the standards, although they are indeed pivotal. Obstacles may also be factors hampering the progress of already ratified standards by disrupting their proper applicability/implementation at a national level; while, the evanescence of the factors that formerly led to the ratification of the ISSS by countries, could, nowadays also be regarded as obstacles to further promoting them. What is more, obstacles to further promoting the ISSS may emanate similarly from other sources, for example, the functioning of the standard-setting system (international and regional) itself, the socio-economic and political changes stemming from the process of globalization, etc.; this is something also worth looking at. These last

167 See, also, Valticos, N., www.lawnet.gr/pages/eofn/2/dil_ioun.asp (last visit: 06/05/2010).

168 This relates to regulatory compliance: aspiration of public bodies and national agents to ensure that the necessary steps are taken and efforts are made so as to comply with the ISSS basic principles and requirements.

aspects have not been given a fair amount of attention in pure research (scientific) terms yet.

Thus, the first step to be undertaken towards the elimination of obstacles is to identify them in an as accurate a way as possible. Obstacle identification is decisive for many reasons. It is indispensable for coming up with tailor-made resolutions; without it, no advancement at a national level can be comprehensive, and it contributes to the proper preparation of any new social security (standard-setting) mechanisms, since weaknesses and omissions can be avoided more easily once detected, increasing, at the same time, domestic acceptance. Moreover, obstacle identification becomes even more significant, since at an international level it has been acknowledged that an intensification of the efforts in promoting both the ratification and implementation of the main international social security related Conventions is necessary in the coming years, and the ILO has been asked to work on this matter.[169]

In recent years certain obstacles have been pointed out. However, most of them – if not all – relate to difficulties preventing or delaying the ratification process of the ISSS at the national level.

This fact actually indicates the strong link between the level of ratification (as well as prospects of future ratification) and the relevance and adequacy of these standards to respond to current or future social security needs. Moreover, the low level of ratification of the up-to-date ILO social security Conventions[170] – and particularly those including higher ISSS – has been a matter of ILO concern for quite a long time now; while recently, as described earlier (see Section 1.3), it has been placed on the agenda anew, and has been given much more emphasis.[171]

In particular, the ILO came up with a list of the most important obstacles to ratification – factors, in other words, negatively affecting ratification – of its legal (normative) instruments, including the ISSS. These are:[172] (a) non-conformity of national legislation; (b) different societal values and political obstacles; (c) lack of financial resources; (d) lack of administrative and statistical capacity; (e) lack of knowledge about the Conventions.

The composition of this list is based on the feedback given, over the years, by the ILO constituents, the CEACR, as well as certain other independent social security experts. Aside from the fact that these obstacles relate mainly to C102,

169 See ILO (2009d), p. 6.
170 For the status of ratification for each up-to-date ILO social security Conventions, see ILO Instruments – ILOLEX.
171 See also ILO (2008b), p. 11.
172 See ILO (2008), pp. 37–39.

which is recognized as the flagship international social security standard-setting instrument,[173] they have also been invoked in respect of the other relevant up-to-date ILO social security Conventions.[174]

It is interesting to note that similar – if not identical – obstacles to ratification have also been detected in relation to the so-called fundamental Conventions of the ILO,[175] which present higher levels of ratification;[176] equally, some of these obstacles to ratification have been found in respect of several other ILO Conventions (i.e. economic costs and political variables).[177]

Be that as it may, there may be other, different reasons why states do not ratify the ISSS. This ILO list of obstacles is not, and cannot be considered, exhaustive, but indicative, and is not the result of in-depth formal academic research. Therefore, by looking beyond the findings of the ILO, I am pointing out, here, a few other possible obstacles to ratification, but also to the further promotion of the ISSS in general; they are: (a) the desire for flexibility and the legally binding character of the ISSS; (b) (inter)national political pressure, opportunism, trends and interests; and (c) the dynamism of the ISSS.

This way, I formulated a combined initial *frame of reference* in respect of the obstacles, and through the leading research question *'what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system'*, I will assess whether indeed this *frame of reference* is valid, and to what extent; whether there are more obstacles to ratification, as well as whether there are other possible obstacles that may hinder the further promotion of the ISSS in general, and if so to identify and describe them. In the Table below, the content of this initial *frame of reference* is presented and afterwards each obstacle is described.

Frame of Reference
(1) Different societal values and political obstacles
(2) The dynamism of the ISSS
(3) (Inter)national political pressure, opportunism, trends and interests
(4) Desire for flexibility and the legally binding character of the standards
(5) Lack of financial resources
(6) Lack of administrative and statistical capacity
(7) Lack of knowledge about the Conventions
(8) Non-conformity of national legislation

173 For a comprehensive analysis of the ISSS on the basis of C102, see Dijkhoff, T. (2011), pp. 23–107.
174 See ILO (2008), pp. 49, 52. See for analysis ILO (2001), pp. 1–78.
175 See ILO (1997). See also ILO (2007b), pp. 1–11.
176 Out of the eight fundamental ILO Conventions none has less than 150 ratifications. See ILO Instruments – ILOLEX.
177 See, for analysis, Boockmann, B. (2000), pp. 1–41. See also Johnson, A. (2003), pp. 1–29.

(1) ***Different societal values and political obstacles:***[178] the ISSS are considered to be outdated and to reflect an old-fashioned concept of social security, which does not correspond to the current socio-economic reality, to the way society is now organized, and also to how social security has been regarded from a governmental point of view in recent years. The terms and concepts used are found to retain a gender-specific language, conservative, obsolete, discriminatory, problematic, and in all, politically and factually incorrect. For example: the preservation of the so-called male breadwinner model; the reference to the notion of skilled manual male employee; the definition of 'wife' as the woman who is maintained by her husband; the restriction of survivors' benefits provisions only to the widow and children of the beneficiary and not to the widower as a beneficiary; the tendency towards individualization and self-reliance with respect to social security protection – this also reflects the gradual erosion of the principle of social solidarity and the role of the state as the final guarantor of social security protection; *etc*.[179]

(2) ***The dynamism of the ISSS:*** the ISSS are regarded as impeding or obstructing more progressive and, at the same time, innovative social security law and policy-making at a domestic level, since they are considered to be rigid and critical of reforms.

(3) ***(Inter)national political pressure, opportunism, trends and interests***: on the one hand, the conviction that states have actually nothing to gain from the ratification of the ISSS; on the other hand, states simply ratify the ISSS to gain international recognition (even when they are not able to or do not really intend to comply with the ISSS). Political pressure can be twofold – either referring to indirect political pressure on a country to show that the level of protection in the country is meets international standards (positive political pressure), or indirect political pressure to undertake measures, which may prove, in the long run, to go against internationally accepted standards (negative political pressure).

(4) ***The wish for flexibility and the legally binding character of the standards:*** States' reluctance to accept binding international obligations in the field of social security and their preference simply not to proceed to ratification or to follow other soft law mechanisms (i.e. the Open Method of Coordination (OMC)[180] at an EU level).

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178 Put differently, discord between states and the ISSS; states do not agree with the social security approach followed by the ILO.

179 See ILO (2008), p. 38.

180 Concerning the 'adoption of non-legislative forms of cooperation (…)', the promotion of 'soft governance mechanisms' and the role of the OMC, see, in particular, Korda, M. and Schoukens, P. (2006), pp. 14–15, 22–24. See, also, Pennings, F. (2010), pp. 153–168.

(5) ***Lack of financial resources***: the inability of a country, one the one hand, to ratify a Convention due to its medium-low level of economic development, and on the other hand, if ratified, to remain compliant with the ISSS due to loss of economic capacity. Moreover, the economic crisis and inflation have been proclaimed as factors impeding the application of the ISSS and worsening the lack of financial resources in countries.[181]

(6) ***Lack of administrative and statistical capacity***: is seen as inability to cope with the complicated mechanisms of regular reporting in respect of the ISSS, the need to mobilize a diversity of national institutions for the purpose of supervising the proper application of the ISSS, the difficulties in collecting the required statistical information, the absence of reliable statistics, and defects in the existing infrastructure for delivering periodical statistics, *etc*.[182]

(7) ***Lack of knowledge about the Conventions***: unawareness, misconception, as well as misinterpretation, of the meaning and content of the Conventions' provisions, leading, in certain cases, to false assumptions that the national legislation of a country does not conform with the ISSS.[183]

(8) ***Non-conformity of national legislation:*** in other words, the lack of consistency between national legislation and certain international social security provisions. For example, provisions pertaining to: the personal scope of application, qualifying conditions, rates of replacement, waiting periods for the provision of a social security benefit, and equality of treatment between national and non-nationals, *etc*.[184]

In order to give a well-founded answer to the leading research question, the research domain of this doctoral thesis has been confined to that of a developed social security system, and particularly to that of Greece, and the identification of obstacles is achieved through the comprehensive exploration of a number of dimensions (factors, in other words) that are inextricably linked to the ISSS, namely: the position of national (social security) law and practice in respect of, and in relation to, the ISSS; the attitude of the state (government), political opposition, civil servants and social partners; the functioning of the domestic social security administration; the standpoint of domestic courts and academia; the role of the national Parliament; and that of the international organizations themselves (ILO and CoE).

181 See ILO (2008), pp. 38–39.
182 See ILO (2008), pp. 38–39.
183 See ILO (2008), p. 39.
184 See ILO (2008), pp. 37–38.

The factual findings of the research will be placed in a new systematic framework that will show which obstacles are relevant today in relation to the further promotion of the ISSS in general, how they actually work, and what could possibly be done to improve the situation. In other words, the aforementioned initial *frame of reference* is taken as a starting point and the conduction of this research intends to either simply confirm it (verify knowledge), or build on it (rectify and extend knowledge). Besides, it is already a challenge to find the degree of accuracy in the official explanations given by the ILO on the non-ratification of the ISSS.

Last, it should be noted at this point that within the framework and the objectives governing this research work, a social security system is regarded as a developed one when the right to social security is recognized domestically/at a national level (constitutionally) as an inalienable right, and at the same time, the system, through its legal, political and structural components, ensures the realization of this right in practice by offering protection against a broad spectrum of social risks.[185]

In relation to the normative content of the right to social security, the General Comment No. 19,[186] on Article 9 (the right to social security) of the ICESCR, recently made explicit reference to C102 and the nine principal social security risks enshrined therein,[187] and remarked that they should be covered by a social security system.[188] Be that as it may, there may be other social security arrangements in a country, equally acceptable and workable in providing protection (coverage). Thus, taking as a premise that the ILO view of social security is the ultimate one automatically excludes them. That is why such an approach is avoided.

Moreover, there is a general tendency to correlate a *developed social security system* with the level of economic development within a country. Although indeed economic prosperity is conducive to the further advancement of the social security protection level in a country, the social security system as such, as well as the social risk coverage provided can be adapted to the socio-economic condition

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185 Social risks pertain to arising social problems and, in general, elements of life causing – both in the short or long term – insecurity for the individual. In most developed social security systems, social risks are organized in social security branches, or schemes. The term *branch,* or *scheme*, refers to 'an arrangement dealing with a definite social risk and displaying a certain unity in terms of regulation and administration'; see Pieters, D. (1993), p. 3. It is also very common at a national level for a branch or scheme to encompass more than one social risk. For example, the pensions' branch usually encompasses the social risks of old-age, invalidity and survivorship, while in certain cases the social risk of employment injury may be covered by this branch as well.

186 See UN (2008), p. 4.

187 Namely: medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivorship.

188 This actually stems from the international consensus that has been established on these risks through the adoption of C102.

of a country, irrespective of the level of development of the country.[189] Relevant to this – and from an economic point of view – is the fact that there are examples of countries with a healthy economy, as well as economic development, which have ratified neither the *minimum,* nor the *higher,* ISSS.[190] Therefore, even if countries have indeed the institutional, financial and administrative structure, it is not certain that they will proceed with ratifications.

It is obvious that the detection and description of the obstacles to further promoting the ISSS within a *developed social security system* – as the one conceived and described above – provides for a more integrated approach and investigation of the research problem (for all the (possibly) covered social risks, and by extension, the functioning of the social security system as a whole).

1.4.2 DISCIPLINARY EMBEDDING

In this doctoral thesis, the research problem previously defined (see Sub-Section 1.4.1, above) is situated (embedded) between two disciplines: the discipline of law and the discipline of social policy. However, the specific field of study (or research area, in other words) on which the research problem focuses in both disciplines is that of international social security law, and the specific subset (research theme) is the obstacles to further promoting the ISSS. This specific subset is examined within each discipline from a different perspective and through the use of different research methods (see Sub-section 1.4.3, below).

By way of illustration, in the discipline of law, the obstacles to further promoting the ISSS are identified and described based on the position of national law and practice (legislative perspective/law-making and application/implementation) in respect of, and in relation to, these standards (legal comparison/bottom-up approach), as well as the standpoint of domestic courts (examination of applicability to the facts (per case) and law interpretation). Within the discipline of social policy, the behaviour (over the years (beginning of the 1990s – end of 2010)) of certain political (the government, opposition political parties, civil servants, trade unions, employers' representatives, national Parliament) and other actors (such as academia and international organizations) towards, and in relation to, these standards is studied. This shall further facilitate the identification and the description of the obstacles. It is important to see whether or not these actors have exercised an influence – and to what extent – in creating, or eliminating the obstacles. This becomes even more obvious if one recalls that particularly the

189 See Kulke, U. and Lopez Morales, G. (2007), p. 94.

190 For example, Australia, Canada, Gulf Cooperation Council countries, United States; see ILO (2008), p. 37.

ILO ISSS have been adopted by an international body (the ILC), which consists of (national) government delegates and delegates representing employers and employees (usually also accompanied by their respective advisers).

The combination of the two disciplines provides for a more thorough approach of the research problem. That is why the research, which aims to give answer to the set problem, is interdisciplinary. Besides, law is related to social policy and *vice versa*.

1.4.3 METHODOLOGICAL FUNCTIONALITY: THE RESEARCH METHODS AND THE SELECTION OF THE RESEARCH SUB-QUESTIONS

a. Qualitative descriptive research

In this doctoral thesis, the research conducted is of a qualitative nature, and its main function is descriptive.[191] The research problem (leading research question) is focused on describing: *'what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system?'*

Qualitative research elicits understanding and places an emphasis on in-depth knowledge, as well as on describing the complete, actual picture of a research problem (holistic approach).[192] That is also its special value. To this end, collection of extensive information is necessary for an in-depth knowledge to be acquired and for accurate results to be reported.

b. The use of the case study

Taking the above into account, as well as the ultimate goal of the research, which is to give a solid answer to the leading research question, one of the methods regarded, from the beginning, as being appropriate, is that of the case study, which also forms a central part of descriptive (qualitative) research.[193]

It is probable for someone to enquire whether such a research approach – the *single country study* – can indeed provide substantial results and answer the leading research question adequately, particularly, since it has been widely claimed that generalization of knowledge cannot be based on a single case; summarizing and

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191 'Describing is a very important research function since a researcher cannot define, compare, evaluate, explain, or design without first describing. Thus, all research begins with a description and if one does not exist then the researcher will have to make one'; see Oost, H. (2006), p. 34.

192 See, for analysis, Ragin, C.C. (1994), pp. 83–101.

193 See Chima, J.S. (2005), p. 22.

developing general propositions becomes difficult, and thus should be avoided; the chance for bias towards verification is always present; and so on. Infra, explanation is given as to why the case study method has been applied in this doctoral thesis, as well as why Greece has been chosen as the country of study.

The desirable result of the leading research question is to highlight which obstacles to the further promotion of the ISSS are relevant today, how they actually work, to place them in an integral systematic framework, and thereupon reflect on what could be possibly done to improve the situation. Thus, the conduction of this research intends to study the presence, validity and reliability of the obstacles embodied in the initial *frame of reference*, as well as to identify and describe other possible obstacles.

The case study method is applied in this doctoral thesis exactly because there is a usefulness to this method in knowledge elaboration and verification, as well as in knowledge reconstruction (rectification of omissions) and knowledge building (extension).[194] Even though the information is based on a single country study, this is a beneficial approach, since it contributes to the cross-check between the content of the initial *frame of reference* and the new research factual findings, and at the same time allows for improvement and grounds for further research.

Furthermore, it is not quite right to conclude that the generalization of knowledge cannot be based on a single case. Generalization depends, to a significant extent, upon the case of which one is speaking, and on how this case has been chosen and investigated. Put differently, the strategic choice of a case may greatly add to the generalizability of the case study. Besides, formal generalization is only one way through which knowledge is gained. The fact that knowledge cannot be formally generalized from a single case does not mean that it cannot enter into the collective process of knowledge accumulation in a given scientific field of study. Moreover, without any doubt, a purely descriptive, phenomenological case study, which does not intend to generalize, can certainly also be of value in the process of knowledge production, and has often assisted in *cutting a path* towards scientific innovation.[195]

As far as this doctoral thesis is concerned, the purpose is not the formal generalization of knowledge as such, but more the facilitation of learning, describing reality, and achieving new insight into the research problem, providing, at the same time, food for future thought and investigation. Even if generalization takes place, it will be meticulous and will involve specific aspects of the research problem, where generalization could be applicable. As Hans

194 See Flyvbjerg, B. (2004), p. 424, as well as Chima, J.S. (2005), pp. 2–4.
195 See Flyvbjerg, B. (2004), pp. 423–424, as well as Chima, J.S. (2005), p. 6.

Eysenck said 'sometimes we simply have to keep our eyes open and look carefully at individual cases – not in the hope of proving anything, but rather in the hope of learning something.'[196]

The choice of Greece as the country of study – apart from the reasons stated in the section on the research relevance (see Sub-Section 1.4.4, below) – is also based on the following aspects:

(a) It is a country that has had a developed social security system for quite a long; the formulation of the Greek system began already in the 1920s, while by the late 1950s, protection against a wide range of social contingencies was already provided (sickness and maternity benefits both in cash and in kind; invalidity, old-age, and survivors' pensions; employment injury and occupational diseases; unemployment and family benefits),[197] without ever being a country with high levels of economic prosperity;[198]

(b) It is a country where the social security system has been under constant change, particularly during the last two decades (form 1990 to 2010), and in the most recent period (between 2008–2010)[199] further successive reforms have taken place (and will continue to take place). Therefore, it is useful to spot and describe the obstacles to promoting the ISSS over a fairly long time period. As it has also been correctly pointed out, 'policy reforms, even if considered to be merely adjustments when implemented, can have a cumulative effect and ultimately lead to structural reforms'[200] at a later stage;

(c) Last, but not least, my language competence – Greek being my mother tongue – played a decisive role in the selection of Greece as the country of study as well. Through my command of the Greek language, which not many non-Greek researchers have, access to genuine, legal, academic, political and other texts (sources) – where knowing the language is important for gaining and eliciting new substantial information and data – was facilitated. A satisfactory command of the Greek language alone would not suffice for the conduction of such in-depth research.

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196 See Eysenck, H.J. (1976), p. 9.

197 See also Chapter 3, Section 3.1.

198 In relation to this, it should be kept in mind that several historic, political and economic developments have influenced negatively the general advancement of Greece as a country for many decades, and particularly from 1936 onwards. By way of illustration: the interwar period (1918–1939), marked by the global economic crisis of 1929, was the threshold for the economic crisis in Greece between 1929–1932; the Greek interwar period (1923–1940), known as the period starting from the population exchange between Greece and Turkey (1923) and lasting until the beginning of WWII, is one of the most troubled periods of the Greek history; the triple occupation of Greece by the Germans, the Italians and the Bulgarians (1940–1945); the Greek civil war (1946–1949); a series of military and political dictatorships: 1925–1926, 1935, 1936, with the last taking place between 1967–1974. It was only after 1974, with the fall of the last dictatorship, the establishment of democracy, and the affiliation of Greece to the then EEC (nowadays EU) that Greece managed to gradually prosper again. Nevertheless, as already mentioned, the formulation of a developed social security system in terms of risks coverage was achieved.

199 See Chapter 3, Section 3.1, as well as Chapter 5, Section 5.4, Sub-Section 5.4.1.

200 See Van Gerven, M. (2008), p. 67.

Furthermore, I find it appropriate to elaborate here on certain points. Greece, in the last few years – and currently – has been facing serious domestic economic difficulties (several economic problems, which have been accumulating, came to the surface, particularly from mid-2008 onwards). In addition, the country was severely hit by the latest global financial crisis. Hence, one could characterize it, at least for the forthcoming years (i.e. 2011/2012/2013, *etc.*), as an untypical country for study and examination due to the effects of the crisis on the country (i.e. if compared to other countries, which may have been hit less by the crisis, or even not at all). To this end, I would like to specify that the present research work concentrates mainly on the years preceding the crisis. For that reason, in my opinion, it can be compared with other countries. A description, however, and reflection on the national measures adopted in mid-2010 (during the crisis), which touch upon social security matters and the ISSS,[201] has been also considered beneficial, since this way the research simultaneously serves two purposes: (i) whether the ISSS accepted by Greece have been respected, and to what extent during the years before the onset of the crisis at the national level, as well as during the first period of the crisis (starting mid-2008); (ii) whether the measures adopted (mid-June 2010) after the crisis peaked (end of 2009) shall negatively affect core values and requirements of the accepted ISSS, and why so. Besides, in such complex domestic situations, the examination of the utility of the ISSS becomes more pertinent, and adds to the search for existing obstacles to the further promotion of the ISSS, and those that may emerge.

Last, regarding the case study method, some further merits ought to be highlighted, which will enrich the outcome of the research. The method involves the explanatory utility of findings. It contributes significantly to the better understanding of reality and envisage views directly in relation to the research problem as they unfold in practice, while through it the effect and usefulness of research becomes clear and tested. What is more, the inherent advantage of the case study in describing and explaining a phenomenon or a problem in a rigorous manner makes it useful for exploring and analyzing situations of complex causality.[202]

Moreover, the use of the case study method in this doctoral thesis also complements the questionnaire method,[203] which is (almost always) applied by the ILO for the conduction of its General Surveys. It was, similarly, used for the conduction of the General Survey of 2011 on Social Security.[204] The use of the

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201 This follows in Chapter 5, Section 5.4, Sub-Section 5.4.1.

202 See Flyvbjerg, B. (2004), pp. 428–429, as well as Chima, J.S. (2005), p. 2, 4.

203 See International Labour Office (2009), pp. 1–9.

204 On the basis of Article 19 (ILO Constitution), the CEACR publishes an in-depth annual General Survey on Member States' national law and practice, on a subject chosen by the ILO GB.

questionnaire method by the ILO is understandable. It is not possible for such an international organization to conduct, within a short time period (or at short notice), in-depth qualitative research for each one of its Member States, and the questionnaire method proves useful in understanding the degree to which certain phenomena are present in a given group, or how they vary across cases. However, the advantage of large samples, which is breadth, encounters a problem, which is depth, and this is where the case study method fills the gaps. Therefore, the use of both research methods leads to the sound development of knowledge and science.[205]

c. The research sub-questions and their purpose

Thereafter, three research sub-questions[206] have been chosen in view of facilitating a profound reply to the leading research question. Gradually, as explained subsequently, each of them approaches the research problem from a different angle, seeking to detect obstacles to further promoting the ISSS, and to describe them.

Under every research sub-question the purpose of its formation is illustrated. Afterwards, the research methods used to obtain the data that best enable the detection and description of the obstacles are presented, as well as the data collection sources.

1st Research Sub-Question:

> *Greece has ratified several international social security standards (ISSS). What are the reasons that led to the ratification of these standards by Greece? In other words, how did these reasons influence the ratification process and to what extent were they factors in ratifying these standards? Are these reasons still valid today, or not?*

Firstly, it is considered appropriate to study and describe the reasons that led to the ratification of a number of up-to-date ISSS by Greece. After doing so, it will be examined whether these reasons are still valid today, or not. As mentioned earlier, the evanescence of the reasons leading to the ratification of the ISSS at a national level in a given time-period could today be regarded as obstacles to further promoting them. It should be noted, in this respect, that recently the ILO has cited a number of reasons, which, since1990, it believes has led certain

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205 See also in Flyvbjerg, B. (2004), p. 432.

206 Sub-questions contribute to careful, diligent and exhaustive investigation of specific subject matters. Such an investigation seeks the advancement of knowledge that will lead to the complete answer of the research problem.

countries to ratify C102.[207] Thus, it is also interesting to see whether the reasons that led Greece to ratification coincide with those cited by the ILO, or overlap; or whether there are also other reasons, behind the ratification, and which of all these reasons are present today, and which are not.

2nd Research Sub-Question:

Greece did not ratify certain international social security standards (ISSS). Do the mentioned obstacles fully describe the country's disinclination to ratify ISSS? Are there any other obstacles preventing ratification?

Secondly, the obstacles are studied and described based on non-ratified ISSS. As clearly stated, this second research sub-question intends to explore whether the already recognized obstacles to ratification can fully describe the country's disinclination[208] to ratify ISSS, or whether further obstacles exist.

3rd Research Sub-Question:

Greece fails to comply with a few of the ratified international social security standards (ISSS). Can this failure also be attributed to the existence of the mentioned obstacles? Put differently, is it possible that the mentioned obstacles can also cause improper applicability of the ratified standards? Are there any other obstacles that may cause or affect the (im)proper applicability of the ratified standards, as well as their further promotion?

Thirdly, the obstacles to further promoting the ISSS are studied and described, based on already ratified ISSS. As noted before, the obstacles to further promoting the ISSS should not be considered only as those preventing or delaying the process of their ratification. Obstacles may also be those hampering the progress of already ratified standards by disrupting their proper applicability and implementation – their general endorsement, in other words – at a national level. The aim of this third research sub-question is therefore twofold: to explore whether the obstacles to ratification have been equally encountered after the ratification of the ISSS,

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207 The reasons invoked by the ILO are summarized as follows: (1) provision of ILO technical assistance; (2) economic development; (3) positive effects of the transition in Central and Eastern Europe from centrally planned to market economies; (4) EU and ILO strong support in bringing national law and practice into line with European social standards and requirements laid down in Convention No. 102. Moreover, from the ILO statement that the: 'Convention No. 102 adopted in 1952, received most of its ratifications prior to 1980', one fifth reason for ratification could be presumed, and that is the existence of political interest and will (a different political climate prevailed almost six decades ago; there was a necessity to reconstruct the social security system in countries after the end of WWII)). See ILO (2008), pp. 35, 37.

208 Disinclination refers both to pure unwillingness on the part of the country, or simple hesitancy.

as well as to identify and describe any other possible obstacles to the further promotion of the ISSS.

d. The other employed research methods and their utility

In an effort to detect and describe the obstacles to further promoting the ISSS on the basis of the above presented research sub-questions, certain other research methods are also used.

To begin with, the comparative (content) analysis method has been employed. Comparative analysis, as Joan Higgins points out, 'is a methodology (…) and should be deployed where it can illuminate specific questions and hypotheses.'[209] Types of comparative social research are not necessarily cross-national in nature, but they also depend on the aim of the study.[210] Comparative approaches can be applied to many different kinds of cases, not just countries; that is why comparative researchers usually initiate their research with a specific set of cases in mind, which are thought to be comparable with each other. Additionally, several basic features of the comparative approach make it a good strategy for advancing knowledge.[211]

In this doctoral thesis, a vertical legal comparison (bottom-up approach) takes place between the national (Greek) social security (legal) system and the ISSS included in a number of ratified and unratified international social security legal instruments (national and international social security legislation are the two comparable cases in question).

Being more precise, the legal comparison goes through the following four aspects: (a) the conformity of the national social security legal system with the ratified ISSS; (b) the non-conformity of the national social security legal system with the ratified ISSS; (c) the conformity of the national social security legal system with the unratified ISSS; (d) the non-conformity of the national social security legal system with the unratified ISSS. This way, the position of national law – and, by extension, practice – is explored with regard to both the ratified and unratified ISSS. This, in turn, advances knowledge, examines the validity of certain obstacles embodied in the initial *frame of reference* (see sub-section 1.4.1, above) and facilitates the detection and description of other possible obstacles to further promoting the ISSS.

209 See Higgins, J. (1986), p. 224.
210 See Clasen, J. (2003a), p. 95, as well as Clasen, J. (2003b), pp. 3–4.
211 See Ragin, C., C. (1994), pp. 11–113.

It is worth noting, however, that this legal comparison does not imply that conformity or non-conformity is the sole reason that the ISSS are ratified or unratified, accepted or rejected, etc. Through it, factual findings emerge with respect to the main research problem. The legal comparison method is used in all three research sub-questions mentioned previously.

A specific number (sample) of ratified and unratified international social security legal instruments has been selected (ratification and non-ratification on the part of Greece), since the obstacles are studied based on both ratified and unratified ISSS. The ratified instruments are ILO C102[212] and the ECSS of the CoE (1964).[213] The unratified instruments are ILO Convention No. 128 on Invalidity, Old-age, and Survivors' Benefits (1967) (C128), the Protocol to the ECSS (1964) of the CoE, as well as the Revised ECSS (1990) of the CoE.

The content of the comparative analysis concentrates on the following social security risks – namely: medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivorship – and the units of analysis involve: the material and the personal scope of application of each social security risk, the qualifying conditions for granting the benefit, the amount and the duration of the benefit, benefit revision, the suspension of benefits, the right of appeal, as well as social security financing and administration.

The Greek social security legal system provides coverage for all the above social security risks, which are also included in all the chosen ratified and unratified instruments (comparability of content and units) with the exception of (unratified by Greece) C128, which pertains to only three of them (invalidity, old-age and survivorship).

The reason why this last instrument has been included in the sample of the unratified instruments relates to the fact that the research aims at describing obstacles in relation to both minimum and higher ISSS. C128 belongs to the *third generation* of ISSS (see Sub-Section 1.2.1, above), pertaining to *higher standards*. Still, one may question the choice of this specific instrument, by stating that obstacles to further promoting *higher standards* could be equally detected and described through the use of another instrument on *higher standards*. Although this may be a defensible standpoint, I would like to argue that C128 encompasses a lengthy spectrum of social risks compared to the other ILO instruments on *higher standards*, and particularly long-term risks (pensions). What is more, it is more interesting, since long-term risks are considered to be – if not the most –

212 Greece has ratified all parts of C102 except Part VII on Family Benefits.

213 Greece has ratified all parts of the CoE ECSS except Part IV on Unemployment Benefits and Part VII on Family Benefits.

among the most costly social risks in a national social security (legal) system, and this relates also to the fact that the duration of social security coverage provided is longer compared to the one provided for short-term social security risks.[214]

It should be mentioned at this point that the description and comparison which takes place in connection with the Greek social security (legal) system and the content of the ISSS is dense[215] for two main reasons: (a) to make the legal comparison between the system and the international social security standards more comprehensible and understandable; and (b) to present in sequence the modifications, alterations or amendments that have taken place at a national level, so as to assist the examination of the aspects of conformity and non-conformity referred above.

Moreover, and by borrowing words from Bent Flyvbjerg, another purpose of opting for a description in such detail is 'to allow the study to be different things to different people'; 'to leave scope for readers of different backgrounds to make different interpretations and draw diverse conclusions regarding the question of what the case is a case of.'[216]

In the same spirit, a detailed description and critical analysis of C128 has been included in this doctoral thesis,[217] with the aim of exploring in a more systematic way the position of national law and practice in respect of, and in relation to, the higher ISSS on pensions.

Apart from the comparative (content) analysis method, the interview method is also employed. The added value of interviews is the direct receipt of pertinent information and the gaining of more practical knowledge on the subject matter. Taking into account the research subject matter of the three research sub-questions, the type of in-depth interviewing and the approach of the standardized open-ended interview[218] has been considered as the most appropriate. In simple

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214 A similar train of thought has been expressed elsewhere. See, for example, Czucz, O. (1999), p. 51. It is true that C121 also refers to a long-term social risk. Be that as it may, this international legal instrument sets standards in relation to only one long-term social security risk. Thus, the spectrum of analysis would be rather confined. Similarly, the other ILO Conventions on higher ISSS (C168, C130, C103, as well as C183) each set international standards, for one social security risk at a time. Thus, once again the spectrum of analysis would be confined. Furthermore, these last ILO Conventions refer to short-term social security risks, which pertain to a more limited social security coverage period (duration). Last, and particularly in relation to the two ILO Conventions on maternity protection (C103 and C183), they encompass, apart from social security, labour law matters, and it has been considered more appropriate to go for an ILO Convention of a purely social security content.

215 See Chapter 4.

216 See Flyvbjerg, B. (2004), pp. 430–431.

217 See Chapter 2.

218 'In-depth interviewing, also known as unstructured interviewing, is a type of interview which researchers use to elicit information in order to achieve a holistic understanding of

words, face-to-face discussions based on open questions took place with persons involved in the field of social security and coming from different professional backgrounds: civil servants/officials,[219] trade union representatives,[220] academics, lawyers, independent social security experts and contact persons working in the international organizations.

The approach of the standardized open-ended interview assists, further, the detection and description of obstacles to promoting the ISSS. It complements the comparative (content) analysis method in the sense that provides for cross-checking of the legal (content) comparison findings, and at the same time produces additional findings. The interview method is used in all three research sub-questions.

e. Data collection and time periods

Finally, the body of materials gathered has been based on both primary and secondary sources (data analysis, as already clarified, is qualitative). These two types of sources have been used to complement each other so as to provide for a wider scale of data facilitating the accurate identification and description of obstacles. The *primary sources* used include: national social security laws and other legislative instruments;[221] internal (Greek) ministerial documents;[222] national reports on the application of the ratified ISSS and national reports on the non-ratified ISSS;[223] national social security case law;[224] national parliamentary

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the interviewee's point of view or situation; it can also be used to explore interesting areas for further investigation. This type of interview involves asking informants open-ended questions, and probing wherever necessary to obtain data deemed useful by the researcher. As in-depth interviewing often involves qualitative data, it is also called qualitative interviewing. Patton (1987:113) suggests three basic approaches to conducting qualitative interviewing: (i) the informal conversational interview; (ii) the general interview guide approach (commonly called guided interview); (iii) the standardised open-ended interview. Researchers following the third approach – the standardised open-ended interview – "prepare a set of open-ended questions which are carefully worded and arranged for the purpose of minimising variation in the questions posed to the interviewees" see Bery, R., S., Y., (1999). This document was added to the Education-line database 28 September 1999. See also Draper, A., K., (2004), 641–646. (The transcripts of the interviews have been withheld).

219 Civil servants/officials are considered, in a sense, to be government's representatives, since they mainly express the government's view on the matters discussed. However, their personal reflections and standpoints were – in certain cases – also expressed.

220 The initial intention was to have discussions with both workers' and employers' representatives. Unfortunately, the researcher was only granted permission by the workers' representatives.

221 Some of them were obtained during research visits to Greece, while others from electronic libraries and other internet sources.

222 They were obtained during research visits to Greece.

223 Some of them were obtained during research visits to Greece, while some others were provided by the Social Policy Department – Directorate General of Social Cohesion of the CoE. All of them involve the ratified and unratified parts of the ECSS.

224 They were obtained during research visits to Greece.

documentation;[225] reports of the Greek Committees of Experts (Committee);[226] explanatory and introductory reports on the laws proposed for the reformation of the Greek Social Insurance System (SIS);[227] the texts of the international social security legal instruments,[228] as well as relevant underlying and explanatory documents (i.e. the preparatory work documents);[229] individual observations, individual direct requests, as well as General Surveys of the CEACR of the ILO and resolutions adopted by the CoE Committee of Ministers);[230] and information obtained through in-depth interviewing.[231] The *secondary sources* are mainly national and international books and articles published (in journals, periodicals, newspapers, internet sources, *etc*.). However, most of the sources are primary, which gives further added value to the doctoral thesis. As already noted, the researcher's competence in the Greek language contributed significantly to this end as well.

With respect to the country (Greece), data collection mainly covers the time period between the beginning of the 1990s and the end of 2010. Apart from being a sufficiently long time period for data analysis, within this period several modifications, alterations, or amendments took place at a national level with regard to the formulation of the Greek social security (legal) system. This fact assists further the examination of the aspects of conformity and non-conformity of the national social security legal system with the ratified and unratified ISSS and of the detection and description of obstacles to the further promotion of the ISSS in general. Similarly the individual direct observations and direct requests made by the ILO CEACR concerning the application of the ratified (by Greece) ISSS, as well as the resolutions adopted by the Committee of Ministers on the application (by Greece) of the ECSS, refer to the same time period.

However, with respect to C128, data collection covers the time period between the beginning of 1965 and end of 2010. It was considered appropriate to use information provided both in the preparatory work documents of the ILO ILC (covering the period from 1965 to 1967),[232] and in subsequent documents published

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225 They were obtained from the Hellenic Parliament after official (written) request.

226 They were obtained from electronic libraries and other internet sources.

227 They were obtained from electronic libraries and other internet sources.

228 See ILO Instruments – ILOLEX. See: Council of Europe Instruments – Treaty Office.

229 Some were obtained during the research visit to the ILO Headquarters in Geneva, while others from the library of the Dutch Ministry of Employment and Social Affairs (SZW *Ministerie van Sociale Zaken en Werkgelegenheid*).

230 See: ILO – ILOLEX; Council of Europe – Committee of Ministers Adopted Texts; ILO General Surveys.

231 They were obtained during research visits to Greece. An explanation as to why the interview method was employed in this study has already been given within the text above. See Sub-Section 1.4.3.

232 They were obtained from the library of the Dutch Ministry of Employment and Social Affairs (SZW *Ministerie van Sociale Zaken en Werkgelegenheid*).

by the ILO in relation to C128 (covering the period from 1970 to 2010),[233] so as to have a comprehensive description and analysis of this instrument.

f. Rounding off

This is the researching route that has been considered as the best for providing for a well-founded answer to the research problem addressed in this doctoral thesis. Overall, the research conducted is of a qualitative nature and is based on the research function of description. The research methods of case study, comparative (content) analysis and in-depth interviewing (based on the approach of standardized open-ended interview) have been applied as well, while the data collection consists of a combination of *primary* and *secondary* sources.

The choice of methods has been problem-driven. Besides, and as it has been also argued, a research agenda 'should be problem-driven and not methodology-driven.'[234] 'In the sense that it employs those methods that for a given problematic best help answer the research questions at hand.' In other words, 'the choice of method should clearly depend on the problem under study and its circumstances.'[235] 'The plurality of 'tools' and 'methods' available for a social scientist leads to a more accurate, rich and nuanced understanding of politics and other social phenomena.'[236]

Particularly regarding the use of the case study method, the words of Thomas Kuhn worth repeating, which enclose its ultimate value: 'A discipline without a large number of thoroughly executed case studies is a discipline without systematic production of exemplars, and that a discipline without exemplars is an ineffective one.'[237]

1.4.4 RESEARCH RELEVANCE

It has become obvious by now that in recent decades social security has held a *special* place on the ILO agenda. It has, however, been the constant focus of other regional and international organizations as well (for example, the CoE, the International Social Security Association (ISSA), *etc.*), since it also directly relates to the further advancement of social policy. Improving social security coverage,

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233 These documents comprise: individual observations and individual direct requests submitted by the CEACR; interpretations given concerning C128; General Surveys relevant to C128, as well as C102.

234 See Chima, J.S. (2005), p. 4.

235 See Flyvbjerg, B. (2004), pp. 424, 432.

236 See Chima, J.S. (2005), p. 4.

237 Cited in Flyvbjerg, B. (2004), p. 432.

and in particular, achieving social security coverage for all, strengthening know-how in the field of social security, and developing useful tools in this respect, has been considered of paramount importance.

As previously stressed (see Section 1.3, above), the international discussion is concentrated on how to enforce the international standard-setting framework on social security. It is imperative to preserve minimum levels of social security protection and to attain higher ones, while any new basic package should be seen as the foundation for the development of higher social security levels.[238]

The research problem addressed in this doctoral thesis – '*what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system*' – has practical relevance, is of international concern, and appertains to the crucial world matters of fostering the realization of the acknowledged right to social security, extending social security coverage and reinforcing the existent level of social security protection. Besides, it is evident that any effort in respect of either the *vertical*[239] or *horizontal*[240] *social security coverage extension* (see also Section 1.3, above) at a national level is obstructed unless faults are first located and then put right. Moreover, it is a valuable and debatable – although highly politicized – issue, and it is the first time that formal academic research focuses exclusively on it.

Within this in-depth single country study, obstacle identification and description is done through the exploration of different dimensions, with which the ISSS are inextricably linked (see sub-Section 1.4.1, above). Such in-depth single country studies are very rare.

Accordingly, this single country study contributes further to the ILO General Survey 2011 on Social Security, recently prepared within the framework of the ILO Declaration on Social Justice for a Fair Globalization (2008). It intends to give additional feedback on the position of national law and practice in relation to the ISSS, as well as on the information transmitted by employers' and workers' organizations to this end. This way it can also indirectly enrich, from an academic perspective, the international discussion on social security that took place in the Recurrent Review at the ILO ILC in 2011.[241] The factual findings could be compared to the results of this General Survey, complementing them in a

238 See ILO (2009d), p. 6.
239 See ILO (2009d), pp. 1–2.
240 See also Kulke, U. (2009b), p. 7.
241 As had been noted: 'The Office Report for the ILC 2011 will be based on the outcome of the Tripartite Meeting of Experts on Strategies for the Extension of Social Security Coverage (Geneva, September 2009) and it will also reflect on the nature of a possible mechanism to support the formulation of national social security extension strategies'; see Kulke, U. (2009a), p. 6.

comprehensive way, allowing cross-checking of information, particularly in the case of Greece, since several – if not all – of the matters raised in the questionnaire sent to governments are dealt with in this study and provide ground for further discussion. What is more, the information included in this General Survey, as well as the outcome, is based solely on governments' and social partners' feedback, while in this study several other factors are examined.

Furthermore, this doctoral thesis adds up to the to-date global debate between researchers, practitioners, social security stakeholders and decision-makers on how to proceed with the ISSS, as well as social security.

Thereafter, both at an international and national level there is lack of case studies in the field of international social security law in general, and that of the ISSS in particular. A first academic attempt in this direction was made in 2006, through research carried out in France, Germany, the Netherlands, Spain and the United Kingdom.[242] However, since that was an initial attempt, it ought to be expanded upon, so as to enrich the knowledge obtained up to now in the field of ISSS, especially through the more systematic use of the case study research method. Besides, there is a need for the conduction of more comprehensive country studies in Europe, since a lot can be learned from the paradigm not only across countries, but also within countries. The *Europe and Social Security Research Programme* is a step in this direction,[243] under which, currently, in-depth case studies have been conducted in relation to several aspects of the ISSS in certain countries, namely, Czech Republic, Estonia and the Netherlands.[244] This in-depth case study on Greece is also part of the aforementioned Research Programme. Through the use of thorough academic case studies, the international organizations have a lot to learn (both in terms of research methods and techniques), since as already stated (most of the times), their knowledge is confined to a specific spectrum of data collection.

As stated back in 1997, in the Report of the ILO Director General during the 85th Session of the ILC, 'the ILO's role must first and foremost be to make people more aware of the facts, and, in so doing, increase the awareness…Country studies and various research projects under way should contribute towards this aim"[245]

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242 See Frans Pennings Ed. (2006).

243 This research programme is subsidized by the Dutch Stichting Instituut Gak (SIG) and is carried out by the Department of Social Law and Social Policy of the Faculty of Law at Tilburg University under the supervision of Prof. Dr. Frans Pennings.

244 With reference to Czech Republic and Estonia, researcher Tineke Dijkhoff has examined the impact and application of the up-to-date ISSS at a national level, as well as the added value of these standards in newly redesigned social security systems. As far as the Netherlands is concerned, researcher Barbara Hofman worked on the possibilities and limitations for the modernization of the Dutch social security system in the light of international law.

245 See ILO (1997b), p. 11.

Moreover, seen within a broader context, the research activity in the field of international social security law lags behind when compared to the overall research activity that has taken place over the years in the field of EU social security law and social policy in general. This is something that should be given proper attention in future, and should be somewhat balanced. Within such a framework, it could be said that this study (as well as the *Europe and Social Security Research Programme* referred above) is a step forward.

Particularly for Greece, it is the first time that such a complete study on ISSS has been conducted and to such an extent. Actually, in a small number of publications – both at a national and at an international level – concerning the Greek social security (legal) system, reference is made to the ISSS. What is more, apart from the value of this in-depth single country study in the field of the ISSS (the overall exploration and description of factors that act as barriers to the further promotion of the ISSS and their impact at a national level), it has another merit. It supplements and updates the existing international and national literature on the description of the Greek social security (legal) system, since new changes that have taken place and which relate to the ISSS have also been considered.

Moreover, a separate, but important aspect, which is worth considering *vis-a-vis* this doctoral thesis, relates to the current global financial crisis and its consequences. It is true that social security matters are always of heavy interest in periods of economic recession. As present times are characterized by high economic austerity and lack of economic development, the ISSS has become an even more intriguing field of study. This is simply because there are similarities between the present times and the times when the development and adoption of the ISSS was pressing. Relevant to this is the fact that Greece – also as a consequence of the global financial crisis – has feces, in recent years, its biggest economic problems ever and the future financial sustainability of the social security system is seen as a big challenge.[246]

Finally, the detailed description and commentary of C128 included in this doctoral thesis aims to boost the identification and description of obstacles based on unratified ISSS, and in this way to explore in a more systematic way the position of national law and practice in respect of, and in relation to, their non-ratification. In addition, the comprehensive description and critical analysis of this Convention broadens the know-how on the higher ISSS set in respect of the risks of invalidity, old age and death, while at the same time contributing further to the work done by the ILO on matters of providing technical assistance to countries when applying, or considering ratification of this instrument.

[246] See in this respect, also the justification given under the Sub-Section 1.4.3, above, on the use of the case study.

Since one of the main obstacles to ratification declared by the ILO is the lack of knowledge about the Conventions, the study of the provisions making up this instrument sheds more light on its content and makes it much clearer, by removing confusion, or ambiguity. Over and above that, it is the first time that such a research effort has been made with regard to this specific international instrument. It combines not only the explanation of the provisions pertaining to the three social risks, based on the information provided in the preparatory work documents of the ILO ILC, but also the rounding up of the observations, clarifying remarks and comments given over the years by the CEACR on the proper applicability of the provisions and in certain cases their interpretation.[247] The work done on C128 provides added value to the scientific field of the ISSS, while at the same time making known to the academic and general public information that was previously not (easily) accessible.

Besides, a long time ago the ILO GB stated that due to the complexity of the provisions included in the text of the instruments on the up-to-date ISSS, the ILO Bureau should offer technical assistance to Member States in this area, through the dissemination of information. Therefore, this study is a response to this call. As also stated, a main concern of the ILO Bureau has always been intensifying the efforts aimed at ensuring a better understanding of the ILO Conventions and Recommendations on social security, with the view to strengthening their range and impact.[248]

I hope that my doctoral thesis will prove to be a valuable tool for other researchers, academics and students in the field of law and policy formulation in relation to social security, as well as an inspiration guide for politicians, international organizations, social partners and social security designers, contributing this way to the future planning of social security law and policy-making both at a national and international level.

1.4.5 RESEARCH BOTTLENECKS AND SOLUTIONS

As in most doctoral theses, certain difficulties were encountered and unpredicted issues came up before the research was complete.

In the first place, and as the research evolved, constant changes started to take place with regard to the domestic (Greek) social security legislation and the

247 This effort of providing a clearer insight of the international instruments on social security standards is part of an organized research effort, which started back in 2006, and continues to evolve at present; see Frans Pennings Ed. (2006b), as well as Frans Pennings Ed. (2007b). See also the website of the Europe and Social Security Research Programme.

248 See also Humblet, M. and Silva, R. (2002), p. vii.

initial formation of the system.[249] Despite the fact that such an incident cannot be characterized as a big problem – the reality is that social security at national levels, has never been stagnant – it led to an increase in the time planned for the description of the system and the conduction of the vertical legal comparison, since new materials had to be gathered, studied and analyzed, as well as the new changes, directly or indirectly, pertinent to the ISSS had to be located and appropriately incorporated within the body of the research. Thus, modifications and additions were inevitable. In particular, the social security law, which was passed in mid-2010,[250] introducing a radical reform to the pension system and stirring up discussions both at a national and at an international level, as a result of the relationship that this law had with the international economic support mechanism received by the country from the EU, the European Central Bank (ECB) and the International Monetary Fund (IMF), slowed the presentation and analysis of the research factual findings. Further changes and the adoption of laws after the end of 2010 had to be left out, not only due to time constraints, but also due to their ambiguity.

Similarly, the collection of the relevant Greek parliamentary documentation and their study took more time than anticipated. This subsequently resulted in a further delay in the presentation and analysis of the research findings. At the same time, research also had to keep up with the ongoing deliberations at the international level in relation to ISSS and social security.

Thereafter, during the research visits to the country, I encountered different kinds of difficulties (and this despite being a native speaker). A number of significant primary sources were not available or comprehensive enough. It actually came as a surprise that within the same Ministry,[251] the two responsible Sections[252] – the one on the Relations with International Organizations/General Secretariat of Social Security and the other on the Relations with the ILO/International Relations Department – showed a differing interest and willingness in respect of assisting me with the primary data collection, as well as in getting involved in discussions.

In particular, the Section on Relations with the ILO characterized certain requested materials as confidential and remarked that the dissemination of information only took place between this national ministerial Section and the

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249 See Chapter 3, Section 3.1 and Chapter 4.

250 Reference to this Law and its implications in relation to the ISSS follows in Chapter 5, Sub-Section 5.4.1.

251 The period from 2001 to 2009 the Ministry was known as the Ministry of Employment and Social Protection. In 2009 it was renamed the Ministry of Labour and Social Security. Currently it is called the Ministry of Labour, Social Insurance and Welfare.

252 Reference to these two ministerial sections and the division of competences in relation to the international social security instruments follows in Chapter 3, Sub-Section 3.2.3.

ILO competent Departments. On the contrary, permission for access to these materials for the conduction of the research was given to me with alacrity by the Section on the Relations with International Organizations, which also showed an interest in the subject of my doctoral thesis. This also enabled a plurality of the requested data to be provided by the CoE if they were not available.[253] Moreover, together with the civil servants working for this Section of the Ministry, and after a thorough search of the ministerial files and archives, I gathered lots of useful information and primary data useful to the conduction of the overall research.

The *confidential materials* actually pertained to the Greek reports submitted to the ILO on the application of C102 ratified parts and those including the factors hindering the ratification of parts of this Convention, as well as those on the other ILO social security Conventions unratified by Greece. It is interesting to note, in this respect, that the governments of other countries provided access, for research purposes, to their national reports to the ILO in relation to up-to-date social security Conventions, without characterising them as *confidential*.[254] The fact that the annual national reports on the application of the ratified parts of the ECSS by Greece (both general and detailed), as well as the biannual reports on the unratified ones, were provided by the ministerial Section on Relations with International Organizations and the above mentioned competent CoE Department, filled an ample part of the gap with respect to the collection of further primary data sources; the remaining was covered by the standardised open-ended interviews that took place in the country. Similarly, the communication between the competent departments of the CoE[255] was more satisfactory in relation that of the ILO.[256] The CoE (unlike the ILO) responded in due time to emails sent for clarification and/or to further information requested for the conduction of the research.

With respect to the issue of *confidentiality* and the national reports raised, I would like to note that their gathering intended to complement my research work from a comparative perspective and to serve as background material, which would facilitate the verification of my final claims and findings. They were also used as a reference point for not leaving out issues that should be subject to further research exploration. Moreover, this argument of confidentiality – although to a certain extent understandable – in my opinion does not hold sway, especially if one bears in mind the fact that in the CEACR individual direct requests and individual observations, as well as the Committee of Ministers resolutions, which

253 Social Policy Department – Directorate General of Social Cohesion.

254 As of an example one can make reference to the governments of Czech Republic, see Dijkhoff, T. (2011).

255 In particular, the Social Policy Department/Directorate General of Social Cohesion, the Treaty Office and the Secretariat of the Department of the ESC and of the ECSS.

256 In particular, the Social Security Department.

are publicly available,[257] almost always, parts of the text of the national submitted reports are included and national issues are raised. The same goes for other documents or surveys conducted by the ILO and the CoE.

Going further, concerning the standardised open-ended interviews, certain shortcomings were present as well. For example, a few persons failed to keep their initial appointments (so they had to be re-contacted), others agreed to be interviewed, but only after persistence, and some would not meet with me. Significant was also the reluctance of some to reveal information, and the difficulty in recalling information. Another problem was the fact that on a few occasions I had to obtain information and get replies to the questions posed within a short time.[258] All the same, a satisfying number of persons participated in the standardised open-ended interviews (the personal contacts and network I developed during the repeated visits to the country contributed to this end as well).

One may consider the above-mentioned difficulties as casual or minimal, but when experienced, they were a challenge.

1.5 THE SEQUENCE AND CONTENT OF THE CHAPTERS

The order, in which the six Chapters of this doctoral thesis are arranged, as well as their content, is as follows. Chapter 1 provides an analytical introduction, focusing on a plurality of topics relevant to the completion of the entire research work. Initially, through a historic overview, the momentous landmarks along the route that social security followed in the context of international organizations is presented, as well as a quick look over their constitution based on domestic interferences. The background of the ISSS is described with specific emphasis on the purpose of creation, temporal evolution, endorsement and course of action both in international and national spheres. Particular attention is paid to the recent global deliberations in relation to social security and the minimum and higher ISSS. Afterwards, and by focusing on the transpiring developments, the research problem is defined and thoroughly explained, and the methodology used to answer it is meticulously discussed. The relevance of the research rationale and certain encountered difficulties are equally laid out.

Chapter 2 contains a description and a critical analysis of the higher ISSS on pensions. The first section is a brief write-up of the causal factors of their final

[257] They can be found within the relevant websites of the international organizations.
[258] The duration of appointments was significantly limited.

formation. The remaining sections clarify their content in concrete terms and their meaning is further elucidated by also displaying, where applicable, interpretations of specific provisions, useful observations and remarks. In such a manner their dynamism is also pointed out. Cross-references with the minimum standards included in C102 can be found within the whole text, and similarities, but also differences are highlighted.

Chapter 3 and Chapter 4 concentrate on the core of the research, since they deal with the chosen case study directly. The first section of Chapter 3 is devoted to the delineation of the main components of social protection. It is principally centred upon the insurance system and deals with its legal foundation, gradual expansion and changes of an administrative and organizational nature. Subsequently, it carefully addresses the correlation between the country and the ISSS, and examines it through the behaviour of several different actors and their position towards the ISSS. Chapter 4 is made up of four parts. The first consists of an introduction and an overview of the social risks covered at a national level. Under the other three, national social security legislation is depicted and legally compared with the content of the ISSS set in five international instruments, namely C102, the ECSS, and the Protocol to the ECSS, as well as C128 and the Revised ECSS. Matters of compliance and incompliance are also discussed.

Chapter 5 presents and analyses the overall research factual findings. Each of the three research sub-questions posed in the introduction are answered separately, based on comprehensive assessment. Finally, Chapter 6 contains conclusions, discussions and recommendations. Primarily, a coherent answer to the research problem is given and the *new* factual findings are meticulously summarised and placed into a broader systematic context. Thereafter, discourse on problem-solving takes place, recommendations are made and the added value of the thesis is described, followed by an epilogue.

CHAPTER 2

PENSIONS IN THE LIGHT OF INTERNATIONAL STANDARDS: A DESCRIPTION AND CRITICAL ANALYSIS OF ILO CONVENTION No. 128

Great deeds are usually wrought at great risks … – Herodotus

Those who know how to win are much more numerous than those who know how to make proper use of their victories … – Polybius

To find fault is easy; to do better may be difficult … – Plutarch

2.1 THE WAY TOWARDS ILO CONVENTION No. 128 ON INVALIDITY, OLD-AGE AND SURVIVORS' BENEFITS (1967)

2.1.1 THE 'PREDECESSORS': ADOPTING THE FIRST ILO SOCIAL SECURITY STANDARDS ON PENSIONS

Back in 1925, the ILO International Labour Conference (ILC), at its 7th Session, and taking into account the fact that the protection of workers deserved a distinct place in the existing global economic and social system, set out, for the first time, the concept of unified social insurance as a corollary to the wages system.[1] During this same session, the issue of pensions was also brought up, and, at the request of government, employers' and workers' delegates, the International Labour Office (ILO Bureau) prepared a report for the 16th ILC Session (1932), pointing

[1] The Preamble to Part XIII of the Versailles Treaty, signed on the 28th June 1919, states that the International Labour Organization (ILO) is established to improve the conditions of the worker, protecting him against '… sickness, disease and injury arising out of his employment …' through the '… provision for old-age and injury …' See The League of Nations (1919), p. 166.

out that it was desirable to seek solutions at an international level for the further advancement of compulsory social insurance.[2]

A significant number of ILO Member States had already accepted compulsory social insurance as the cornerstone of their social legislation. Therefore, the ILC, at its 17th Session (1933), adopted six Conventions on pensions, namely:[3] C35 on Old-Age Insurance (Industry, etc.); C36 on Old-Age Insurance (Agriculture); C37 on Invalidity Insurance (Industry, etc.); C38 on Invalidity Insurance (Agriculture); C39 on Survivors' Insurance (Industry, etc.); and C40 on Survivors' Insurance (Agriculture). Their common characteristic was the objective to establish, at the national level, compulsory insurance schemes for these specific branches. Recommendation (R) No. 43 on Invalidity, Old-age and Survivors' insurance was also adopted,[4] in order to supplement these Conventions and set out general principles for the further establishment of compulsory social insurance schemes.[5]

2.1.2 THE 'SUCCESSOR': NEED FOR NEW INTERNATIONAL SOCIAL SECURITY STANDARDS ON PENSIONS[6]

Gradually, and particularly after the WWII, the concept of social insurance proved to be inadequate. It was considered desirable to take a new step towards the realisation of income security through the unification or co-ordination of social insurance within national schemes on the basis of existing Conventions and Recommendations. The pre-war instruments procured for the protection

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2 International Labour Office (1965), pp. 3–4.

3 These six Conventions belong to the so-called *first generation of standards*, which envisaged social insurance technique as the primary means for their application. They have since been shelved. They were found to be outdated, and even obsolete. It is also interesting to note that these instruments – despite the fact that they were among the 24 Conventions out of the 67 adopted before the WWII had received fewer than 12 ratifications. Shelving also means that detailed reporting on the application of these Conventions is no longer requested. However, it leaves intact the right to invoke provisions relating to representation and complaints under Articles 24 and 26 of the ILO Constitution. Moreover, employers' and workers' organizations are allowed to continue to make comments in accordance with the regular supervisory procedures, and the Committee of Experts should review these comments and to request, if appropriate, detailed reports under Article 22 of the ILO Constitution. Finally, *shelving* has no impact on the status of these Conventions in the legal systems of the Member States that have ratified them. Nevertheless, ratification of these Conventions is no longer encouraged, and there will be, in principle, no further reference to these Conventions in the ILO Bureau documents, studies, research papers, etc. See also ILO (1999b), p. 1; Nußberger, A. (2006), pp.106–107. Regarding the so-called generations of standards, see Pennings, F. and Schulte, B (2006), pp. 5–11; Humblet, M. and Silva, R. (2002), pp. 1–2.

4 The R43 has been withdrawn, and declared as an outdated instrument.

5 International Labour Office (1965), pp. 3–4.

6 The composition of this section has been also based on information and data included in International Labour Office (1965), pp. 3–9.

against certain types of employment related social risks, and almost all of them encompassed (or at least envisaged) the provision of some kind of social benefit;[7] still, the unification and amplification of their provisions was a necessity.

Thus, taking into account the consequences of WWII and the imperativeness of improving welfare standards, first extending the personal scope of application of the existing international social security instruments – and, by extension, the material one – was not only desirable, but to a certain extent, obligatory. Besides that was also what Recommendation Nos. 67 and 69 (1944) – on Income Security and on Medical Care, respectively – proposed.[8] These two Recommendations were adopted by the ILC during WWII, and R67 in particular 'has had a marked impact since it was the first major international instrument to view social security as an integrated whole made up of various programs formerly treated separately.'[9]

Accordingly, the Committee of Social Security Experts suggested the commencement of discussions for the adoption and signature of a new instrument that would cover the whole field of social security. As a result, Social Security (Minimum Standards) Convention No. 102 (C102) was adopted at the 35th Session of the ILC in 1952. This Convention is the foundation of international social security legislation. It covers the so-called nine classic social security contingencies: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. Approximately a decade after, it also formed the basis of the European Code of Social Security (ECSS), which was adopted by the Council of Europe (CoE) in 1964.[10]

C102 departed from pre-war principles in many respects and, in particular, because it no longer recommended social insurance as the only method of giving effect to social security. It recognized other methods as well (such as, for example, services financed out of general taxation). Moreover, it included a new and more flexible formula for the establishment of standards – that of *essential minimum standards* – relating to the scope and the level of benefits, rather than the excessively rigid formal standards applied in the pre-war Conventions.[11]

It is worth mentioning, however, that initially – before the final adoption of C102 – the idea of establishing apart from *minimum* also *advanced* social security standards was set forth by the Committee of Social Security Experts. However,

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7 Myers, R.J. and Yoffee, W.M. (1966), p. 22.

8 It was also taken into account that there were developments in certain countries which had already gone further than what was set out in these two Recommendations.

9 Myers, R.J. and Yoffee, W.M. (1966), p. 22.

10 See also Bartolomei de la Cruz, H.G. (1994), p. 12; Bartolomei de la Cruz, H.G. (1996), p. 34.

11 For a comprehensive analysis of the ISSS on the basis of C102, see Dijkhoff, T. (2011), pp. 23–107.

due to time constraints and because the preparation of an instrument dealing with more progressive objectives and advanced social security standards was likely to involve more complex problems than those arising out of the minimum standards already discussed, the ILC issued a resolution inviting the ILO Governing Body (GB) to take up the issue of setting advanced (higher, in other words) social security standards at a later date.[12]

Be that as it may, later on, and since the idea of also establishing *advanced* standards did not eventually flourish,[13] the Committee of Social Security Experts felt it was necessary to at least adapt the existing pre-war Conventions to the new concept of social security, bearing in mind that they no longer corresponded to social security trends. Therefore, it was decided that all the pre-war Conventions on social security should be revised and that their revision should be carried out in successive stages, as follows:[14] (a) firstly, the instruments relating to benefits in case of employment accidents and occupational diseases;[15] (b) secondly, the instruments relating to old-age, invalidity and survivors' pensions;[16] (c) thirdly, the instruments relating to sickness benefits;[17] and (d) fourthly, the instruments relating to unemployment benefits.[18]

It was considered desirable to make them more flexible[19] and to ensure – as a result of their easier adaptation to national social legislations – greater possibility for ratification, without, however, reducing the positive substance of their social provisions. Furthermore, concerning the pertinent question of the relationship between the new instruments and the adopted C102, the opinion was expressed

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12 With regard to the discussions that took place on the issue of *minimum* and *advanced* standards, see Dijkhoff, T. (2011), pp. 28–30. See also in: International Labour Office (1989), p. 3.

13 Interesting is also the following information obtained from the discussions held during the research visit that took place in the ILO Social Security Department in Geneva (17–18/01/2008). It was mentioned that it was already too difficult to adopt the C102. That is why the adoption of a Convention on advanced social security standards was left aside. Moreover, the (at that time) *political influences* made it even more difficult to go for the adoption of such an ILO Convention in the field of social security. In particular, the employers were very much against the approach of having comprehensive international (legal) instruments. They showed strong preference into setting international standards for specific/different social risks. Consequently, later on the ILO social security Conventions on higher standards were gradually adopted per risk.

14 See also Myers, R.J. and Yoffee, W.M. (1966), pp. 22–23.

15 This revision led to the adoption of the C121.

16 This revision, as analytically discussed in this sub-section, led to the adoption of the C128.

17 This revision led to the adoption of the C130.

18 This revision led to the adoption of the C168.

19 As it has been argued by Valticos (1996), N. 'the flexibility of standards is [indeed] the price of their universality. If standards have to be universal, and therefore applicable to States whose level of development and legal approaches differ considerably from one another, the only realistic approach is to develop standards with sufficient flexibility so that they can be adapted to the most diverse of countries', in Kulke, U. and Lopez Morales, G. (2007), p. 94.

that they should be brought into line with this Convention both as regards their concept and structure. Nevertheless, they should also ultimately achieve an appropriate improvement on the standards already contained in C102, and even go beyond them, without including less important details that had prevented many countries with advanced systems from ratifying the previous social security Conventions. In the same content, the need for caution was equally stressed, mainly due to the fact that C102 itself, since its adoption, had received relatively few ratifications,[20] hence, the avoidance of extreme deviations was also considered of major importance.[21]

Particularly regarding Convention Nos. 35 to 40 on pensions, the Committee of Social Security Experts, during a meeting in December 1962, suggested to the ILO GB that their successor(s) should take closely into account the standards laid down in C102, in parallel, of course, to the global developments in national pension schemes. Similarly, it noted that the new standards to be set in relation to the social risks of invalidity, old-age and survivorship, should by no means be lower than those set in the pre-war instruments, which 'on the whole are more favourable and are not less favourable than those contained in Convention No. 102.'[22]

Consequently, the pre-war Conventions were gradually revised through the adoption of a new series of instruments,[23] which set out a higher level of protection and introduced a greater degree of flexibility.[24] It was in November 1964, at its 160th Session, that the ILO GB placed on the agenda of the 50th (1966) Session of the ILC the question of revising Convention Nos. 35 to 40 on pensions. Their successor,[25] Convention No. 128 on Invalidity, Old-Age and Survivors' Benefits (C128), as supplemented by R131, was adopted by the ILC on the 29th June 1967.

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20 It is interesting, in this respect, to refer the position taken by the United States government, which led, in a sense, the international discussion that took place concerning the revision of the pre-war instruments. As stated, 'while Convention No. 102 was a good instrument, it contained a number of minor provisions that restricted its flexibility so that countries with excellent social security systems – some going well beyond the minimum standards provided in Convention No. 102 – could not ratify because their systems did not conform in every detail'. In general, 'the aim of formulating an excellent model scheme while eliminating minor technical provisions, adding flexibility without watering down major requirements, and giving consideration to national systems whose schemes exceed minimum standards was at the core of the United States Government position on most of the subsequent points that were discussed', in Myers, R.J. and Yoffee, W.M. (1966), p. 23.

21 International Labour Office (1966a), pp. 56–57; International Labour Office (1967a), pp. 631–632; International Labour Office (1968), pp. 687–689.

22 See Myers, R.J. and Yoffee, W.M. (1966), p. 24.

23 See also International Labour Office (1989), p. 3.

24 See also Bartolomei de la Cruz, H.G. (1994), p. 12.

25 The ILC had to decide whether one or more than one instruments would be adopted for the replacement of Convention Nos. 35 to 40 on pensions. Finally it was considered appropriate to have one Convention, supplemented by one Recommendation. Furthermore, the Convention

So far, C128 has been ratified by the following 16 countries (still active): Austria (Part III),[26] Barbados (Parts II and III), the Plurinational State of Bolivia (Parts II, III and IV),[27] Cyprus (Part IV), the Czech Republic (Part III), Ecuador (Parts II, III and IV),[28] Finland (Parts II, III and IV), Germany (Parts II, III and IV), Libya (Parts II, III and IV), The Netherlands (Parts II, III and IV), Norway (Parts II, III and IV), Slovakia (Part III), Sweden (Parts II, III and IV), Switzerland (Parts II, III and IV), Uruguay (Parts II, III and IV), and the Bolivarian Republic of Venezuela (Parts II, III and IV).[29]

The final formulation of this instrument is the result of the standpoints expressed and observations made during the double discussion procedure,[30] held from 1965 to 1967, prior to its final adoption. Hereunder, a description and analysis of the provisions included in C128 takes place.

2.2 PERSONAL SCOPE OF APPLICATION

2.2.1 PERSONS FOR WHOM COVERAGE IS ANTICIPATED UNDER C128

According to Article 5 of C128, Member States should protect certain categories of persons in order to comply with the standards set for the social risks of invalidity (Part II), old age (Part III) and death (survivorship) (Part IV). These categories are to be determined by the country's national legislation; all the same, they must not comprise less than a definite percentage of employees or of the whole economically active population. This percentage actually refers to *the minimum amount of persons* for which coverage is anticipated under the instrument. Moreover, each Member State, before complying with the requirements laid down

would include a provision for separate ratification by pension branch. See also International Labour Office (1966b), p. 200; Myers, R.J. and Yoffee, W.M. (1966), p. 24.

26 For Austria, and in accordance with Article 39, paragraph 1(b), public servants are excluded from the application of C128.

27 Pursuant to Article 4, paragraph 1, of C128, the government has availed itself of the temporary exceptions provided for in Articles 9, paragraph 2; 13, paragraph 2; 16, paragraph 2; 22, paragraph 2. The government has also availed itself of the temporary exclusion provided for in Article 38, paragraph 1, of C128.

28 Pursuant to Article 4, paragraph 1, of C128, the government has availed itself of the temporary exceptions provided for in Articles 9, paragraph 2; 13, paragraph 2; 16, paragraph 2; 22, paragraph 2. The government has also availed itself of the temporary exclusion provided for in Article 38, paragraph 1, of C128.

29 Pursuant to Article 4, paragraph 1, of C128, the government has availed itself of the temporary exceptions provided for in Articles 9, paragraph 2; 13, paragraph 2; 16, paragraph 2; 22, paragraph 2. The government has also availed itself of the temporary exclusion provided for in Article 38, paragraph 1, of C128.

30 Concerning the double discussion procedure followed by the ILO ILC see Myers, R.J. and Yoffee, W.M. (1966), pp. 21–22.

in the aforementioned Parts, is asked to ensure that the percentage is attained and can be actually covered at the time that C128 is to be ratified at the national level.

Initially, the insertion of such a clause into C128 seemed rather unnecessary, and its deletion had been proposed. Its final incorporation though, is due to the fact that it was considered appropriate to emphasize the need to ensure that Member States are in a position – before entering into an international undertaking – to effectively apply the provisions of the Convention, which impose an obligation to protect a specified percentage of persons.[31]

Thereafter, and departing from this rather general Article, C128 includes other provisions (Articles 9§1, 16§1 and 22§1) that determine in more concrete terms what the personal scope of application involves for each of the social contingencies covered by this international instrument.

The protected persons are not defined in terms of strictly legal concepts. It was considered appropriate not to follow such an approach and to avoid determining the personal scope of application in terms of branches of economic activity and of the legal position of persons in the sectors concerned. This was actually the practice followed in the pre-war Conventions. Instead, a different method was chosen, based on statistical criteria and on offering governments a choice of alternatives. Thus, three criteria have been used, according to which the personal scope of application may be determined by reference to: (a) employees, or (b) the economically active population, or (c) residents. This method was deemed to be much more flexible, since Member States would enjoy the freedom to choose which criterion to apply.[32]

More precisely, regarding both invalidity and old-age, it is stated in Article 9§1 and in Article 16§1 respectively that the Member States have the right to choose between providing coverage to: (a) all employees, including apprentices (in other

[31] International Labour Office (1967b), p. 19. It should also be mentioned that the question was raised as to whether the provisions of this article were in conformity with Article 19§5(d) of the ILO Constitution, according to which a Member who ratifies a Convention is required to take the necessary measures to give effect to the provisions of that Convention. 'The Legal Adviser considered that the provisions of Article 5 were not contrary to that of Article 19. In effect, the latter provision did not state when the necessary measures to give effect to a Convention should be taken, the essential principle being that the Member concerned must be able to apply the Convention in its entirety when it came into force for that Member. Moreover, the Legal Service pointed out that while the effect of Article 5 was to impose obligations before the Convention came into force, these provisions were not new and had been considered justified, in particular, in the preparatory work for the C102, by the desire to draw the attention of governments to the need for member states to ensure that they complied consistently with the statistical requirements of this Convention, independently of possible variations in the proportion of the protected persons.' In light of these observations also, Article 5 of C128 was unanimously adopted; see International Labour Conference (1968), pp. 687–445.

[32] International Labour Office (1989), p. 21.

words, the obligation to also cover the apprentices exists);[33] or (b) categories of the economically active population, designated according to national rules and comprising not less than 75% of the entire economically active population; or (c) the whole resident population – however, when this is not possible, coverage may be limited to the residents of the country whose earnings during the occurrence of the risk, and throughout its duration, are below the limits specified by the Member State's government. These limits are prescribed in such a manner as to comply with the requirements of Article 28 of C128.

Likewise, with respect to survivors' benefits, in Article 22§1 it is stated that they shall be granted either: (a) to the wives, children and to a certain number of other persons who are considered to be dependent on the employees or apprentices (in other words, the dependants of the breadwinners); or alternatively (b) to the wives, children and dependants of the breadwinners belonging to classes of the economically active population as determined by national law and constituting not less than 75% of the whole economically active population. Finally, a third option is also provided for countries whose social legislation opts for the protection of residents. In these countries, coverage shall be provided to: (c) 'all widows, all children and all other prescribed dependants who have lost their breadwinner, who are residents and, as appropriate, whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the provisions of Article 28'. In all previous cases, the exact number of dependents is once again to be defined by domestic rules.

Despite the fact that the concept of the *economically active population* is defined neither in C102 nor in C128, in accordance with the international recommendations concerning labour statistics, the term encompasses both the employed and the unemployed (categories such as self-employed, farmers, fishermen, etc. are included as well). It should be also noted that the criterion relating to the economically active population laid down in C128 is expressed in terms of a percentage of the economically active population, while C102 refers to a percentage of all residents. In the first case, however, the proportion is 75%, while in the second it is only 20% (R131§2(b) envisages the extension of the coverage to the whole economically active population). Thereafter, the term *resident*, as defined in C128, makes no distinction between nationals and non-nationals residents. As a matter of fact, the protection of non-national residents (or at least those whose means do not exceed prescribed limits) is necessary. Furthermore, concerning the question of whether under the term *resident* non-nationals who are not residing legally in the territory of the Member State are also to be covered,

[33] However, according to Article 37 of C128, the possibility of excluding certain categories of workers from its application in case employees are protected by the national legislation exists. See, further, Sub-Section, 2.2.2 of this Chapter (below).

it should be noted that both in C102 and C128 only the non-nationals who are lawfully resident in the country of immigration are to be included in the personal scope of application.[34]

The three options available in all the above-mentioned Articles are not mutually exclusive. As already stated, their aim is to make the text of the instrument as flexible as possible, enabling each Member to select the provision most suited to its social security system.[35] That is why their final inclusion in the text of the instrument was accepted with alacrity.

Last, it is worth mentioning that among the most controversial discussions were concentrating on the issue of fixing the percentage of coverage of the persons belonging to the economically active population.[36] In the initial text of the instrument,[37] 50% coverage was envisaged for the categories of the economically active population (the current Articles 9§1(b), 16§1(b), 22§1(b)). Several amendments were proposed, though, mainly from government and workers' members, which sought to raise the percentage to 75. Such an increase would better co-ordinate the three alternative provisions available for each social risk concerning the personal scope, and at the same time would improve the protection provided as regards coverage in comparison to C102. Opinions to the contrary were, however, also expressed, drawing attention on the fact that it would be difficult for several states to accept such a high standard. A lot of employers' and governmental advisors stressed that such a high percentage would make ratification impossible for many countries, and it would be so for many years to come.[38] Be that as it may,[39] it was finally considered necessary to improve the earlier standards with regard to coverage. The modern trends in social security

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34 'In its General Survey of 1977 relating to the Equality of Treatment (Social Security) Convention, 1962 (No. 118), the Committee pointed out that 'a requirement of lawful residence in the country or of lawful authorization to be in employment does not appear to be contrary to this principle; where such conditions are imposed the difference in treatment does not appear to be motivated by the alien status of the persons concerned but rather by their legal position under regulations governing entry into and residence in the country or access to employment' (para. 57, p. 20)', in International Labour Office (1989), p. 23. See, also, pp. 22–23, 28–29.

35 International Labour Office (1966b), p. 173. Initially, compulsory protection was usually established for only certain categories of employees. Subsequently, it was extended, also encompassing, for example, self-employed persons, and even the entire population in some countries; special schemes also began to emerge, in: International Labour Office (1965), pp. 10–12.

36 See also Myers, R.J. and Yoffee, W.M. (1966), p. 25.

37 International Labour Conference (1966b), p. 201.

38 International Labour Office (1966a), pp. 58–59, 63, 71–72.

39 At first, the proposed amendments were rejected. Later on, though, and based on a record vote requested by the workers' members, they were adopted by 586 votes to 504, and 112 abstentions. Several remarks were made regarding the fact that this reversal of the vote came by show of hands and with less than half of those present voting in favour (International Labour Office (1966a), pp. 58–59, 63, 71–72). Still, in the end, the coverage of the persons belonging to the economically active population was fixed at 75%.

had to be taken into account, as they had led to the significant extension of the protection to ever-wider categories of the population.[40]

Similarly, several questions were raised concerning the issues of the overall coverage of employees, as well as of apprentices under 18 years of age. The ILO Bureau remarked that it was preferable to leave it to the Conference to decide on these issues during the last discussions.[41] During the final deliberations, the re-consideration of Articles 9, 16 and 22 was reserved for joint consideration with the relative Miscellaneous Provisions (primarily Article 38, and also Articles 37 and 39). All the same, the aforementioned issues were not brought up again, and the debate centred on the exceptions to be permitted with reference to the personal scope of application.[42] As a result, the overall coverage of employees – including apprentices – was retained.

2.2.2 DETERMINING THE SCOPE OF PERSONS TO BE PROTECTED THROUGH THE USE OF FLEXIBILITY CLAUSES

a. Temporary exceptions

C128 gives Member States whose economies are insufficiently developed the opportunity to protect a substantially smaller number of persons in comparison to the number of persons for whom coverage is anticipated in the more developed countries by utilizing the flexibility clause under Article 4.

Specifically, according to this clause, developing countries may choose, in respect of the social risks of invalidity (Article 9§2) and old age (Article 16§2), between covering either groups of employees (as defined by national law) corresponding to minimum 25% of all the employees; or groups of employees in industrial undertakings (as defined by national law) corresponding to minimum 50% of all employees in industrial undertakings. Similarly, it is stated that the survivors' benefit (Article 22§2) shall be provided either to the wives, children and to other persons (as set out by national legislation) relying on the aforementioned groups of employees, or to the wives, children and to other persons (as set out by national

40 International Labour Office (1967a), pp. 633–634. Regarding the developing countries, it was stated that their special position should be taken into account not so much in fixing the level of the standards, but in providing appropriate exceptions.

41 International Labour Office (1967b), pp. 11–80. According to the ILO Bureau, the number of observations expressing the desire that the provisions concerning the personal scope of application be made more flexible was rather limited. This is why the opinion was expressed to (preferably) leave matters to be decided in the Conference during the second discussion; see International Labour Office (1967b), pp. 23, 34–35, 43–44.

42 International Labour Office (1968), pp. 691, 694–695, 698–699.

legislation) relying in the aforementioned groups of employees, but in industrial undertakings.

However, to this effect, a declaration[43] has to be made by the country when ratification of C128 takes place, stating the cause(s) for such an action. Moreover, it should be emphasized that these exceptions are temporary in nature. Member States deciding to benefit from them must report regularly on whether the reasons for doing so still exist, or whether they wish to renounce the right to avail themselves of the exceptions from a given date.[44] It should be also borne in mind that each Member State making use of these exceptions must increase the number of employees protected as circumstances permit.[45]

Article 4 is the result of several amendments proposed from an early stage by government, employers', and workers' members during the first round of discussions in the ILC. Their acceptance served several purposes, such as the conformity of the new instrument with the texts of both C102 and C121, the provision of supervision with respect to the reasons declared for retaining the temporary exceptions that some countries would have reserved the right to make; and the eventual improvement of pension schemes by ensuring better protection for workers.[46] Article 4 was unanimously adopted. Furthermore, it was particularly stressed that such exceptions represented a definite advantage as compared with the corresponding provisions included in C102 and C121, neither of which contain the possibility of increasing the number of employees protected.[47]

Thereafter, and apart from the exceptions temporarily granted to countries whose economy is insufficiently developed, C128 includes another clause, which equally permits certain other transitory exclusions. The difference being that this time they can be utilized by all countries, regardless of whether their economy is sufficiently developed, or not – in other words, irrespective of whether a Member State belongs to the developed or the developing countries. More precisely, under Article 38 of C128, the right is given to all Member States whose legislation protects employees to temporarily exclude from the personal scope of application employees working in the agricultural sector. Nevertheless, this exception only applies to categories of agricultural employees who were not yet protected at the time of ratification,

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43 Put differently, a formal statement specifying facts and circumstances constituting cause of action, or unsworn statement of facts that is admissible as evidence in a legal transaction.

44 See also Humblet, M. and Silva, R. (2002), pp. 9–10. A statement in respect of each exception of which a Member avails itself should be included in its reports upon the application of this Convention submitted under Article 22 of the ILO Constitution.

45 See also Myers, R.J. and Yoffee, W.M. (1966), p. 25.

46 See International Labour Office (1967a), pp. 633.

47 See International Labour Office (1967b), pp. 18–19, 23, 34, 43–44; International Labour Office (1968), p. 690.

and it cannot be applied to categories already protected by national legislation, but whose protection is inadequate.[48] Once again a declaration has to be made, accompanying the ratification of the instrument.

The main purpose of this flexibility clause is to facilitate a gradual increment of the number of employees protected in the agricultural sector according to the situation prevailing in the country. That is also why the exception is temporary in nature (Article 38§3). Therefore, Member States that avail themselves of such an exception must state in their reports on the application of the instrument, on the one hand, any progress made that would possibly permit the extension of coverage to agricultural employees, while on the other hand, when there is no substantial development allowing for an extension of coverage, the main reasons for this, and any obstacles still hampering it.

It is interesting to note that initially, it was proposed that C128 should be ratified separately for agricultural and non-agricultural activities. Extensive negotiations[49] took place before its final formulation. Its final formulation was actually based on the principle of global ratification that prevailed.[50] Put differently, the present Article 38 actually owes its existence to the decision taken to remove permanently the possibility of separate ratification in respect of non-agricultural and agricultural sectors.

b. Other exceptions

Alongside the previously described temporary exceptions, C128 contains certain other exceptions, which are not, however, temporary in nature. Through some further flexibility clauses contained in Articles 37 and 39, Member States may decide to permanently leave out of the personal scope of application in respect of some categories of persons.

More specifically, according to Article 37, a Member State whose legislation protects employees[51] has the right to exclude from the personal scope of application: (a) persons performing casual work; (b) members of the employer's

48 See International Labour Office (1968), p. 699. See, also, the first and second reports of the Committee on Social Security – Submission and Discussion and Adoption of the First Report, International Labour Office (1968b), pp. 433–445.

49 See International Labour Conference (1968), pp. 698–699.

50 See International Labour Office (1968), p. 689.

51 During the first round of discussions the workers' members requested that it be made clear that the exceptions to be provided for certain categories of persons would relate only to national legislation protecting employees. Similarly, any Member should have the right to avail itself of these exceptions, whatever the activity for which it had accepted the obligations of the new Convention. In addition, they proposed stating in the text of the instrument that such exceptions did not permit a reduction in the percentage of the persons belonging to the economically active population covered. The Committee considered this interpretation put

family living in his house in respect of their work for him;(c) other categories of employees – not constituting more than 10% of all employees – than those belonging to the occupational categories of casual workers and employers' family members already mentioned. It is obvious that the first two exclusions are applied to two specific categories of workers, while the third permits the exclusion of any category of workers, provided that they do not exceed the percentage indicated.[52]

Similarly, Article 39 gives Member States whose legislation protects employees or residents the right to exclude seafarers (including fishermen) as well as public servants, but only if these categories are protected by special national schemes, which provide – in the aggregate – benefits at least to the same level as those required by C128.[53] Thus, a Member State can make use of this exception (Article 39§1) on the premise that certain conditions are met in relation to the extent of protection offered by existing special schemes.[54] In this respect, a declaration is required at the moment of ratification (Article 39§2).[55] Moreover, the alternative is given that Member States can decide to accept the obligations in respect of the categories initially excluded, just by giving an earlier notification for this decision to the Director General of the ILO Bureau.

It is worth mentioning that 'Convention No. 102, by virtue of Article 77 applies neither to seamen nor to sea fishermen. However, it contains no specific provision for exception as regards public servants, agricultural workers or other categories of workers, such as members of the employer's family or casual workers. On the other hand, Convention No. 102 sets far lower standards for its scope than those of Convention No. 128, and in most cases it should be possible to achieve the percentages prescribed without having to take these categories of workers into account.'[56]

Despite the fact that in the initial text of the current Article 37, the following exceptions were also proposed: outworkers[57] and workers too old to be protected

forth by the workers to be logical, and decided in favour of it; see International Labour Office (1967a), pp. 635–636.

52 See International Labour Office (1989), p. 25.

53 See also Myers, R.J. and Yoffee, W.M. (1966), p. 25.

54 See International Labour Office (1989), p. 25.

55 Where a declaration under paragraph 1 of this Article is in force, the Member may exclude the persons belonging to the category or the categories excluded from the application of the Convention from the number of persons taken into account when calculating the percentages specified in: Article 9§1(b) and §2(b), Article 16§1(b) and §2(b), Article 22§1(b) and §2(b) and Article 37(c) of C128.

56 See International Labour Office (1989), p. 26.

57 Regarding outworkers, it was stated that from an economic point of view, home workers were in the same position as other employees. So, the reasons for their exclusion from pension schemes were purely administrative. From a social point of view, the protection of this category of workers was most desirable, particularly in regard to pensions. Furthermore, by allowing for the exclusion of a specified percentage of employees, it was sufficient to overcome

when they first entered employment.[58] These two categories were eventually deleted.[59] In general, the idea that there should be an overall percentage to cover all the permitted exceptions instead of expressly listing specific exceptions was supported.[60]

Several discussions took place regarding the present Article 39 as well. While the reasons for excluding from the application of the new instrument seafarers (including fishermen) and public servants were understood, it was also stated (during the initial stage of negotiations)[61] by several government members that in general, the exclusion of specific categories was hardly satisfactory, and to a significant extent, hazardous, as it was not in keeping with the idea of unified social security systems, as well as with the desire to afford every category adequate protection. Workers' members also pointed out the necessity of giving sufficient social security protection to all categories, whether or not these categories might be covered by special schemes.

Notwithstanding, the exclusion of seafarers (including fishermen) resulted basically from the fact that particular social security Conventions had been adopted by the General Conference of the ILO for these categories of workers.[62] For public servants, exclusions were considered appropriate due to the impossibility of applying all the provisions of the new Convention to special pension schemes for public servants, and in particular, those provisions on legal, administrative and financial safeguards.[63]

Last, it is interesting to note that a complete deletion of the clause was also proposed (this suggestion was made by the government of Bulgaria). Sailors, fishermen as well as public servants were considered to be all part of the active

difficulties that some countries might experience in extending insurance to these workers. Different opinions were also expressed, such as that by the deletion of this exception the new Convention would become too rigid, and lead to the reduction of the number of ratifications, as different countries dealt in different ways with the coverage of home workers. Nevertheless, the Committee came up with the deletion of the relevant provision. See, further, International Labour Office (1967a), p. 636.

58 With respect to the workers too old to be protected when they first entered employment, the deletion was justified by the fact that the category was deemed to be too wide. It did not reflect the spirit of solidarity and social justice upon which the protection of the aged depended, and also from an economic point of view, because of competition in the employment market in countries which had large-scale unemployment. See, further, International Labour Office (1967a), p. 636.

59 The deletion of the category of outworkers and the workers too old to be protected when they first entered employment made it even more essential to keep the initially proposed 10% and not to reduce it to 5%, as had been also suggested. See also Myers, R.J. and Yoffee, W.M. (1966), pp. 25–26.

60 See International Labour Office (1967a), p. 636.

61 See International Labour Office (1967a), p. 635.

62 The ILO Conventions No. 70 and No. 71 already existed.

63 See International Labour Office (1967a), p. 635.

working population of any country. It was not, therefore, recommended that Member States that ratify the new instrument should be offered the possibility of excluding them from the scope of the Convention by means of a special declaration. The ILO Bureau, however, noted, once again, that the proposed text followed the lines of similar provisions in Article 3 of C121. It did not exclude the categories of workers indicated from the scope of the Convention. It only offered Member States the possibility of excluding them subject to the condition that they enjoy, in respect of the contingencies in question, at least equivalent protection. This solution took account of the fact that the categories of workers indicated were often protected by special schemes. This Article was unanimously adopted in the final discussion without further debate.[64]

Overall, the main reason for having such a variety of flexibility clauses incorporated into the final text of C128 – permitting multiple exceptions concerning personal coverage – was to facilitate the ratification, and, by extension, the application, of its parts at the national level.[65] Besides, in general, the new standards set by C128 were much higher than those set out under C102.

2.3 MATERIAL SCOPE OF APPLICATION

2.3.1 THE RISK OF INVALIDITY

Two different ILO Conventions set standards on income protection in the case of invalidity. C128 concerns the protection in the case of invalidity due to a non-work related cause. C121 protects victims of employment injuries and occupational diseases. Consequently, it can be said that invalidity is distinguished on the basis of its cause (i.e. between professional risks and social risks).[66]

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64 See International Labour Office (1968), pp. 699.

65 Despite the fact that all the aforementioned exceptions may seem rather extensive, they are far less so when compared to the ones permitted under the predecessors of C128. In particular, Convention Nos. 35 to 40 permitted exceptions in the case of the following categories of workers: workers whose earnings exceeded a prescribed amount; employees engaged in occupations which are normally considered to be professional in character; workers who are not paid a money wage; workers under or over a specified age; members of the employer's family; home workers whose conditions of work are not of a similar nature to those of ordinary employees; workers whose employment is of short duration, occasional or subsidiary; invalid [disabled?] workers and those in receipt of a pension; retired public officials who are remuneratively employed; domestic servants employed in the households of agricultural employers and persons who are entitled to benefits under special schemes that are at least equivalent (the Conventions concerning agriculture did not allow exceptions for domestic servants employed in the households of agricultural employees). This long list of exceptions had been designed in order to make these pre-war Conventions as flexible as possible. See International Labour Office (1965), pp. 21–23. See also Bartolomei de la Cruz, H.G. (1994), pp. 57–58, 95, 104–105.

66 See Pennings, F. (2006c), p. 89.

'There is a difference of concept between invalidity pensions, which are paid under general schemes and permanent incapacity benefit payment under employment injury compensation schemes. The former are designed to provide a disabled person with a pension when all efforts to enable him to find a suitable gainful activity have partly or completely failed. The latter are usually designed to provide compensation for the consequences of an occupational injury.'[67] Hereunder, the description and analysis concentrates on invalidity pensions paid under general schemes. Besides, the issue of providing benefit on the occurrence of an employment injury was examined by the 47th and 48th Sessions of the ILC. This led to the adoption of C121 and its accompanying R121.[68]

a. Definition of the contingency

On the occurrence of the risk of invalidity, and according to Article 8 of C128, the coverage provided at a national level 'shall include incapacity to engage in any gainful activity, to an extent prescribed, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity.'[69]

From the above it derives that Member States have the freedom to define the extent of invalidity at a national level. In other words, Member States are allowed to 'specify how the degree of incapacity is taken into consideration and what degree of incapacity has been prescribed for the contingency of 'incapacity to engage in any gainful activity.'[70] Thus, Article 8 permits 'invalidity to be defined as 100-per cent incapacity and it eliminates the tie-in within temporary disability benefits.'[71]

However, coverage is anticipated in the following cases: (a) when incapacity is permanent from the very beginning, or eventually becomes permanent; (b) when incapacity is not permanent, but continues to exist after the completion of a specific time period, defined by national legislation, during which it is recognized as being temporary, or at an initial stage.

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67 See International Labour Office (1965), p. 37.

68 Most countries distinguish between the different causes of incapacity for work. Usually there is a special benefit for persons who become incapacitated as a result of a work accident, or a disease arising from work undertaken, or the working environment, in general. However, there are also countries in which no such differentiation exists (for example, the Netherlands). See Pennings, F. (2006c), p. 89.

69 Article 8 of C128.

70 The Member States are also asked to supply to the ILO the relevant texts of any regulatory or administrative provisions defining the scope of Article 8. See also CEACR (1997a); CEACR (2003a).

71 See Myers, R.J. and Yoffee, W.M. (1966), p. 26.

Moreover, invalidity can be either *partial* or *total*. As a matter of fact, under Article 8 of C128 coverage of *partial invalidity* is not required as such. This means that it is not obligatory for the Member States to cover *partial invalidity*, but this does not mean that it is not permitted, or that coverage cannot to be provided. Put differently, *partial invalidity* can be also covered under Article 8 of C128, according to the arrangements made at the national level.

Additionally, according to R131§5, which accompanies C128, coverage in the case of *partial invalidity* is envisaged, and Member States are advised to take relevant measures at a national level, since 'a reduced benefit should be provided in respect of partial invalidity, under prescribed conditions.'[72] Similarly, and according to the definition of invalidity given in R131§4 'invalidity should take into account incapacity to engage in an activity involving substantial gain.'[73] This actually suggests that when defining invalidity, Member States should take into account that the person cannot, after the occurrence of the risk, perform an activity involving substantial gain, and the term *substantial* actually refers to partial invalidity.

Likewise, under C102, coverage for *partial invalidity* is not explicitly required. All the same, Member States are once again allowed to cover it. Article 54 of C102 states that on the occurrence of the risk of invalidity, coverage at a national level 'shall include inability to engage in any gainful activity, to an extent prescribed, which inability is likely to be permanent or persists after the exhaustion of sickness benefit.'[74] Therefore, the extent of any gainful activity by the disabled person is to be determined by national legislation. This alteration makes it possible for countries to fix the limit at an even higher rate. However, as has been stressed by the ILO Bureau, 'the payment of benefit in respect of total incapacity alone would not satisfy the requirement of the Convention.'[75] What is more, it should be kept in mind that R67 introduced the rule that the loss of working capacity must be at least 2/3 to be entitled to an invalidity benefit.[76]

On the contrary, under C121, *partial invalidity* should be covered by national social security legislation, since according to Article 6(c) 'The contingencies covered shall include the following where due to an employment injury: (c) total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty.'[77] Similarly, according to R121, which accompanies C121, in the case of partial invalidity, Member States are advised to pay a lump sum benefit. In particular, under paragraph 10(2), it is

72 R131, para. 5.
73 R131, para. 4.
74 Article 54 of C102.
75 See Dijkhoff, T. (2011), p. 95.
76 See R67, para. 11. See also Dijkhoff, T. (2011), pp. 94–95.
77 Article 6 of C121.

stated that 'in cases in which the degree of loss of earning capacity likely to be permanent, or corresponding loss of faculty, is less than 25% a lump sum may be paid in lieu of a periodical payment. Such lump sum should bear an equitable relationship to periodical payments and should be not less than the periodical payments which would be due in respect of a period of three years.'[78]

Thereafter, and as far as the coverage of *total invalidity* is concerned, what should be noted is that if national legislation provides the invalidity benefit only when 100% invalidity is reached (in other words, recognizes only 100% invalidity as *total invalidity*), the application of such a rule at the national level does not fulfil the requirements set in C128. Consequently, domestic legislation is not in compliance with the international social security standards (ISSS) set, since 100% of invalidity, as such, does not exist. As a matter of fact, in such a case, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) would certainly request an explanation and/or clarification to be given by the Member State of what is exactly meant by 100% invalidity under the relevant domestic social security legislation.[79] Furthermore, as under C128, when a Member State recognizes the coverage of *total invalidity* only in case of 100% invalidity, its legislation equally does not fulfil the requirements set in C102, and national law is once again not in compliance.

Moreover, and according to C102, the risk covered under a general invalidity scheme is considerably higher than the one covered under an employment injury scheme. This is due to the fact that the cause of invalidity is not necessarily attributed to an external event, but may also be caused by a disease, such as tuberculosis, or arthritis, and a benefit must also be paid in the case of temporary incapacity for work, if the person protected has already exhausted the right to sickness benefit under a scheme covering sickness.[80]

The definition of invalidity[81] existing in C128 corresponds, with one or two minor changes, to the definition of invalidity given in Article 54 of C102.[82] Numerous discussions took place during the double discussion procedure followed by

78 R121, para. 10(2).

79 This interpretation has been reaffirmed from the discussions held during the research visit that took place in the ILO Social Security Department in Geneva (17–18/01/2008).

80 See Dijkhoff, T. (2011), pp. 94–95.

81 The definition of invalidity included in the proposed conclusions of the 50th session of the ILC actually 'tied permanent invalidity to, and defined it as an extension of, a temporary or initial incapacity for which a benefit is payable'; see Myers, R.J. and Yoffee, W.M. (1966), p. 26. The majority of members supported the idea that invalidity should be defined in the text of the instrument; otherwise its provisions would lose much of their purpose. This was found necessary, since a definition of invalidity already appeared both in C37 and C38, as well as in C102. See International Labour Office (1967a), pp. 636–637.

82 See International Labour Office (1966a), p. 69; International Labour Office (1967b), pp. 21–22. See also Dijkhoff, T. (2011), pp. 94–96.

the ILC concerning the definition of this social risk. Actually, the diversity of opinions was great.[83] This was also the reason that it was finally decided that the consideration of the definition of invalidity should be referred to a Working Party.[84] Hence, the definition of invalidity, as set out in Article 8 of C128, and despite the fact that it can indeed be characterized as an amended version of the one included in Article 54 of C102,[85] was the result of the discussions held in that Working Party.[86]

Last, it is worth mentioning that the concept of *partial invalidity* has, overall, been considered as a subject best reserved for national legislation. As a result, it was considered more appropriate to deal with the grant of pension in the case of partial invalidity within a Recommendation, since also establishing any generally accepted definition of partial invalidity would be rather difficult.[87]

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83 The most substantial observations regarding the content of the definition were made by the following countries: Germany pointed out that the definition of invalidity given in Article 54 of C102 should be followed; Bulgaria proposed groups to be established in the light of the degree of invalidity; Czechoslovakia noted that invalidity should be considered the function not of any particular occupational activity, but of occupational activity remunerated at a substantial level; both New Zealand and Austria were in favour of another definition (namely, 'inability to engage in any substantially gainful activity by reason of a chronic condition due to disease or injury, or by reason of loss of a member or function which inability is likely to be permanent or persists after the termination of a benefit paid in respect of a prescribed period of temporary or initial incapacity'), although with a simplification in the wording; Hungary, Poland and the Syrian Arabic Republic advocated only general basic principles being embodied in the text of the instrument, see International Labour Office (1966b), pp. 179–180.

84 See International Labour Office (1967a), p. 637. At the same time, the ILO Bureau considered it advisable to include in the Proposed Conclusions for a Recommendation a proposal for a more liberal definition of invalidity; see International Labour Office (1966b), p. 180.

85 See also International Labour Office (1966a), p. 69; International Labour Office (1967b), pp. 21–22.

86 The care with which the Working Party drafted the (current) definition of invalidity, as well as the fact that this definition gained very wide support from the Committee of Social Security, were the main reasons behind its final adoption. See also International Labour Office (1967b), pp. 20–22. Nevertheless, it should be noted that no exact information on the issues raised during the deliberation of this Working Party regarding the definition of invalidity is provided in the Preliminary Reports. As also stated during the research visit that took place to the ILO Social Security Department in Geneva (17–18/01/2008), information on the work of the relevant composed Working Groups concerning the analysis of a specific subject matter is very difficult to find. Moreover, it is worth mentioning that in several government replies sent to the Office during the second round of discussions, observations were still made, asking still for changes to be made to the definition; see International Labour Office (1967b), pp. 20–21. The ILO Bureau, however, did not find it appropriate to make any substantial changes. The only change that took place was the replacement of the word 'inability' with the word 'incapacity' after a request made by the United Kingdom (UK); see International Labour Office (1967b), p. 21.

87 See International Labour Office (1966b), p. 180.

b. Some remarks concerning the present definition of invalidity

As already stated above, the current definition of invalidity included in the text of C128 is the result of careful drafting by a Working Party set up for this purpose. Its formulation also received broad support from the Committee of Social Security, and was finally accepted with alacrity. Nevertheless, there are some parts of this definition that drew the attention of the researcher, and for which no specific clarifications could be found in the preparatory documents on the final adoption of C128. Hereunder, certain thoughts are expressed in relation to these points.

To begin with, the phrase *incapacity to engage in any gainful activity*, included in the definition, as formulated, implies that a person, in order to be covered on the occurrence of the social risk of invalidity, must have lost his/her capacity to perform any kind of earnings related activity. The term *gainful*, taken literally, refers to an employment, work, or occupation for which someone is being paid. Therefore, if this is indeed the case, people disabled from birth could also be part of the given definition. Still, they could be excluded from the personal scope of application of C128, unless a country chooses to protect all residents. In such a case, this category of persons could also be included in the scope of application of the instrument. No reference to the category of persons disabled from birth and their possible coverage under C128 has been made.

Thereafter, the phrase *any gainful* relates more to coverage of *total invalidity*. As described, under Article 8 of C128, coverage of *total invalidity* is included, while *partial invalidity* is not required as such. This, then, implies that the person must have lost the ability to gain a considerable amount of earnings, and not just a fair amount of earnings. In such a manner, it is obvious – and taking into account that coverage of *partial invalidity* can be excluded – that the possibility is afforded to Member States to provide much lesser social security protection (than the one they would need to provide if coverage of *partial invalidity* was also required) and still comply with the higher standards set in the instrument.

Thus, C128 enables Member States to easily exclude more persons from the provision of long-term incapacity for work benefits, and at the same time, the degree or level of capacity loss becomes relatively much higher. Despite the fact that in this way national social security protection can be easily decreased, the flexibility in complying with the advanced standards set is increased. Thus, it emerges that the overall purpose of inserting such broad terms into the text of the instrument is to give more room for manoeuvre on the part of the country concerning law, policy and decision-making. The same kind of thinking actually applies to the determination of the terms *temporary* or *initial* incapacity. At least, it has been clarified that when a Member State provides coverage only in the case

of 100% invalidity (payment of invalidity benefit in respect of total incapacity alone), it does not fulfil the higher standards set in C128.

Going further, as already stated, Article 8 of C128 corresponds to the definition of invalidity given in Article 54 of C102. Taking this into account, it could be argued that the phrase 'incapacity which persists after the termination of a prescribed period of temporary or initial incapacity' has been formulated in order to allow for countries that do not have a sickness scheme also to ratify C128, enhancing, at the same time, the flexibility of the instrument. As a matter of fact, such a phrase may actually replace the wording *after the exhaustion of sickness benefit* included in Article 54 of C102. Such a formulation indeed increases possibility of ratification. Still, it also eliminates the importance of having a distinct sickness scheme at the national level. Once again, though, a country can more easily fulfil the higher standards set in C128.

Last, the current definition of invalidity includes certain other phrases with a rather abstract meaning. For instance, what is actually meant by the wording 'incapacity likely to be permanent', or 'incapacity which persists after the termination of a prescribed period of temporary or initial incapacity'? When someone reads incapacity is *likely to be permanent,* one can assume that incapacity may indeed be permanent, which would actually also mean a *total loss of working capacity*. But it is also not certain that it is permanent, so it can be temporary. Similarly, what the distinction should be drawn between *likely permanent incapacity* and *incapacity that persists after the termination of a period of temporary or initial incapacity*? The phrase 'likely permanent incapacity' implies that the person may remain disabled until pensionable age. However, at the same time, this is not certain, since it is also possible that the person may eventually recover. In any case, once again the use of such wording could be said to further facilitate the exclusion of more persons from the coverage anticipated under C128. Last, with respect to the arguments given previously on the abstract meaning of phrases included in the current definition of invalidity, one could also dispute them overall, on the grounds that it is actually unavoidable, and there are several cases in which it cannot be known, as such, whether invalidity will be permanent or not. Thus, at the end of the day, it is up to the to the legislature once again to provide explanations on how the definition of invalidity is utilised and interpreted, as well as how it actually gives effect to the relevant provision included in the instrument. In other words, the legislature should, in principle, proceed in good faith and it should into account the objectives underlying the particular provision.

2.3.2 THE RISK OF OLD AGE

The provision of old-age benefit[88] is usually subject to conditions. The attainment of a specific *pensionable age* and the completion of a certain *qualifying period* are recognized as the two most essential conditions,[89] and are very often intrinsically linked.[90] These two main conditions have also been used by international social security law when defining the risk of old age and awarding old-age benefit. Below, the first condition is discussed – that of the *pensionable age*. The second condition, pertaining to the *qualifying period,* is dealt with subsequently.[91]

a. Definition of the contingency

According to Article 15§1, the risk of old age is defined as 'survival beyond a prescribed age'. The same definition is followed in Article 26§1 of C102.[92] The phrase 'survival beyond a prescribed age' actually refers to the payment of the old-age benefit for a life term, starting from the moment the protected person has reached the age determined by the national legislature. Thus, the contingency is based on age, and not on the cessation of any gainful activity. However, engaging in such an activity may constitute a ground for suspension of the payment of the benefit.[93]

Thereafter, under Article 15§2 the age determined by the national legislature 'shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to demographic, economic and social criteria, which shall be demonstrated statistically'. This provision is quite flexible, since Member States are given two alternatives: they can either set a lower age than 65 years, or they can set a higher age. However, in the latter case, which allows the national legislature to opt for a higher pensionable age than 65 years, the exact reasons for doing so must be justified, and these reasons much consist of demographic, economic and social criteria that need to be demonstrated statistically.[94] 'The

88 See also International Labour Office (1965), p. 74, as well as International Labour Office (1966b), p. 177.

89 See also International Labour Office (1989), p. 37, as well as International Labour Office (1965), p. 26.

90 There are also, however, schemes under which old-age pensions are granted regardless of age, in respect of years of employment, or years of contributions. The granting of long-service pensions also exists for special categories of persons, irrespective of age. See International Labour Office (1989), p. 37, as well as International Labour Office (1965), p. 26.

91 See Section 2.4, below.

92 See, further, Dijkhoff, T. (2011), pp. 70–72.

93 See also International Labour Office (2001), p. 41.

94 During the preparatory work on the adoption of C128, it was suggested that the provisions of Article 26§2 of C102 should substitute Article 15§2, so as to bring the two Conventions into harmony and to avoid difficulties arising out of the statistical demonstration of the proposed criteria. In general, several doubts were expressed by many government members regarding the utility of using statistical concepts. Furthermore, it was also suggested that the possibility

aim of requiring such criteria to be demonstrated statistically, was to ensure that exceptions were founded on objective criteria[95] and thus make the supervisory bodies' work easier.'[96]

C102 also provides the possibility of fixing a pensionable age higher than 65 years under Article 26§2. The difference, though, with the respective provision of C128 is the fact that the specific reasons refer solely to the working ability of elderly persons.[97]

Finally, and according to Article 15§3, when the pensionable age in a country is set at 65 years or higher, the national legislature should fix a lower pensionable age 'in respect of persons who have been engaged in occupations that are deemed by national legislation, for the purpose of old age-benefit, to be arduous or unhealthy.' It should be made clear, however, that this possibility of lowering the pensionable age explicitly refers to the age of 65 years or older, and not to any lower pensionable age that might be fixed by the national legislation. This interpretation was given by the workers' members during the first round of discussions on the Revision of the pre-war Convention Nos. 35 to 40, and was later on confirmed by the Conference Committee on Social Security.[98]

Be that as it may, Article 15§3, as formulated, entails an increased degree of flexibility, since 'firstly, is for the competent authorities to assess and evaluate jobs and occupations in order to determine which should be considered as arduous or unhealthy within the meaning of the Convention, specifying the criteria applied, where appropriate; secondly, the provision also leaves it to the competent authorities to prescribe the conditions under which persons engaged in arduous or unhealthy work would be entitled to benefit at a lower age than the normal pensionable age.'[99]

The inclusion of such a provision was considered of great social importance during the preparatory work of C128, since it aims to 'establish more advantageous social protection for categories of workers whose working conditions are arduous or

given to the competent authorities to prescribe (according to certain criteria) an age higher than 65 for entitlement to an old-age pension should be removed from Article 15§2. However, both suggestions were finally rejected. See International Labour Office (1967a), pp. 637–638, as well as International Labour Office (1968), p. 693.

95 By way of illustration, exceptions based on objective criteria demonstrated by statistics, covering life expectancy, and/or the activity rate of elderly persons, etc.

96 See International Labour Office (1989), p. 37; International Labour Office (1965), p. 38.

97 See Humblet, M. and Silva, R. (2002), p. 25.

98 See International Labour Office (1967a), p. 638; International Labour Office (1968), p. 693. See also International Labour Office (1989), p. 37; International Labour Office (1965), p. 39.

99 See International Labour Office (1989), p. 37, as well as International Labour Office (1965), p. 39.

unhealthy.'[100] Still, it should be emphasized that the discretionary power given to the Member States under this provision should be exercised in such a manner fitting with its purpose, and should be also exercised in good faith. Actually, 'employment on arduous or unhealthy jobs is the oldest and still the most widespread reason for lowering the pensionable age, on the assumption that such jobs entail premature ageing.' Moreover, the establishment of a more favourable scheme for this category of workers should 'draw an anticipated old-pension, of which the rate and qualifying period must conform to Articles 17 and 18 of the Convention.'[101]

C102 contains no such equivalent provision. It permits though, according to Article 26§3, the pension to be suspended if the beneficiary is engaged in a prescribed occupation.[102] It is also worth mentioning at this point that during the first discussions at the ILC (prior to the adoption of C102) 'the Office had allowed a pensionable age of more than 65 years on condition 'that the number of residents having attained that age is not less than 10 per cent of the number of residents under that age but over 15 years'. This draft was intended to facilitate countries whose life expectancy is high and a large proportion of elderly people may therefore be considered fit for work. The version that was finally adopted by the Conference, however, opted for a greater degree of flexibility by eliminating this statistical criterion, retaining only the underlying idea of the working ability of elderly persons'.[103] Nevertheless, 'the idea that an increase in the pensionable age should be based on criteria supported by statistics was taken up again in drafting of Convention No. 128.'[104]

R131§6, accompanying C128, states that 'with a view to protecting persons who are over a prescribed age but have not attained pensionable age Members should provide benefits, under prescribed conditions, for: (a) persons whose unfitness for work is established or presumed; (b) persons who have been involuntarily unemployed for a prescribed period; or (c) any other prescribed categories of persons for which such a measure is justified on social grounds'.[105] Moreover, once again under paragraph 7 'the pensionable age should where appropriate be

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100 See CEACR (1994a).

101 See International Labour Office (1989), p. 37, as well as International Labour Office (1965), pp. 40, 42.

102 Particularly, 'in a contributory system, the pension may be reduced by earnings in excess of an amount fixed by national laws, or regulations. Nevertheless, under a non-contributory system, i.e. a social assistance scheme, a reduction is allowed in respect of not only earnings exceeding the fixed amount, but also in respect of other means of the pensioner'; see Dijkhoff, T. (2011), p. 74.

103 See International Labour Office (1989), p. 37; International Labour Office (1965), p. 38.

104 See International Labour Office (1989), p. 37; International Labour Office (1965), p. 38.

105 See R131, para. 6.

lowered, under prescribed conditions, in respect of any prescribed categories of persons for which such a measure is justified on social grounds.'[106]

Last, in C128, no reference is made to the equalization of the pensionable age for men and women. In other words, no reference is made on the matter of equal treatment with respect to old age. Consequently, the instrument simply remains neutral on this issue.[107]

It is interesting to note that during the double discussion procedure followed by the ILC a number of countries suggested having a lower pensionable age for women than for men, the difference generally being five years lower in the case of women.[108] Be that as it may, several arguments in favour of the opposite were outlined, stating that the instrument should allow for greater flexibility, so as to take into account the variety of national legislation provisions on this matter.[109] Eventually, the issue was withdrawn from the discussions.[110]

Furthermore, the situations under which the pensionable age could be reduced received a lot of attention during the ILC double discussion procedure. Actually, the complete deletion of Article 15§3 was proposed. It was stated that such provisions would restrict the number of ratifications, and in any case, would be difficult to accept, having regard to: the speed of technological development; the constant change of working conditions, and the absence of simple tests that would permit the identification of the occupations concerned. In contrast, some government and workers' members emphasized the necessity to provide a reduction in

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106 See R131, para. 7.

107 The Conference did not take a stand on the question of whether the pensionable age should be different or equal for men and women when adopting C128. See also International Labour Office (1989), p. 57.

108 In particular, the following amendment was proposed by the workers' members: 'the age so specified should not be more than 65 years for men and 60 years for women.' This amendment was inspired by the resolution adopted by the 1st European Regional Conference and corresponded to an idea accepted in many countries, whose legislation provided for a lower pensionable age for women than for men; see International Labour Office (1967a), p. 637.

109 These arguments came mainly from government and employers' representatives. In particular, government members made reference to the resolution in the Report of the United Nations Economic and Social Council (Commission on the status of women), 11–29 March 1963, in which it was stated that '…the provision concerning the pensionable age…should be sufficiently flexible to meet…individual needs…bearing in mind the encouraging trends towards equal economic conditions for the work of men and women, including equal provisions in the matter of the age of retirement and the right to pension'; see International Labour Office (1967a), p. 637.

110 'The main support for the principle of lower retirement age for women was based on the argument that women are subject to great strain and sometimes carry on occupations simultaneously with housekeeping and child rearing. The main opposition was based on the contentious that women generally live longer than men and that a lower retirement age is discrimination which might ultimately work to the detriment of women who would like to continue working as long as they are able'; see Myers, R.J. and Yoffee, W.M. (1966), p. 26. See also International Labour Office (1968), pp. 693–694.

pensionable age for those engaged in arduous or unhealthy occupations, such occupations were still to be found in all industrialized countries.[111]

Despite the fact that at a certain point Article 15§3 was transferred into the text of the current R131,[112] the provision was put back into the text of C128 based on the workers' members' requests, which particularly stressed its overall social importance. The opponents – mainly employers' members and some government members – drew attention to the difficulties of applying this provision, notably, in the case of schemes covering the whole population. They were of the opinion that the provision was more a matter of collective agreements in the branches concerned. All the same, the argument put forward by the workers' members (during the initial discussions), according to which the lowering of the pensionable age should be measured with reference to the age prescribed in the Convention and not with reference to any lower age possibly prescribed by a national legislation, was accepted. This was also the main reason for reincorporating the provision back into the text of C128. Additionally, after this decision, the Representative of the ILO Secretary-General, indicated that a Member could meet the requirements set in Article 15§3 by means of regulations as covered by the definition of the term 'legislation' in Article 1 of C128.[113]

In conclusion, the fact that although it was initially proposed that the 'work considered to be arduous or unhealthy for the purpose of old-age benefit' should be determined by national legislation after an obligatory consultation of the employers' and workers' organizations, it was finally decided that national legislation alone should determine whether, and under which circumstances, work could be 'considered to be arduous or unhealthy for the purpose of old-age benefit', is quite intriguing.[114] It is obvious that the involvement of social partners in such decisions was not deemed favourable at the time.

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111 See International Labour Office (1967a), p. 638. During the first round of discussions, such exceptions were also proposed regarding other prescribed categories of persons for whom a reduction in the pensionable age would be justifiable (such as, for example, women). Nevertheless, the category of persons for whom the reduction was found more desirable and necessary was that of those engaged in arduous or unhealthy occupations.

112 After hearing the advice of the Legal Adviser, the Committee decided to transfer the provision to the proposed text for a Recommendation; see International Labour Office (1967a), p. 638. The Legal Adviser had stated that it was valuable to make decisions as clear as possible so as to facilitate the drafting of the texts for submission to the Conference at the second reading. For this purpose, it was important to specify the instrument in which the provision on lowering the pensionable age of the Proposed Conclusion should be inserted; see International Labour Office (1967a), p. 638, as well as Myers, R.J. and Yoffee, W.M. (1966), p. 26.

113 See International Labour Office (1968), p. 693.

114 See International Labour Office (1968), p. 693.

b. *Clarifications provided by the CEACR with reference to the meaning of Article 15§3*

The following interpretation of a decision concerning Article 15§3 of C128, published in 1970 by the ILO ILC, is particularly illuminating:[115]

> By letter of 3 July 1969, the Director of the International Relations Division of the Danish Ministries of Labour and Social Affairs requested the Director-General of the ILO Bureau to clarify the meaning of Article 15§3 of C128. More specifically, the Danish government stated that, as Danish legislation does not provide for any lower minimum age in special cases, it wishes to know *whether Article 15, paragraph 3, should be understood to be applicable only if national legislation contains provisions to that effect or whether it should be taken as a legislative requirement which shall be complied with as a condition for accepting the obligations of the relevant Part of the Convention.*
>
> The ILO Bureau replied that since this specific clause had been the subject of considerable discussion during the preparatory work leading to the adoption of the Convention, reference to certain points would provide clarification of its meaning.
>
> From the preliminary report prepared by the ILC prior to the first discussion, it was clear that a number of countries already included in their social security legislation clauses for the provision of *a lower pensionable age for persons who had been employed for a prescribed period in arduous, unhealthy, or dangerous occupations*. It was also indicated that *the granting of such preferential treatment is based on the assumption that, on average, the working capacity of persons employed in such conditions diminish sooner than that of persons in other occupations; the contribution made by such persons to the national economy in physically arduous conditions is also taken into consideration*. Accordingly, the questionnaire appended to this report included a question asking governments to indicate whether, if the instruments specified the pensionable age, they should also provide for a lower pensionable age for persons engaged in occupations that are deemed to be arduous or unhealthy for many years.
>
> In the light of the replies to this questionnaire received from governments, the Office included in the proposed conclusions for a Convention a point stating that the pensionable age should, under conditions prescribed by national legislation, be lower for persons who have been engaged in occupations that are deemed to be arduous or unhealthy.
>
> During the first discussion, at the 50th Session of the Conference, it was decided to transfer this point, as amended, to the proposed conclusions for a Recommendation (point 47). This point was embodied in Paragraph 7 (a) of the

[115] For the original text of this interpretation, see International Labour Conference, (1970).

draft Recommendation drawn up by the Office on the basis of the Conference discussions, in the following terms: 'The pensionable age should be lowered, under prescribed conditions, in respect of: (a) persons who have been engaged in occupations that are deemed to be arduous or unhealthy after consultation with employers' and workers organisations'. The term "prescribed" was defined in Paragraph 1 of the proposed Recommendation to mean "determined by or in virtue of national legislation".

Following comments by certain governments (which related more particularly to a suggested reduction of pensionable age for women, in clause (b) of the Paragraph), the introductory words of the Paragraph were altered to read: "The pensionable age should, where appropriate, be lowered…" to make the text more flexible.

During the second discussion, at the 51st Session of the Conference, the workers' members of the Committee on Social Security submitted an amendment to add as paragraph 3 of Article 15 of the Convention a provision identical to Paragraph 7 of the proposed Recommendation, as first drawn up by the Office. With respect to clause (a) of this amendment, a government member, while supporting this clause in principle, submitted a sub-amendment to delete the words "after consultation with employers' and workers, organisations" and to replace them with the words "by national legislation". Subject to this sub-amendment, the introductory words and subparagraph (a) of the workers' members' amendment were adopted, the remaining subparagraphs being rejected".

At the following sitting of the Committee, a government member stated that the provision in question would be difficult to apply in practice and suggested that the Committee should give an interpretation to this clause making it easier to apply. Another government member took the clause to mean that it was up to governments to decide which occupations they considered "arduous or unhealthy". In reply to a question raised by a government member who wished to know if statutory regulations would satisfy the obligation laid down by Article 15, paragraph 3, the representative of the Secretary-General recalled the interpretation given in Article 1 to the terms "prescribed" and "legislation", and stated that if a government decided that there was no arduous or unhealthy occupation, it seemed that this would be covered by Article 15, paragraph 3. Later, at the time of adoption of the text established by the drafting committee, Article 15, paragraph 3, was further amended, without discussion, at the behest of the employers' members, with the addition of the words "for the purpose of old-age benefit" after the words "national legislation".

The first report of the Committee on Social Security to the Conference summarised the discussion on this provision as follows: "The workers' members presented an amendment to add to Article 15 a new paragraph corresponding to the provisions of Paragraph 7 of the Recommendation. They based their amendment on the social importance of these provisions… The Committee examined successively the three parts of this amendment. With respect to the first part, a government member presented a sub-amendment to limit its application to persons who had been

engaged in occupations that were deemed to be arduous or unhealthy by national legislation. This sub-amendment would make the text more flexible, on the one hand, by allowing national legislation, as indicated in Article 1 of the Convention, to determine, where applicable, work considered as arduous or unhealthy for the purpose of old-age benefit and, on the other hand, by eliminating the obligation to consult employers' and workers' organisations in this connection… At the request of a government member, the Representative of the Secretary-General indicated that a Member could meet the requirements of paragraph 3 of Article 15 by means of regulations as covered by the definition of the term "legislation" in Article 1".

During the discussion of the report of the Committee on Social Security in plenary session of the Conference, the Employers' Vice-Chairman of the Committee made the following statement regarding the provision under consideration: "We have had much difficulty in accepting paragraph 3 of this article, according to which persons who have been engaged in occupations that are deemed by national legislation to be arduous or unhealthy should have a lower pensionable age under prescribed conditions. However, at the very end of our deliberations a satisfactory interpretation of this text was given and for that reason most Employers could accept this stipulation".

A government member of the Committee stated that "it is clearly left to the governments to determine what, if any, occupation should be given the basic concession of a lower pension age and how any such concession should be given".

It would appear from the above indications – and particularly from the final decision to include the relevant provisions, not to the Recommendation, but to the Convention – *that the Conference intended to "embody in Article 15, paragraph 3, of the Convention the principle that, where the pensionable age is 65 years or higher, that age shall be lowered for persons who have been engaged in arduous or unhealthy occupations".*

However, *the specific provision is, at the same time, particularly flexible regarding the implementation of the above-mentioned principle*. More precisely, "firstly, *the determination of the occupations deemed to be arduous or unhealthy is left to national legislation* (defined in Article 1 of the Convention as including "any social security rules as well as laws and regulations"); secondly, *the determination can be made "for the purpose of old-age benefit", irrespective of any corresponding determination which may be made for other purposes*; thirdly, *it is open to a State to decide that, in the light of all the relevant circumstances* (which might include such factors as the nature of economic activities in the country, climate, technology, protective measures in the field of industrial health and safety, general standards of health, etc.*), no occupation need be deemed arduous or unhealthy for old-age benefit purposes*; fourthly, *a country may revise its determination from time to time in the light of changing conditions*; it is also left to national legislation *to prescribe the conditions under which persons engaged in occupations deemed arduous or unhealthy would be entitled to a pension at an age lower than the general pensionable age*".

> However, in countries where the general pensionable age is 65 years or older, *it would be necessary for the competent national authorities to consider what occupations it would be appropriate to deem arduous or unhealthy within the meaning of Article 15, paragraph 3*. While, as has been noted, *they would enjoy a considerable degree of discretion in arriving at a decision on the matter, they should* – as is generally the case in regard to such discretionary powers left to national authorities by international conventions – *proceed in good faith*, taking into account the objective underlying the particular provision.

From the above information, it could be stated (and by also taking into account that the Danish legislation did not provide for any lower minimum age in special cases) that if in Denmark the general pensionable age was set at 65 years or older, then the Danish legislature would have to lower it *for persons engaged in arduous or unhealthy occupations*, in order to fulfil the relevant international requirements. However, in the text of the interpretation published by the ILC, there was no further information on what the general age set in Denmark was with regard to the provision of old-age pension. If the general pensionable age was lower than 65 years, then the international requirements would be fulfilled, since, as already stated, the 'possibility of lowering the pensionable age explicitly refers to the age of 65 years or older, and not to any lower pensionable age that might be fixed by national legislation.' Maybe that is one of the reasons that Denmark has not proceeded with the ratification of C128 to date.

However, it may also be the case that a country has set the pensionable age at 65 years or older (or may have also set a lower pensionable age), but no arduous or unhealthy occupations exist in the country. This can be illustrated by the fact that the government of Barbados proceeded, in 1972, with the ratification of C128 (Parts II & III), without having categories of arduous or unhealthy occupations, as such. As a matter of fact, in its report in 1979, the government of Barbados stated that in Barbados there did not exist work that was considered to be sufficiently arduous or unhealthy to justify a lowering of the pensionable age to below 65 years for persons engaged in such work.[116] The CEACR later asked the government of Barbados whether this statement was still applicable – 'whether there exists, at the current time, in Barbados work that is considered to be sufficiently arduous or unhealthy as to justify, in accordance with Article 15§3, a lowering of the pensionable age to under 65 years for persons engaged in such work'[117] – and the answer provided was once again the same.[118]

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116 See CEACR (1994b).

117 See CEACR (1997b).

118 In Barbados, the 'pensionable age of 65 years is progressively being increased to reach 67 years on 1 January 2018, while flexible retirement allows retirement at any age from 60 to 70 years'. To this end, in 2010, the CEACR asked the government of Barbados 'to indicate whether the labour legislation of Barbados deems certain occupations as arduous or unhealthy, and

This actually justifies, once again, the following points previously mentioned in this thesis: that *it is open to a state to decide that, in the light of all the relevant circumstances* (which might include such factors as the nature of economic activities in the country, climate, technology, protective measures in the field of industrial health and safety, general standards of health, etc.), *no occupation need be deemed arduous or unhealthy for old-age benefit purposes*; as well as that *a country may revise its determination from time to time in the light of changing conditions*.

What is more, and as it has already been mentioned, states enjoy increased discretion in making a decision on whether or not to introduce such a scheme (if they deem it necessary). In any case, they should proceed in good faith taking into account the objective underlying the particular provision.

c. An example of bringing national social security legislation into compliance with Article 15§3

An interesting example of bringing national social security legislation in conformity with Article 15§3 of C128 can be seen in the case of Finland.[119] In July 1989 a bill was submitted to the Finnish Parliament for the introduction of an early retirement pension scheme, which envisaged the granting of a pension to persons over 55 years of age, whose working capacity had been reduced due to ageing and the arduous nature of their work. The rate of such pensions was supposed to be equivalent to that of a full invalidity pension that would be granted until the age of 65, whereupon it would be replaced by an old-age pension. The new scheme also provided for an early old-age (from 58 years) or delayed pension and a part-time old-age pension intended to supplement the income of an elderly person working part-time.

The CEACR expressed – through a series of Individual Observations, as well as Individual Direct Requests (from 1989 to 2002) – to the Finish Government its desire for the reform to enable workers engaged in arduous or unhealthy occupations, to receive old-age benefit before the age of 65 years, in accordance with Article 15§3 of C128, and with the conditions laid down by this instrument. According to the Committee, this should be done despite the fact that public sector workers in such jobs were no longer entitled to an old-age pension before 65 years of age, and despite the plans, at that time, to gradually increase the minimum age for entitlement to a pension for certain categories of workers (i.e. seafarers) by the

whether the pensionable age is lowered in respect of persons who have been engaged in such occupations'; see CEACR (2010a).

119 For all the relevant Individual Observations and Individual Direct Requests submitted for Finland by the CEACR, see CEACR (1989–2002).

year 2002. Relevant remarks had also been submitted to the CEACR by Finish Trade Unions representatives.

Finish national legislation did eventually come into compliance with C128, but only in 1998 (almost 9 years after the first remarks were made to this end by the CEACR). Thus, nowadays, public sector employees in arduous or unhealthy occupations have the opportunity to take an early old-age pension at the age of 60 and to apply for a part-time, or an individual early pension at the age of 58. An employee qualifies for an individual early pension – which is equal in size to the disability pension – if he has a long history of work, and if his capacity for doing his work has decreased, taking into account the strain of the job and the working conditions.

2.3.3 THE RISK OF DEATH

a. Definition of the contingency

According to Article 21§1, this social risk involves the loss of support resulting from the death of the breadwinner. The protection to be provided at a national level concerns two categories of persons affected by the occurrence of this risk: namely, the widow or the child(ren) of the deceased.[120] Article 21 of C128 (as a whole) groups together the various provisions for determining the contingency covered by also taking into account the definition of the terms *widow* and *child* provided in clauses (g) and (h) of Article 1 of C128. It has been modelled on C102 and its drafting corresponds with the Articles 60§1 and 63§5 on C102.[121]

b. Definition of the term 'widow' and conditions for securing entitlement to a survivors' benefit by the widow

In Article 1§ (g) of C128 General Provisions, the widow is defined as 'a woman who was dependent on her husband at the time of his death.'[122] This implies the existence of a marriage at the time of the risk occurrence. In other words, in order to be entitled to social security coverage a woman must have been legally married

120 Despite the fact that several amendments had been proposed during the discussions at the ILC concerning the extension of entitlement to a survivors' benefit to persons other than the widow or child, none of them found its way into the final text of C128; see International Labour Office (1967a), pp. 638–639, as well as International Labour Office (1966b), pp. 180–181.

121 Concerning the material scope of application in relation to the social risk of death under C102, see Dijkhoff, T. (2011), pp. 100–101.

122 Initially, it had been proposed that the term 'widow' be prescribed by national legislation. Actually, the task of proposing clear alternatives to this term was entrusted to a Working Party; see in International Labour Office (1967a), pp. 638–639. However, later on the term 'widow' was taken from Article 1 (d) of C102.

to the deceased person when he died. This is actually the corollary of the legal and moral conceptions predominant in contemporary society at the time.[123] 'The term dependent refers to a state of dependency, which is presumed to exist in prescribed cases' (Article 1§ (e)).[124] Therefore, national social security legislation specifies each time the meaning and the extent of the dependency of a widow. It can also be assumed that dependency is, in most cases, of an economic nature.

Thereafter, according to Article 21§2, the widow has the right to receive survivor's benefit only if she has reached a certain age.[125] This age is determined once again by national social security legislation, and cannot, in any case, be higher than the age determined for the receipt of old-age benefit in a given country. Additionally, under Article 21§4 it is possible that the widow needs not only to have been legally married to the deceased person at the time of the occurrence of the risk, but also to have been legally married for a minimum time period in order to be entitled to a survivor's benefit. This requirement actually corresponds to Article 63§5 of C102.[126] Unless, as postulated under Article 21§3(b), she is caring for a dependent child of the deceased. In such a case, no requirement both as to age and to minimum duration of marriage may be set for the granting of the survivors' benefit, as set out in Article 21§3(b) and Article 21§4. 'Even in the case that the youngest child of the deceased turns 18, the widow should not lose her entitlement to receive the survivors' benefit, since according to Article 21§3(b) the widow should continue to receive the benefit as long as she is caring for a dependant child of the deceased.'[127] Finally, no requirement as to age can be made if the widow is disabled[128] based on the rules set under Article 21§3(a). Still, disability is specified under national social security law.

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123 See International Labour Office (1965), p. 45.

124 The text of this provision is the same with the one of Article 1§ (d), of C121. See International Labour Office (1966a), p. 69.

125 Regarding the age requirement, Czechoslovakia had stated that the age of the widow, to be entitled to a survivor's benefit, should be prescribed by national legislation, and should not be higher than the retirement age of women; in International Labour Office (1966b), p. 181. This proposal was actually incorporated into the final text of the Convention.

126 See International Labour Office (1967b), p. 41.

127 See CEACR (2008).

128 Concerning the condition of invalidity, it had been proposed that it should be omitted, as it was presumed that a small number of beneficiaries would fall into this category. However, this proposal was withdrawn due to social importance. Eventually, it was unanimously agreed that the condition regarding invalidity would remain in the text of C128; see International Labour Office (1967a), p. 639. For example, Malta was prepared to accept disability only if it was total and permanent. The United States wanted the establishment of a special definition of invalidity [disability?] according to purely hypothetical criteria in order to extend protection to widows that have never been employed; International Labour Office (1966b), p. 181. The UK had expressed the opinion that the disability, per se, should not be a condition for a survivors' pension in the case of a widow; International Labour Office (1967b), p. 40.

Moreover, and based on R131§9, which accompanies C128, where the widow's right to a survivors' benefit is conditional on the attainment of a prescribed age, a widow below that age should be given every assistance – including training and replacement facilities and the provision of benefit where appropriate – to enable her to obtain suitable employment. Similarly, R131§11 states that a contributory old-age benefit or a contributory survivors' benefit payable to a widow should not be suspended after the prescribed age solely on the ground that the person concerned is gainfully occupied. Last, R131§10 presupposes that a widow whose husband fulfilled the prescribed qualifying conditions, but who, herself, does not fulfil the conditions for a survivor's benefit, should be entitled to an allowance for a specified period, or a lump sum death benefit.

At this point, reference should be made to some important observations made during the discussions for the adoption of Article 21.

Firstly, according to the comments made by the ILO Bureau, for the purposes of the application of C128, a widow who is expecting a child of the deceased also enjoys the same rights with a widow caring already for a child of the deceased.[129] Secondly, with regard to the three conditions imposed on the widow for the receipt of a survivors' benefit, namely: age, invalidity and her caring for a child of the deceased, "it has been affirmed during the discussions and after a request made by the Workers' members that the relevant provisions could be envisaged separately.' 'The fulfilment of one of them is sufficient for securing the entitlement to a survivors' benefit.'[130]

The issue of 'whether the three aforementioned conditions imposed on the widow should be satisfied at the moment at which the contingency occurred for the purpose of determining the widow's right to a survivors' pension, or if this right could ultimately be recognized when the conditions were satisfied after the occurrence of the contingency' was also raised.[131] Several opinions were expressed to this end. 'It had been stated that the three terms imposed on the widow did not involve the granting of a widow's pension when the conditions were satisfied after the occurrence of the risk, because not all national laws and regulations had such provisions. Also, a different interpretation was suggested by a government member, according to which a widow would have the right to a survivors' pension at the moment that she satisfied one of the conditions, even if these conditions were

129 International Labour Office (1968), pp. 694–695.

130 International Labour Office (1967a), p. 639.

131 See Myers, R.J. and Yoffee, W.M. (1966), p. 27. By way of illustration, currently in Dutch social security legislation the condition in such a case is from the day of the occurrence of the risk onwards – meaning on the day that the person died. However, this is not explicitly stated. This kind of interpretation can also be found in other national social security legislation. Moreover, if the child is over 18 and the widow becomes disabled on that date (when the child turns 18), under Dutch Law the widow continues to receive survivors' benefit.

satisfied after the occurrence of the risk. Many government members considered this interpretation to be too wide to be accepted, having regard to the legislation in their countries, and felt that this interpretation led to unfair results in some cases. Other government members supported this wide interpretation in order to ensure more a complete protection of widows by guaranteeing their rights. Workers' members also agreed with this suggestion, but most of the employers' members indicated their preference for a more flexible approach that would leave the conditions prescribed to national laws and regulations. The Committee in light of such discussion and divergent views, chose to report the matter for future clarification.'[132] However, in the final discussions this issue was not brought up again.

Worthy of a mention is also that during the discussions on the adoption of Article 21, no reference was made to the conditions for granting a survivors' benefit in the case of a divorced or separated wife, despite the fact that at the time the discussions were taking place, in some countries, subject to specified conditions, certain social security rights were recognized in respect of this group.[133]

c. The denial of survivors' benefit to a disabled and dependent widower

It is interesting to note that the under C128, the right to a survivors' benefit for a disabled and dependent widower was initially proposed[134] in order to bring the text of C128 into line with Article 18§1 of C121. All the same, this right was not recognized in the end,[135] regardless of the support of a quite large majority for this idea.[136]Attention was drawn to the difficulties that would arise with the introduction into the Convention of such particular provisions, which, at the end of the day, could only be fulfilled by a small number of countries.[137] The relevant provisions were included in the proposal for a Recommendation.[138] According to the current R131§12, 'a disabled and dependent widower should, under prescribed conditions, enjoy the same entitlements to survivors' benefit as a widow.' Similarly,

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132 International Labour Office (1967a), p. 640.

133 See International Labour Office (1965), p. 45.

134 International Labour Office (1967a), pp. 638–639. See also International Labour Office (1966a), p. 85; International Labour Office (1967b), p. 42.

135 By way of illustration, the governments of the United Kingdom (UK) and Finland asserted, respectively, that a disabled or dependent widower should not be granted the same rights as a widow under the Convention, and that this provision should be transferred to a Recommendation. The government of New Zealand also noted that it would be better to say, simply, that the widower should enjoy benefits equivalent to those of a widow pursuant to this Part of the Convention so as to make the provision more flexible. See International Labour Office (1967b), p. 42.

136 See International Labour Office (1967b), p. 42.

137 International Labour Office (1968), p. 695.

138 International Labour Office (1968), p. 695.

C102 does not include any specific requirement concerning the coverage of a disabled and dependent widower by the survivors' scheme of a country.[139]

d. The issue of the widow's re-marriage

In the text of Article 21, the right of a widow to survivors' benefit if she remarries is not recognized. Moreover, there is no reference, as such, to when exactly and in what circumstances the entitlement of a widow to survivors' benefit shall be terminated.

The issue of whether a remarried widow could be entitled to survivors' benefit was not brought up during the preliminary discussions on the adoption of Article 21. Still, two other relevant questions were posed at the double discussion procedure held by the ILO ILC, to wit whether the widow's former rights may be revived on the death of her second husband if her second marriage does not entitle her to a pension,[140] and under which circumstances the entitlement of a widow to survivors' benefit shall be terminated.[141]

The ILO Bureau replied that the definition of 'widow' was the same as the definition adopted on C102. As far as the issue of clarifying when a widow's status can be terminated because of remarriage, the ILO Bureau remarked that it seemed to be already implicitly contained in the interpretation of the provisions Article 21§1 and Article 25 of C128 taken together. In particular, since Article 21§1 of C128 stipulates that '*the contingency covered shall include the loss of support suffered by the widow* as the result of the death of the breadwinner', and Article 25, that the benefit shall be granted throughout the contingency.[142]

To this end, an interesting intervention was made by the government of the United Kingdom (UK), which stated that indeed Article 25 of C128 could be intended to cover this point on the grounds that the relevant contingency of widowhood can no longer be said to exist after the widow's remarriage. Be that as it may, it was considered appropriate for a specific provision to be included to this effect, which

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139 In particular, and in relation to C102 'the Office stated that widowers must, as a rule, be incapable of work in order to obtain the pension. However, the text of the Convention refers to the dependent wife, which is, considering the division of roles between men and women at that time, not very surprising. It must be kept in mind that the Convention provides minimum standards, which means that a country is always free to extend the definition by including dependent widowers', in Dijkhoff, T. (2011), p. 101.

140 International Labour Office (1965), p. 46.

141 In particular, the United States government had made an observation 'on the fact that the proposed text did not include *any indication of when a widow's status can be terminated because of remarriage.* It seemed, therefore, desirable to insert at the end of the definition of the term widow, in Article 1§ (g) of the Convention the phrase: *and who has not remarried*', in International Labour Office (1967b), p. 13.

142 International Labour Office (1967b), p. 13.

would make the position much clearer. Consequently, the UK requested that a provision for *the suspension of a survivors' pension during a widow's cohabitation with a man as his wife,* be inserted into Article 32 of C128, while it also noted that a provision along these lines was already included in both Conventions Nos. 102 and 121.[143]

The ILO Bureau replied that 'the assumption of the UK that the provisions of Article 25 can be taken to mean that the contingency of widowhood ceases on remarriage is certainly in accordance with the intentions with which this clause was drafted. It may, however, would be advisable for the Conference Committee to endorse this interpretation at its next discussion, rather than to make this point clear in the text itself, since its wording, in the interests of achieving uniform application of the two instruments wherever possible, follows that of Convention No. 102. By the same token, however, the second proposal by the Government of the UK concerning the suspension of survivor's benefit whenever a widow is cohabiting with a man as his wife should be accepted.[144] It will be recalled nevertheless that the original provision to this effect was deleted during the first discussion and it would therefore appear to be advisable to leave it to the Conference Committee to reconsider its position during the second discussion in the light of the suggestion made by the UK.'[145]

Finally, the issue of remarriage was given more concrete clarification under the discussions that took place in the last round of negotiations regarding the adoption of the Article 25 of C128. It was decided that when applying Article 25, a series of interpretations should be kept in mind. In particular:[146] (a) the remarriage of the widow terminates the contingency, defined in Article 21 as loss of support suffered by the widow as a result of the death of the breadwinner; (b) the idea of marriage or of remarriage, not defined by the Convention, could be understood in the meaning given to it in national legislation either in general, or in respect of social security.

To this end, it was also accepted that 'the concept of remarriage, within the meaning given by national legislation, could cover cohabitation as well. At the request of the workers' members, it was also accepted … that cohabitation could be considered as analogous to remarriage and the cohabiting widow could become entitled to benefits in her new position in relation to the man with whom, she was

143 International Labour Office (1967b), pp. 42–43.

144 Permitting the suspension of survivors' benefit as long as a widow lived with a man as his wife was not based on moral considerations, but took account of the factual position by placing the cohabiting widow on an equal footing with the married woman; International Labour Office (1968), p. 697.

145 International Labour Office (1967b), pp. 42–43.

146 International Labour Office (1968), p. 695.

cohabiting.'[147] However, in relation to Article 32§1(g) of C128, dealing with the case of providing survivors' benefit to a widow, 'a benefit to which a person is entitled to may be suspended as long as she is living with a man as his wife' – or in other words, cohabiting with a man as his wife. As previously mentioned, cohabitation could be also interpreted by national law as remarriage.[148]

Moreover, it was made explicit[149] that the remarriage of the widow did not end the rights of her children to receive survivors' benefit in conformity with the provisions of the Convention. Besides, Article 32§2 of C128, concerning the cases of suspension of a benefit, reads that: 'in the case and within the limits prescribed, part of the benefit otherwise due shall be paid to the dependants of the person concerned.'

Some further conclusions can be drawn from the above clarifications in relation to the issue of survivors' benefit suspension. More specifically, the use of the word 'may', instead of the word 'shall', implies that the suspension of the benefit may also not take place. Similarly, no time frame for suspension has set out, as such. Therefore, it could be assumed in both of the latter cases that a lot of discretion has been left to the Member States in order to decide on the issue of suspension. This discretion becomes even broader when someone takes into account the interpretation that has been given to the concept of suspension, where suspension corresponds to that given in the provisions of subparagraph (d) of Article 69 of C102, according to which: 'the concept of suspension must be given a wide interpretation so as also to cover disqualification, or the possible refusal of benefits.'[150] Hence, the term 'suspension' becomes even wider and can be used in various ways at the national level.[151]

Last, it is worth noting that during the discussions on the issue of remarriage, the object of Article 39 (Miscellaneous Provisions) was also clarified. This provision

147 International Labour Office (1968), p. 697. For several countries at the time, the legal marriage of a woman was not necessarily considered an essential condition for the establishment of a right to a survivors' benefit, and in the absence of legal marriage a woman could become entitled to a pension if her relationship with the breadwinner could be regarded as having been equivalent to that of marriage (maybe the condition that a woman must have lived with the deceased person for a certain time period had been laid down by national legislation); International Labour Office (1965), p. 45.

148 There were also countries in favour of deleting the condition of suspension of the survivors' benefit of a widow in case of cohabitation, since their legislation did not provide for suspension in which a widow cohabited with a man as his wife, in: International Labour Office (1967a), p. 647.

149 This was the result of a request made by the Workers' members, in: International Labour Office (1968), p. 695.

150 See International Labour Office (1968), pp. 696–697.

151 The increased discretion given to member states becomes also obvious form the earlier referred decision to leave the interpretation of the idea of marriage or of remarriage to national legislation.

permits the substitution of survivors' benefits with other periodical benefits, for the purposes of application of the Convention, when a protected person is granted such periodical benefits in the case of the death of the breadwinner.[152]

e. Definition of the term 'child' and conditions for securing entitlement to a survivors' benefit by the child

As far as for the child is concerned, apart from 'losing support because of the death of the breadwinner' (his/her father or mother), as postulated under Article 21§1 of C128, he/she must fulfil certain further requirements in order to be entitled to a survivors' benefit. In particular, and in accordance with Article 1(h) of the General Provisions,[153] the child has:

(a) to be 'under school-leaving age or under 15 years of age, whichever is the higher', as set out under Article 1(h)(i). This means that if, in a given country, the school-leaving age is higher than 15 years of age (i.e. 16 years of age), the condition 'under school-leaving age' is the one to be applied;

(b) to be 'under a prescribed age higher than that specified in clause (i) of this subparagraph and who is an apprentice or student or has a chronic illness or infirmity disabling him for any gainful activity, under prescribed conditions; provided that this requirement shall be deemed to be met where national legislation defines the term so as to cover any child under an age appreciably higher than that specified in clause (i) of this paragraph', as stated in Article 1(h)(ii). This means that a child who is older than the school-leaving age or 15 years of age is also covered, but with the precondition that he/she is an apprentice or a student, or has a chronic illness or infirmity which prohibits him/her from carrying out any gainful activity under conditions determined by national law. In addition, national legislation needs to have defined the term as such, in order to cover any child of an age considerably higher than school-leaving age or 15 years of age.

For instance, a child may pursue a general or vocational education, or may prepare himself in any other way for earning his living, and it could be said that he should be covered up to an age that is higher than that normally laid down for other children.[154]

The definition of the term 'child' in C128 increases the scope of the term as compared to Article 1(e) of C102, in accordance with Article 1(e) of C121.[155] The

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152 In: International Labour Office (1968), p. 695.

153 Under C102, Article 1(e) (General Provisions) the term 'child' is simply defined as 'a child under school-leaving age or under 15 years of age as specified by national legislation.'

154 International Labour Office (1965), p. 47.

155 International Labour Office (1968), p. 689.

ILO Bureau also emphasized that the provisions corresponding to those of C121 intend to give greater flexibility to the text of C128.[156]

Noteworthy was an observation made by the government of the United States, which expressed the belief that terminating benefits on account of disability, for any reason, including age, which fails to take into account the disabled person's continuing social need, cannot be justified on any human, social and financial grounds. To this end, it stated that children whose continuing benefit rights are based on a disability should remain beneficiaries for as long as they are disabled.[157]

With respect to the previous assertion of the United States government, the ILO Bureau replied that 'the proposal of the United States to abolish the age limit in the case of children with a chronic illness or infirmity would, if it were adopted, result in a further widening of the definition of the term child. The definition proposed is in conformity with that appearing in the Convention No. 121, which already considerably widened that concept as compared with the Convention No. 102. Further, the survey of the legislation in force shows that only a small number of laws (in question) give invalid orphans a survivor's benefit without taking an age limit into account.'[158]

During the discussions no reference was made to whether the child of the deceased should be born in wedlock, or whether a child that has been born out of wedlock would also have the right to receive a survivors' benefit. Moreover, no comments were made on whether adopted children, maintained children, or posthumous children have the right to a survivors' benefit as well. Additionally, the Convention does not provide for the granting of a benefit to other dependants such as younger brothers or sisters, or grandchildren, etc., nor does it provide for the granting of the benefit to others dependants if there are no survivors from the priority group – meaning the spouse or the child.

f. Certain cases of non-compliance between national social security legislation and the right to receive a survivor's benefit according to C128

The case of Norway

As already mentioned, Norway ratified C128 in 1968. However, under the National Insurance Act (as amended in 1986) a surviving spouse who, at the time of death, is taking care of the deceased's children or adopted children (under 18 years of age), is only entitled to a bereavement allowance (pension) if the length

156 International Labour Office (1967b), p. 15.
157 International Labour Office (1967b), pp. 14–15.
158 International Labour Office (1967b), pp. 14–15.

of marriage and period during which he or she had care of the children, after the death of the spouse, was at least 5 years.

According to an Individual Direct Request submitted by the CEACR in 1989,[159] since Article 21§3(b) and Article 21§4 of C128 make no requirement concerning length of marriage when the widow 'is caring for a dependant child of the deceased' for her to be entitled to survivors' benefit, the Committee requested that the government indicate the way in which it envisaged giving effect to the relevant provisions of C128. No further information concerning the remedy of this case of non-compliance has been published since 1989. However, C128 still remains active for Norway.

The case of Sweden

In Sweden, according to the Act of 30 June 1988, 'a surviving spouse who has not reached the age of 65 years upon the death of the spouse is entitled to an adjustment pension for a period of one year if the spouse has a dependant child under 12 years of age or if they have lived uninterruptedly with the deceased spouse for a period of at least five years.' Moreover, the entitlement to an adjustment pension is maintained for as long as the surviving spouse lives with a dependant child less than 12 years of age. Furthermore, a surviving spouse who fulfils the conditions for entitlement to an adjustment pension is entitled to a special survivors' pension if its capacity to obtain an income from work is reduced by at least half following the death of the spouse and the reduction is due to conditions on the labour market, to the surviving spouse's state of health or to any other comparable circumstances which are presumed not to be of short-term duration. Similar provisions apply to supplementary pensions.'[160]

In 1993, the CEACR[161] observed that in accordance with Article 21§2 and Article 21§3 of C128, the right of a widow to a survivors' pension must be recognized in the following three cases: (1) when the widow has reached a prescribed age, which may not be higher than the age prescribed for old-age benefit; (2) when the widow is an invalid; and (3) when the widow is caring for a dependent child of the deceased.

Accordingly, the new Swedish legislation appeared to ensure the application of C128 to the first two categories of widows. However, it did not appear to be the case for a widow caring for dependent children. According to Article 1(h) of C128, the term 'child' covers: '(i) a child under school-leaving age or under 15 years of

159 CEACR (1989a).
160 CEACR (1997c).
161 CEACR (1993).

age, whichever is the higher; and (ii) a child under a prescribed age other than specified in clause (i) of this subparagraph and who is an apprentice or student or has a chronic illness or infirmity disabling him from any gainful activity, under prescribed conditions: provided that this requirement shall be deemed to be met where national legislation defines the term so as to cover any child under an age appreciably higher than that specified in clause (i) of this subparagraph.'

Therefore, the CEACR asked the Swedish government to re-examine the matter in the light of the above. Moreover, it added that if the government continued to prevail itself of Article 41 of C128, to which it referred in its first report, the information required by the report form under this Article should be supplied, and in particular, under points 2 and 3. The same Individual Direct Request was submitted to the Swedish government by the CEACR in 1997, since no Report from the government was received.[162]

In 1998, the CEACR received certain information from the Swedish government with reference to the comments it first sent in 1993. Nevertheless, this information was not satisfactory. The CEACR recalled[163] that according to the Act of 30 June 1988 amending the Swedish National Insurance Act, 'entitlement for an adjustment pension is maintained for as long as the surviving spouse lives with a dependent child under 12 years of age, whereas under Article 21, paragraph 3(b), and Article 1(h) of the Convention, the right of a widow to a survivors' pension must be maintained for as long as she is caring for a dependent child of the deceased under school-leaving age or under 15 years of age, whichever is the higher, or under such higher age as may be prescribed when the child is an apprentice or student or is an invalid. In its latest report the Government indicates in this respect that in Sweden the compensation is linked to the child and not to the surviving spouse, and since, in the great majority of cases, the survivor is custodian, in practice the compensation goes to the family. It adds that survivors' pension in the form of child pension is paid to children aged under 18 years or 20 years, if the child is studying.'

Thereafter, it noted that no change took place at a national level regarding the aforementioned situation, and it further observed the following regarding the level of the survivors' pension in the form of child pension for two children over 12 years of age: 'according to the statistics provided by the Government, this pension would not attain the level of the survivors' benefit prescribed by the Convention for a standard beneficiary (a widow with two children).' Consequently, it asked the Swedish government once again to take all the necessary measures at a national level to ensure the correct application of Article 21§3(b) of C128. To this

162 CEACR (1997c).
163 CEACR (1998).

end the CEACR suggested two possibilities for solving the matter in question. In particular, it suggested to the government: 'either to prolong the widow's entitlement to an adjustment pension until the child she is caring for reaches at least the school-leaving age, or such higher age as mentioned above, or to raise the amount of the child pension for children over 12 years of age, so that the amount of such pension for the children would attain the level of the survivors' benefit prescribed by the Convention for a standard beneficiary.' Moreover, it repeated that 'in the event that the Government would wish to continue to prevail itself of Article 41 of the Convention, the Committee hopes that it would not fail to supply in its next report full information required by the report form under this Article, and in particular under points 2 and 3.'

After almost 5 years, in 2003, several changes took place in Sweden in relation to old-age, invalidity, and survivors' benefits, as a pension reform was adopted by the Parliament in 1998. Actually, in 2000, new legislation was adopted on survivors' pensions and children's support that would come into force on 1 January 2003, together with other laws relating to the general pension reform that took place in Sweden. Under this new legislation,[164] 'the special survivors' pension will be abolished, while the adjustment pension will be paid to a surviving spouse who at the time of the death of the other spouse lived together with a child under 18 years of age, instead of 12 years as before.'

The case of Venezuela

In 1992, the CEACR[165] noted that Venezuelan social security law should be brought into conformity with Article 21§1 – in conjunction with Article 1(h)(i) – of C128. In particular, according to the relevant national Social Security Act, 'single children under 14 years of age are entitled to a survivors' pension (except in the case of a child who is still at school or disabled).' However, such an arrangement is not in line with the previously discussed provisions of C128, which stipulate that survivors' benefits should be payable up to the age of 15 years.

In 1996, the government of Venezuela stated that 'future national legislation will take into account this requirement set out in the Convention.'[166] However, in 1997, the government replied that 'no change [to the relevant ACT] is currently envisaged'.[167] Despite the fact that the CEACR has insisted repeatedly through the submission of several Individual Observations[168] – since 1997 – on the fact

164 CEACR (2003b).
165 CEACR (1992).
166 CEACR (1996a).
167 CEACR (1997d).
168 Since 1997, three other Individual Observations have been sent by the CEACR to the government of Venezuela – in 2001, 2006 and (the latest so far) in 2009 – to this end; see

that the government should bring the national social security legislation into compliance with Article 21§1 – in conjunction with Article 1(h)(i) – of C128, no further information has been supplied so far on the issue by the government.

2.4 QUALIFYING PERIOD

The qualifying period is an essential condition for entitlement to pensions. C128, just as C102,[169] requires pensions to be paid to the insured persons who complete a certain qualifying period.[170] This qualifying period,[171] in C128, is determined under the following provisions: Article 11 – qualifying period for entitlement to invalidity benefits; Article 18 – qualifying period for entitlement to old-age benefits; Article 24 – qualifying period for entitlement to survivors' benefits.

Reference to Article 15 and Article 24 – which also contain certain other conditions to be fulfilled for the award of old-age, and survivors' benefits, respectively – has been made previously (see Section 2.3.2 and Section 2.3.3, above).

2.4.1 QUALIFYING PERIOD FOR ENTITLEMENT TO INVALIDITY BENEFIT

At a national level, practice has shown that the qualifying period for entitlement to an invalidity benefit usually consists of 'a period of contributions, insurance, employment, or residence – the latter being required as a rule by schemes in which the granting of a pension is not conditional upon direct financial participation by the protected person, or his employer, or on a period of gainful employment. It consists either of a total minimum period, or a minimum period of insurance during a specified period preceding the certification of the disability; the purpose of this requirement is to ensure that the claimant has recently formed part of the protected population. There are also countries in which the qualifying period depends on the age of the insured person. When invalidity pensions are regarded as anticipated old-age pensions, an age requirement is also laid down. Last, there

CEACR (1997–2009).

169 See further in Dijkhoff, T. (2011), pp. 75–77, 98–100, 104–105.

170 Most of the discussions held during the 50th ILC dealt with the length of qualifying conditions. See also Myers, R.J. and Yoffee, W.M. (1966), pp. 27–28.

171 'The prescribed rules referred in the Articles 11, 18 and 23, could include, in particular, provision of time limits, within which qualifying period must be completed before the contingency occurred', in International Labour Office (1967a), p. 642. Furthermore, it has been stated that 'the qualifying periods laid down should be considered as referring to the longest minimum period that could be required', in International Labour Office (1967a), p. 643.

is a means test under certain schemes which are financed out of taxes and apply to all residents.'[172]

The scheme under Article 11 – bar the 5th paragraph – corresponds to that of Article 57 of C102.[173] In the light of concern expressed regarding the amount of benefits granted under systems which specify a relatively short qualifying period instead of a minimum period of contribution or employment, it was considered appropriate to include in (the new instrument) C128 paragraphs 3 and 5 of Article 11, modelled on paragraphs 3[174] and 4[175] of Article 57 of C102. This also aimed at bringing the structure of the two instruments – C102 and C128 – into greater conformity with one another. It was also considered necessary to include the provisions laid down in paragraph 4 of C120, so as to take account of the various legal systems that scale the length of the qualifying period in ratio with the age of the beneficiary. Moreover, it should be noted at this point that the comments in respect of paragraphs 3 and 5 of Article 11 of C128 apply equally to Articles 18 and 24 of the same instrument and those in respect of paragraph 4 apply to Article 24 of C128.[176]

a. Qualifying period for a full benefit

Article 11§1 of C128 'lays down the duration of the qualifying periods for which invalidity benefits, corresponding to the Schedule annexed to Part V of tC128, must be granted to a standard beneficiary.'[177]

A person who is protected has the right to receive a *full invalidity benefit* (ordinary invalidity pension) (Article 11§1(a)) when he/she has completed – before the occurrence of the risk – a qualifying period, of: (a) 15 years of contribution or employment; or (b) 10 years of residence, both in accordance with rules[178]

172 International Labour Office (1965), pp. 41–42.

173 International Labour Office (1968), p. 691.

174 According to Article 57§3 of C102: 'The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part XI but at a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, five years of contribution, employment or residence.'

175 According to Article 57§4 of C102: 'A proportional reduction of the percentage indicated in the Schedule appended to Part XI may be effected where the qualifying period for the pension corresponding to the reduced percentage exceeds five years of contribution or employment but is less than 15 years of contribution or employment; a reduced pension shall be payable in conformity with paragraph 2 of this Article.'

176 International Labour Office (1966a), p. 72.

177 International Labour Office (1968), pp. 691–692.

178 The rules can, for example, include provision of time limits, within which, the qualifying period must be completed before the occurrence of the risk. See also Myers, R.J. and Yoffee, W.M. (1966), p. 28.

determined by, or in virtue of, national legislation. For social security systems covering the entire economically active population, *full invalidity benefit* (ordinary invalidity pension) (Article 11§1(b)) shall be provided to a protected person who has completed – before the occurrence of the risk – a qualifying period of 3 years of contribution, according to rules determined by, or in virtue of, national legislation. However, in addition to these 3 years of contribution, the person must have also paid – while he/she was working – a yearly average number or yearly number of contributions, as arranged by national social security rules and regulations.[179]

b. Qualifying period for a reduced benefit

Article 11§2 lays down the duration of the reduced qualifying periods for which *reduced benefits* should be guaranteed when the payment of invalidity benefits is made subject to the fulfilment of a minimum period of contribution, employment or residence. Consequently, a *reduced benefit* should be provided at least: (a) to a protected person, who has completed – before the occurrence of the risk – a qualifying period of 5 years of contribution, employment, or residence (Article 11§2(a)); or (b) where social security systems cover the whole economically active population, to a protected person who has completed – before the occurrence of the risk – a qualifying period of 3 years of contribution. Nevertheless, in addition to the 3 years of contribution, the person must have also paid – while he/she was working – half of the yearly average number or half of the yearly number of contributions, as arranged by national social security rules and regulations (Article 11§2(b)).

It is interesting to note that an amendment to transfer the provision of a reduced invalidity pension from the text of the Convention to that of a Recommendation was proposed.[180] However, this amendment was withdrawn. It was confirmed that the provisions did not seek to impose the idea of a reduced pension on national laws and regulations, but only to ensure that when the payment of an invalidity pension was made subject to the completion of a minimum period of contribution or employment, an invalidity pension should be granted at least to the persons protected who had completed the period provided at a rate reduced in comparison to the rates of pension laid down.[181]

179 See also Myers, R.J. and Yoffee, W.M. (1966), p. 28.

180 As stated 'the idea of a reduced pension did not fit in with the laws and regulations of all countries, for some granted a full invalidity pension after a very short qualifying period, or even without any such period', in International Labour Office (1967a), pp. 641–642.

181 International Labour Office (1967a), pp. 641–642.

c. Other possibilities allowed in relation to the determination of the qualifying period

Article 11§3 of C128 provides the consideration that the provisions of Article 11§1 (full benefit) are complied with when the invalidity benefits are at a percentage of, at most, 10 points lower than those in the Schedule appended to Part V (meaning 40% rather than 50%) for a qualifying period of 5 years' contribution, employment or residence.[182]

Moreover, Article 11§4 of C128 permits a proportionate reduction in this latter percentage when the duration of the qualifying period of contribution, employment or residence is between the duration fixed by paragraph 3 (5 years) and that fixed in paragraph 1 (15 years). However, in this last case, the provisions of paragraph 2 remain applicable and the reduced benefits must, moreover, be paid in the circumstances indicated in this paragraph.[183]

The insertion of the reference to the periods of residence in paragraph 4 of Article 11 took place in order to permit Member States whose systems provided for a qualifying period of residence to avail themselves of the provisions of paragraph 4 in the same way as those Members whose systems provided for qualifying periods of contribution or employment.[184]

With respect to Article 11§3 of C128, the ILO Bureau expressly stated, concerning the issue of reducing by more than 10 points the percentage referred to in Article 11§3, that 'it should be born in mind that the provisions of this paragraph are intended precisely to make the requirements of the Convention, as regards the percentage shown in the Schedule appended to Part V, more flexible in cases where the stipulated benefits are secured at least to a person protected who has completed, in accordance to prescribed rules, 5 years of contribution, employment or residence. It appears difficult to allow for a reduction greater than the 10 points stipulated in Article 11§3, as this corresponds to the reduction already permitted in the Convention No. 102.'[185]

Furthermore, it was noted that 'paragraphs 3 and 4 of Article 11 have a logical consequence. The provisions of paragraph 4 are not restrictive, but supplementary to the provisions of paragraph 3 in cases where the duration of the prescribed qualifying period lies between the duration fixed in paragraph 3 and that fixed in

182 International Labour Office (1968), pp. 691–692.
183 International Labour Office (1968), pp. 691–692.
184 International Labour Office (1968), pp. 691–692.
185 International Labour Office (1967a), pp. 28–30.

paragraph 1. In these cases the reduction in percentage was in any case lower than the figure mentioned in paragraph 3.'[186]

Despite the fact that the complete deletion of Article 11§3 of C128 was proposed (by several workers' members) based on the fact that its provisions seemed to contradict the provisions of Article 11§2, it was finally incorporated into the text of C128 (after the intervention of several government and employers' members). The main reason for its incorporation relied on its usefulness in making Article 11 (as a whole) more flexible, and in facilitating ratification by countries whose systems provided relatively high benefits after a relatively short qualifying period.[187]

Last, the insertion of Article 11§5 into the text of C128 served the purpose of taking into account the systems of Member States for which the duration of the qualifying period increased according to the age of the victim at the moment of the occurrence of the contingency, provided that this duration does not exceed 5 years at a prescribed minimum age. It was considered that this provision would make Article 11 much more flexible, by recognizing that a shorter qualifying period at a lower age can create certain equilibrium.[188] Moreover, according to further explanations given, Article 11§5 would, in general, facilitate ratifications at the national level.[189] Particularly in relation to the issue of a *prescribed minimum age*, it was noted that 'it should also be understood as placing on an equal footing the different systems in which the required qualifying period increases with age, provided that there was reasonable co-ordination between the various lengths of qualifying periods in relation to the duration of the qualifying period fixed by paragraph 1 of Article 11.'[190]

d. Further clarifications made concerning issues pertaining to the qualifying period

Concerning the present Article 11 of C128, the question was raised as to *whether the pension schemes that did not provide reduced pensions could, nonetheless, satisfy the requirements set for reduced invalidity, old-age, as well as survivors' benefits*. To this end, it was stated that the possibility of having a reduced pension

186 International Labour Office (1968), pp. 691–692.
187 International Labour Office (1968), pp. 691–692.
188 International Labour Office (1968), pp. 691–692.
189 As expressly stated, 'ratification would have been made difficult for Member States, such as some Scandinavian countries, whose schemes took account, in the calculation of invalidity benefits, the working years remaining before the age of entitlement to old-age pension, and so guaranteed full benefits to young workers who had completed a very short qualifying periods, but limited the invalidity benefits to the level of the old-age benefits, which would normally have been payable if the person concerned had not become disabled', in International Labour Office (1968), p. 692.
190 International Labour Office (1968), p.692.

did not seek to impose the idea of a reduced pension on the laws and regulations of all countries, but only to guarantee that when the payment of a pension is made subject to a minimum qualifying period of contributions or employment, the persons protected, having fulfilled the qualifying periods set out in the relevant clauses, should receive a pension reduced below the rate fixed.[191]

With respect to Article 11§2, an interesting observation was made.[192] In particular, it was stated that based on this clause, a *reduced benefit* is provided for only in the case of legislation that makes the granting of a pension subject to the completion of a period of contribution or employment. All the same, it would be wiser to consider a similar possibility to be permitted in the case of non-contributory schemes, as well.[193]

To this end, the ILO Bureau commented that 'the provisions of Article 11§2 are taken from the Convention No. 102. This paragraph, deals solely with invalidity benefit, the award of which is subject to completion of a minimum qualifying period of contribution or employment. Moreover, Article 11§3 provides that the requirements of Article 11§1 shall be deemed to be satisfied where a benefit reduced by the permitted amount is secured at least to a person protected who has completed, in accordance with prescribed rules, 5 years of residence, *inter alia*.'[194]

Furthermore, the ILO Bureau added that 'the intention of the provisions in Article 11§1(b) and Article 11§2(b) is by no means to reduce the length of the qualifying periods by comparison with those stipulated in Article 11§1(a) and Article 11§2(a). These provisions have been designed so as to give a Member whose scheme covers the whole of the working population a choice between stipulating a qualifying period along the lines of clause (a) and requiring a prescribed yearly average number of contributions to have been paid on behalf of the person protected throughout his working life, on condition, however, that the minimum qualifying period required for entitlement to benefit does not exceed 3 years of contribution. A Member who opts for the latter system may thus grade the length of the qualifying period according to the age at which the person protected becomes disabled. The required qualifying period according may vary from 3 full years of contribution to a period which may well exceed those mentioned in clause (a) of these paragraphs.'[195]

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191 See International Labour Office (1967a), p. 641.
192 This observation came from the Italian government.
193 International Labour Office (1967b), pp. 28–30.
194 International Labour Office (1967b), pp. 28–30.
195 International Labour Office (1967b), p. 29.

Thereafter, concerning Article 11§1 as well as Article 37 (Part VII, Miscellaneous Provisions) of C128, an interpretation of a Decision published in 1974 by the ILC is particularly illustrative.[196]

More precisely, in 1972, the Finnish Ministry of Social Affairs and Heath requested for certain clarifications to be provided by the ILO Bureau regarding the effect of these provisions. It was stated that normally, under Finnish law, once an employment relationship has lasted for a month, an employee who becomes disabled is entitled to an invalidity pension known as a *full effect invalidity pension*, which is calculated in such a manner so as to ensure compliance with the requirements of C128 on the level of benefit in the case of anyone who has completed the qualifying period provided for in Article 11§1(a). However, under Finnish law there are certain circumstances under which a person who becomes disabled is not entitled to the *full effect invalidity pension*, namely: (a) if the disability commences more than one year after the termination of the last pensionable employment; or (b) if the illness that caused the disability began before the commencement of the employment relationship and the disability occurs before the expiration of one year from the commencement of the employment. In these cases, entitlement exists only to what is known as a *free policy pension*. Still, the rules for the calculation of this *free policy pension* do not ensure compliance with the requirements of C128 pertaining to the level of the benefit.

Thus, the question was posed as to *whether the scope of Article 11 of C128 may be restricted so as to apply only to persons who comply with the requirements for entitlement to a full effect disability pension, and if this is not possible, whether persons entitled only to a free policy pension – representing not more than 2 per cent of invalidity pensioners – may be excluded from the application of C128 under the provisions of Article 37 (c).* To this end, two further issues were raised: (a) may the payment of invalidity benefit be made subject to qualifying conditions, according to which: (i) the last period of employment taken into consideration must have terminated less than 12 months before the disability occurred; (ii) where the illness that caused the disability began before the period of employment, the disability must have occurred more than 1 year from the commencement of the employment; (b) may persons who are not entitled under national legislation to an invalidity pension (*full effect disability pension*) meeting the requirements of the Convention, even where they satisfy the qualifying period provided for in Article 11, be excluded from the application of the Convention, pursuant to Article 37(c)?

[196] For the information reproduced here, see International Labour Conference (1974).

The reply given to the Finnish government includes the following information, which also provides further clarifications on the proper applicability of both Article 11§1 and Article 37.

> As far as the qualifying period that needs to be completed for the provision of an invalidity benefit, the ILO Bureau recalled that according to Article 11§1, this period should consist of 'a period completed, prior to the contingency, "in accordance with prescribed rules"' – rules determined by, or in virtue of, national legislation (Article 1(b)). The question, therefore, to be examined, in the first place, is whether the qualifying conditions existing in Finnish national legislation and described above can be regarded as constituting part of such prescribed rules.
>
> The first of these conditions – *requiring the qualifying period to include a period of pensionable employment within a prescribed period immediately preceding the contingency* – is of a type found in many countries. This was shown by the indications in respect of the qualifying period giving right to an invalidity pension contained in the first report on the item submitted to the ILC in 1966.
>
> Commenting on these indications, the report noted that the qualifying period for invalidity pensions 'consists either of a total minimum period … or a minimum period of insurance during a specified period preceding the certification of disability … The purpose of this requirement is to ensure that the claimant has recently formed part of the protected population.'
>
> During the first discussion of the question in the competent Conference committee, an amendment was proposed to the point that was to become Article 11§1(a) of the Convention, providing that the qualifying period of contribution, employment or residence should have been fulfilled during the ten years immediately preceding the occurrence of the risk. The committee's report indicates: 'This amendment was withdrawn, because it had been stated that this qualifying period was completed in accordance with the rules prescribed by national legislation. The rules could, in particular, include provision of time limits within which the qualifying periods must be completed before the contingency occurred.'
>
> It is thus apparent that *a condition that the last period of employment taken into consideration must have terminated not more than a specified time before the disability occurred* was described by the Conference *as one of the 'prescribed rules' for completion of the qualifying period to which the grant of an invalidity pension might be made subject under Article11§1, of the Convention.* The other type of condition for entitlement to an invalidity pension mentioned in the request under consideration, namely, *that where the illness that caused the disability began before the period of employment, the disability must have occurred more than one year after the commencement of the employment* – appears not to have been specifically mentioned in the preparatory work leading to the adoption of the Convention. However, among the examples of qualifying conditions laid down in national systems there cited, *were conditions requiring payment of contributions during a specified period immediately preceding the occurrence of the risk.* The condition

now under consideration appears to be similar in nature (although possibly less exacting, since, while it requires a minimum of one year between the beginning of the last pensionable employment and the occurrence of the disability, it does not stipulate that the employment itself must have continued throughout this period).

Therefore, it may be concluded that this condition may also properly be regarded as forming part of the prescribed rules provided for in Article11§1 of the Convention.

Now, as far as the categories of persons that may be excluded from the application of the Convention are concerned, Article 37 of the Convention permits the exclusion – in the case of countries which protect employees – of three categories of persons. In particular, Article 37(a) & (b) refer to clearly defined groups: (a) persons whose employment is of a casual nature, and (b) certain kinds of family workers, while Article 37(c) refers to other 'categories' of employees.[197]

The latter clause is based on a similar provision contained in C121, inserted in that Convention by the competent Conference committee *to make allowance for the numerous and different 'special cases' that were cited by various members in respect of which coverage could not readily be effected, such as members of the armed forces, civil servants, domestic workers, etc.*

All these indications suggest that what the Conference had in mind was *the exclusion of clearly defined and predetermined groups of employees from the application of the Conventions concerned.*

In these circumstances, *the provisions of Article 37 (c) of C128 would not appear to be capable of being invoked in respect of persons who were subject to coverage under the relevant scheme, but who, though they satisfied the qualifying conditions laid down by the Convention, would not be entitled to benefits at the required level.*

e. Assimilation of other periods to the qualifying period under Recommendation 131

According to R131§20, accompanying C128, if the provision of invalidity benefits is made conditional on the completion of a period of contribution or employment, Member States are asked to consider assimilating, under prescribed conditions, at least the periods of incapacity due to sickness, accident or maternity, as well as the periods of involuntary unemployment – in respect of which benefit was paid – to the periods of contribution or employment in calculating the qualifying period that has been fulfilled by the person concerned. Similarly, under R131§21, periods of compulsory military service should be assimilated, under prescribed conditions, to periods of contribution or employment in calculating the qualifying period that has been fulfilled by the person concerned. This suggestion pertains

[197] See also Sub-Section 2.2.2, above.

equally to the provision of old-age, and survivors' benefits when they are made conditional on the completion of a certain qualifying period.

2.4.2 QUALIFYING PERIOD FOR ENTITLEMENT TO OLD-AGE BENEFIT

The scheme under Article 18 of C128 corresponds to Article 29 of C102.[198] The comments in respect of Article 11 of C128 mentioned above (see Section 2.4.1 Qualifying period for entitlement to invalidity benefit) equally apply to Article 18 of C128, except for paragraph 4.

a. Qualifying period for a full benefit

Article 18§1 of C128 lays down the qualifying period for which old-age benefit, corresponding to the Schedule annexed to Part V of the same Convention, should be granted to a standard beneficiary.

Accordingly, under Article 18§1(a), a person who is protected has the right to receive *full old-age benefit* (ordinary retirement pension) when he/she has completed, before the occurrence of the risk, and in accordance with prescribed rules, a qualifying period of: (a) 30 years of contribution or employment; or (b) 20 years of residence. For social security systems covering the entire economically active population, Article 18§1(b) stipulates that *full old-age benefit* (ordinary retirement pension) shall be provided to a protected person who has completed, prior to the occurrence of the risk, a qualified period determined by national law. However, the person must have additionally paid – while he/she was working – a yearly average number, or yearly number of contributions, as arranged by national social security rules and regulations. Article 18§1(b) actually provides for more flexible rules than the ones under the Article 18§1(a).

The term *qualifying period* used in Article 18§1 refers to *a maximum number of contribution, employment, or residence* which may be considered in order for the old-age benefit to attain the rate prescribed under C128. This term permits (to a certain extent) national legislation to determine the conditions under which the qualifying period should be completed, on the proviso, however, that it should not exceed the length set by the Convention. Last, it should be kept in mind that Member States have the right, when referring to the *qualifying period*, to use other units of time other than years (such as, for example, a quarter, month, week or day). The main point is that such other units of time are used in a proper way so as to correspond to the minimum number of years required by the Convention,

198 International Labour Office (1966a), p. 73.

also placing emphasis on the conversion methods stemming from national legislation.[199]

Despite the fact that several proposals to reduce the length of the qualifying period of contribution, employment, or residence were made, most of them were eventually withdrawn.[200] It is interesting to note that the majority of the employers' members requested leaving to national legislation the possibility of setting the length of the required qualifying period in all cases. It was equally suggested the length of the qualifying period (Article 18§1(a)) should be reduced from 30 to 25 years, since thirty 30 years appeared excessive and likely to be unfavourable for workers whose working life began late, or was interrupted. This amendment was supported by many government and workers' members. However, it was rejected on the ground that such a reduction would prevent the provision of benefits that would be in conformity with the standard fixed in the Schedule of Part V.[201]

b. Qualifying period for a reduced benefit

Article 18§2 of C128 sets out the duration of the reduced qualifying periods for which *reduced benefits* should be guaranteed to the beneficiary when the payment of old-age benefits is made subject to the fulfilment of a minimum period of contribution or employment. Therefore, under Article 18§2 the term *qualifying period* refers to the minimum qualifying period that may be required for entitlement to old-age benefit; the same actually applies for Article 29§2 of C102.[202]

Consequently, at least a *reduced old-age benefit* should be provided: (a) to a protected person who has completed, prior to the occurrence of the risk, a qualifying period of 15 years of contribution or employment (Article 18§2(a)) (R131 stipulates that a reduced old-age benefit should be provided as soon as a qualifying period of 10 years of contribution or employment has been completed); or (b) to a protected person who has completed, prior to the occurrence of the risk, a qualifying period of contribution, but only if under the social security system of the country concerned the whole economically active population is covered. In such a case, however, the person must also have paid half of the yearly average number of contributions, as arranged by national social security rules and regulations, while he/she was working (Article 18§2(b)). This provision provides an increased degree of flexibility for the determination of rules at the national level.

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199 See also International Labour Office (1989), p. 49.

200 This actually took place because an agreement was reached in the Experts Committee to reduce the number of the amendments proposed.

201 International Labour Office (1968), p. 694; International Labour Office (1967b), pp. 36–37.

202 International Labour Office (1989), p. 49.

All the same, it should be made clear that under Article 18§2(a) of C128 the reduced old-age benefits are not obligatory in every case. The main purpose of this provision is to ensure that if the provision of an old-age benefit is made conditional on the completion of a minimum qualifying period (either of contributions or employment), the insured person who has completed a 15-year qualifying period shall be paid a benefit at a lower rate than that calculated in accordance with Article 18§1. The same applies for reduced old-age benefits provided under Article 29§1 of C102.[203]

Moreover, the CEACR has observed that according to Article 18§2(a), reduced old-age benefits are paid to persons who have reached the age which gives entitlement to the ordinary retirement pension and who have accumulated 15 years of contributions or employment.[204]

In any case, though, the reduced old-age benefit should be periodical (put differently, it needs to be paid at regular intervals), as stipulated under Article 17 of C128, as well as Article 28 of C102.

It is also interesting to note that during the 50th session of the ILC it was proposed that reduced old-age pensions should also be provided to persons who, when the Convention came into force, were too old to qualify for a full old-age pension. Nevertheless, this proposal 'was rejected on the grounds that this was basically a transitional matter and that there was already a provision for reduced pensions for persons who had not fulfilled the requirements for full pensions. This provision was transferred to the Recommendation.'[205] Indeed, currently under R131§8 it is stated that 'a reduced old-age benefit should be payable under prescribed conditions to a person protected who, by reason only of his advanced age when the legislation giving effect to the Invalidity, Old-Age and Survivors' Benefits Convention, 1967, comes into force, has not satisfied the qualifying conditions prescribed, unless a benefit in conformity with the provisions of paragraph 1, 3 or 4 of Article 18 of that Convention is secured to such person at an age higher than the normal pensionable age.'

A reduction in the length of the qualifying period set for the provision of the reduced old-age benefit was equally proposed. In particular, the Swedish government had observed that since the standards set in the new Convention should be more favourable than those set in C102, it would be inclined to favour a shortening of the qualifying period proposed in Article 18§2(a), as regards entitlement to a reduced old-age pension. Be that as it may, the ILO Bureau simply

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203 International Labour Office (1989), p. 49.
204 See CEACR (1989–2009).
205 Myers, R.J. and Yoffee, W.M. (1966), p. 28.

replied that all proposals for shortening the qualifying period were withdrawn during the first round of discussions in the ILC.[206]

c. Other possibilities allowed in relation to the determination of the qualifying period

According to Article 18§3 of C128, the requirements set under the previously described Article 18§1 can be fulfilled through the provision of old-age benefits at a percentage of, at most, 10 points lower than in the Schedule appended to Part V of the same Convention (meaning 35 percent instead of 45) for a qualifying period of 10 years' contribution or employment, or 5 years of residence. In particular, the clause states that the requirements of Article 18§1 'shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V but a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, ten years of contribution or employment, or five years of residence.'

Similarly, Article 18§4 of C128 states that 'a proportional reduction of the percentage indicated in the Schedule appended to Part V may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds ten years of contribution or employment or five years of residence but is less than 30 years of contribution or employment or 20 years of residence; if such qualifying period exceeds 15 years of contribution or employment, a reduced benefit shall be payable in conformity with paragraph 2 of this Article.'

In particular, Article 18§4 of C128 has been completed in the same way as Article 11§4, in order to take into account schemes with residence as a main condition. This Article is mainly designed to adapt the more flexible provisions of Article 18§3 in relation to the hypothesis mentioned in Article 18§2 – i.e. provision when entitlement to old-age benefit depends on completion of a minimum period of contribution or employment. Since Article 18§2 does not mention a period of residence, it seemed logical to make no reference to it in paragraph 4; in this it follows the corresponding provision of C102.

[206] International Labour Office (1967b), pp. 28–30.

2.4.3 QUALIFYING PERIOD FOR ENTITLEMENT TO SURVIVORS' BENEFIT

The scheme under Article 24 of C128 corresponds to Article 63 of C102.[207] The comments in respect of Article 11 of C128 mentioned above (see Section 2.4.1 Qualifying period for entitlement to invalidity benefit) equally apply to Article 24 of C128.

In general, 'a qualifying period of contributions, insurance, employment or residence is required. Its length is often the same for survivors' pensions as for invalidity pensions. The national legislations fix the length of these qualifying periods either explicitly or in relation to the period laid down for invalidity or old-age pensions. The qualifying period is generally to be completed by the deceased breadwinner, not by the survivors, so that many systems, instead of requiring a fixed qualifying period, provide that the survivors may receive the pension if the deceased breadwinner was or would have been entitled to an old-age or invalidity pension at the date of his death.'[208]

a. Qualifying period for a full benefit

Article 24§1 of C128 sets out the length of the qualifying period for which a survivors' benefit, corresponding to the Schedule annexed to Part V of the same Convention, should be granted to the standard beneficiary.

A person who is protected has the right to receive a *full survivors' benefit* (Article 11§1(a)) when his/her breadwinner has completed a qualifying period, in accordance with rules determined by, or in virtue of, national legislation, of: (a) 15 years of contribution or employment; or 10 years of residence. However, for a survivors' (full) benefit payable to a widow, the widow may also need to have completed a prescribed qualifying period of residence.

For social security systems covering the wives and children of the entire economically active population, *full survivors' benefit* (Article 24§1(b)) shall be provided to a protected person whose breadwinner has completed a qualifying period of 3 years of contributions – again, according to rules determined by, or in virtue of, national legislation. However, in addition to the 3 years of contribution, the breadwinner must have also paid a yearly average number, or yearly number, of contributions, as arranged by national social security rules and regulations, while he/she was working.

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207 International Labour Office (1966a), p. 74.
208 International Labour Office (1965), pp. 47–48.

Article 24§1(a)) was inserted during the last round of discussions, after an amendment proposed by a government member in order to take into account schemes in which the right to survivors' benefits paid to a widow depended on a period of residence being fulfilled by the widow herself.[209]

b. Qualifying period for a reduced benefit

Article 24§2 of C128 sets out the length of the qualifying period for which *reduced benefits* should be provided when the payment of survivors' benefits is made subject to the fulfilment of a minimum period of contribution or employment. Consequently, a *reduced benefit* should at least be provided: (a) to a protected person, whose breadwinner has completed a qualifying period of 5 years of contribution or employment (Article 24§2(a)); or (b) to a protected person whose breadwinner has completed a qualifying period of 3 years of contribution where social security systems cover the wives and children of the whole economically active population. However, in addition to these 3 years of contribution, the breadwinner must have also paid half of the yearly average number, or half of the yearly number, of contributions, as arranged by national social security rules and regulations while he/she was working (Article 24§2(b)).

It was adopted without opposition that 'a survivors' pension or a survivors' reduced pension should be secured at least to persons protected whose breadwinner has fulfilled the qualifying conditions referred to for a reduced invalidity pension.'[210]

c. Other possibilities allowed in relation to the determination of the qualifying period

Under Article 24§3 of C128 the requirements set under the previously described Article 24§1 may be fulfilled through the provision of a survivors' benefit (at least) to a person protected whose breadwinner has completed, in accordance with prescribed rules, 5 years of contribution, employment or residence. The benefit should be calculated based on the requirements set in Part V of the same Convention, but at a percentage of 10 points lower than that shown in the Schedule appended to Part V.

Similarly, Article 24§4 of C128 permits a 'proportional reduction of the percentage indicated in the Schedule appended to Part V where the qualifying period for the benefit corresponding to the reduced percentage exceeds five years of contribution, employment or residence but is less than 15 years of contribution or employment or ten years of residence; if such qualifying period is one of

209 International Labour Office (1968), p. 695.
210 International Labour Office (1967a), p. 643. See also Myers, R.J. and Yoffee, W.M. (1966), p. 28.

contribution or employment, a reduced benefit shall be payable in conformity with paragraph 2 of this Article.' This addition to Article 24§4 corresponds to that of Article 11§4 of C128 in order to take into account those schemes requiring a qualifying period of residence.[211]

Last, based on Article 24§5 of C128, the requirements set in Article 24§1 and §2 'shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V is secured at least to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period of contribution or employment which shall not be more than five years at a prescribed minimum age and may rise with advancing age to not more than a prescribed maximum number of years.'

2.5 NATURE AND AMOUNT OF CASH BENEFITS

2.5.1 THE TYPE OF INVALIDITY, OLD-AGE, AND SURVIVORS' BENEFITS

According to Article 10 (invalidity benefit),[212] Article 17 (old-age benefit) and Article 23 (survivors' benefits) of C128, the social security benefits provided to the beneficiary have to be of a *periodic* nature. In other words, they have to be provided in the form of regular payments of a set amount at regular intervals (i.e. every month, week, etc.).[213] The aforementioned Articles correspond respectively to Article 56 (invalidity benefit), Article 28 (old-age benefit) and Article 62 (survivors' benefits) of C102.[214]

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211 International Labour Office (1968), p. 695.

212 The aim of Article 10 of C128, on which Article 17 and Article 23 of C128 are also based, when drafted, was to be compatible with the structure of the 1st proposed conclusions of the 15th session of the ILC, which had been modelled on that of C102. In fact, it normally corresponded with the relevant qualifying conditions regarding the contingencies under question. Additionally, it was stated that Article 10 contained only the basis for the determination proposed with regard to the level of the pensions, and that in the interests of simplicity the particular methods of calculation that appeared in Articles 65 to 67 of C102 had been deliberately omitted at the first stage. However, with the agreement of the Committee, these methods were introduced in the appropriate manner in the proposed Convention to be submitted to the Conference for a second reading. Accordingly, the earnings and wages mentioned should be considered in accordance with the provisions of Articles 65 and 66 of the Convention. See International Labour Office (1967a), p. 644. See also International Labour Office (1966b), pp. 192–193, 204–205. Their finalization, however, came later on, in the form of the current Articles 26 to 28 of C128, as seen below (Sub-Section 2.5.2).

213 See also in: Nickless, J. (2002), p. 8–9.

214 Concerning the type of social security benefits under the C102 see in: Dijkhoff, T. (2011), p. 53.

The fact that these benefits are recognized under Articles 10, 17 and 23 of C128 as *periodic* excludes, in principle, *lump sum payments*. Put differently, a one-off payment for the entire amount due (as opposed to a series of breaking payments into smaller instalments).[215] The main reason why invalidity, old-age and survivors' benefits are not allowed to take the form of *lump sum payments* has to do with the fact that they would not meet the real needs of the beneficiaries. Particularly concerning old-age benefits, a *lump sum payment* cannot fully provide for their old age and is unlikely to cover the necessities of life upon retiring.[216]

2.5.2 METHODS OF CALCULATIONS AND REPLACEMENT RATES

Regarding the social security systems under which *the employees* or *categories of the economically active population* are protected, Articles 10§a, 17§a and 23§a of C128 postulate that the calculation of the level[217] of the invalidity, old-age and survivors' benefits should be done in accordance with the requirements set out in Article 26 or Article 27 of C128.

'These provisions had been drafted with a view to being as flexible as possible. Due to the problems created by systems comprising mixed qualifying mechanisms for calculation of benefit(s), it seemed desirable to allow Member States whose legislation protected either *employees* or *classes of the economically active population* to retain the option of referring equally to the provisions of Article 26

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215 There is also the case that some lump sum distributions receive special tax treatment under national legislation. See also in: Nickless, J. (2002), p. 8–9.

216 International Labour Office (1989), p. 61.

217 Some of the most interesting opinions expressed, during the fifteenth (50th) session of the ILC regarding the amount of the cash benefits were the following: "the level of the pension to be left to national legislation"; "the instrument should not specify directly or indirectly the amount of the pensions"; "the rules laid down in Articles 65 to 67 of the Convention No. 102, concerning the calculation of benefit, should be adopted"; "the Convention should stipulate that the level of the pension should be calculated in relation to the earnings or income of the insured person over a specified period preceding the occurrence of the contingency and prescribed by national legislation or in relation to the total average wage of an ordinary labourer"; "the methods of calculating pensions proposed can be accepted, but suggested that in order to avoid difficulties in practice the Convention should include a simpler alternative method", in: International Labour Office (1966b), pp. 192–193.

or Article 27 of C128[218] for the purpose of calculating periodical payments guaranteeable in the event of invalidity, old-age and survivorship.'[219]

For social security systems, however, under which *all residents* or *all residents whose means during the contingency do not exceed prescribed limits* are protected, according to Articles 10§b, 17§b and 23§b of C128, the calculation of the level of the invalidity, old-age and survivors' benefits is done in accordance with the requirements set in Article 28 of C128. It should also be added at this point that when the coverage of a scheme refers to *all residents* or *all residents whose means during the contingency do not exceed prescribed limits*, it is permitted under national legislation 'to take into consideration benefits provided to all residents, as well as means-tested benefits, which are provided as of right to those residents whose means exceed the substantial amounts determined under Article 28 of the Convention.'[220]

Therefore, C128 'largely reproduces the provisions of Convention No. 102 as regards the calculation of benefit,[221] although it prescribes a higher rate of benefit.'[222]

To begin with, and according to ***the first option*** (formula) for calculation of the level of the benefits mentioned in Article 26 of C128, the amount of benefit is based on the previous earnings of the beneficiary. Consequently:

(a) the invalidity benefit for a standard beneficiary – *man with wife and two children* (Schedule to Part V: Periodical Payments to standard beneficiaries) – should be a periodical payment of at least 50%[223] of the total of the previous earnings of the beneficiary (individual earnings/earnings of the person protected) and of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary;[224]

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218 In other words, 'the application of Article 26 has not been systematically linked with calculation of benefits as decided in relation to earnings, and application of Article 27 has not been systematically linked with calculation of benefits as decided without relation to earnings. In accordance with the solution adopted in Convention No. 102, it is stated that Articles 26 and 27 are equally applicable in both cases – either when social security systems cover employees or protect categories of the economically active population.' Besides, 'it was considered preferable to increase the scope of Part V by not specifically limiting the application of these articles on account of procedures for calculating benefits, which may vary widely and may depend on mixed qualifying periods'; in International Labour Office (1966a), p. 75.

219 International Labour Office (1966a), pp. 72–74. See also Myers, R.J. and Yoffee, W.M. (1966), p. 29.

220 See CEACR (2008).

221 Concerning the issue of benefit calculation under C102, see Dijkhoff, T. (2011), p. 56.

222 International Labour Office (1989), p. 61.

223 This is the minimum rate for an invalidity pension.

224 Therefore, the level of the invalidity benefit equals to 50% of the total of previous earnings plus any family allowances (50% of the total of [previous earnings + family allowances]).

(b) the old-age benefit for a standard beneficiary – *man with wife of pensionable age*[225] (Schedule to Part V: Periodical Payments to standard beneficiaries) – should be a periodical payment of at least 45%[226] of the total of the previous earnings of the beneficiary (individual earnings/earnings of the person protected) and of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary;[227]
(c) the survivors' benefit for a standard beneficiary – *widow with two children* (Schedule to Part V: Periodical Payments to standard beneficiaries) – should be periodical payments of at least 45%[228] of the total of the previous earnings of his breadwinner (individual earnings/earnings of the person protected) and of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary.[229]

The calculation of the previous earnings of the beneficiary, or his breadwinner in the case of survivors' benefit, is based on rules that are determined by, or in virtue of, national social security legislation. But where the persons protected, or their breadwinners in the case of survivors' benefit, are categorized in classes/groups according to their earnings, then their previous earnings may be calculated from the basic earnings of the classes/groups in which they belong.

In Article 26 of C128, *a maximum limit* (ceiling) can also be set by national legislation[230] for the percentage of the benefit or for the earnings taken into account for the calculation of the benefit – the previous earnings of the beneficiary or his breadwinner (in the case of survivors' benefit). However, this maximum limit should be arranged in such a way so as to be equal to, or not lower than, the wage of a skilled manual male employee.[231] Thus, according to Article 26, and *where employees or classes of the economically active population are protected,* the level of:

– the invalidity benefit for a standard beneficiary has to be a periodical payment of at least 50% of the total of the previous earnings of the beneficiary (and

225 Article 1(f) of C128 defines the term *wife* as a wife who is dependent on her husband.
226 This is the minimum rate for an old-age pension.
227 Therefore, the amount of the old-age benefit is equal to 45% of the total of previous earnings, plus family allowances (45% of the total of [previous earnings + family allowances]).
228 This is the minimum rate for a survivors' pension.
229 Therefore, the amount of the survivors' benefit is equal to45% of the total of previous earnings, plus family allowances (45% of the total of [previous earnings +family allowances]).
230 Maybe the obligations of the states are lowered in this respect.
231 Article 26§9 of C128 states that: 'The wage of the skilled manual male employee shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national legislation, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 8 of this Article is not applied, the median rate shall be taken.' A precise definition of the *skilled manual male employee* is provided in Article 26§6, §7 and §8 of C128. See Annex, Part IV.

of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary), up to a maximum benefit where classes/groups of employees are protected In addition, any maximum limit set by national social security legislation shall be equal to, or not be less than, 50% of the wage of a skilled manual male employee;

- the old-age benefit for a standard beneficiary has to be a periodical payment of at least 45% of the total of the previous earnings of the beneficiary (and of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary), up to a maximum benefit where classes/groups of employees are protected. In addition, any maximum limit set by national social security legislation shall be equal to, or not be less than, 45% of the wage of a skilled manual male employee;
- the survivors' benefit for a standard beneficiary has to be a periodical payment of at least 45% of the total of the previous earnings of his breadwinner (and of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary), up to a maximum benefit where classes/groups of employees are protected. In addition, any maximum limit set by national social security legislation shall be equal to, or not be less than, 45% of the wage of a skilled manual male employee.

Summarizing,[232] if Article 26 of C128 is applied by national legislation – corresponding to Article 65 of C102 – the rate of benefit plus any family allowances must amount to the percentage required by C128 of the beneficiary's previous earnings, including any family allowances. Under Article 26§2 of C128, as well as Article 65§2 of C102, previous earnings are calculated according to rules which are prescribed by, or in virtue of, national legislation, which allows for a wide margin of flexibility. In systems where the persons protected are arranged in classes according to their earnings, their previous earnings may be calculated from the basic earnings of the classes to which they belonged. Most national systems place a ceiling on the level of benefit or on the earnings taken into account for the calculation of benefit. In order to ensure that this upper limit is not too low, reducing the extent of protection in practice, C128 and C102, stipulate that the maximum limit prescribed by national legislation should be fixed in such a way that the percentages required by the instruments are attained where the previous earnings of the beneficiary or his bread-winner are equal to, or lower than, the wage of a skilled manual male employee (Article 26§3 of C128 and Article 65§3 of C102). Both Conventions contain provisions defining *a skilled male manual employee* – a worker belonging either to certain occupational categories, or to certain statistical categories (Article 26§6, §7, §8 of C128 and Article 65§6, §7, §8 of C102) – as well as his wage (Article 26§4, §9 of C128 and Article 65§4, §9 of

[232] The information reproduced in this paragraph is contained in International Labour Office (1989), p. 64.

C102), which must be calculated on the same time basis as his previous earnings, the benefit and any family allowances. In order to obtain comparable statistical data, the Committee of Experts has expressed its wish for governments to use as the reference wage the wage before deduction of taxes and social insurance contributions when communicating the statistical information required for the calculation of benefit to the ILO.

Thereafter, according to the ***second option*** (formula) for calculation of the level of the benefits mentioned in Article 27 of C128, the level of benefit is based on a uniform rate of benefit or on one which includes a prescribed minimum amount, compared to the wage of an ordinary adult male labourer. Consequently:

(a) the invalidity benefit for a standard beneficiary – *man with wife and two children* (Schedule to Part V: Periodical Payments to standard beneficiaries) – should be a periodical payment of at least 50% of the total of the wage of an ordinary adult male labourer[233] and of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary.
(b) the old-age benefit for a standard beneficiary – *man with wife of pensionable age* (Schedule to Part V: Periodical Payments to standard beneficiaries) – should be periodical payments of at least 45% of the total of the wage of an ordinary adult male labourer and of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary.
(c) the survivors' benefit for a standard beneficiary – *widow with two children* (Schedule to Part V: Periodical Payments to standard beneficiaries) – should be periodical payments of at least 45% of the total of the wage of an ordinary adult male labourer and of any family allowances that are paid to a protected person with the same family responsibilities as the standard beneficiary.

Thus, according to Article 27 of C128, *where employees* or *classes of the economically active population are protected,* the level of:

– the invalidity benefit for a standard beneficiary has to be a periodical payment of at least 50% of the total of the wage of an ordinary adult male labourer;
– the old-age benefit for a standard beneficiary has to be a periodical payment of at least 45%of the total of the wage of an ordinary adult male labourer;

233 Article 27§7 of C128 states that: 'The wage of the ordinary adult male labourer shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national legislation, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 6 of this Article is not applied, the median rate shall be taken.' A precise definition of *the ordinary adult male labourer* is provided in Article 27§4, §5 of C128. See Annex, Part IV.

– the survivors' benefit for a standard beneficiary has to be a periodical payment of at least 45% of the total of the wage of an ordinary adult male labourer.

It should be also noted that under Article 27 of C128, no means testing is allowed. In other words, 'the benefits cannot be calculated on the condition that the family of the beneficiary has no other income or social security benefit.'[234]

Finally, according to Article 28 of C128, and *where all residents* or *all residents whose means during the contingency do not exceed prescribed limits are protected:*

– the invalidity benefit for a standard beneficiary – *man with wife and two children* – has to be a periodical payment at a rate that amounts to at least 50 per cent of the wage of an ordinary adult male labourer subject to a means test;
– the old-age benefit for a standard beneficiary – *man with wife of pensionable age* – has to be a periodical payment at a rate that amounts to at least 45% of the wage of an ordinary adult male labourer, subject to a means test;
– the survivors' benefit for a standard beneficiary – *widow with two children* – has to be a periodical payment at a rate that amounts to at least 45%of the wage of an ordinary adult male labourer, subject to a means test.

Consequently, based on this ***third option*** (formula), a uniform rate of benefit is once again fixed, but the level may be reduced to the extent by which the other means of the beneficiary's family during the contingency exceed a prescribed amount.

Summarizing,[235] according to Article 27 of C128 – corresponding to Article 66 of C102 – the rate of benefit, increased by the amount of any family allowances, must attain, for the standard beneficiary, the percentage of the wage of an ordinary adult male labourer required by the Conventions. As already mentioned above, this formula applies, in particular, to systems under which benefits are awarded at a uniform rate, irrespective of the beneficiary's previous earnings. This method may also be used where benefits, although based on the beneficiary's previous earnings, include a minimum rate guaranteed to all beneficiaries; this minimum guaranteed rate may thus be considered as benefit which is fixed at a uniform rate.

Thereafter,[236] the formula provided for by Article 28 of C128 and Article 67 of C102 is designed to allow for systems which cover all residents, by definition,

234 CEACR (2008).
235 The information reproduced in this paragraph is contained in International Labour Office (1989), p. 65.
236 The information reproduced in this paragraph is contained in International Labour Office (1989), pp. 65–66.

and under which benefits may be reduced or suspended depending on the beneficiary's other means. The rate of the benefits normally awarded under such systems should be fixed according to a prescribed scale, and may only be reduced if the other means of the beneficiary's family exceed prescribed amounts. The Conventions do not specify these amounts, leaving them to be determined by legislation and the competent authorities, bearing in mind that such amounts must be 'substantial' in order for a reduction to be allowed. The total of the benefit and any other means for which a deduction is permitted by the Conventions should be sufficient to maintain the family of the beneficiary in health and decency. Moreover, in order to provide a basis for comparison with the international standard, this total amount should not be less than the level of benefit calculated in accordance with the requirements of Article 27 of C128 and Article 66 of C102. In addition, subparagraph (d) of Article 28 of C128 and of Article 67 of C102 gives governments the option of an overall evaluation of the benefits paid under their schemes. This subparagraph provides that the rate of benefit shall be considered to have been attained if the total amount of benefits paid under the scheme concerned exceeds by at least 30% the total amount of benefits which would be obtained if the benefits, calculated in accordance with Article 27 of C128 or Article 66 of C102, had been awarded under a scheme covering 75% of the economically active population in the case of C128, and 20% of all residents in the case of C102. Obviously, such a calculation presupposes an estimate of the number of beneficiaries to whom benefits would be paid under such a hypothetical system (an estimate of the beneficiaries/insured person's ratio). This flexibility clause allows Member States considerable leeway in fixing the level of benefit awarded individually, provided that the overall evaluation of benefit meets the requirements of these instruments under subparagraph (d) of Article 28 of C128 and Article 67 of C102.

Finally, it should also be noted here that according to comments made over the years by the CEACR 'while States remain free to adopt their own rules and methods of calculation to determine the amount of the benefits, this amount must, however, be determined in such a manner that is at least equal to the amount prescribed by Articles 26, 27 or 28 of the Convention, in conjunction with the Schedule appended to Part V (Standards to be complied with by periodical payments). The methods of calculation envisaged by these provisions and the parameters that they use are established solely to permit comparison between national situations and the requirements of the Convention.'[237]

Furthermore, 'in a country where the social security system as a whole allows all of the requirements as to scope laid down by these instruments to be met, it should be possible, in principle, to apply any one of the above three (3) formulas

[237] CEACR (2003c); CEACR (2004a).

in the calculation of benefit; the choice will depend on the method of calculation of benefit under the scheme concerned.'[238]

Similarly, 'in a country where, in addition to the old-age benefits awarded within a general scheme, benefits are provided under supplementary schemes, whether compulsory or voluntary, the sum of these various benefits may be used for purposes of calculation of benefit in so far as they meet the other requirements laid down by the instrument, particularly as regards coverage and conditions of entitlement. Thus, a State where a scheme combines a non-means tested flat-rate benefit and a graduated supplementary benefit which is related to earnings, can use either its basic benefit scheme for all residents by applying Article 67 of Convention No. 102 (Article 28 of Convention No. 128) or its combined benefit scheme for employees or classes of the economically active population by applying either Article 65 or Article 66 of Convention No. 102 (either Article 26 or Article 27 of Convention No. 128).'[239]

Articles 26, 27 and 28 of C128 – as well as Articles 65, 66 and 67 of C102 – have been the centre of attention in numerous Individual Direct Requests and Individual Observations addressed by the CEACR to the Member States that have ratified C128. It seems that Member States have, on several occasions, encountered difficulties concerning the proper application of these provisions despite the clarifications provided by the CEACR as well as by the ILO Bureau. Apart from the definition of 'widow' was the same as the definition adopted on C102, there is also the issue of not providing the ILO with the proper statistics so as to enable the CEACR to assess whether the level of benefits covered by Articles 10, 17 and 23 of C128 corresponds to the percentage prescribed by the Schedule appended to Part V. What is more, the technical assistance of the ILO does not seem to be used often, regardless of the CEACR suggestions to several countries to do so.[240]

2.5.3 ISSUES KEPT FOR RECOMMENDATION 131

Amongst the most interesting issues that were left to be dealt with in a Recommendation were the *minimum amounts* of the cash benefits and the *increments in cash benefits* for pensioners requiring the constant help or attendance of another person.

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238 Memorandum addressed to the government of the Netherlands by the ILO Bureau concerning certain provisions of C102 (O.B., Vol. XLIV, 1961, No. 8, pp. 569 and ff., paras. 7 and 8); International Labour Office (1989), p. 63.

239 International Labour Office (1989), pp. 63–64.

240 See the relevant comments made by the CEACR to the following countries: Germany, The Netherlands, Slovakia, Czech Republic, Sweden, Barbados, Venezuela, Ecuador, Uruguay, Bolivia, and Libyan Arab Jamahiriya; in the website of ILO – ILOLEX.

In particular, during the 50th session of the ILC, it was proposed that the new instrument on pensions (the current C128) should set *minimum amounts* for invalidity, old-age, and survivors' pensions, which in any case would be subject to a means test. Many government members as well as the workers' agreed that this principle was a useful one to introduce. It was considered of great importance from a social point of view. Nevertheless, other government members and most of the employers' members were against this proposal, which seemed to them useless in this field, or in respect of their concepts of social security. Due to the divergence in opinion on this issue, the relevant provisions to be included in a Recommendation were finally decided.[241]

Indeed paragraph 23 of R131 provides that national legislation should fix *minimum amounts* for invalidity, old-age, and survivors' benefits, so as to ensure *a minimum standard of living.* As far as the old-age benefit is concerned, its amount should be (further) increased in certain cases, determined by, or in virtue of, national legislation, according to paragraph 18[242] of R131.

Moreover, and according to paragraph 22 of R131, the percentages set out in the Schedule appended to Part V should be increased by at least ten points. Therefore, the amount of the invalidity benefit should be raised from 50% to 60%, and those of old-age benefit as well as of survivors' benefit, from 45% to 55%.

Thereafter, within the initial text for the new instrument on pensions (the current C128) a provision was included, according to which increments in pensions or other supplementary or special benefits should be provided for beneficiaries of invalidity pensions requiring the constant help or attendance of another person. All the same, it was proposed from the beginning of discussions in the 50th session of the ILC to transfer such a provision to a Recommendation, since it was considered of secondary importance or of limited application.[243] Despite the fact that in the final discussions at the 51st session of the ILC, the matter was brought up again by the workers' members, requesting that the provision be placed back in

241 International Labour Office (1967a), p. 646.

242 First case: (a) where the grant of the benefit is conditional upon retirement from a prescribed gainful activity, if a person who has reached the pensionable age and has fulfilled the qualifying conditions of contribution or employment prescribed for a benefit defers his retirement. Second case: (b) where the grant of an old-age benefit is not conditional upon retirement from a prescribed gainful activity, if a person who has reached the pensionable age and has fulfilled the qualifying conditions prescribed for a benefit defers his claim to benefit.

243 For example, several government members and most of the employers' members observed that it did not take into account the diversity of social security schemes and it would endanger ratification. On the other hand, certain other government members, as well as the workers' members, emphasized the importance from the social point of view of these provisions, which were actually modelled upon relevant provisions of C121. See International Labour Office (1966b), pp. 141–143.

the text of the Convention (certain government members showed support for this as well), it was considered more appropriate to include it in a Recommendation.[244]

Accordingly, under paragraph 25 of R131 accompanying C128, it is stated that increments in benefits or supplementary or special benefits should be provided, under prescribed conditions, for pensioners requiring the constant help or attendance of another person.

It is interesting to note, though, that national practice has shown that 'these increments are most often awarded under invalidity protection schemes and occupational injury compensation schemes, although some systems also award them to recipients of old-age benefit.'[245]

2.6 REVISION OF THE RATE OF CASH BENEFITS

According to Article 29 of C128, the rates of the periodical cash benefits provided – invalidity, old-age, and survivors' benefits – have to be reviewed in the event of either 'any substantial changes in the general level of earnings' or 'substantial changes in the cost of living' (Article 29§1). In addition, Member States are asked to submit in their reports the relevant statistical data under this provision (Article 29§2).

It is obvious that Article 29 requests that governments establish a review mechanism for all long-term benefits in payment. So far, the most commonly used methods of adjusting pensions to variations in the economic situation at a national level have proved to be: (a) *systematic adjustment* – the principle and methods of adjustment are laid down in legislation; (b) *adjustment in accordance with general principles* – these principles are stated by the law, without specifying any method or degree of adjustment; and (c) *adjustment on an ad hoc basis*.[246]

Article 29 corresponds to Article 65§10 and Article 66§8 of C102, as well as to Article 21 of C121. Nevertheless, the scope of Article 29 (without taking into account the procedures for calculation of the benefits as laid down in Articles 26, 27 and 28 of C128) has led to a slight amendment of the corresponding texts in the previous Conventions. It was found necessary to 'introduce a reference to substantial changes in the cost of living independently of substantial changes in the general level of earnings, so as to take account of revisions of benefits as

244 International Labour Office (1968), p. 691.
245 International Labour Office (1989), p. 77.
246 See further information and elaboration on these methods in International Labour Office (1989), pp. 84–94.

decided without relation to earnings, to which (latter) the provisions of Article 28, in particular, apply.'[247]

It should be noted that Article 29 of C128 does not require on the part of the Member States the introduction of *the automatic indexation of benefits method* – despite of the fact that 'it may be the most advanced method of adjusting the rates of the benefits to inflation and the cost of living.'[248] Ratifying States 'have full discretion in choosing the method of benefits adjustment most suitable to their economic system,[249] provided that it safeguards the standard of living of the beneficiaries.'[250] Moreover, they should adhere in good faith to the objectives of Article 29, which is to maintain the real value of pensions, particularly concerning changes in wages and/or the cost of living.[251]

In general, 'the aim of the mechanisms of the adjustment of benefits established by Article 29 of the Convention consists both in maintaining the purchasing power of benefits "when times are bad" by adjusting pensions to substantial changes in the cost of living, and raising the standard of living of pensioners "in good times" by adjusting pensions to substantial changes in the general level of earnings.'[252]

What is also interesting is the fact that Article 29§1 provides, at the same time, for two different methods of pensions' adjustment. The first method can take place *on the basis of inflation*, which means that the pensions are increased in line with increases in consumer prices. The second method – known also as *net adjustment* – adjusts average pensions in line with the average income of the working population.

The CEACR has expressly stated in this respect that: 'Article 29(1) provides for both methods of adjustment of pensions linking them to changes in the cost of living as well as to changes in the general level of earnings of the working population, without opposing one method to the other. In fact, they are treated as complementary: the first method, market-based, permits to maintain the purchasing power of pensions vis-à-vis the inflation and fluctuation of market prices; the second, solidarity-based, ensures that pensioners share in the increase of the general standard of living of the working population.'[253] The CEACR has also added that: 'the ability of the national pension system to maintain both principles of adjustment of pensions is an important indicator of the financial

247 International Labour Office (1966a), p. 75.
248 CEACR (2009a).
249 See also Myers, R.J. and Yoffee, W.M. (1966), p. 30.
250 CEACR (2009a).
251 International Labour Office (1989), p. 84.
252 CEACR (2003b).
253 CEACR (2009b).

health of the system and its contribution to the sustainable social development and social cohesion within the country. Adjusting pensions to the cost of living alone, while safeguarding the standard of living of the pensioners against sliding into absolute poverty, would not prevent them from experiencing relative poverty as their pensions would progressively lag behind the growth of the average income of the working population.'[254]

Moreover, the CEACR remarked that increase in pensions at a national level should be tied directly to the cost-of-living index, and should not be reviewed on an *ad hoc* basis. Ergo, *ad hoc increasing* of the minimum invalidity, old-age, and survivors' pensions is not sufficient to give full effect to the provisions concerning the revision of the rates of cash benefits.[255] Actually, undertaking *ad hoc* adjustments, dictated by circumstances or – in certain cases – in accordance with a general principle laid down by legislation, does not guarantee the same degree of security to the recipients of benefits as when systematic indexing of benefits is applied at a national level. In any case, though, the method of adjustment at an *ad hoc* basis could meet the objectives of Article 29 of C128, and thus, could provide effective protection, but only when the frequency and the level of the *ad hoc* adjustments keep in step with the economic situation in a country – which is not such so common.[256]

On several occasions the CEACR has asked Member States through both Individual Observations and Individual Direct Requests to make the revisions required under Article 29 when 'substantial changes in the general level of earnings or substantial changes in the cost of living' have taken place in the country – or even in the event that the global economic environment makes such revisions imperative – and to demonstrate the findings of these reviews statistically,[257] according to the report forms adopted by the Governing Body. However, in many cases such information has not been provided in due time, or even after the elapse of a significant time period, and the proper statistics required have also not been supplied.[258]

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254 CEACR (2009b).

255 CEACR (2004b).

256 International Labour Office (1989), p. 93.

257 Such requests have been made by the CEACR over the years to the following countries that have ratified C128: Ecuador, Uruguay, Barbados, Bolivia, Venezuela, Slovakia, Czech Republic, and Libyan Arab Jamahiriya. See the website of the ILO – ILOLEX.

258 As already stated (see Sub-Section 2.1.2, above) C128 has been ratified to date by 16 countries, and is still active in all of them. Between 1989 and 2009, 119 Individual Direct Requests and Individual Direct Observations have been published by the CEACR (45 Direct Observations and 74 Direct Requests). Out of these 119 documents, in at least 61 of them recourse has been made by the CEACR to Article 29 and its importance. Moreover, the CEACR has requested that the Member States that have ratified C128, in all or in parts, send in the statistical data of the revisions of the benefits. It should also be noted that within this specific time period, more

The persistence of the CEACR in seeking full applicability of Article 29 clearly shows its importance concerning both the proper application and effectiveness of the social security standards in the field of pensions. Moreover, in 1989, in the General Observations made concerning C102 and C128, the CEACR stated that 'given the effects of inflation on the general level of earnings and increases in the cost of living, revision of the amount of long-term benefits should receive the Government's particular attention, in particular as concerns the general economic climate of today.'[259]

It is profound that the content of this statement is extremely applicable and maybe even more profound today, since the global economy has undergone, and is still undergoing, dramatic changes, greatly affecting the value and merit of long-term social security benefits.

Within this context, the following statement of the CEACR is interesting, which notes that today 'the social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems.'[260]

Several amendments and proposals were suggested regarding this provision. Even before the first round of discussions in the 50th Session of the ILC, the current Article 29 caused a lot of consideration to most governments.[261]

than once each of these 16 Member States has been asked to provide such information. This information has been found through the website of the ILO – ILOLEX.

259 CEACR (1989b); CEACR (1989c). See also CEACR (1992–2000); CEACR (2010b).

260 CEACR (2009c).

261 By way of illustration: (a) Bulgaria had stated that 'a system for the adjustment of pensions to the cost of living should be applied'; 'it would be desirable to adopt on an equal basis both the system of automatic adjustment and that of periodical adjustment of pensions; variations in the cost of living might be recorded either by the general wage index or by the retail price index'; (b) Czech Republic (then Czechoslovakia) noted that 'such an adjustment should take place'; 'the Convention, though, should state the principle only; the extent and the means of such an adjustment should be left to national legislation, or stated in a Recommendation'; (c) for Greece, 'adjustment of the rates should take place, but in accordance with the conditions laid down by the national legislation, which might provide, for example, either that the adjustment of pensions to variations in wages should not take place automatically, but within a certain period (perhaps 6 months), or that pensions should not be adjusted if the variation in wages is below a certain rate (perhaps 5%) prescribed by national legislation'; (d) Hungary, rather categorically, noted 'the instrument should only specify that the cost of living and the general level of living should be closely followed and that in the event of substantial changes the amount of the cash benefits should be suitably adjusted. As regards the method of adjustments, this should be included in the Recommendation'; in International Labour Office (1966b), pp. 132–137.

The complete deletion of the present Article 29 was also proposed (such proposals came from certain government and employers' members). However, they were withdrawn at a later stage in favour of another proposal for transferring the provision to a Recommendation. This proposal was based on the reasoning that these provisions would be difficult to apply in many countries. However, it was opposed (by the workers' members) and finally rejected on the ground that there was social need to preserve the value of pensions. Subsequently, it was decided to incorporate in the text of the new instrument (C128) the text referring to the corresponding provision of C102 and adding to it the provisions of Article 21(2) of C121, which reads as follows: 'Each Member shall include the findings of such reviews in its reports upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation, and shall specify any action taken.'[262]

2.7 NATURE OF BENEFITS IN KIND

2.7.1 REHABILITATION AND PLACEMENT SERVICES PROVIDED TO DISABLED PERSONS

On the occurrence of the risk of invalidity, apart from the cash benefit, Member States – and according to Article 13§1 of C128 – should also provide certain benefits in kind to the insured persons. These benefits comprise: (a) *rehabilitation services* (or programmes) that aim to help disabled persons obtain gainful employment – either by the resumption of their previous activities, or, if this is not possible, by finding the most suitable alternative gainful activities – wherever possible; to this end the persons' physical, as well as other, capacities should be taken under consideration; (b) *measures* or *policies* through which the entry of the disabled persons into the labour market is facilitated.[263]

However, under Article 13§2 Member States are also given the opportunity to derogate from the provisions of Article 13§1 of C128, by making a declaration under Article 4 of the same Convention at the time of its ratification.

Article 13 actually corresponds to Article 26§1(b) & (c) of Convention No. 121. 'In view of the purpose of these provisions, it was considered that they should be made conditional on acceptance of the obligations of the Convention in respect of

[262] International Labour Office (1967a), p. 646.

[263] The principle that rehabilitation services should be provided to disabled persons, incorporated in Article 13§1(a), is an import from C121. The principle, however, to provide measures and policies at the national level which would facilitate the re-entry of disabled persons into the labour market was actually an advancement in relation to the existing international standards included in Article 13§1(b) of C128. See also Myers, R.J. and Yoffee, W.M. (1966), p. 31.

invalidity benefits. The fear was stressed that this Article would create difficulties as regards ratification. It was pointed out to the Committee on Social Security that such difficulties would be especially pronounced in the case of developing countries particularly as regards the placement of disabled persons.[264] For this reason, it was though desirable that in cases where a declaration made in virtue of Article 4 is in force, Members should be permitted to derogate, at least temporarily, from these provisions.'[265]

'The employers' members had put forward an amendment to transfer Article 13 to the Recommendation. They had justified their amendment by the diversity of methods of rehabilitation, which, on account of their social and economic importance, might merit a special instrument. Several government and workers' members, however, stressed the close relationship in the case of invalidity between social security protection and rehabilitation to which some systems even gave priority, in the interests of the victims and of society. Considering that the provisions of Article 13 were conceived in a flexible manner, so as to take account of the real possibilities of rehabilitation, both in the interests of the persons concerned and of the national community, and that there should be derogation from these provisions by means of a declaration made under Article 4, the employers' members agreed to withdraw their amendment.'[266] In such a manner, Article 13 found its way into the final text of C128.

2.8 DURATION OF CASH BENEFITS

Article 12 (invalidity benefit), Article 19 (old-age benefit) and Article 25 (survivors' benefits) of C128 set the duration of the cash benefits to be provided under this Convention. In particular: Article 12 corresponds to Article 58 of C102; Article 19, to Article 30 of C10; and Article 25, to Article 64 of C102. All three were adopted with no special debate in the ILC.[267]

In general terms, invalidity, old-age, and survivors' benefits 'shall be granted throughout the contingency". In other words, "no limitation, in general, of the

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264 Also the Government Adviser of the United Kingdom (UK), Mr. Partridge, had stated that 'the transfer from the proposed Recommendation to Point 34 of the proposed conclusions for a Convention of a requirement for the provision of rehabilitation and placement services presupposed a level of development of social services, which was not to be found in many countries that might otherwise be able to ratify the Convention by making use of the special exceptions on benefit coverage and level of developing countries', in International Labour Office (1966a), p. 63.

265 International Labour Office (1966a), p. 73.

266 International Labour Office (1968), p. 692.

267 International Labour Office (1966a), p. 74. Concerning the duration of invalidity, old-age, and survivors' benefits under C102, see: Dijkhoff, T. (2011), pp. 74, 97–98, 103–104.

duration of benefits, other than specified to that of the contingency, is permitted.'[268] The term 'limitation' (in this context) refers to the cases of suspension of benefits (see sub-section 2.9.2, below)[269] as specified under both C128 and C102.

However, there is a difference in relation to the duration of the invalidity benefit, since it 'shall be granted throughout the contingency, or until an old-age benefit becomes payable.' Thus, invalidity benefit may be substituted with an old-age benefit when the beneficiary reaches pensionable age. This possibility of replacement of the invalidity benefit by an old-age benefit is also partly covered by a common provision on suspension of benefits.[270]

With respect to Article 12, there were certain proposals[271] that suggested that 'the person concerned should be allowed to choose (freely) between the invalidity benefit and the old-age benefit when he/she reaches the pensionable age.' To this, however, the ILO Bureau replied that if these proposals were to be taken into account and adopted, this would likely deter some Members from ratifying C128. It was considered, therefore, better to retain the present wording, derived from the more flexible terms already used in C102.[272]

Moreover, it is worth mentioning that according to comments made over the years by the CEACR, even if national social security legislation establishes a system based on individual funding, through the insured person's accumulated capital managed by private bodies (there have been cases where such a system replaces a system of pensions based on a pay-as-you-go system administered by public bodies), the Member State in question has to confirm and make sure that the invalidity, old-age, and survivors' benefits are granted throughout the contingency, even where the capital accumulated in the worker's individual account is exhausted.[273]

No reference to the duration of the provision of benefits in kind – rehabilitation services and other measures taken – is contained in Article 13 of C128.[274]

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268 See International Labour Office (1966a), p. 73.

269 Concerning the issue of suspension in the case of survivors' benefit, see also Sub-Section 2.3.3, above.

270 International Labour Office (1966a), p. 73.

271 These proposals were made by the countries of Belarus and Ukraine.

272 International Labour Office (1967b), pp. 30–31.

273 CEACR (2003c); CEACR (2004a).

274 Concerning the rehabilitation and placement services provided to disabled persons under C128, see the Sub-Section 2.7.1, above.

2.9 COMMON PROVISIONS

2.9.1 MAINTENANCE OF RIGHTS IN COURSE OF ACQUISITION

According to Article 30 of C128, 'national legislation shall provide for the maintenance of rights in course of acquisition in respect of contributory invalidity, old-age and survivors' benefits under prescribed conditions.' The term 'contributory benefit' is defined in Article 1(j) of C128, and means 'benefits the grant of which depends on direct financial participation by the persons protected or their employer or on a qualifying period of occupational activity.'

The maintenance of rights in the course of acquisition – in other words preservation of rights in the course of acquisition – is one of "the fundamental principles of international coordination of social security legislation.' This method involves the adding together of all the periods taken into consideration under the legislation of the Contracting Parties for admission to an obligatory, or optional continued insurance scheme, for entitlement, and where appropriate, for the calculation of benefits in the branches covered by these agreements.'[275]

The inclusion of the reference to 'prescribed conditions' in Article 30 was meant to allow the national legislature to choose the methods considered most appropriate to guarantee the proper implementation of this principle. Certain examples of such methods are the following: a prescribed period of insurance or employment; a prescribed period for the preservation of rights or the choice given to the persons concerned to continue their insurance subject to prescribed conditions, including doing so by means of continuing voluntary insurance. Therefore, it should be made clear that Article 30 refers to measures that must be taken at a national level, and not to measures that may prove necessary at the international level so as to ensure the maintenance of rights in the course of acquisition if the protected person moves to another country.[276]

According to comments made by the CEACR, the persons covered by C128 must receive benefits in accordance with its provisions, 'irrespective of the fact that they may have been covered during their occupational careers by various pension schemes and irrespective of the concepts and principles upon which the latter are based.'[277]

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275 See Kremalis, K. (2004), p. 30.
276 International Labour Office (1989), p. 51.
277 CEACR (2003c); CEACR (2004a).

2.9.2 SUSPENSION OF BENEFITS AND RELEVANT PERMISSIBLE REDUCTIONS

Articles 31, 32 and 33 of C128 involve the cases of suspension for both benefits in cash and in kind, as well as the cases in which a reduction of cash benefits is possible.

More specifically, under the first paragraph of Article 31, it is stated that the payment of the cash benefits may be suspended according to conditions determined by the national legislature if the beneficiary is engaged in gainful activity. Furthermore, the Article 31 recognizes certain cases for reduction of the level of the cash benefits. In particular, in its second paragraph, it is stated that a contributory invalidity, old-age, or survivors' benefit may be reduced if the earnings of the beneficiary exceed an amount specified by national legislation, but the reduction cannot be more than these earnings. Similarly, the third paragraph of this Article states that a non-contributory invalidity, old-age, or survivors' benefit can also be reduced if the earnings of the beneficiary, or any other means, or earnings and means taken together, exceed an amount set by national legislation.

Article 32[278] – corresponding[279] to Article 69 (Part XIII – Common Provisions) of C102[280] as well as to Article 22 of C121[281] – enumerates in its first paragraph the specific cases under which cash benefits as well as benefits in kind could be suspended,[282] to wit: (a) as long as the person concerned is absent from the

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278 Concerning the formulation of the current Article 32, an interesting observation was made by the United States government, according to which the use of the term 'contingency' raised questions as to its precise meaning. In particular, 'in some instances it could, and probably should, mean (a) retirement because of old age prior to death, (b) onset and continuance of any disability prior to recovery, and (c) death of the breadwinner after meeting the qualifying conditions for survivors' protection and prior to any event terminating the survivors' entitlement. In order to avoid any confusion as to the meaning of this term, the government recommended that the latter meaning be specified by adding a definition to that effect in Article 1 of the proposed instrument'; in International Labour Office (1967b), pp. 55–56. To this end, the ILO Bureau recalled that 'in the interests of clarity, the contingencies covered were defined not in Article 1, but in Articles 8, 15, and 21 of Parts II to IV, respectively. It would, therefore, appear that the objective sought by the United States government could be achieved more easily by specifying the contingencies covered in the appropriate clauses of Article 32. It should, however, be noted that the terminology used in this Article corresponds to that of Convention No. 102, the similar provisions of which do not seem to have caused any difficulties in their application'; in International Labour Office (1967b), pp. 55–56.

279 See also International Labour Office (1966a), p. 76.

280 Concerning the cases of benefit suspension under C102, see Dijkhoff, T. (2011), pp. 36–37.

281 In C121 only one of the possible cases of benefit suspension enumerated in C102 is not included, namely: 'permitting suspension up to the limit of the additional amount being received, when the beneficiary is receiving another cash benefit or an indemnity from a third party' (Article 69(c)); in Myers, R.J. and Yoffee, W.M. (1966), p. 30.

282 During the discussions that took place in the 50th ILO ILC, the complete deletion of the list of the cases of suspension included in Article 32§1 was also proposed on the grounds that only the national legislation of each country should choose the cases in which a benefit should be

territory of the Member, except, under prescribed conditions, in the case of a contributory benefit;[283] (b) as long as the person concerned is maintained at public expense or at the expense of a social security institution or service; (c) where the person concerned has made a fraudulent claim;[284] (d) where the contingency has been caused by a criminal offence committed by the person concerned; (e) where the contingency has been wilfully caused by the serious misconduct of the person concerned;[285] (f) in appropriate cases, where the person concerned, without good reason, neglects to make use of the medical or rehabilitation services placed at his disposal or fails to comply with rules prescribed for verifying the occurrence

suspended. All the same, this proposal was rejected, since it was considered appropriate to retain a clause in C128 that would basically correspond to the provisions already included in C102 and C121; in International Labour Office (1967a), pp. 646–647.

283 Article 32§1(a) provoked numerous reactions during the whole double discussion procedure followed by the ILC before its final adoption. Its deletion was proposed both in the 50th and the 51st session of the ILC. Several government members stated that *the principle of the personal right to social security benefit* did not permit the suspension of benefits when the beneficiary was not within the territory of the state from which the benefit was due. Other members recalled *the principle of territoriality of the right to benefits,* the purpose of which was to make the granting of benefits subject to the beneficiary's residence within the territory of the state from which the benefit was due. Most employers' and workers' members recalled that C118 had provided bilateral and multilateral agreements to deal with this problem. Moreover, the workers' members indicated that they had proposed an amendment to this clause that could be considered as a reasonable basis for compromise. Consequently, the amendment under discussion was withdrawn, subject to the adoption of the related proposal put forth by the workers' members, namely, to add to the clause the wording 'to the extent that the benefits are not provided by contributory schemes.' To this amendment submitted by the workers' members, was added by a government member the wording 'subject to the conditions prescribed by national legislation', which envisaged that the conditions for payment of pensions abroad should be determined by national legislation. These amendments were accepted. However, certain government members still criticized the distinction drawn between contributory and non-contributory benefits. They expressly noted that these two categories of benefits should be treated alike. In particular, Italy noted that the distinction between contributory and non-contributory schemes was not proper in relation to the transfer of benefits abroad, since also under non-contributory schemes, contributions are paid in respect of social security even though they take the form of a supplement to the income tax. Provisions should, therefore, be made for at least partial transfer, or transfer, subject to such conditions as may be laid down in national legislation; in International Labour Office (1967a), pp. 646–647. The Office simply replied that the wording of the relevant clause was corresponding, in a more general way, to the provisions of C102. So it was not felt appropriate for changes to take place; International Labour Office (1967b), p. 53. See also International Labour Office (1968), p. 696–697.

284 In the 50th session of the ILC, the deletion of Article 32§1(c) was proposed. It was considered to contradict? the beginning of Article 32. This proposal was withdrawn, however, since the Committee took into account that it corresponded to Article 69(d) of C102 and Article 22(c) of C121; in: International Labour Office (1967a), pp. 646–647.

285 In the 50th session of the ILC, the deletion of Article 32§1(e) was also proposed, since it seemed to be reproducing the clause '…where the contingency has been caused by a criminal offence committed by the person concerned' (the current Article 32§1(d)). However, 'many government members draw a distinction between a criminal offence one the one hand and serious and wilful misconduct on the other hand.' So the proposal was rejected (although there were, at that time, countries in which such a distinction did not exist in their legislation); in International Labour Office (1967a), pp. 646–647.

or continuance of the contingency or for the conduct of beneficiaries;[286] and (g) in the case of survivors' benefit for a widow, as long as she is living with a man as his wife.[287]

However, in the second paragraph of this Article, it is stated that according to national rules or regulations, part of a cash benefit is likely to be paid to the dependants of the person concerned.[288]

It should be noted that Article 32§2 of C128 broadens the scope of Article 69(b) of C102. Being more precise, under Article 69(b) a benefit may be suspended to an extent determined by the national legislature 'as long as the person concerned is maintained at public expenses, or at the expense of a social security institution or service, subject to any portion of the benefit in excess of the value of such maintenance being granted to the dependants of the beneficiary.'

This actually means that when the cost of maintenance of the insured person is less than the level of cash benefit to which he/she is entitled, this pecuniary difference should be given to the dependants of the insured person – but only if the cash benefit exceeds the cost of maintenance. To this end, Article 32§2 – according to which 'in the case and within the limits prescribed, part of the benefit otherwise due shall be paid to the dependants of the person concerned' – extends the scope of application of Article 69(b), since it does not specify exactly in which cases part of the cash benefit should be paid to the dependants of the beneficiary. This way, Member States are given more freedom to define the cases and the limits to when the payment should be made under national law. It could be said that the most common case under which suspension of the benefit may be issued is when the beneficiary is hospitalized.[289]

Furthermore, it should also be made clear that Article 32 as a whole intends to list the only possible cases under which a Member State has the right to suspend

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286 A proposal for deleting the reference to 'the conduct of the beneficiaries' from the current Article 32§1(f) was put forward because of its vagueness. However, after an explanation given by the Committee, the proposal for deletion was withdrawn; in International Labour Office (1968), pp. 696–697.

287 Concerning the suspension of survivors' benefit under the present Article 32§1(g), see the Sub-Section 2.3.3.4: *The issue of the widow's re-marriage, above.*

288 'This principle is a carryover from the Convention No. 121 that did not appear in the Convention No. 102'; in Myers, R.J. and Yoffee, W.M. (1966), p. 31.

289 'From the examination of the available information and of the national laws and regulations, it is clear that the types and definitions of possible cases of suspension provided for in the Conventions cover most of the situations provided for in national law and practice. However, in accordance with the C128 (Article 32§2), it would be desirable that in certain cases of suspension part of the benefits otherwise due be paid to the dependants of the person concerned, particularly to their children'; in International Labour Office (1989), pp. 107, 109, 112. See also in: Myers, R.J. and Yoffee, W.M. (1966), p. 31.

a social security benefit. This clarification was made after a request submitted by the workers' members during the negotiation that took place prior to the adoption of the final text of C128.[290]

Thereafter, Article 33[291] covers 'simultaneous entitlement to more than one of the benefits dealt with by the Convention No. 128'[292] and refers to cases where reduction or suspension of the benefit is possible. In particular, Article 33§1 states that if a person is, or would be, eligible simultaneously for more than one of the benefit under C128, these benefits may be reduced according to national rules or regulations, and by conditions properly set at a national level. In any case, though, the person will receive in total at least the most favourable level of these benefits. This is actually very important so as to guarantee that no reduction in the level of protection can take place. The usefulness of Article 33§1 can be further illustrated with an example: Article 25 of C128 postulates that the survivors' benefit 'shall be granted throughout the contingency.' However, the case may be that under national legislation the survivors' benefit terminates as soon as the person reaches the age of eligibility for an old-age pension. In such an event, and according to Article 33§1, the person protected shall not suffer a reduction in the amount of the benefit he/she was already receiving. Therefore, the standard of living ensured to the person in receipt of a survivors' benefit should not be lowered by its replacement with the old-age benefit.[293]

Last, Article 33§2 notes that if a person has the right to receive an invalidity, an old-age benefit, or a survivors' benefit, and he is also receiving another social security benefit for the same risk (and this benefit is not a family allowance), then

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290 International Labour Office (1967a), p. 648.

291 Initially, in the list of the cases of suspension under Article 32§1, another case was supposed to be included: in particular, the suspension of the benefit where '…the person concerned is in receipt of another social security cash benefit, other than a family benefit, or is being indemnified for the contingency by a third party, subject to the part of the pension which is suspended not exceeding the other benefit or the indemnity by a third party…'. However, this case was eventually omitted. At a certain point, it was agreed to simply delete the phrase 'to being indemnified by a third party' and to limit the application of the rules governing accumulation in cases where more than one benefit was due for a given contingency. To this end, most of the employers' members and some government members proposed retaining the clause as it initially had been proposed, as it actually reproduced Article 69(c) of Convention No. 102. However, the Committee adopted the amendment. Another amendment considered by the Committee had to do with the insertion in the clause of a reference to study benefits. The author of this amendment stated that the intention was to assimilate study benefits to social security benefits and not to add a new exception to that provided in this clause in respect of family benefits. The Committee rejected the amendment proposed'; in International Labour Office (1967a), p. 647. This case of suspension was finally not included in the list of the current Article 32§1. However, after modifications, it turned out to be the current Article 33 of Convention No. 128; see International Labour Office (1967b), p. 54; International Labour Office (1968), pp. 697–698.

292 International Labour Office (1967b), p. 54.

293 See this example in CEACR (2003a).

the invalidity, old-age, or survivors' benefit may be reduced or suspended, but under conditions determined by, or in virtue of, national legislation, and within limits. Moreover, the benefit that may be reduced or suspended should not exceed the other benefit already being received.

The provisions on suspension included both in C102 and in C128 are, in fact, *flexibility clauses*. They have been inserted so as to encompass the various social, economic and legal situations existing at a national level. 'Obviously, these provisions are optional in that the States are not obliged to avail themselves of them. As they constitute exceptions to the general rules laid down in these Conventions, however, it would be desirable that their application be more restrictive so as to avoid any abuse which might result from drafting suspension clauses in national legislation in excessively broad terms.'[294]

a. Accepted interpretations and useful observations on benefit suspension

With respect to Article 32§1(c) of C128, the following interpretation has been accepted: 'the concept of suspension must be given a wide interpretation so as also to cover disqualification or the possible refusal of benefits.'[295] This interpretation is also in accordance with the consistent interpretation of the corresponding provisions of subparagraph (d) of Article 69 of C102.

Furthermore, an interesting question was posed on whether the *extinction* of benefits could be assimilated to the *suspension* of benefits. To this end, it has been confirmed that in accordance with the long-standing interpretation of the corresponding provisions of Article 69(d) of C102, the word 'suspended' used in the relevant provisions of C128 should be understood in a broad sense, so as to include also the meaning of the word 'extinguished'.[296]

Concerning survivors' benefits, it had been proposed during discussions in the ILC 'when the legislation of a Member provides that, after the death of the breadwinner, his child or children may receive periodical benefits other than survivors' benefits, such periodical benefits should be assimilated to survivors' pensions for the purposes of the application of the Convention.' This issue was, in principle, adopted and was considered justifiable in order to take account of the family benefits provided by national legislation in order to apply the relevant provision.[297] However, it was also referred to the Drafting Committee.[298]

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294 International Labour Office (1989), pp. 111–112.
295 International Labour Office (1968), pp. 696–697.
296 International Labour Office (1967a), pp. 647.
297 International Labour Office (1967a), p. 648.
298 As stated during the research visit to the ILO Social Security Department in Geneva (17–18/01/2008), no minutes are kept from the Drafting Committees during the preparatory work

Thereafter, the ILO Bureau pointed out that *serious and wilful misconduct* (Article 32§1(e)) is not the same thing as a criminal offence (Article 32§1(d)). So, the relevant provisions do not seem to duplicate each other. Likewise, *fraudulent claim* is not the same as *serious and wilful misconduct*, as it deals with cases in which the person concerned, without causing the contingency, endeavours, for example, to obtain benefit by giving a false account of the circumstances, or by producing false documents.[299] Moreover, it was stated that the possibility of suspending the benefits provided by this provision is limited to cases of serious willful misconduct and underlined that serious wilful misconduct should not be considered as having a criminal character.

Worthy of note at this point is also an observation made, back in 1989, by the CEACR to the government of Venezuela concerning the proper application of Article 32§1(d) of C128 – benefit suspension *because of a criminal offence* – and of Article 32§1(e) of C128 – benefit suspension *because of serious and wilful misconduct*.

According to Venezuelan social security law, pensions shall not be granted when the invalidity or partial incapacity is a result of, or due to, *a violation of the law, a crime or an offence against morals or decency*.

However, such a practice goes against the previously mentioned Common Provisions of C128, *which do not authorize the suspension of benefits, save where the contingency is due to a criminal offence or to the serious and willful misconduct of the person concerned*. Consequently, the government was asked to bring national law into conformity with the international requirements set under C128 (still, in 2009, non-compliance remained).[300]

Last, the Swedish government made the following comment: 'it is the understanding of the government that Article 32 does not allow the suspension of a widow's pension in cases where the contingency was caused by a criminal offence committed by the deceased breadwinner, as it would not be reasonable to let the survivors suffer financial loss in such cases.' The ILO Bureau replied that the provisions of Article 32§2 meet, to some extent, the point made by the government of Sweden. It should, however, be added that *suspension of benefit in the cases covered under Article 32§1 is optional within the limits prescribed*.[301]

before the final adoption of an ILO Convention.

299 International Labour Office (1967b), p. 55.

300 Several Individual Direct Requests and Individual Observations were sent to this end to the Venezuelan government. See, respectively, CEACR (1990–1996), and in: CEACR (1997–2009).

301 International Labour Office (1967b), p. 54.

b. Accepted interpretations concerning Article 12 of C128, in conjunction with Article 32§1(e)

An invalidity benefit may be suspended – temporarily or permanently refused, reduced, or withheld – *only when the contingency has been caused by serious, and at the same, time wilful misconduct on the part of the person protected*. Consequently, this is the case also with regard to the dependants – and *not only when the misconduct was serious*. Therefore, the misconduct must have taken place wilfully (in other words, deliberately) and must have been proved.

In connection to this, there are two noteworthy Swiss cases, which involved Article 12 in relation to Article 32§1(e) of C128 and Article 68(f) of the ECSS. These provisions were recognized as directly applicable and overruled Article 7 of the Swiss Law on Invalidity Insurance. Through the recognition of their direct applicability it was, at the same time, affirmed that *they did not allow the reduction of an invalidity benefit for a serious fault, when the fault, although, serious was not committed wilfully.* In other words, *the reduction of an invalidity benefit cannot take place when the fault was not intentional on the part of the insured person.* Despite the fact that the compliance of Swiss law with the relevant international social security standards took place, this happened only 14 years after the CEACR had submitted the first Individual Direct Request to the government of Switzerland.[302]

Similarly, the CEACR did not accept the refusal, suspension, or reduction of the disability pension in cases where the beneficiary *caused their invalidity through gross negligence*. Such practice was followed in Finland for quite some time. However, due to a series of Individual Direct Requests sent by the CEACR, the relevant national provision was removed from the new Finnish pension legislation, which entered into force in 2007.[303]

2.9.3 THE RIGHT OF APPEAL

Both C102 and C128 recognize, in Article 34§1 and Article 70§1, respectively, the right of appeal[304] 'in case of refusal of the benefit or complaint as to its quality

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302 The first Individual Direct Request was submitted by the CEACR to the Swiss government in 1989. Compliance of national law with the relevant international social security standards took place in 2007. See CEACR (1989d); CEACR (1993–2007). See also in: Korda, M. and Pennings, F. (2008), pp. 145–146.

303 CEACR (2009d).

304 'The French government stated that the discussion at the 50th Session of the Conference, gave the impression that the word "appeal" must be taken in its true meaning and that the Article, therefore, is based on the principle that there are two levels of jurisdiction. In order to avoid any possibility of misunderstanding, it might be helpful to reword this clause as follows:

or quantity.'[305] In fact, all the ILO Conventions following the adoption of C102 recognize the right of appeal to the claimant (beneficiary).[306] Nevertheless, apart from the incorporation of this principle, 'the instruments do not specify the channels of appeal which must be made available'[307] – in other words, 'what form the appeal should take.'[308]

The preparatory work for the adoption of C128[309] provides only indications on the nature of this right. For example, it was stated that 'the right of appeal concerns a decision which would have been final if this right had not existed. Furthermore, the concept of recourse implies that the matter must be determined by an authority that is independent of the administrative authority which made the first decision. The mere right to request re-examination of the matter by this authority is not sufficient to constitute an appeal procedure.'[310]

Moreover, some differences exist between C128 and C102 with respect to the realization of this right. Article 34§2 of C128 provides that national legislation has the obligation to arrange procedures permitting every claimant of a benefit to be represented, or assisted – where necessary – by a qualified person of his/her choice (i.e. by a lawyer/legal adviser/expert), or by a delegate of an organisation representative of persons protected (i.e. trade union representative).[311]

"Every claimant shall have the right to contest and subsequently to appeal against any decision concerning the award, quality or quantity of the benefit"'; in International Labour Office (1966b), p. 57. Within the same context, the Spanish government added that 'the term "appeal" does not seem wholly adequate in view of the purpose of the proposed text, which might gain in scope and effectiveness if the term "contest" were substituted, since this is equally valid legally but does not refer solely to bodies higher than the organization whose decision is opposed'; in International Labour Office (1966b), p. 57. The ILO Bureau commented that the suggestions by the Governments of France and Spain were designed to clarify the meaning of paragraph 1 of Article 34. 'It is, of course, true that the normal meaning of "appeal" in the event of refusal of the benefit or complaint as to its quality or quantity does correspond to this interpretation. However, it would appear to be preferable to obtain general agreement on the meaning of "appeal" instead of simply changing the term, which already figures in the Convention No. 102 as well as the Convention No. 121 in order to avoid any possible discrepancies of interpretation between these instruments and the new Convention'; in International Labour Office (1966b), p. 57.

305 In particular, 'a government member and the workers' members suggested the inclusion of provision according to which the right of appeal should be recognized in any case of a refusal of benefit or of dispute as to its amount. This suggestion was accepted without opposition" in International Labour Office (1967a), p. 648.

306 For a description and analysis of the right of appeal under C102, see Dijkhoff, T. (2011), p. 37.

307 Humblet, M. and Silva, R. (2002), p. 14; Kulke, U. (2006), p. 31.

308 International Labour Office (1989), p. 101.

309 The preparatory works for the adoption of C121 provided indications on the nature of this right as well.

310 International Labour Office (1965), p. 68. See also International Labour Office (1989), p. 101; Humblet, M. and Silva, R. (2002), p. 14; Kulke, U. (2006), p. 31.

311 During the discussions on the adoption of the current Article 34 on the right of appeal, it was proposed from the very beginning not to recognize the inapplicability of the right of appeal *in cases in which a claim is settled by a special tribunal established to deal with social security*

Recommendation No. 131, however, does not contain any similar provision. In contrast, in Article 70§3 of C102, the right of the claimant's representation by a qualified person of his/her choice, or by a delegate of an organization representative of persons protected, does not exist.[312] It is, however, stated 'in the case that the claim is settled by a special tribunal, established to deal exclusively with social security questions, and on which the persons protected are represented, no right of appeal is required.'[313]

Consequently, according to Article 70§3 of C102 the right of appeal is made, in a sense, optional, and not obligatory, but only in the case that the claim is indeed settled by a special tribunal dealing with social security questions and composed of persons representing the beneficiaries. Therefore, no choice is given to the claimant regarding his/her representation, as the tribunal consists of representatives already chosen. It is recognized, however, that representation of the persons protected is mandatory. Moreover, under Article 70§2 of C102, Member States are given another possibility. When at the national level a government department responsible to a legislature exists and is entrusted with the administration of medical care, the Member State is allowed to substitute the right of appeal – provided under Article 70§1 – with a right to have a complaint concerning the refusal of medical care, or the quality of the care received investigated by the appropriate authority.

It could be said, therefore, that the right of appeal under C102 becomes somewhat weaker, in the sense that the Member States are the ones which may choose the representation of the insured persons making a claim, as well as substitute the

questions, and in which the persons protected are represented. The reason for this proposal – which was accepted by the Committee – was the anxiety of two government members about admitting no exceptions to the right of appeal. The essential nature of this right as a legal safeguard was also recalled for this purpose. Certain other government members as well as workers' members adopted the same position as a matter of principle. Even before the offset of discussions at Conference level, certain countries (such as Turkey, the United States, the Former Yugoslavia) were already stating that a person should always have the right of appeal, no matter where the claim is settled. Despite the fact that an employers' member appealed to the government members to change as little as possible of Convention No. 102 and Convention No. 121 on minor points, such as those regarding legal, administrative and financial safeguards, the workers' members considered that the provisions of both Convention Nos. 102 and 121 were not sufficiently clear to be reproduced without change; in International Labour Office (1966b), p. 157; International Labour Office (1967a), p. 648.

312 The right to be represented by an organization of protected persons in an appeal has been included neither in C102 nor in C121. See also Myers, R.J. and Yoffee, W.M. (1966), p. 31. Article 34§2 is intended to provide procedures to safeguard the right of appeal (opinion expressed by a government member) and it was also thought that everyone should have the right to be represented by a person of his choice (opinion coming from the employers' members). The Committee accepted the proposal as well as the reasoning; in International Labour Office (1967a), p. 648.

313 International Labour Office (1965), p. 69.

right of appeal with a right to have a complaint concerning the refusal of medical care, or the quality of the care received investigated by the appropriate authority.

Furthermore, it is worth mentioning that although the right of appeal is a principle, which is incorporated in most of the cases – if not in all – at a domestic level through the enactment of relevant laws or regulations, and despite the fact that neither C120 nor C128 determine the exact way the appeal procedure should take place, there are certain principles that need to be reflected in a country in relation to the realization of this right. Such principles are, for example, that the appeals procedures 'are expeditious and free of charge and the appeal authority independent'. Moreover, 'the claimant should have the right to be represented or assisted by a qualified person of his choice'. 'It should be remembered that a large proportion of insured persons depend mainly, if not entirely, on their pensions for their livelihood. For them a protracted and costly procedure could indeed amount to a denial of justice, with sometimes drastic repercussions on their everyday lives.'[314]

An interesting remark was also made by the CEACR concerning the proper application of Article 34 of C128 by the government of Ecuador. In Ecuador, 'all disputes arising in connection with the entitlement to benefits or the rights and duties of the insured and employers are dealt with administratively by authorities such as the Benefits and Credit Commissions, the National Board of Appeals and Regional Directors of the Ecuadorian Social Security Institute, in accordance with the statutes and regulations in force'[315] – these are 'the provisions of the Compulsory Social Security Code of 1988 and the compiled Statutes of the IESS of 1990.' However, none of these provisions 'expressly establish the right of insured persons to be represented or assisted by someone of their choice in an appeal against refusal of benefit or a complaint as to its quality or quantity.'[316]

Consequently, the CEACR asked from the government to specify how the right of appeal is guaranteed and to specify what the exact legal provisions are. The reply sent stated that according to Article 19 of the Ecuadorian Constitution, the right to defence of every person is guaranteed. This right is also applicable to all types of judicial or administrative complaints. So, the complainant could be represented or assisted by any person in the resulting administrative procedure by simply writing down this wish in a form provided by the social security institution.[317]

Be that as it may, there is still no explicit reference to the insured person's right 'to be represented or assisted by someone of their choice in an appeal against refusal

314 International Labour Office (1989), pp. 102–103.
315 CEACR (1989e).
316 CEACR (1994c).
317 CEACR (1996b).

of benefit or a complaint as to its quality or quantity.' Therefore, the CEACR asked the government of Ecuador to 'insert into the national social security legislation when it is next revised an express provision'[318] to this end. Nevertheless, progress has yet to be made on this issue.[319]

From the above case, it is apparent that the CEACR pays particular attention to the proper application of Article 34 of C128, and through it, to the realization of the right to appeal, particularly by insisting on the fact that the relevant provisions should be explicitly prescribed in national social security law.

2.9.4 FINANCIAL AND ADMINISTRATIVE ASPECTS

Back in 1962, the Committee of Experts expressed the opinion that the new international social security instrument on pensions 'should contain similar financial, administrative and procedural safeguards to those required by Convention No. 102.'[320]

It was found desirable not to include in the new instrument international standards of a technical nature in relation to the methods for organizing and administering pensions. Therefore, and particularly with respect to the financing of pension schemes, 'the Conference did not introduce any new provisions on the financing of benefits in Convention No. 128.'[321] However, it should be noted that C102 also only lays down a number of principles[322] for financial, administrative and procedural guarantees that should be respected at the national level. It does not prescribe a uniform system for financing. Nevertheless, it stipulates that 'whatever the financing system used, the method adopted must serve two purposes: one the one hand, it must provide resources to cover benefits and administrative costs; on the other it must ensure equitable distribution of the financial burden.'[323] Similarly, it does not impose any uniform method of organization, but provides 'simultaneously for the interests which should be represented in the administration

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318 CEACR (1997e).

319 CEACR (2006).

320 International Labour Office (1965), p. 68.

321 International Labour Office (1989), p. 95. Similarly, Convention Nos. 121, 130 and 168, do not contain provisions on the financing of benefits. What should be noted, however, is that the question of the method of financing has been of particular importance in relation to the maternity protection Conventions. To this end, see Kulke, U. (2006), p. 30; Humblet, M. and Silva, R. (2002), pp. 13–14.

322 The term *principle* is rather confusing. There have been several discussions on what is exactly meant by this term. In general terms however, it could be considered as 'the general idea behind the rules', since rules actually elaborate on a certain principle. What should be also kept in mind is that a certain principle is not always found in a written form, particularly if it is commonly accepted.

323 International Labour Office (1989), p. 98.

of the schemes and for the share of the responsibility which would ultimately rest with the State.'[324]

As a result, C128 includes almost identical provisions on the administration of pension schemes to those included in C102, while no new provisions on the financing of pension schemes have been included therein.[325]

In the description and analysis given below, similarities and differences between C128 and C102 on administrative aspects are illustrated (Article 35 of C128 cross-reference with Article 71§3 and Article 72§2 C102; Article 36 of C128 cross-referenced with Article 72§1 of C102), whereas the issue of financing is elaborated only on the basis of the provisions included under C102.

a. Financial aspects

As already mentioned above, C102 'is confined to setting out principles concerning the financial guarantees of social security systems.'[326]

Thus, according to Article 71§1 of this instrument 'the cost of the benefits provided, and the cost of the administration of such benefits, must be borne collectively by way of insurance contributions or taxation or both.'[327] Article 71§2 postulates that the distribution of the financial burdens should be done in a manner that avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected. In particular, for social security schemes based on contributions (contributory schemes),[328] the total of the insurance contributions borne by the employees protected may not exceed 50% of the total of the financial resources allocated for their protection.[329]

Consequently, taking into account the provisions of Articles 71§1 and 71§2, when 'benefits are financed entirely either by the workers, this method of cost distribution is contrary to Convention No. 102.'[330] In other words, when schemes depend entirely on workers for financing, they are not in line with the requirements set in C102.

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324 International Labour Office (1989), p. 99.

325 An analysis of the administrative and financial aspects under C102 is also available in Dijkhoff, T. (2011), pp. 34–36.

326 Humblet, M. and Silva, R. (2002), p. 13; Kulke, U. (2006), p. 30.

327 International Labour Office (1965), pp. 68–69.

328 Contributory schemes are financed by employers' and workers' contributions (with or without state subsidies), while the financing of non-contributory schemes is based on taxes.

329 International Labour Office (1965), pp. 68–69. See also Humblet, M. and Silva, R. (2002), p. 13; Kulke, U. (2006), p. 30.

330 International Labour Office (1989), pp. 96–97.

Despite the fact that unlike C102, C128 does not contain any provisions on the financing of pension schemes, it should be noted that the relevant provisions reflecting the principles enshrined in C102 concerning financial as well as administrative guarantees and procedural safeguards apply equally under C128.

b. Administrative aspects: the general responsibility of the State

Under Article 35§1 of C128, which corresponds to Article 71§3 of C102, the state has the overall responsibility concerning the provision of the invalidity, old-age, and survivors' benefits. 'Irrespective of the method of financing adopted, the competent authorities are under the obligation to take all the necessary measures to ensure that benefits are duly provided, whatever the system.'[331]

Thereafter, Article 35§2 of C128, corresponding to Article 72§2 of C102, stipulates that each Member State 'shall accept general responsibility for the proper functioning of the social security system.'[332] This responsibility actually pertains to 'the provision of an appropriate legal framework for the social security system as well as the proper administration of the resulting institutions, whatever system is chosen, in order to guarantee the protection envisaged by the Convention.'[333]

The general responsibility of the state was firstly mentioned in C102 and has been included in the Conventions on social security adopted after C102.

It should be noted, though, that Article 71§3 of C102, unlike Article 35§1 of C128, further indicates that 'the State shall ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any planned change in benefits, the rate of insurance contributions or the taxes allocated to protection. The State's supervisory powers should not, however, allow it to use the assets of its social security system for other purposes such as making up for deficits in its budget, which might cause insured persons to lose confidence in the institutions responsible for their protection.'[334]

Despite the fact that Article 35§1 of C128 does not include an explicit reference to the conduction of actuarial studies, and the necessary calculations concerning the financial equilibrium of the social security system, it is taken for granted

331 Humblet, M. and Silva, R. (2002), p.12; Kulke, U. (2006), p. 29. See also Myers, R.J. and Yoffee, W.M. (1966), p. 31.

332 See also Myers, R.J. and Yoffee, W.M. (1966), p. 31.

333 Humblet, M. and Silva, R. (2002), p.12; Kulke, U. (2006), p. 29.

334 It should be noted at this point that 'the provisions concerning the participation of the insured persons are also important in this respect', as also mentioned later on, in Humblet, M. and Silva, R. (2002), p.12; Kulke, U. (2006), p. 29.

that such studies should be conducted by a state that has ratified C128. This has been made even clearer through an Individual Direct Request submitted by the CEACR to the government of Libyan Arab Jamahiriya in 2010, concerning Part VI (Common Provisions), Article 35 of C128. This Individual Direct Request stated: 'The Committee noted in its previous comments that, by virtue of section 34 of Act No. 13 of 1980, the financial situation of the Social Security Fund have to be examined by one or more actuaries every three years. It requested the Government to indicate whether such actuarial studies and calculations concerning the financial equilibrium of social security had been carried out recently and, if so, to provide the results of these studies. The Committee notes the Government's indication that discussions with the ILO have been held on the need to carry out an actuarial study so as to allow the Social Security Fund to appraise the number of participants, the monetary and in-kind benefits which will be provided, as well as the value of contributions in relation to insured persons insured in the future. The Committee hopes that the Government will provide information on the progress achieved in this respect.'[335]

It is clear that Article 35§1 of C128, as well as Article 71§3 of C102 are of paramount importance. Based on these provisions, and as already stated, Member States that ratified the relevant instruments have accepted 'general responsibility for the due provision of the benefits' and are bound to 'take all measures required for this purpose.' As a matter of fact, it is during periods of reform and transition that the responsibility of the state takes on particular importance for the future development of social security, both at a national and an international level.[336]

There have been several occasions that the CEACR has made explicit recourse to these provisions when examining the applicability of the Conventions and the compatibility of national law with them.[337] Actually, recently, the paramount importance of these provisions has been further reinforced.

In its General Observation (2009) concerning C102, the CEACR stressed the fact that proper attention should be given to the scope of these provisions by expressly noting that 'the social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems, undermining the application of all ILO social security standards. The Committee calls that to enable member

335 CEACR (2010b).

336 ICEACR (2003a).

337 For example, see the several Individual Direct Requests addressed by the CEACR to the government of Libyan Arab Jamahiriya and the government of Bolivia, through the website of the ILO – ILOLEX.

States to discharge their general responsibility for the financial viability of the social security, Article 71(3) of Convention No. 102, Article 25 of Convention No. 121, Article 35(1) of Convention No. 128, and Article 30(1) of Convention No. 130, place each State under the obligation to "take all measures required for this purpose.' It added that: 'The Committee trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the State to ensure the viability and sustainable development of social security.'[338]

Moreover, the CEACR emphasized that 'the ILO system of regular reporting and supervision of the application of standards could serve as an additional channel of first-hand information on the legal and regulatory measures taken by the member States to combat the crisis.'[339]

Despite the fact that the provisions corresponding to the current Article 35 of C128 were adopted with no particular amendments or opposition during the double discussion procedure followed by the ILC,[340] certain countries observed that even if it was indeed beyond argument that governments must accept general responsibility, this was exactly the reason why it was not necessary to include such provisions in the final text of the new instrument on pensions.[341] Therefore, they could be simply included – if considered appropriate – in the (proposed) Recommendation.[342] These observations were rejected.

c. Administrative aspects: the issue of representation

'The concern of the International Labour Organization (ILO) not to impose a single form of organization of social security systems was accompanied by a desire to take into account the various interests, which should be represented in the administration of social security systems, particularly those of the persons protected.'[343] Thus, both C102 and C128 contain provisions aiming to safeguard the representation of the various interests in the social security administration, paying special attention to the representation of the interests of the protected person.

However, there is a difference between the provisions included in C102 and those included in C128 in relation to the protection of insured people's interests. Being

338 CEACR (2009c).
339 CEACR (2009c).
340 See International Labour Office (1966b), p. 198; International Labour Office (1967a), p. 649; International Labour Office (1967b), p. 58; International Labour Office (1968), p. 698.
341 Japan, in International Labour Office (1966b), p. 198.
342 Pakistan, in International Labour Office (1966b), p. 198.
343 Humblet, M. and Silva, R. (2002), p.12–13; Kulke, U. (2006), p. 30.

more precise, in Article 36 of C128 it is stated that in cases where the administration is not entrusted to an institution regulated by the public authorities of the state, or to a government department responsible to the legislature, the representatives of the persons protected shall participate in its management under prescribed conditions (conditions specified by national social security legislation). In such a manner, Article 36 of C128 ascribes to participation significant status. In Article 72§1 of C102, though, participation is, in a sense, optional, as the following wording is included in the relevant provision: the representatives of the persons protected shall participate in its management or be associated therewith in a consultative capacity under prescribed conditions (conditions specified by national social security legislation). In both Articles, however, national laws or regulations/national legislation may, likewise, determine the participation of representatives of employers and of the public authorities.

It seems, therefore, that C128 places more emphasis on the participation of the protected persons in relation to C102. In other words, this Convention is stricter in comparison to C102. In any case, the principle of representation is included in both instruments. R131, accompanying C128, contains no provisions on this matter.

During the first round of discussions in the 50th ILC, an interesting proposal was submitted by the workers' members, which emphasized that 'it was extremely important to be ensured that protected persons participate in the administration of social security and that this obligation should apply to all contributory systems.'[344] All the same, this proposal was opposed by the government members, which concentrated on 'the difficulty the amendment would create for all the systems of social security directly administered by the public service, in which only consultation of the representatives of protected persons was possible.'[345]

Also intriguing is the fact that the proposal to have people's representatives consulted on administrative matters was initially rejected. Be that as it may, the issue of consultative capacity on the part of people's representatives was retained later on. As a matter of fact, the ILO Bureau decided on the second round of discussions 'to revert to the text of the Conventions Nos. 102 and 121, in respect to Article 36', which included the wording 'the representatives of the persons protected must participate in its management or be associated therewith in a consultative capacity under prescribed conditions.'[346]

344 International Labour Office (1967a), p. 649.
345 International Labour Office (1967a), p. 649.
346 International Labour Office (1967b), p. 58.

Last, a proposal was also submitted to insert a new paragraph into (the present) Article 36 with a view to imposing on social security institutions the obligation to publish at regular intervals a complete statement of their financial situations,[347] since such a provision was also included in C102, in particular under Article 71§3. The workers' members were in favour of this proposal. On the other hand, several government and employers' members recalled the objective of the revision of the pre-war Conventions, 'which was precisely to limit the new instrument to the essential provisions relating to the scope of protection and to the benefits to be secured, while avoiding dealing with particular aspects of an administrative or financial nature.'[348] Thus, this proposal for amendment of the Article 36 was eventually rejected.

2.10 EQUALITY OF TREATMENT OF NON-NATIONAL RESIDENTS

The principle of equality of treatment has not been incorporated into C128 or its accompanying R131. The main reason for this has been that questions on equality of treatment for nationals and non-nationals have been dealt with in-depth by C118[349] and C19. Thus, it was not considered necessary to include them in C128 as well.[350]

However, reference will be made here to Article 68 of C102, which also deals, to a certain extent, with the issue of equality of treatment for nationals and non-nationals, since it encompasses all the traditional social security risks.

Based on this Article, 'non-national residents must have the same rights as national residents'. However, in paragraph 1, it allows the prescription of special rules for benefits that are paid wholly or mainly out of public funds and for transitional schemes. As the Committee pointed out in paragraph 23 of its 1961 General Survey on C102, this provision 'was included to prevent possible abuses and safeguard the financial balance of non-contributory schemes, particularly as regards old-age benefits. It seemed necessary to permit, for example, the imposition of a qualifying period of residence on non-national residents (or nationals born abroad), although it might not be required from other residents, or of a longer qualifying period than for the latter'. As for contributory social security schemes that protect employees, Article 68, paragraph 2, allows for equality of treatment to be limited, for the application of any Part of the Convention, to nationals of

347 International Labour Office (1968), p. 698.
348 International Labour Office (1968), p. 698.
349 C118 was also the subject of a General Survey carried out by the CEACR in 1977. See International Labour Office (1977).
350 International Labour Office (1989), p. 103.

another Member, which has accepted the obligations of the relevant Part. Such equality of treatment may be subject to the existence of a special agreement providing for reciprocity. According to this paragraph, the enforcement of equality of treatment thus presupposes the satisfaction of two conditions. The first condition is achieved, ipso jure, when the non-national resident is a national of another member State that has accepted the obligations arising from the relevant Part of Convention No. 102. The second condition is potential in nature: equality of treatment may be made subject to the existence of a bilateral or multilateral agreement of reciprocity.'[351]

All the same, the scope of C102 concerning equality of treatment between nationals and non-nationals is 'substantially weakened by the possibility of making equality of treatment contingent on the existence of a reciprocity agreement in the case of contributory social security systems which protect employees (Article 68, paragraph 2). No such possibility is allowed by C118 which also stipulates that old-age benefits be paid abroad both for non-nationals and for the nationals of the States having ratified this Convention (Article 5).' To this end, the CEACR has expressly stated: 'it is to be hoped, in the interests of millions of non-national and migrant workers that member States will continue to make every effort to extend application of the principle of equality of treatment as regards social security in accordance with the provisions of Convention No. 118.'[352]

Last, it is worth mentioning that C102 and C128 – as well as Recommendation No. 131 – do not deal with equality of treatment between men and women with regard to social security. The CEACR 'had brought this issue to the attention of the Working Party[353] set up by the ILO's Governing Body to examine, *inter alia*, possible subjects for new standards. The Committee subsequently noted with interest that the above-mentioned Working Party had included this question among the subjects which might require new instruments. Therefore, the Committee would like to draw the attention of the International Labour Conference to this serious flaw in social security matters, with a view to the possible adoption of universal standards on this subject.'[354]

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351 International Labour Office (1989), p. 104.

352 International Labour Office (1989), p. 106.

353 As stated during the research visit to the ILO Social Security Department in Geneva (17–18/01/2008), information on the work of the relevant Working Groups concerning the analysis of specific subject matters (i.e. a certain provisions of a draft Convention) is very difficult to be find.

354 International Labour Office (1989), pp. 106–107.

CHAPTER 3

GREECE AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS: AN OVERVIEW

Under every stone lurks a politician … – Aristophanes

A councillor ought not to sleep the whole night through,
a man to whom the populace is entrusted,
and who has many responsibilities … – Homer

How dreadful it is when the right judge judges wrong… – Sophocles

3.1 SOCIAL PROTECTION IN GREECE: GENERAL DESCRIPTION

Social protection in Greece[1] has been based on the parallel functioning of three systems: (a) the Social Insurance System (SIS), which protects the working population[2] against certain social risks (sickness, medical care, maternity,

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1 Further analytical information on the gradual evolution of social protection in Greece is available in Katrougalos, G. (1996), pp. 46–57. See also an analysis of the general features of the Greek welfare state in Spanou, C. (2002), pp. 1–4.

2 The working population includes all the existing categories of working people in Greece, regardless of the kind of employment (in other words, the different socio-professional categories to which a person may belong; i.e. employees, self-employed, farmers, *etc.*). Social insurance coverage is provided both to the directly insured persons and to those who are indirectly insured (their dependants). The distinction within the Greek context between workers and employees is also related to the prior existence of categorization between 'blue collar workers' and 'white collar workers'. Nowadays, there is not such an actual distinction between an employee and a worker as far as social insurance is concerned. However, it could be said that the term 'employee' refers, in general, to a person who is working under a contract of employment, while the term 'worker' refers to a person who works for an employer, either under a contract of employment or any other contract providing the employer with work or any other services. In both cases, dependent work is provided. Furthermore, it is worth mentioning that 'the distinction between employees and workers is important for Labour Law, for example, with regard to the amount of the indemnity for denouncing an indefinite term labour contract without notice. For social insurance purposes broader notions of "employed" (*ergazomenos*) or "salaried" persons (*misthotos*) are of greater interest. With regard to the notion of "employed" people (the working people/population), it is remarkable that in

invalidity, old-age, death, employment injuries and occupational diseases, family, and unemployment) and compensates for the loss of income through the provision of benefits in cash as well as in kind; (b) the Health Care System (HCS), which comprises the National Health System (NHS) and the medical care branches of the various social insurance funds, providing sickness benefits in kind, as well as other related services;[3] and (c) the Social Assistance System (SAS), which protects persons in need. The SIS is regulated and supervised by the Ministry of Labour and Social Security,[4] while the HCS and the SAS are supervised by the Ministry of Health and Social Solidarity.[5]

Despite the fact that the vertical legal comparison (as already referred)[6] that takes place between the national (Greek) social security legislation and the international social security standards (ISSS) adopted by the International Labour Organization (ILO) and the Council of Europe (CoE) pertains to the social insurance legislation of the most important and largest main (principle) compulsory Greek social insurance fund, 'Social Insurance Institute for the Private Sector (IKA-ETAM)',[7] hereunder it is considered appropriate to give a general description of all three systems of social protection, and their respective features, in order for the reader to better grasp the general picture of the social protection architecture within the country.

Article 22§5 of the Hellenic Constitution social insurance seems to be established mainly for dependent workers, since these people are usually called "employed". It is, however, considered that the drafters of the Constitution did not want to exclude from protection other professional groups, such as craftsmen, *etc*. Therefore, by interpreting the previous Article we have to view the term "employed people" (working people/population) in its broader sense. Based on the entire labour legislation (see Article 6, Law 765/43, Article 1§4, Law 539/45) one could define "salaried" persons as the natural persons who provide their services to other individuals or to entities of law on the basis of a labour contract of dependent work. The notion of "insured employed" people derives from the social insurance affiliation rules. Since social insurance is promoted by more independent organizations there are not, of course, unified insurance rules. One thing is certain, if someone wants to be affiliated to social insurance, he/she must work; the competent social insurance organization depends on the kind of work involved', in Kremalis, K. (2004), p. 45. This also becomes obvious later on when further describing the Greek SIS.

3 As described further below, the NHS provides health care coverage for all residents in Greece and the separate social insurance funds provide medical care coverage to the insured (either directly or indirectly) working population. Thus, a kind of coverage overlap exists.

4 In 2004 the Ministry of Labour and Social Insurance was renamed Ministry of Employment and Social Protection. Later on, in 2009, the Ministry of Employment and Social Protection was renamed Ministry of Labour and Social Security. Within the footnotes of this PhD thesis, the ministerial sources, and in general all the ministerial documentation used, are referred to each time under the name the Ministry held the year of their publication. However, within the main text of the PhD thesis the latest name of the Greek Ministry is used.

5 It was initially named the Ministry of Health and Social Welfare.

6 See Chapter 1, Sub-Section 1.4.3.

7 This comes next in Chapter 4.

3.1.1 THE SOCIAL INSURANCE SYSTEM (SIS)

a. Legal foundation and historical evolution

The SIS is the pivotal component of the Greek social protection system. Greece basically belongs to the continental social protection model, and the SIS follows (even today), to a significant extent, the *Bismarckian* rule.[8] Article 22§5 of the Hellenic Constitution, lays down the legal foundation of the right to social insurance. It reads that 'the State will care for the social insurance of the working people, as specified by law.'[9] This clause, as has been interpreted in Greek case law, comprises the basis for the insurance coverage of the working population, independently of the kind of employment. The guarantee of this right has also been recently reinforced through the principle of the *Social State of Law*,[10] which has formed part of the constitutional order since the revision of the Hellenic Constitution in 2001.[11]

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8 It should be noted that 'the question of the distinctiveness of a Southern European (SE) model of social protection and welfare state goes back to the early 1990s, and has caused much debate (Liebfried 1992, Petmesidou 1996, Castles and Ferrera 1996, Ferrera 1996, Gough et al. 1997, Rhodes 1997, Esping-Andersen 1999, Andreotti et al. 2001, Katrougalos and Lazaridis 2003, Vasconcelos Ferreira and Figueiredo 2005). Still today different views are expressed in the literature on whether Italy, Greece, Spain and Portugal constitute a "fourth world of welfare capitalism" or simply a subcategory of the conservative welfare regime of Continental Europe. Esping-Andersen (1999), but also Katrougalos and Lazaridis (2003), consider the SE countries as a variant of the conservative welfare regime. At the other extreme, Liebfried (1992), Petmesidou (1996) and Ferrera (1996) have argued in favour of a distinct SE model of social protection and welfare, though each one of them on different grounds', in Karamessini, M. (2007), pp. 2–3. Be that as it may, this debate goes beyond the scope of the research conducted in this Ph.D thesis. Here, it is relevant that Greece is among certain European countries that traditionally fall under the continental model of social protection, and still today retains some of its basic characteristics, such as: the SIS is based on the social insurance bond; the redistributive function of the state, although indeed present, is not very extensive; the social provisions' financing is mainly based on contributions paid by the employees and the employers, and not so much on taxation.

9 Hellenic Parliament (2010a), p. 37.

10 This actually means that state intervention is not only allowed, but actually necessary. Moreover, this principle binds the national legislature to respect and realize recognized social rights. See, further, Katrougalos, G. (2008a), pp. 225–250; Katrougalos, G. (2010), pp. 5–9; see also Angelopoulou, O. (2010), pp. 149–151. Concerning the development of the Social State principle, see Vonk, G. and Katrougalos, G. (2010), p. 4; Vonk, G. (2010), p. 71.

11 Amitsis, G. (ed.) (2003), p. 16. See also the relevant reference made in the initial report of Greece on the application of the United Nations (UN) International Covenant on Economic, Social and Cultural Rights (ICESCR) for the period 1996 to 2001, in United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) (2002), p. 5; European Union (EU) Mutual Information System on Social Protection (MISSOC) (2010), p. 25.

It is true that 'social insurance policies in Greece were developed in a piece-meal way, through the establishment of main (principle)[12] and supplementary[13] funds for different socio-professional categories.[14] There is *not any single universal scheme for all active persons*, but different schemes according to the occupation of the relevant persons concerned.'[15]

The first elements of the social insurance *institution* (*thesmos*) in Greece can be traced back almost to the same time as the foundation of the Modern Greek State, in 1830.[16] It should be noted that *the idea of a national social insurance system covering the entire population was officially expressed quite early*,[17] *however, it did not flourish*. As a result, a series of social insurance funds started to appear gradually. It is worth mentioning that almost in their entity, the numerous social insurance funds that were established were the product of politics. The planning of the social security system was never done in a systematic, strategic way to ensure coverage of the whole population, but it was based on criteria directly related to clientelism.[18]

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12 'The main social insurance organizations are entities of public law and they are subdivided according to the extension of the insured persons, to general and special organizations'; see Kremalis, K. (2004), p. 23. Instead of the term 'main' the terms 'basic' or 'primary' have been used in the international literature as well.

13 The term 'auxiliary' funds rather than the term 'supplementary' funds has also often been used in the international literature when describing the Greek SIS. These two terms, however, can be used interchangeably. In any case, they pertain to the extra protection provided. Actually, supplementary protection is called 'auxiliary' (*epikoyriki*) in Greece. The reason that the term 'supplementary' is chosen here has to do with the fact that the translated Ministerial documentation and the general literature on social security have used it more regularly in recent years.

14 Several kinds of funds emerged, providing supplementary coverage to the different socio-professional categories of the population, such as supplementary funds as legal entities of public law, supplementary funds as legal entities of private law, mutual funds (mutual aid societies), *etc*. The main reason for this development of supplementary (complementary) coverage was, on the one hand, to enhance protection already provided by the state for certain socio-professional categories, and, on the other hand, to provide protection to other socio-professional categories for which the state had not initially provided for their protection.

15 Amitsis, G. (ed.) (2003), p. 25.

16 Fuduli, K. (1998), p. 1.

17 Kremalis, K. (2004), p. 17.

18 See, for an in-depth analysis, Petmesidou, M. (1991), pp. 36–45.

'In 1836 the very first social insurance fund was established. It was the Seamen's Retirement Fund (NAT), which still exists. Later on, Law 2868/1922[19] was the first Greek insurance law that referred to *the compulsory insurance of workers and private employees*.'[20] Although a number of main (principle), special, professional insurance funds were established (as legal entities of public law, i.e. Pension Fund for the Employees in the National Bank of Greece (1926), Jurists' Fund (1929), and others), initially providing insurance only against sickness and accidents, and some of them also providing pensions, the number of insured persons remained limited until the end of the 1920s. 'The 25 insurance funds in operation during that time period covered only twenty thousand employed persons.'[21]

The year 1934 was the one that actually signaled the birth of social insurance in Greece. With 'Law No. 6298/1934, and more specifically, with its Article 2§1',[22] a main (principle), general, compulsory social insurance fund was established, namely, the Social Insurance Institute (IKA). Nevertheless, the proper functioning of this fund did not start until the 1950s. The IKA, from its initial establishment, has been a legal entity of public law. It still exists today, comprising the general fund for the insurance coverage of all employees and workers in the private sector. It has now though been renamed the Social Insurance Institute for the Private Sector (IKA-ETAM).[23]

Moreover, 'Law 6234/1934 led to the establishment of insurance for artisans and the craftsmen',[24] and after the establishment of the (current) IKA-ETAM, several other main (principle) insurance funds in the form of legal entities of public law were also established, mainly in the 1940s and 1950s.

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19 'In 1986, the pension scheme for civil servants was established, followed by several insurance funds in the big private enterprises according to Law 2868/1922. This legislation included obligatory rules for the establishment, the structure, and the function of the social insurance organizations of dependent workers in the industrial, handicraft and merchant enterprises; the first social insurance organization of the self-employed was the Jurists' Fund' (Kremalis, K. (2004), p. 17).

20 Katrougalos, G. (2004), p. 235.

21 Fuduli, K. (1998), p. 1.

22 Kremalis, K. (1985), p. 194.

23 In the international literature it is also often written as 'the Social Insurance Institute – Employees' Inclusive Insurance Fund' (IKA-ETAM).

24 Kremalis, K. (2004), p. 17.

However, what should be noted is that during the period when social insurance began to emerge, and also during World War II (late 1930s until 1945), state action aimed at expanding social insurance was very limited,[25] and coverage was not very extensive. Although indeed the (current) IKA-ETAM was established quite early (as previously discussed), the percentage of the population covered was, in general, low. Actually, it was only in 1951 that the IKA-ETAM started to extend its activities in order to cover the whole country.[26]

Therefore, in order to compensate for the state's inertia and to close insurance gaps (especially against the risk of sickness), workers' as well as employers' organizations took initiatives and began to create a significant number of 'autonomous, self-governed, and self-financed insurance funds for each professional sector or enterprise.'[27] Most of the supplementary social insurance funds that emerged in the form of legal entities of private law were created at that time.

'These insurance funds covered individuals who were not IKA insured, usually against sickness,[28] and aimed at a higher quality of sickness benefits for their insured members in comparison to the provisions made by the statutory insurance system.'[29] Moreover, often they did not only have sickness insurance branches, but also providence (welfare) insurance branches, and in certain cases, some of them also established retirement insurance branches.[30]

Apart from the supplementary social insurance funds, 'provident funds were [also] created according to collective agreements to provide their insured members with lump sum benefits upon retirement (the largest and one of the oldest provident funds is the Provident Fund of Civil Servants, created in 1926).

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25 As already stated: 'the development of social insurance was marked by limited state intervention in social security matters', in: Fuduli. K (1998), p. 2. On this point another important element should be mentioned, which further explains the state's limited intervention. From 1946 to 1949 the Greek Civil War *(Emphylios Polemos)* took place. Consequently, after the war the state had to recover, so the main aim was not the development of the social welfare state, but, rather, the economic recovery of the country. To this end, the state also ordered the already functioning social insurance funds to hand over their reserves – without any interest – to the Bank of Greece so as to create investment and develop industry. This fact, apart from explaining limited state intervention, also accounts for the (still) ongoing financial unsustainability of the whole social security system of the country.

26 Fuduli, K. (1998), p. 2.

27 It is quite interesting to read that these efforts on the part of workers' and professionals' unions were made not only because of the state's inertia, but even more in order 'to compensate for state indifference and to meet the increasing needs' (Fuduli, K. (1998), p. 2).

28 For example, the Health Fund for the Staff of the Agricultural Bank of Greece (1934), the Care Mutual-Aid Fund of the Association of Employees in the Bank of Greece (1938), the Health Fund of the Staff of the National Bank of Greece (1930), *etc*. Some of these funds existed until quite recently.

29 Fuduli. K. (1998), p. 2.

30 Fuduli. K. (1998), p. 2.

Mutual aid societies[31] were created as well, again by professional groups, based on private law to provide additional benefits.'[32]

After WWII, the Greek state took action to extend coverage and social provisions. In 1945, the unemployment benefit was established for industrial workers, and in 1949 it was established for all employees. The benefit was provided by the then Unemployment Organization. This organization evolved into the current Organization for the Employment of Labour Force, also known as the Manpower Employment Organization (OAED). In 1958, a fund for family allowances, called DLOEM, was established, while in 1961 the Agricultural Insurance Organization (OGA) was founded,[33] through which almost the entire rural population was covered.

Moreover, after WWII the institution of supplementary insurance was extended further. Several supplementary social insurance funds – this time mostly in the form of legal entities of public law – were established. Their main aim was to complement the benefits already provided by the statutory main (principle) social insurance funds, particularly in respect of old-age pensions.[34]

In 1979, the general compulsory Supplementary Insurance Fund for Employees (IKA-TEAM), a legal entity of public law, was created for the first time. This fund was replaced by the current compulsory Supplementary Insurance United Fund (IKA-ETEAM),[35] which was founded in 2003, still as a legal entity of public law, according to the arrangements set out in Law No. 3029/2002. In 1983, the (then)

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31 There is little information available on the development of these mutual aid societies. According to the social budget (2007), 54 Mutual Aid Funds (Societies) functioned, providing complementary additional benefits. Their supervision by the General Secretariat of Social Security/Ministry of Labour and Social Security, depended on the payment either of the employer's contribution, or social resources (*koinonikoi poroi*) (Article 2§4, Law 2084/1992) (General Secretariat of Social Security (2007), pp. 245–260). These funds have been placed in the general category of 'Self-Aid Groups'. The main task of organizations belonging to this category is, in general, to resolve problems through the self-aid of their members. The members are related to one other by common malady, need or intentions. The 'Self-Aid Groups', on certain occasions, and, to a lesser extent, can also provide aid to third parties. They also function as assertive trade unions against the state (in Citizens' Union for Intervention, "The Society of Volunteers" (in Greek), http://www.paremvassi.gr/volunteers.htm#29 (last visit: 05/05/2008).

32 Fuduli, K. (1998), p. 2.

33 'Till 1997 OGA was not an autonomous organization, but was financed by the Greek state. In 1998, it started functioning autonomously as the main insurance fund for the agricultural population' (Fuduli, K. (1998), p. 3).

34 The coverage of these funds – despite the fact that it was also organized along enterprise or occupational lines – was not identical to that of the main (principle) primary funds; in Fuduli, K. (1998), p. 3.

35 In the international literature it is also often written as: the Unified Supplementary Insurance Fund for Employees (IKA-ETEAM). The following translation has also been used: the Consolidated Auxiliary Insurance Fund of Wage-earners (ETEAM).

IKA extended coverage to the whole country and to all employees in the private sector who were not insured in any other main insurance fund/organization. In 1987 the first Supplementary Insurance Fund (a legal entity of public law) for the rural sector was established as an insurance branch of the OGA). However, this branch was later closed down revoked by law.[36] Numerous medical care branches of certain social insurance funds were also created. Furthermore, mutuality funds were created as well, functioning independently and with no state financial support, providing additional pensions in cases of invalidity, old age and death.[37]

In general terms, these kinds of developments this kind of development shaped the Greek social insurance system and gave it a number of characteristics that still (to a certain extent) exist.[38] From the above description, it can be said that the Greek social insurance system is a rather *intricate piece of machinery*, characterized by multiplicity, fragmentation and diversity of social insurance funds (the co-existence of main (principal) general and main (principal) special social insurance funds; supplementary social insurance funds, either as legal entities of public law, or legal entities of private law; mutual aid funds, and so forth). What is more, the conditions for entitlement to benefits and the benefits provided by the various insurance funds have also been quite inconsistent (uneven) while contributions have not been always in relation to the benefits provided. These factors account for the financial deficits and administrative difficulties associated with the Greek social security system.[39]

In order to solve these problems created over the course of several decades, 'rationalization policies, mergers of funds, as well as the reduction of the deficits have dominated policy priorities since the 1990s'.[40] From 1993 to 1999 in particular, emphasis was placed on addressing the organizational aspects of the system, and mostly the fragmentation of social insurance funds. However, many of the reforms introduced faced resistance, while at the same time were not able to tackle the issues – even those that were introduced during the 1990s and the early and mid-2000s.[41]

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36 Fuduli, K. (1998), pp. 2–3; Katrougalos, G. (2004), pp. 235–237; Amitsis, G. (ed.) (2003), pp. 22–23, 27–28.

37 Kremalis, K. (2004), p. 26.

38 Fuduli, K. (1998), p. 2.

39 Spanou, C. (2002), p. 9.

40 Spanou, C. (2002), p. 9.

41 The most important laws, through which reform of the Greek social insurance system was attempted until the mid-2000s, were the following: Law No. 1902/1990, Law No. 2084/1992, Law No. 3029/2002, Law No. 3371/2005, and Law No. 3518/2006.

Be that as it may, Greek governments did not *shy away from the task*. Further attempts at reform of the SIS were made, through the passage of two more recent Laws, both targeting (once again) the restoration of the system's social justice and long-term administrative and financial sustainability. The first – Law No. 3655 – was passed in mid-2008. This Law was purely based on domestic political initiatives and activities to handle the national issues at hand. Below a description of the developments brought by this Law is given. The second law – the Law No. 3863 – was passed in mid-2010. However, this Law cannot be considered as a clear product of domestic politics. Its final formation was significantly influenced by the political world[42] and the evolution of international politics during the period of its adoption, especially in relation to the overall governmental policy followed. Further reforms are expected to take place in the near future, based on this Law. A depiction of the main changes brought about by Law 3863/2010 takes place in a subsequent chapter of this thesis.[43]

b. Recent developments of administrative and organizational aspects

Law No. 3655/2008 on the 'Administrative and Organizational Reform of the Greek Social Insurance System and other social insurance provisions' was adopted by the Hellenic Parliament at the beginning of April 2008. The government stated that a drastic reform of the SIS was imperative, since the perpetuation of the chronic pathogenesis of the system was no longer permissible.[44] One of the main parts of this reform concerned a radical administrative reconstruction of the SIS. The two others pertained to targeted social insurance interventions and to certain measures undertaken in order to reinforce the Greek institutional framework.

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42 See also in European Union (EU) (2011), p. 7.

43 To this end, see the explanation given in Chapter 5, Section 5.4, Sub-Section 5.4.1.

44 In the preamble of the draft law it was claimed that through the impending reform long-lasting problems would be finally overcome. Among those hampering the proper functioning of the system the most were the economic-structural deficits and administrative inconsistencies. The main aims were the enhancement of social cohesion and social solidarity, ensuring the financial viability of the system, cracking down on tax evasion as well as social inequalities and extravagances. See, for an in-depth discussion, Ministry of Employment and Social Protection (2008a), pp. 4–11.

To date, the Greek SIS has been administratively structured in *three pillars*.[45, 46] This structure has been retained and contains as follows:[47]

(a) the *1st pillar*[48] appertains to public statutory compulsory insurance (it is typically public (redistributive), and based on the pay-as-you-go (PAYG)[49] principle), and comprises the (i) Main (principle) compulsory Insurance

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45 The term *three pillars*, is not a legal, but a descriptive concept. In recent years, authors, when describing the Greek social insurance system, refer to it as being administratively structured according to the so-called *three pillars system*. Nevertheless, as remarked, to date Greece has lagged behind other EU Member States in transforming its system – especially its pension system – into a multi-pillar model (see also Sotiropoulos, D.A. (2004), p. 282). The term *three pillars,* was first introduced by the World Bank (see Katrougalos, G. (2009), p. 233). In recent years the European Commission has also used this term. Actually, in its Communication No. 622/2000, and the guidelines referred therein, the Commission suggested ['recommended' might be a better word to use here] the introduction of a *three-pillar social security (insurance) system* to the EU Member States, with the ultimate goal of achieving a degree of harmonization of the national social security (insurance) systems (see Robolis, S. and Romanias, G. (2001)). However, it should be also kept in mind that 'the World Bank supports the opinion that the first pillar within a country should be of an average extent and should leave extensive space for the development of the second and the third pillar, while the European Union (EU) – although encouraging personal responsibility through the establishment of second and third pillar schemes – should still emphasize the main role of the state and its intervention in the provision of insurance' (in Romanias, G. (2006), pp. 1–2).

46 As has been described and explained previously, supplementary social insurance in Greece has been provided not only by legal entities of public law (statutory supplementary/auxiliary funds), but also by legal entities of private law established on the basis of collective bargaining. Actually, supplementary social insurance funds in the form of legal entities of private law had been established long before the institution of occupational professional insurance was introduced in Greece, and also before the state began to provide supplementary insurance coverage. A long-running debate has been taking place in Greece on the exact position of these funds in relation to the *1st* and *2nd* pillar. Actually, 'since 1995, the establishment or the amendment of social security provisions and, in particular, the establishment of a social security institution by collective bargaining, has been forbidden. Despite this prohibition, social security institutions established before 1995 by virtue of collective bargaining and certain mutuality funds have continued to function independently and without any financial support from the state … parallel to the auxiliary funds, which have the nature of legal entities of public law. The tendency of the Greek legislature has always been intervening to the function of these institutions, which sometimes have been 'absorbed' by the statutory social security system of public law'; see, for further discussion, Kremalis, K. (2004), p. 26–27. Currently, there is mismatch between the statutory definition of the *1st* and *2nd* pillar and the case law developed by the Greek Council of the State (*Symboulio tis Epikrateias* (StE)) – the Supreme Administrative Court in Greece – concerning the legal character of the supplementary insurance funds. See, among others, Anagnostou-Dedouli, A. (2005), pp. 1–324. However, it is not within the scope of this PhD thesis to go further into this debate. Therefore, the above categorization of the funds under the first and second pillar has been based on the official standpoint pursued, to date, by the Greek government.

47 See also Katrougalos, G. (2009), pp. 233–234; European Union (EU) (2011), p. 7.

48 In Chapter 4, further analysis of the financial aspects of the *1st pillar* will be carried out in relation to international social security standards (ISSS). Based on the financing principle followed in Greece, for unemployment and family allowances contributions are paid alone by employees and employers; there are no annual state subsidies to the social insurance institutions (in MISSOC (2010)).

49 According to the pay-as-you-go systems (or repartition systems), the current contributions serve so as to pay present-day social security benefits [do you mean that the current

Funds and (ii) the Supplementary (Auxiliary) compulsory Insurance Funds (both of them functioning as legal entities of public law);

(b) the *2nd pillar* (optional), consisting of the Occupational (Professional) Non-compulsory Insurance Funds (funded schemes, functioning as legal entities of private law); and[50]

(c) the *3rd pillar* (optional) concerns insurance protection on private initiative (funded schemes, based on private insurance policies).[51]

In particular with regard to the social insurance funds falling under the *1st pillar*, the principle of three-party financing is applied (the *tripartite model*, in other words): employees' and employers' contributions, as well as (annual) state subsidies. The Greek state has (to date) retained its role as the *final guarantor* regarding the provision of the benefits and the general social protection of its citizens. As also stated by the Minister of Labour and Social Security during the presentation given on the introduction of Law No. 3655/2008, the state – always under the spirit of social solidarity – is the final guarantor of risk coverage for the provisions of benefits to the insured persons.[52]

Indeed, social insurance has, from the outset, been guaranteed by the state. This means that the state has undertaken the obligation to procure for the proper functioning of the system and to disburse any social insurance financial deficits so as not to disrupt the due provision of the benefits. Even in the past (before 01.01.1993), when the *tripartite model* of financing had not been introduced, and *1st pillar* financing was based solely on the contributions paid by employers and employees,[53] in the case that there was a reduction in the level of protection, the state provided special subsidies. Therefore, direct state support of the social insurance funds has a guaranteeing character.[54] This could be also considered as a logical consequence, since (in 1955) Greece ratified the ILO Convention No. 102 *Social Security (Minimum Standards) (1952)*, according to which (Article 71§3) a state's obligations are not restrained to the establishment, organization and

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contributions are used to pay social security benefits?]. See, for an in-depth discussion, Pieters, D. (1993), pp. 97–98.

50 Despite the fact that a description of the 2nd pillar follows later on in this section, this pillar is not going to be examined in relation to the ISSS, since the benefits in cash provided under this pillar consist of (mainly) lump sum payments. According to the basic principles underlying the ILO Conventions and the European Code of Social Security, benefits in cash should be, in principle, periodical payments, and not lump sum payments.

51 This pillar concerns: 'Group premiums concluded between enterprises and private insurance companies and individual premiums' (Ministry of Employment and Social Protection – Ministry of Economy and Finance (2005), p. 5–6). See also Katrougalos, G. (2004), pp. 237–238; Amitsis, G. (ed.) (2003), p. 26; and David, N. (2004), p. 1–2. The third pillar is not well developed in Greece; especially in comparison to the other European countries. This pillar will not be further examined, as it falls outside of the scope of this PhD thesis.

52 General Secretariat of Social Security (2008a), p. 20.

53 See also MISSOC (2010).

54 Contiades, X. (1997), pp. 87–88; Kremalis, K. (1985), p. 182.

functioning of the social security system, but expand to the management and financing of the system, and finally to the due payment of the insurance benefits.[55]

(1) The radical administrative reconstruction of the 1st pillar

Until recently (end of 2007-beginning of 2008), and with respect to the *1st pillar*, 155 main (principal), as well as supplementary (auxiliary), social insurance funds and branches were functioning, from which 133 were supervised by the Ministry of Labour and Social Security.[56]

These 133 social insurance funds and branches were merged into (in total) 13 social security funds (Law No. 3655/2008) (the consolidation of the social insurance funds did not involve the Seamen's Retirement Fund (NAT)):[57] (i) five main (principal) funds, (ii) six supplementary funds, and (iii) two provident funds. merges already begun early in 2008 in order to be completed by the 1st of October 2008. However, through this unification none of the (current) benefits were to be lost, given that the terms, conditions and amounts did not change – they remained the same (as they were in effect). Different special accounts were held for each fund integrated into another, and reserves of one were not combined with those of the other.[58]

The five main (principal) social insurance funds – all of them being legal entities of public law – are as follows:

– The Social Insurance Institute for the Private Sector (IKA-ETAM):[59]
  The IKA-ETAM covers the majority of private employees and workers in Greece. It includes a compulsory pension branch – *old-age*, *invalidity* and *survivors'* pensions – and a sickness insurance branch – *sickness benefits* both *in cash and in kind (health care provisions, medical and hospital care, and pharmaceutical care)* as well as *maternity benefits*. *Family* and *unemployment*

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55 See, further, the description and commentary given on the international provisions referring to the financial and administrative aspects of the ISSS, included both in the C128 and the C102, in Chapter 2, Section 2.9, Sub-Sections 2.9.3 and 2.9.4.

56 According to data given in the Social Budget 2007, 175 social insurance funds existed (General Secretariat of Social Security (2007), pp. 245–260).

57 For the subsequent description of the 13 new funds, the following references have been also used: Official Gazette of the Hellenic Republic (2008a), pp. 961–1059; Official Gazette of the Hellenic Republic (2002), pp. 3063–3064; Ministry of Employment and Social Protection (2008a), pp. 1–127; Amitsis, G. (ed.) (2003), pp. 24, 55–57.

58 See General Secretariat of Social Security (2008b), p. 1.

59 The merging criteria were: (a) that persons integrated in IKA-ETAM had all the status of stipendiaries (employees), (b) that the social insurance funds as well as the branches merged presented in their majority deficits, and (c) that their incorporation had been foreseen under Law No. 3029/2002 (except for the pension branch of the Public Power Corporation (DEI) Staff and the Bank of Greece (BG) Staff).

benefits for the IKA-ETAM insured persons are administered by the Greek Manpower Employment Organization (OAED). This organization also provides *reservists' benefits*, while the Organization for Housing Benefits (OEK) and the Workers' Foundation also provide certain other benefits, such as housing subsidies and grants, or even ready accommodation, (social) tourism and entertainment services, *etc*.

According to Law No. 3655/2008, the following social insurance funds were merged into the IKA-ETAM:[60] (a) the Pensions' Fund of the Athens Piraeus Electric Railways (ISAP) Staff; (b) the Pensions' Fund of the National Bank of Greece (NBG) Staff; (c) the Insurance Fund of the Bank of Greece (BG) Staff; (d) the Pension Branches of the following insurance funds: (i) Insurance Fund of the Insurance Company *ETHNIKI* Staff, (ii) Insurance Fund of the Hellenic Telecommunications Organization (OTE S.A.), (iii) Insurance Fund of the Hellenic Industrial Development Bank (ETVA) Staff, and (iv) Insurance Fund of the Public Power Corporation (DEI) Staff;[61] (e) the Health Care Branches of the Hotel Employees Insurance Institute (TAXY); as well as the welfare (provident) and supplementary insurance branches of the Hippodrome (Race) Staff.

– The Organization for the Insurance of Liberal Professionals (OAEE):[62]
The OAEE was first established during the 1999 reform (Law No. 2676/1999) and affiliation to it has been compulsory. Three self-employed workers' insurance funds were initially merged to form the OAEE, namely: TEBE (Fund for Craftsmen and Small Entrepreneurs), TAE (Storekeepers' Insurance Fund), and TSA (Motorists' Fund). This organization provides: *old-age*, *invalidity* and *survivors' pensions*, as well as *sickness benefits both in cash* (birth allowance, employment injury benefit, funeral expenses) *and in kind* (health/medical care, hospital care, pharmaceutical care, dental care, laboratory (health) examinations, and other forms of care).
According to Law No. 3655/2008, under the pension branch of OAEE fall the: (a) Provident Fund of Hotel Staff, (b) Maritime Agents' and Employees' Insurance Fund (TANPY), and (c) Freelancers of the Hippodrome (Race) Insurance Fund (TAPEAPI). Thereafter, in the health insurance branch of OAEE the insured people under the Provident Fund of Hotel Staff, and the Maritime Agents' and Employees' Insurance Fund (TANPY) are affiliated with regard to the provision of sickness benefits. Moreover, it should be

60 It should be noted that with Law No. 3029/2002, pension branches of other main social insurance funds had been already incorporated into the pension branch of IKA-ETAM (Article 5, Law No. 3029/2002).

61 This, however, has been regarded as a self-contained branch.

62 The merging criteria were: (a) that all persons were liberal professionals, and (b) that the persons who were insured on the basis of complementary auxiliary insurance, had all as their main social insurance fund OAEE.

noted that supplementary non-compulsory coverage are also now provided for the persons insured under OAEE (after the submission of a relevant application) – something that was not foreseen under Law No. 2676/1999. To this end, a new Supplementary Pension Insurance Branch was created (for the provision of monthly old-age, invalidity and survivors' benefits as a supplement) under which the Supplementary Insurance Funds of the Bakers' (TEAA) and the Gas/Petrol Stations Employees' are also included.

– The Insurance Fund for Independent Professionals (ETAA):[63]
The ETAA is a new main (principle) social insurance organization. It provides monthly main as well as auxiliary pensions, allowances in the form of lump sum benefits, and health insurance. It comprises the following branches:
  - A pension branch under which fall, respectively: the Fund for Legal Professional (*Tameio Nomikon*), the main pension branch of the Civil, Electronic and Mechanical Engineers Pension Fund (TSMEDE), and the main pension branch of the Pension Fund for Health Professionals (TSAY);
  - A health insurance branch which incorporates: the sickness branch of the Fund for Health Professionals (TSAY), the health branch of the Civil, Electronic and Mechanical Engineers Fund (TSMEDE), the sickness branches of the Provident Funds of the Lawyers of Athens, Piraeus and Thessaloniki, the sickness branch of the Insurance Fund of Notaries, and the Province Lawyers Health Fund;
  - A supplementary insurance branch in which the supplementary insurance branches of the Civil, Electronic and Mechanical Engineers Pension Fund (TSMEDE), the Notaries Insurance Fund, and the Lawyers' Fund are included; and
  - A provident branch where: the branch of lump sum provisions of the Civil, Electronic and Mechanical Engineers Fund (TSMEDE) is integrated, as well as the provident branch of the Health Professionals Fund (TSAY), the provident branches of the Notaries Insurance Fund, and of the Lawyers of Athens, Piraeus and Thessaloniki, as well as those of Catchpoles and Entrepreneurs of Public (Infrastructure) Works.

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63 In international literature it is also often written as: Independent Professionals Inclusive Fund (ETAA), or the Consolidated Fund of the Independently Employed (ETAA). The merging criteria were: (a) that the insured persons fell under kindred professional categories of self-employed, liberal professionals or other employees, which are engineers, doctors, pharmacists or legal practitioners; (b) that all the funds to be merged within ETAA had reserves and did not face direct economic problems; (c) that the persons insured had their main insurance in the following existing funds for the independent professionals: the Fund for Legal Professional (*Tameio Nomikon*), the Fund for Health Professionals (TSAY), and the Civil, Electronic and Mechanical Engineers Pension Fund (TSMEDE).

– The Insurance Fund for the Mass Media Workers (ETAP-MME):[64]
  The ETAP-MME is also a newly-established main (principle) social insurance fund. It has been divided into:
  - A pension branch under which fall, respectively, the pension branches of: the News Vendors and Agencies Employees (TSEYP) of Athens and Thessaloniki; the Press Technicians of Athens (TATTA); the Owners and Editors of the Press, as well as the Press Employees (TAISYT); and the Athens and Thessaloniki Newspapers Staff (TSPEATH).
  - A sickness branch that incorporates the sickness branches of the: Owners and Editors of the Press, as well as Press Employees (TAISYT); the News Vendors and Agencies Employees (TSEYP) of Athens; and the Press Technicians of Athens (TATTA).
  - A supplementary insurance branch in which the supplementary insurance branches of the: Owners and Editors of the Press, as well as Press Employees (TAISYT); and the Press Technicians of Athens (TATTA) are included.
  - A provident branch that includes the provident funds of the: Owners and Editors of the Press, as well as Press Employees (TAISYT); and the News Vendors and Agencies Employees (TSEYP) of Athens and Thessaloniki.
  - An unemployment and bonus branch for the Special Unemployment Account of the: Athens and Thessaloniki Newspapers Staff (TSPEATH), the News Vendors and Agencies Employees (TSEYP) of Athens (News Vendors Holiday Bonus Account), and the Special Unemployment Account of the Press Technicians of Athens (TATTA).

– The Agricultural Insurance Organization (OGA):
  The OGA is the main (principle) compulsory insurance fund for farmers.[65] Law No. 3655/2008 brought no changes to this main (principal) social insurance fund.[66] Consequently, it continues to provide old-age, invalidity and survivors' benefits to the beneficiaries. However, no complementary

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64 In international literature it is also often written as the Consolidated Insurance Fund of Media Staff (ETAP-MME). The merging criteria were: (a) that the insured persons were all employed in the field of mass media (journalists, reporters, pressmen, daily and periodical press owners, newsagents, press technicians); (b) that all the funds had active reserves; and (c) that the majority of the insured persons had the status of stipendiaries (employees). The EDOEAP (Inclusive Journalistic Organization for Auxiliary Care Insurance) remained unchanged.

65 However, over the years, coverage has been extended to other categories of persons, such as: self-employed people and craftsmen working in villages of less than 2000 inhabitants; employees of all categories living in areas or communities with a population of up to 5000 persons, on the condition that they are not affiliated to any other social insurance institution; fishermen, if they are not affiliated to any other social insurance institution; and Greek priests and nuns working in the agricultural sector.

66 However, one of the future objectives of the Ministry 'is to achieve change in the OGA legislation very soon' (General Secretariat of Social Security (2008b), p. 2).

coverage is available.[67] Moreover, it deals with the pensions for the overaged uninsured persons: in essence, it administers the assistance schemes for the uninsured over 65 years of age with no sufficient means of living. In the cases of absolute invalidity or blindness, an amount is added to the amount of the pension already provided, while paraplegic or quadriplegic persons receive special allowances as long as they are not institutionalized. Sickness and maternity benefits are also provided, as well as medical, hospital and pharmaceutical care.

– Civil Servants:
With respect to civil servants, the main (principle) compulsory insurance is provided by the state (central public budget) *for all social risks apart from that of unemployment.*

Consequently, from the above description it is clear that main (principle) social insurance in Greece continues to depend on socio-professional categories:

Main funds	Groups
IKA-ETAM	Employees and Workers under private law
OAEE	Liberal Professionals
ETAA	Independent Professionals
OGA	Farmers
ETAP-MME	People employed in the press
*	Civil Servants and persons working in public utilities

The six supplementary (auxiliary) social insurance funds – all of them also being legal entities of public law – are as follows:

– The Supplementary Insurance United Fund (IKA-ETEAM):
As already mentioned, in 1979 the general Supplementary Insurance Fund for Employees (IKA-TEAM) (legal entity of public law) was established. This fund was replaced by the current fund IKA-ETEAM, which was founded in 2003, according to the arrangements set out in Law No. 3029/2002.[68] Supplementary *old-age*, *invalidity* and *survivors' benefits* were provided to the beneficiaries. As foreseen by the new Law No. 3655/2008, the following funds were integrated into IKA-ETEAM:[69] (a) the Supplementary Insurance Fund of Greece's Electricians (TEAIE); and (b) the supplementary insurance

67 Supplementary pensions introduced under the statute of 1987 (Law No. 1745/1987) are no longer available.

68 See Article 6 of the aforementioned Law. It retained its status as a legal entity of public law. The IKA-ETAM automatically insured persons affiliated in IKA-ETEAM (the former IKA-TEAM), on the condition that they did not belong to any other supplementary (auxiliary) social insurance fund after 01/02/1983.

69 The merging criteria were: (a) that persons insured under the IKA-ETEAM had all the status of stipendiaries (employees), and had as their main social insurance fund the IKA-ETAM;

branches of the (i) Provident and Supplementary Insurance Fund of Hippodrome (Race) Staff (TAPEAPI), and (ii) the Provident Fund of the Cement Companies Staff (TEPAET).

– The Supplementary Insurance Fund for the Private Sector (TEAIT):[70]
The TEAIT is a newly-established supplementary insurance fund. Its main aim is to provide *monthly supplementary pensions to its beneficiaries and to the members of their families in the case of death of the insured person or pensioner.* The funds merged into TEAIT were:[71] the supplementary insurance fund of Insurers and Staff of Insurance Enterprises (TEAAPAE); the supplementary insurance fund of Pedagogues in Private General Education (TEAEIGE); the supplementary insurance branch of the Shopping Stores Employees Supplementary Insurance Fund; the Supplementary Insurance Fund of the Oil Products Enterprises Staff (TEAPEP); the supplementary insurance fund of the Chemists; and the supplementary insurance fund of the Food Trade Staff; the supplementary insurance fund of the Wine, Beer and Alcohol Incorporated Company Staff (TEAPOZO). Moreover, the supplementary insurance branches of the following supplementary insurance funds were incorporated: Pharmaceutical Works Staff (TEAYFE); Commercial Stores Staff (TEAYEK); and Maritime Agents and Employees (TANPY).

– The Insurance Fund of Bank Employees and Public Utilities Services (TAYTEKO):[72]
The TAYTEKO is composed of three branches – a supplementary branch, a provident branch, and a health insurance branch – which include a significant number of former distinct supplementary, provident and health insurance branches of funds.[73] The main aim of this new fund is the provision of monthly supplementary pensions from the corresponding sections of the supplementary branches, lump sum allowances from the corresponding

(b) that the funds integrated into IKA-ETEAM were subject to significant actuarial deficits, and in 2008 they would not be able to provide pensions.

70 In international literature it is also often written as the Auxiliary Insurance Fund of the Private Sector (TEAIT).

71 The merging criteria were: (a) that all persons affiliated with TEAIT were employees in the private sector and had as their main social insurance fund IKA-ETAM; (b) that all the funds merged into TEAIT provided relatively high level auxiliary pensions, and were estimated not to face direct economic problems.

72 In international literature it is also often written as the Insurance Fund of Employees of Banks and Utilities (TAYTEKO).

73 The merging criteria were: (a) that the insured persons had all been working in private banks and in public utility services, and that they all had as their main social insurance fund the IKA-ETAM; and (b) that the merged funds provided relatively high level provisions and did not face direct economic problems.

sections of the provident branches, and health benefits, to the beneficiaries. To be more precise:

- The supplementary branch encompasses: the supplementary insurance fund of the Athens Water Supply and Sewerage Company Staff (EYDAP SA) (TEAP-EYDAP); the special supplementary insurance account of the Hellenic Postal Staff (ELTA) (found in the insurance fund of the Hellenic Telecommunications Organization (OTE S.A.) Staff (TAPOTE); the aid fund of the Hellenic Telecommunications Organization (OTE S.A.) Staff; and the supplementary insurance funds of the insurance organization of the Public Power Corporation S.A. (DEI) Staff, the Hellenic Broadcasting Corporation (ERT S.A.) & Tourism Staff insurance fund, and the Insurance Fund of the Hellenic Industrial Development Bank (ETBA) Staff.
- The provident branch includes the provident funds of: the Hellenic Railways Organization (OSE) Staff, the Ionian Secular Bank Staff, the insurance organization of the Public Power Corporation S.A. (DEI) Staff, the Hellenic Broadcasting Corporation (ERT S.A.) & Tourism Staff insurance fund, the Commercial Bank Staff insurance fund, and the aid fund of the Hellenic Telecommunications Organization (OTE S.A.) Staff; and
- The health insurance branch comprises the health insurance branches of: the Hellenic Telecommunications Organization (OTE S.A.) Staff (TAPOTE) insurance fund, the insurance organization of the Public Power Corporation S.A. (OPA-DEI) Staff, the Insurance fund of the Hellenic Industrial Development Bank (ETBA) Staff, the Commercial Bank Staff insurance fund, and the insurance fund of the Insurance Company *ETHNIKI* Staff.

– The Supplementary Insurance Fund of the Public Sector (TEADY):[74]
The unification process of the TEADY began during the reform that took place in 1999, when 12 supplementary funds for civil servants were merged into a single general supplementary fund. It provides pensions to civil servants of the central administration, legal bodies of public law, prefectures and local communities. With Law No. 3655/2008, certain other supplementary insurance funds were merged into TEADY,[75] namely: the supplementary insurance fund of the Social Insurance Organizations Staff (TEAPOKA),

[74] In international literature it is also often written as the Civil Servants' Auxiliary Insurance Fund (TEADY).

[75] The merging criteria were: that all the insured persons were employed in the public sector, in legal entities of public law, and in local self-governing organizations (OTA); that they received their main pensions from the public sector, or their retirement pensions according to provisions pertaining to public servants; moreover, that all the merged funds had reserves and were expected not to present economic problems in the near future.

the special supplementary insurance section of the Legal Entities of Public Law (IKA-ETAM-ETEAM), and the supplementary insurance branch of the Municipal and Community Staff insurance fund (TADKY).

– The Fund for Supplementary Insurance and Providence for Employed in Public Safety Forces (TEAPASA):[76]
  The TEAPASA is another newly-established fund, providing supplementary pensions and health services, as well as lump sum allowances to the insured. The composition of its branches is as follows:
  - The supplementary insurance branch encompasses: the aid fund of the Cities Police, the supplementary fund of Greek Gendarmerie, and the aid fund of the Fire Brigade Staff.
  - The provident branch includes: the aid fund of Policemen, the supplementary fund of the Employees of the Cities' Police, and that of the Employees in the Fire Brigade.
  - The health insurance branch is composed only of the health insurance branch of the Employees of the Cities' Police.

– The Fund of Providence for Private Sector Employees (TAPIT):[77]
  The TAPIT provides lump sum allowances to the directly insured persons and to the members of their families in the case of death. It is composed of:[78] (a) the provident funds of the following staff insurance funds: Metal Employees (TAPEM), Fertilizer Companies (TAPPEL), the Water Supply Organization of Thessaloniki (TPPOYTH), Harbour Organization of Thessaloniki (TPPOLTH); and (b) the provident branches of: the Cement Enterprises Staff supplementary insurance fund, the Provident and Supplementary Insurance Fund of Hippodrome (Race) Staff (TAPEAPI), the Commercial Stores Staff supplementary fund (TEAYEK), the Pharmaceutical Works Staff supplementary fund (TEAYFE), the Hotel Employees' insurance fund (TAXY), the provident fund of the Harbour Employees (TAPEL), and the provident fund of the National Theatre Organization Staff (TPPOETH).

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76 In international literature it is also often written as the Auxiliary Insurance Fund of Security Forces Employees (TEAPASA).

77 In international literature it is also often written as the Private Sector Welfare Fund (TAPIT).

78 The merging criteria are: that all persons are employees in the private sector; that they have as their main social insurance fund the IKA-ETAM; and that the funds, which are unified, do not encounter economic difficulties in the near future.

Consequently, affiliation to supplementary (auxiliary) insurance in Greece is as follows:

Auxiliary funds	Groups criteria
	Main insurance fund: IKA-ETAM
IKA-ETEAM	Employees
TEAIT	Employees in the private sector
TAYTEKO	Employees in banks and public utilities services
TAPIT	Employees in the private sector
	Main Insurance Fund: Other than IKA-ETAM
TEADY	Employees in the public sector, legal entities of public law, OTA
TEAPASA	Employees in the security forces

Last the two provident funds, functioning as legal entities of public law, are as follows:

– The Providence Fund for the Public Sector Employees (TPDY),[79] in which the provident fund of the Commercial, Industrial, Professional, and Trades State Chambers Staff was merged, as well as the provident branches of the supplementary insurance fund of Legal Professionals (*Tameio Nomikon*) and the insurance fund of Municipal Communal Employees (TADKY).

– The United Insurance Fund of Bank Employees (ETAT), which operates as a public body corporate.

Provident funds	Groups
TPDY	Employees in the public sector, legal entities of public law, OTA
ETAT	Bank sector employees

There are still certain other social insurance funds that fall under the supervision of other Ministries, such as the Ministry of Economy and Finance, the Ministry of National Defence, the Ministry of Mercantile Marine, and the Ministry of Rural Development and Food.

[79] In international literature it is also often written as the Civil Servants' Providence Fund, or the Public Employees' Welfare Fund (TPDY). The merging criteria were: that all persons were employees in the public sector, in legal entities of public law, and local self-governing organizations (OTA); that they received their main pension from the public sector, or they got retired [do you mean 'or their retirement pensions'?] based on the provisions pertaining to public servants; and that the unification of the funds did not seem to create problems, since they were not encountering (at least when the merger took place) financial difficulties.

(2) Targeted social insurance interventions and other measures for reinforcing the institutional framework of the 1st pillar

– Special prescribed limits to the pensionable age:
Law No. 3655/2008 brought changes to the prescribed pensionable age in certain special cases. These changes aimed to keep employees within the SIS for longer time periods.
To date, the persons who are insured with the IKA-ETAM, and who have completed a contribution record of 10,500 working days (approximately 35 years of insurance coverage) under this fund or under any other employees' main (principal) social insurance fund retire as soon as they reach 58 years of age,[80] receiving a full pension. All the same, the retirement age of 58 will gradually increase (Article 143§1 of Law No. 3655/2008) from 01.01.2013, in order to reach 60 years by 2016. Likewise, for those who were insured from 01.01.1983 until 31.12.1992 in the (former) main special employees' insurance funds (funds that have been now merged into IKA-ETAM), and who have completed 35 years of insurance coverage, the retirement age also increases from 58 to 60 years (Article 143§2&3 of Law No. 3655/2008). The same increase in the retirement age applies to women insured in main social insurance branches for the self-employed who have completed 35 years of insurance coverage, as well as to those women insured under the IKA-ETAM, but who have completed a contribution record of 10,000 working days (approximately 33 years of insurance coverage) (Article 143§4&5 of Law No. 3655/2008).
For recently insured persons (also known as newly insured persons, and meaning those insured after 01.01.1993), changes have been brought in regarding the possibility of receiving a reduced pension on reaching 55 years of age and having completed 35 years of insurance coverage. For them, the retirement age required in order to receive a reduced pension has risen from 55 to 60 years of age, while the requirement of fulfilling 35 years of insurance coverage remains (Article 143§6 of Law No. 3655/2008).

– Arduous and Unhealthy Occupations:
For those who have undertaken heavy and unhealthy work, it is currently foreseen that if they have a contribution record of 10,500 working days (almost 35 years of insurance coverage), and 7,500 of these working days (almost 25 years of insurance coverage) have been completed in arduous and unhealthy occupations, they have the right to retire at the age of 55 (both men and women) on a full pension, and at the age of 53 (both men and women) on a reduced pension. The minimum age in these cases will, however, also increase gradually from 01.01.2013 (Article 143§1 of Law No. 3655/2008).

[80] As prescribed in Article 10§1 of Law No. 825/1978.

Consequently, the retirement age for the full pension after 35 years of insurance coverage will be 57 years, and for reduced pension after 35 years of insurance coverage, 55 years (Article 143§1 of Law No. 3655/2008).

– Retirement due to the completion of 37 years of insurance coverage:
Despite the fact that it was initially proposed the retirement age – when the insured person had a contribution record of 11,100 working days (37 years of insurance coverage) – should be 58 years of age, this provision was withdrawn and removed. Consequently, also under Law No. 3655/2008, it is still possible for a person who has been insured and paid contributions for 37 years to retire without fulfilling any specific age requirement.

– Maternity protection:
As far as working mothers' retirement is concerned, several modifications have been introduced. The right of women with children under the age of 18 to receive reduced pensions as soon as they reach 50 years of age has been abolished. However, instead, these women receive full pension at the age of 55.[81] Moreover, women affiliated with the IKA-ETAM with at least three children, as well as men insured with the IKA-ETAM, who: (i) have at least three children; and (ii) are widowers, or divorced, and have the custody of the children under the age of 18, or custody of disabled (invalid) children,[82] according to a decision taken by a court, now both have the right to receive a full pension as soon as they complete 20 years of insurance, regardless of age. Nevertheless, with regard to pensionable rights acquired as from 01.01.2013, they are both obliged to reach 50 years of age. In addition, for all women insured after 01.01.1993 in any main (principle)social insurance fund for at least 6,000 days, who have more than three children (the so-called *polyteknes miteres*), it is foreseen that the minimum retirement age for the provision of a full pension will be 55 years of age from 01.01.2013.[83]
Next, in order to reinforce maternity protection, Law No. 3655/2008 stipulates that a special six-month leave will be granted to mothers who are insured with IKA-ETAM, and who are in a definite or indefinite work relationship in the private sector. . This leave will be granted after the cessation of the

81 'However, the child concerned must have been under 18 when the mother was 50 rather than 55, that is, the mother will be eligible to receive a pension even if the child comes of age in the interval between her 50th and 55th birthday. Pension ages for mothers with children under the age of 18 will gradually increase by one year every year, beginning in 2013. It is estimated that this change will affect over 250,000 mothers in the coming years' (Tikos, S. (2008), p. 1–2).

82 These children should be also unable to work.

83 'For mothers with three children, the retirement age is increased from 56 to 59,with four children from 53 to 57and with five children from 50 to 55' (Tikos, S. (2008), p. 1–2).

maternity leave, and also the cessation of the leave, which is regular to the reduced-working schedule.[84]
During the special six-month leave the mother will receive a monthly amount from OAED, which is equal to the minimum salary provided according to the national general collective labour agreement, as well as holiday bonus and a leave allowance.[85] Moreover, in order for the mother to retain her acquired insurance rights, the time period of this special leave provided (six months) will be regarded as an insurance period by the pension branch of IKA-ETAM.

– Parents with disabled children:
As regards parents with disabled children, Law No. 3655/2008 states that in future also the father of the child (or children) who is more than 67% disabled has the right to retire as soon as he completes 7,500 days of insurance, in case the mother has not (already) made use of this right.[86]

– Changes to' here the amounts of auxiliary pensions:
Law No. 3655/2008 introduced no changes to the amounts of basic pensions provided by the social insurance funds. Be that as it may, the amounts of the contributory supplementary (auxiliary) pensions received are to be reduced. In particular, 'an upper limit of 20% of an insured person's basic pension will be set on the amount of supplementary pensions they can receive. Insurance funds that currently pay supplementary pensions exceeding this percentage will be required to bring it down to the 20% limit. The reduction will begin in 2013 and will be made in eight equal annual installments. It is estimated that the reductions to supplementary pensions will affect around 1 million insured people.'[87] For the time being, and depending on the social insurance fund, the amount of the supplementary (auxiliary) pensions to be provided, when the insured person completes a 35 years insurance period, ranges between 12% and 80% of the regular pension amount. The changes introduced by Law No. 3655/2008 aim to discourage early retirement. More precisely, 'people who retire earlier than the normal age set by their insurance scheme will receive pensions reduced by 6% for every year of retirement prior to the year they would normally have retired. At present, the annual pension reduction for people who have opted for early retirement is 4.5%. Thus, although the overall levels of basic pensions will not change, reducing individual benefits will indirectly reduce the total amounts received. However, provision will be

84 In the case that the mother does not make use of this leave, she has the right to take the special six-month leave immediately after the cessation of maternity leave.
85 In the case that the mother has been working part-time (4 hours per day or 13 days per week) during the six-month period before the birth of the child, the benefit provided from the OAED is reduced to the half of the aforementioned prescribed amount.
86 Maybe the mother cannot retire for some reason.
87 Tikos, S. (2008), p. 1–2.

made for higher pensions if workers choose to remain in work beyond the official retirement age. Pensions will increase by 3.3% for every year people remain in work, for up to three years after they would normally have retired.'[88]

– Further adopted measures:
Law No. 3655/2008 established the Insurance Fund for Solidarity between Generations (AKAGE).[89] The main aim of this fund is the creation of reserves for the financing of the pension branches of the social insurance funds – from the 01.01.2019 – so as to support the SIS and ensure that new generations will receive pensions. The financial resources of AKAGE comprise 10% of the annual income from the privatization of public enterprises and organizations, 4% of the annual VAT revenues, and 10% of the amounts collected from the social sources *(koinonikoi poroi)* of the financially stable social insurance funds.[90] Moreover, the National Social Insurance Number (AMKA) was introduced for all directly (or indirectly) insured persons, and Mixed Control Units started to function with the aim of reinforcing the mechanism against contributions evasion.

(3) The establishment of the 2nd pillar: The Occupational (Professional) Insurance Funds

In mid-June 2002, the *institution (thesmos)* of occupational (professional) insurance was introduced, through the passage of Law No. 3029/2002, entitled 'The reform of the Social Security System'. This Law contained, among others, detailed provisions[91] establishing a unified legislative and institutional framework for the development of occupational (professional) insurance schemes (funds) with the status of legal entities of private law (still, though, of a non-commercial/non-profit nature).[92] These schemes refer to the so-called *second pillar* of social

88 Tikos, S. (2008), p. 1–2.

89 In international literature it is also often written as Generational Solidarity Insurance Fund (AKAGE).

90 See also European Union (EU) Mutual Information System on Social Protection (MISSOC) (2010), p. 25.

91 See Article 7, Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), pp. 3066–3068. See, further, concerning the rules 'on the establishment of occupational funds in Greece', Amitsis, G. (ed.) (2003), pp. 45–46.

92 It is interesting to note that in the past, 'for the promotion of a unified and state-oriented social insurance policy, the Greek legislator had forbidden the establishment or the modification of social insurance rules in collective agreements (Article 21§3 Law 3239/55). Yet, it was difficult to eliminate the relevant social pressures through such a legal prohibition' (see, for an in-depth discussion, Kremalis, K. (2004), pp. 35–36). Discussions on the introduction of occupational funds in Greece have evolved only in recent years. In particular, during the second phase of the reformation of the system, 'A relevant action plan with guiding principles and recommendations on occupational welfare was submitted in March 2002 for consideration by the (then) Ministry of Labour and Social Insurance to the social partners. This plan was finally accepted and regulated through the adoption of Law 3029/2002.' This way Greece is also

insurance in Greece.[93] The set-up of such schemes is based on 'the initiative of employees or employers or on agreement between employers and employees, or on the initiative of the self-employed or freelance professionals, or farmers or their trade unions, on the condition that the number of insured persons exceeds 100.'[94]

By mid-2010, 9 organizations had been founded and were functioning in the form of occupational (professional) insurance funds, namely: (a) the *Occupational Insurance Fund of the Workers in the Ministry of Economy and Finance (T.E.A.-YP. OIK.)*, (b) the *Occupational Insurance Fund of the Hellenic Postal Staff (T.E.A.-E.L.T.A.),* (c) the *Occupational Insurance Fund of the Economists (E.T.A.O.)*; (d) the *Occupational Insurance Fund of the Geo-Technicals' (T.E.A.GE)*, (e) the *Occupational Insurance Fund of Casino Staff*, (f) the *Occupational Insurance Fund of Greek Air Traffic Controllers (T.E.A.-E.E.K.E.)*, (g) the *Occupational Insurance Fund of the Greek Department of the International Police Officers Union (T.E.A.-E.T.D.E.A.)*, (h) the *Occupational Insurance Fund of the Johnson and Johnson Hellas S.A. and the Janssen-Cilag Pharmaceutical S.A. Staff (T.E.A.-J&J/JC), and* (i) the *Occupational Insurance Fund of the Inter-American Staff (T.E.A.-Inter-American).*[95] All funds come under the supervision[96] of the Ministry of Labour and Social Security, and under the financial control of the National Actuarial Authority[97] (NAA).[98]

applying 'the so-called EU occupational pension Directives' (Amitsis, G. (ed.) (2003), pp. 22). According to information contained in the Mutual Information System on Social Protection (MISSOC), in several EU countries, such as Belgium, Finland, France, Italy and others, there is a tendency 'towards the construction or remodeling of supplementary pension mechanisms' (see, analytically, MISSOC-INFO (2004a), p. 13).

93 For the composition of this part, aside from the indicated references, the following additional references were consulted: General Secretariat of Social Security (2002a), pp. 1–6; General Secretariat of Social Security (2002b), pp. 1–7; Amitsis, G. (ed.) (2003), pp. 13, 45–46; David, N. (2004), pp. 1–6; Gagales, A. and Roehler, C.L. (2005), pp. 1–78; MISSOC-INFO (2004b), pp. 1–3; Lazaridou, D. (2003), pp. 1–26.

94 See Ministry of Employment and Social Protection – Ministry of Economy and Finance (2005), p. 6. OECD (2008), p. 5.

95 General Secretariat of Social Security (2007), p. 246; General Secretariat of Social Security (2011), p. 1.

96 This supervision concerns the observance of the rules and obligations as specified by law, so as to ensure and maintain the protection of the insured; it does not concern the exertion of insurance policy through these funds.

97 See also Article 8 of Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3068. The NAA has been established 'as an institution possessing credibility and commanding general acceptance.' It submits annual reports and conducts 'special enquiries on specific issues, focusing in particular on matters regarding the financial standing and viability of all the social insurance organizations (Primary pension Funds, Auxiliary Pension Funds, Occupational Funds).' It also implements one of the key policy initiatives introduced by Law 3029/2002 (Ministry of Economy and Finance – Ministry of Labour and Social Insurance (2002), p.4; see also Kremalis, K. (2004), p. 13; OECD (2008), p. 5).

98 Article 7§1, Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3066.

Their aim is the dispensation of complementary social insurance coverage to the insured persons and all the other insurance beneficiaries, which goes beyond the social insurance provided by the state.[99] In contrast with the statutory social insurance schemes, where affiliation to the scheme is obligatory (compulsory), the participation in the occupational insurance schemes is optional[100] (non-compulsory). Protection is provided for all social risks, and illustratively (to date) for the following: *old age, death (survivorship), invalidity, employment injury, sickness, and termination of employment*.[101]

More precisely, through occupational insurance an entitlement to provision is acquired by the protected person on the occurrence of a social risk. This provision represents income, which is additional (complementary) to the income the insured person receives, on the occurrence of the same social risk, through the statutory social insurance.[102] Provisions can be either in cash or in kind, and may comprise monthly annuities or lump sum payments.[103]

The capitalization system is applied[104] (at least for the occupational pension schemes (funds)) and funding is ensured through the payment of employees' and employers' contributions. The resources of the funds are the settled as well as the special levies of the insured persons and the employers, property incomes, the return from the funds' capital gain and reserves,[105] and, in general, any form of income which comes from the funds' activities. What is more, the funds are obliged to create special reserves, which are managed according to certain conditions.[106]

As far as the tax incentives and tax exemptions applied in Occupational Insurance Funds are concerned, they are specified by the country's tax legislation. 'The competent authority on the tax treatment of Occupational Insurance Funds is the Ministry of Economy and Finance. The tax legislation in Greece provides that the totality of contributions paid in Occupational Insurance Funds by members is exempt from income tax, while contributions from the employer are deductible from gross revenue. Pension investments are not taxed, while pension benefits are.'[107]

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99 Article 7§2, Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3066.
100 Article 7§9, Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3067.
101 Article 7§2, Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3066.
102 Amitsis, G. (ed.) (2003), p. 45.
103 Article 7§2, Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3066.
104 Article 7§5, Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3066.
105 Article 7§19, Law 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3068.
106 Article 7§15&16, Law No. 3029/2002, in Official Gazette of the Hellenic Republic (2002), p. 3067. See, further, Kremalis, K. (2004), p. 44.
107 In OECD (2008), p. 5.

The previously discussed occupational (professional) insurance funds were established in order to provide complementary coverage for the following social risks:

- Occupational Insurance Fund of the Workers in the Ministry of Economy and Finance (T.E.A.-YP. OIK.): medical care and sickness (lump sum payments) (in future it may provide lump sum pension payments);[108]
- Occupational Insurance Fund of the Hellenic Postal Staff (T.E.A.-E.L.T.A.): sickness, old age, invalidity, death, occupational accidents, (lump sum payments) (in future it may provide further lump sum payments for other social risks);[109]
- Occupational Insurance Fund of the Economists (E.T.A.O.): old age, invalidity, death (lump sum payments);[110]
- Occupational Insurance Fund of the Geo-Technicals (T.E.A.GE): old age, invalidity, death (in principle, lump sum payments) and long-term hospital care;[111]
- Occupational Insurance Fund of Casino Staff: old age, invalidity, death (lump sum payments);[112]
- Occupational Insurance Fund of Greek Air Traffic Controllers (T.E.A.-E.E.K.E.): old age, invalidity, death (lump sum payments), hospital care;[113]
- Occupational Insurance Fund of the Greek Department of the International Police Officers Union (T.E.A.-E.T.D.E.A.): old age, invalidity, death (lump sum payments), hospital care;[114]
- Occupational Insurance Fund of the Johnson and Johnson Hellas S.A. and the Janssen-Cilag Pharmaceutical S.A. Staff (T.E.A.-J&J/JC): old age (lump sum payments);[115]
- Occupational Insurance Fund of the Inter-American Staff (T.E.A.-Inter-American): old age, invalidity, death, occupational accidents, sickness, and others (provisions both in cash and in kind, consisting of periodical or lump sum payments).[116]

Be that as it may, it is worth mentioning that the *institution (thesmos)* of occupational (professional) insurance – and, in general, the function of the relevant funds – has been criticized (particularly since 2004) for lacking a sufficient legal framework.

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108 Official Gazette of the Hellenic Republic (2004a), p. 9707.
109 Official Gazette of the Hellenic Republic (2004b), p. 17718; Official Gazette of the Hellenic Republic (2008b), p. 19681.
110 Official Gazette of the Hellenic Republic (2004c), p. 17718.
111 Official Gazette of the Hellenic Republic (2006), p. 11666.
112 Official Gazette of the Hellenic Republic (2008c), p. 31426; see also Dedouli, A.A. (2008).
113 Official Gazette of the Hellenic Republic (2009a), pp. 13119–13121.
114 Official Gazette of the Hellenic Republic (2009b), p. 23739.
115 Official Gazette of the Hellenic Republic (2010a), p. 9051.
116 Official Gazette of the Hellenic Republic (2010b), p. 17269.

Emphasis has been placed on the need to introduce modifications and to make alterations to its existing formation.[117] Therefore, it remains to be seen how this newly-established *institution (thesmos)* will contribute to the enhancement and improvement of the current Greek SIS.

3.1.2 THE HEALTH CARE SYSTEM (HCS)

The Greek Health Care System (HCS) is a mixed one.[118] It consists of 'the health care branches of the various social insurance schemes/funds',[119] which follow the principles underlying the Bismarckian welfare state[120] (compulsory insurance) and the National Health System (NHS) (*Ethniko Systima Ygeias*),[121] which follows the Beveridgian welfare state tradition.[122] Voluntary private health insurance schemes/funds also exist.[123]

It is true that 'most European countries introduced a national health system or national health insurance during the expansion of their welfare states, after the Second World War.'[124] All the same, it was only in 1983 that the National Health System (NHS) was founded in Greece,[125] through the enactment of Law No. 1397/1983.[126] It aimed to provide universal (comprehensive) health

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117 See, further, Dedouli, A.A. (2011), pp. 1–17.

118 Yfantopoulos, J.N. (*s.d.*), p. 338; Pieters, D. (2002), p. 158.

119 Pieters, D. (2002), p. 158; Amitsis, G. (ed.) (2003), p. 11.

120 See the 'main characteristics of the Bismarckian Welfare State' in Pochet, P. (2006), p. 8.

121 Further in-depth examination of the NHS falls out with the scope of this PhD thesis. See the relevant explanation given above, in Section 3.1, Social Protection in Greece. However, an analytical description of the Greek Health Care System (HCS) setting can be found in Angelidis, P., Giest, S., Dumortier, Artmann, J. and Heywood, J. (2010), pp. 9–15.

122 See W. Beveridge, *Social Insurance and Allied Social Services*, London 1942, cited in Korda, M. and Pennings, F. (2008), p. 133.

123 Based on data available until the end of 2006, approximately 8% of the population maintained complementary private (voluntary) health insurance coverage (Commission of the European Communities (2007), p. 76). It should be noted, on this point that private health care provisions fall out with the scope of this PhD thesis; therefore, they will not be discussed further.

124 Nikolentzos, A. and Mays, N. (2008), p. 168.

125 "Until the period of the dictatorship in Greece (1967–1973), health services were characterized by an unbalanced, fragmented and under-financed development, which led to the creation of an inequitable (unjust), downgraded and with no firm principles health 'system'", in Venieris, D. (2003), p. 252.

126 This Law was the first systematic attempt (on behalf of the Greek State) to particularize and amplify the behest imposed under Article 21§3 of the Hellenic Constitution as well as to legislatively entrench the provision of the necessary health protection services. Under this Law, it was also recognized that the State has the exclusive responsibility in the field of health protection (apart from the Law No. 1397/1983, also with the Laws 1278/1982 and 1316/1983); so the Article 21§3 entails a subjective right, and consists an objective rule of law, establishing core constitutional protection, in: Contiades, X. (1997), p. 115. However, "after the enactment of the Law 2071/1992, the Article1§1 of the Law No. 1397/1983 was annulled, and it was stipulated that the State does not have any longer the exclusive responsibility in the field of health care, but that it procures for the establishment, function, organization and supervision

care coverage for all Greek residents,[127] based on the principles of equity and efficiency,[128] free at the point of access, and financed out of the state budget. This development constituted a 'significant exception to the *Bismarckian rule* followed by Greece for many decades; meaning provisions based on the *insurance bond*.'[129, 130]

It should be noted that Law No. 1397/1983 was debated in the Hellenic Parliament for almost one month. The initial intention of the government[131] was the establishment of a *unified (health) insurance fund*. Nevertheless, this proposal was met with strong opposition from the Members of Parliament (MPs) defending, in a sense, the so-called 'noble-funds'.[132] By arguing that the insured population would lose not only their benefits, but also their access to better health services, they managed to persuade the government to abandon its initial intentions and to amend the statute. As a result, in the final text of Law No. 1397/1983 the sole aim was the future voluntary unification of the health insurance funds.[133]

Therefore, although legally speaking the NHS has been regarded as 'the cornerstone of health care protection, this harmonizing concept suffered serious

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of appropriate legal entities, ensuring the health protection of all citizens. Additionally, the Law No. 2071/1992 set that health institutions could also have other legal status apart from being legal entities of public law (Article 48)", in: Contiades, X. (2001), p. 142. It should be also noted that the right to health care "concerns not only treatment but prevention as well. Explicit reference to the obligation of the State to ensure *medical care of a preventive or curative nature* is equally made in Article 7 of the C 102 (sanctioned by the Greek formal statute No. 3251, in 1955). Moreover, according to Article 70§1, the obligation of the State corresponds to an actionable claim", in: Katrougalos, G. (2004), pp. 252–253.

127 "The entire Greek population is covered without any special entitlement condition, regardless of professional category or region. Health care services are also provided to EU and non-EU citizens on the basis of multilateral or bilateral agreements", in Amitsis, G. (ed.) (2003), p. 11.

128 In: Vardica, A. and Kontozamanis, V. (2007), p. 4. Unfortunately, "even after twenty years and numerous reformation attempts, the Greek health care system remains fragmented in terms of coverage, and quite distanced from its principles of equity and efficiency", in: Pappa, E. and Niakas, D. (2006), p. 3.

129 Katrougalos, G. (2004), p. 249.

130 An analysis of the development of the Greek health care system in its broader socio-historical framework, and particularly since the establishment of the NHS in 1983, is available in: Carpenter, M. (2003), p. 257–272.

131 At that time the Pan-Hellenic Socialist Movement (Panellinio Sosialistiko Kinima) (PASOK) was in power.

132 This is a commonly used term referring to "the insurance funds of specific occupational groups". It has been broadly claimed in the literature that "the Greek state has selectively benefited" these 'noble' funds, in: Sotiropoulos, D.A. (2004), p. 271.

133 Since the enactment of Law No. 1397/1983, in the preparation for several later laws concerning the reformation of the Greek health care system (such as Law No. 2071/1992, Law No. 2519/1997, and Law No. 2889/2001), the idea of introducing a *single/unified insurance fund* always met with remarkable opposition, and was put aside because of the high political as well as economic cost that such a radical reform would bring, but also – and maybe mainly – because of the fact that the interests of certain groups would be significantly affected (see, for an in-depth discussion, Nikolentzos, A. and Mays, N. (2008), pp. 169–171, 172–174). See also Sotiropoulos, D.A. (2004), pp. 269, 272; Guillen, A.M. and Matsaganis, M. (2000), p. 122.

drawbacks due to the parallel functioning of the health care branches of the other social insurance schemes.'[134] Actually, what has complicated a lot the general functioning of the HCS is that irrespective of the fact that for all persons residing in the Greek territory coverage is guaranteed through the NHS, particularly, and with regard to those who have been insured with the other social insurance funds, the provision of health protection is equally foreseen from the health branches of these funds.[135] Therefore, 'universal coverage of the population is provided by the NHS and a variety of social insurance funds.'[136]

Interesting though, is a very recent development that took place through the passage of Law No. 3918/2011, 'Structural Changes to the health system and other provisions',[137] and pertaining to the establishment of a unified (single) health insurance fund – the National Health Services Organization (EOPYY). This new fund will combine the formerly separate health care branches of the funds for private employees (IKA-ETAM), liberal professions (OAEE), agriculture (OGA), and civil servants.[138] It will also deal with the purchasing of health services for persons insured under these funds.[139] This development is actually another attempt at the consolidation, rationalization and de-fragmentation of the existing system, yet in a rather moderate way, as it has once again been based not on rational reformation criteria (as the case should be), but on criteria of an economic character. The results of this attempt still remain to be seen.

3.1.3 THE SOCIAL ASSISTANCE SYSTEM (SAS)

For the labour market 'outsiders' without adequate income (means of living) and facing the social risk of need, social welfare works as the final safety net.[140] In Greece, the Social Assistance System (SAS)[141] applied is categorical.[142] To be

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134 See Pieters, D. (2002), p. 158; Sotiropoulos, D.A. (2004), p. 272; Amitsis, G. (ed.) (2003), p. 11.

135 Amitsis, G. (ed.) (2003), p. 11.

136 Commission of the European Communities (2007), p. 76. 'The Ministry of Health and Social Solidarity is responsible for the overall organization, financing, and delivery of health services', while 'the Ministry of Employment and Social Protection finances the services provided by the (social) insurance funds' (Yfantopoulos, J.N. (*s.d.*), p. 338).

137 See Articles 17 to 29, in Official Gazette of the Hellenic Republic (2011), pp. 1207-1215.

138 See Section 3.1.1, above.

139 For further information concerning the structural changes to be brought about under Law No. 3918/2011, see European Commission (2011), pp. 57–58, 61, 119; Ministry of Finance – Hellenic Republic (2011), pp. 17–18; OECD (2011), p. 77.

140 Amitsis, G. (ed.) (2003), p. 11.

141 Further examination of the SAS falls out with of the scope of this PhD thesis. See the relevant explanation given above, in Section 3.1.

142 'Greece belongs to the "limited social assistance regimes of southern Europe".' 'Gough in 1996 described the "rudimentary social assistance regimes of Southern Europe and Turkey" and from the "surveys of social assistance arrangements in developed countries from a comparative perspective" Greece has been portrayed "as the most 'rudimentary' member of

more precise, categorical minimum income schemes function, providing social assistance protection to specific groups of the population (welfare target groups), i.e. the elderly, persons with disabilities, single parent families, needy children, *etc*. Moreover, 'assistance is also focused upon the coverage of emergency situations (i.e. relief for refugees, for victims of earthquakes, *etc*.).'[143] These schemes were introduced in the 1960s, and were further developed in the 1980s.[144] Currently, no *socially guaranteed minimum income* exists in Greece.[145]

'The categorical social assistance schemes normally require Greek nationality and permanent residence in Greece in order to qualify for cash benefits and social services. However, E.U. citizens are equally covered as welfare benefits fall within the definition of social advantage, to which the principle of equal treatment is applied, according to the provisions of E.C. Regulation 1612/68. The current system provides cash benefits, benefits in kind, and personal social services through decentralized legal bodies supervised by the Ministry of Health and Social Assistance. Social services are also provided through local communities and a network of voluntary bodies and NGOs actively involved in the framework of policies for children, refugees and persons with special needs. Their role is rather influential as far as domiciliary services and services for socially excluded persons are concerned.'[146]

According to the Hellenic Constitution, the so-called *sedes materiae* for the non-working population of Greece lies in Article 21.[147] Despite the fact that the

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the 'rudimentary' group of countries or social assistance regimes, i.e. Southern Europe"' (see, for an in-depth discussion, Matsaganis, M. (2000), pp. 68–69).

143 Pieters, D. (2002), p. 157.

144 Amitsis, G. (ed.) (2003), p. 11. Analytical historical data can be found in Kremalis, K. (2004), pp. 162–164.

145 See also CESifo Group Munich (2007a), p.5; CESifo Group Munich (2007b), p. 5. 'Despite the standardization of the minimum living needs, neither a guarantee of a minimum basic income has been established (for financial reasons) nor an organized provision of material goods, within the framework of a fundamental economical rehabilitation of the persons' (Kremalis, K. (2004), p. 165). Also, 'problems in underreporting income for tax purposes (black economy) mean that it is unlikely that any government initiative will be taken in this direction, as it would result in the subsidization of many who in fact have income from other source' (Karantinos, D. (2007), p. 1).

146 Amitsis, G. (ed.) (2003), p. 12. For an overview of the benefits concerning social assistance, see also Matsaganis, M. (2000), pp. 70–76.

147 Article 21 of the Hellenic Constitution reads as follows: '1. The family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State. 2. Families with many children, disabled war and peace-time veterans, war victims, widows and orphans, as well as persons suffering from incurable bodily or mental ailments are entitled to the special care of the State. 3. 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. 4. The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care. 5. Planning and implementing a demographic policy, as well as taking of all necessary measures, is an obligation of the State. 6. People with disabilities have the right to benefit from measures

wording of this Article at first glance does not seem to guarantee a general right to social welfare, it contains provisions amounting to a constitutional obligation for the state to protect certain groups of the population. Such groups include the under-aged (minors), children, and families with many children, the elderly, the needy, victims of war, widows, orphans, and the disabled. Certain other categories of persons relate to family, motherhood and wedlock. Still, though, for measures to be taken and policies to be implemented, the (prior) intervention of the Greek legislature is necessary, through the enactment of appropriate laws (e.g. in 1973 a legislative act for the needy was introduced (based on Article 21§3 of the Hellenic Constitution); in 1979 Law No. 958 was enacted for the protection of sightless persons (based on Article 21§2); and in 1982 Law No. 1296 was enacted for the elderly).[148]

It is both understandable and logical that certain categories of the population merit special protection. Thence, such protection ought to be provided by the state. Still, it does not seem reasonable that the Greek Constitution guarantees protection through selective social welfare and through the introduction of measures applied subject to specific qualifications. Such an attitude goes against the principle of equity, and it should be emphasized that it is not possible to predict, or pre-determinate all the circumstances of need that may arise within the country in the future.[149]

Therefore, certain categories of the population are indeed deserving of more attention than others, and their protection becomes of paramount importance. This is exactly why specific constitutional obligations should exist for extra, *ad hoc*, legal measures to be taken. However, this does not mean that a minimum level of social assistance should not be guaranteed at the same time for all. This is an issue that the Hellenic Constitution seems to have (so far) overlooked. Besides, such a state obligation is also included in one of the fundamental provisions[150] of the European Social Charter (ESC) of the Council of Europe, which has been accepted by Greece (sanctioned by Statute No. 1426, in 1984). The obligation is found in Article 13§1, which clearly states that:

> '…the Contracting Parties undertake: to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security

ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the Country' (Hellenic Parliament (2010a), pp. 35–36).

148 See Katrougalos, G. (2004), pp. 254–256; Katrougalos, G. (2009), pp. 250–251.

149 See Katrougalos, G. (2004), p. 256; Katrougalos, G. (2009), pp. 250.

150 In Article 20 of the European Social Charter it is stated that: 'Each of the Contracting Parties undertakes … to consider itself bound by at least five of the following articles of Part II of this Charter: Articles 1, 5, 6, 12, 13, 16 and 19…' (Council of Europe (1961)).

> scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition….'

Since 1987, the European Committee of Social Rights (ECSS) has repeatedly observed that Greece is not in conformity with Article 13§1 of the European Social Charter, due to the fact that 'there is no general social assistance scheme in the country that ensures that everyone has a legally enforceable right to assistance for which the sole criterion is need.'[151] All the same, the Greek common legislature has not yet taken appropriate measures to enforce this right.[152]

In order to cover the absence of a general social assistance scheme for everyone in need, the state has introduced certain 'assistance elements within the existing social insurance schemes'.[153] Worthy of a mention in this respect is the so-called Social Solidarity Allowance for Pensioners[154] (*Epidoma Koinonikis Allileguis (EKAS)*),[155] introduced in 1996 in order to support low-income pensioners.[156] It is a supplementary non-contributory allowance. It is provided after a means test both to pensioners who have worked in the public sector (gradually it has also been provided to other pensioners, who have been added up to them)[157] and to persons receiving an old-age, invalidity or survivors' pension under a social insurance scheme[158] (supervised by the Ministry of Labour and Social Security), as long as they satisfy certain conditions.[159]

It is interesting to note, in this respect, that discussions on the introduction of a National Minimum Pension have never been absent from national agendas. However, they have also never quite been substantial. During the period before the Greek elections of September 2007, the issue was brought up again.[160] Actually,

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151 Council of Europe (2007b), p. 17.

152 As pointed out in 2000, 'a public debate on the merits and practicalities of a minimum guaranteed income scheme in Greece seems set to start, forcing everybody to consider afresh the broader issue of the proper place of social assistance within a reconstructed welfare state' (Matsaganis, M. (2000), p. 77). However, in Greece (still) such a debate seems to encounter difficulties.

153 Pieters, D. (2002), p. 181. See also Matsaganis, M. (2000), p. 70.

154 In international literature it is also often written as 'Social Solidarity Benefit'.

155 'This "targeting" measure was adopted instead of the direct increase of the minimum amount of pensions and was fiercely debated by trade unions and pensioners associations' (Amitsis, G. (ed.) (2003), p. 36).

156 See Sotiropoulos, D.A. (2004), p. 276; Guillen, A.M. and Matsaganis, M. (2000), p. 123; Matsaganis, M., Ferrera, M., Capucha, L. and Moreno, L. (2003), p. 643; Katrougalos, G. (1996), p. 40.

157 See Amitsis, G. (ed.) (2003), p. 11.

158 Persons who are receiving a pension from O.G.A. have been excluded.

159 Concerning the conditions that have to be met, see also Amitsis, G. (ed.) (2003), p. 36.

160 During discussions on the reformation of the SIS, an extensive speech was made pertaining to the need for protection of a minimum dignified income with the establishment of a national pension. However, this idea was not taken forward, mainly due to arguments that such an attempt would come up against economic obstacles. Therefore, until recently, it has not been possible to speak of minimum social benefits within the framework of a unified system in

it was announced that a National Minimum Pension would be introduced. It was proposed that the Social Solidarity Allowance for Pensioners (EKAS) would be incorporated in the National Minimum Pension. However, until the end of 2009 the institutionalization of a *National Minimum Pension* was not realized. The introductory report of Law No. 3655/2008 mentioned the introduction of a National Minimum Pension as a target; however it was stressed that this would not be achievable in 2009.[161] Through Law No. 3863/2010 however, and the introduction of a new structure for the pension system (in force as of 2015), a sort of guaranteed minimum pension has been introduced in order to function as a more general protection shield.[162]

Thereafter, reference should be made to the National Organization of Social Care (*Ethnikos Organismos Koinonikis Frontidas* (EOKF)),[163] which was established in 1998 by Law No. 2646/1998. 'By virtue of this law a system for social assistance'[164] was supposed to be established in Greece for the first time, decentralizing 'personal social services' and developing 'new forms of open care that tend to prevail over out of date institutional care'.[165] However, 'the *EOKF* was understaffed in the first four years of its existence'. The three old social care organizations, which according to the founding law should have merged into *EOKF*, managed to survive as independent units. In early 2003, under another Law, social care competencies were transferred to regional authorities. The EOKF was transformed into a National Council for Social Care (ESYKF).'[166]

Last, certain other types of non-contributory long-term care provisions exist in the form of personal services. They are mainly 'aimed at the elderly and fall within the objective of moving towards the social care model. Characteristic examples are the Centres for the Open Protection of the Elderly (KAPI), the Home Assistance project,[167] the Patients' Rights Protection Agency, and the Office for the protection of People with Mental Disorders.'[168] 'Apart from direct cash allowances and personal social services, benefits for those in need in Greece include favorable tax treatment and tax credits.'[169]

Greece as in other countries, such as Belgium, Italy, *etc*. See, further, Kremalis, K. (2004), p. 145.

161 Hence (as already mentioned), the Insurance Fund for Solidarity between Generations (AKAGE) was established instead.

162 As already mentioned above, reference to the main changes brought by Law 3863/2010 takes place in Chapter 5, Section 5.4, Sub-Section 5.4.1.

163 See Sotiropoulos, D.A. (2004), p. 274; Guillen, A.M. and Matsaganis, M. (2000), p. 123.

164 Kremalis, K. (2004), p. 177.

165 Amitsis, G. (ed.) (2003), p. 12.

166 Sotiropoulos, D.A. (2004), p. 274. Actually, the EOKF never functioned in reality. Also, the Presidential degrees, which were to determine its operation, were never published.

167 Initially called Pilot home help programme (Guillen, A.M. and Matsaganis, M. (2000), p. 123).

168 See for analytical information in: MISSOC-INFO (2006), p. 3; Amitsis, G. (ed.) (2003), p. 12.

169 Amitsis, G. (ed.) (2003), p. 12.

3.2 GREECE AND THE INTERNATIONAL LEGAL INSTRUMENTS IN THE FIELD OF SOCIAL SECURITY

Greece has signed as well as ratified several multilateral social security treaties and conventions adopted by international organizations, such as the United Nations (UN),[170] the Council of Europe (CoE), and the International Labour Organization (ILO). It has also concluded numerous bilateral social security conventions and agreements[171] with European and non-European countries. Thus, the principles and rules of international social security law have played a significant role in the formation of the current Greek social security legal framework.

Hereunder, and with particular emphasis on the ILO and the CoE, an overview is given of the instruments ratified, or left unratified by Greece, as well as a description with regard to the division of ministerial competences in relation to these international instruments.

3.2.1 GREECE AND THE ADOPTED ILO CONVENTIONS

Greece has been an ILO Member State since 1919.[172] The ILO Constitution was sanctioned by formal statute No. 399/1947 and ratified. Thus, it is part of the internal legal order. Since joining the ILO, Greece has ratified a large number of ILO Conventions. It is worth mentioning that 'back in 1920 it was the first

[170] Greece has ratified the following UN instruments, which include specific provisions on social security rights: the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) (sanctioned by formal statute No. 1532/1985); the International Convention for the Elimination of all Forms of Discrimination against Women (sanctioned by formal statute No. 1342/1983); and the International Convention on Children Rights (sanctioned by formal statute No. 2101/1992).

[171] Social Security Coordination as such, falls outside of the scope of this PhD thesis. Nevertheless, reference to bilateral social security agreements concluded by Greece in the field of social security and other multilateral social security coordination instruments is made for informative purposes. Moreover, it is worth mentioning that the bilateral social security agreements aim 'to promote international coordination of social security through specific principles, as the guarantee of equality of treatment (under which a party agrees that a national of the other party to the specific agreement will have the same rights and obligations under their national social security legislation as their own nationals).' A complete list of the bilateral social security Conventions and Agreements concluded by Greece is available in Amitsis, G. (ed.) (2003), p. 17–19.

[172] Currently, the ILO has 183 Member States.

country to ratify, without any reservations, the first six[173] ILO Conventions of 1919'.[174] To date, Greece has ratified 63 Conventions.[175]

These Conventions involve setting international standards in the areas of: freedom of association, collective bargaining and industrial relations, the elimination of child labour and the protection of children and young persons, the protection of seafarers, as well as and labour administration and inspection.

As far as social security is concerned, of the so-called up-to-date ILO Conventions in this field, Greece has ratified only one: namely, the C102 *Social Security (Minimum Standards)* (1952). All parts of this Convention have been ratified (sanctioned by formal statute No. 3251/1955) except for Part VII on Family Benefits.

Yet, Greece did not proceed with the ratification of the following Conventions: C118 Equality of Treatment (Social Security) (1962); C121 Employment Injury Benefits (1964); C128 Old-Age, Invalidity and Survivors' Benefit (1967); C130 Medical Care and Sickness Benefits (1969); C157 Maintenance of Social Security Rights (1982); C168 Employment Promotion and Protection against Unemployment (1988); and C183 Maternity Protection (2000).[176]

Moreover, the following older ratified ILO Conventions still remain applicable to Greece:[177] C17 Workmen's Compensation (Accidents) (1925) (sanctioned by Statute No. 2078/1952), C42 Workmen's Compensation (Occupational Diseases) (Revised) (1934) (sanctioned by Statute No. 2080/1952), and C103 Maternity Protection (Revised) (1952) (sanctioned by the Statute No. 1302/1982).

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173 C1 Hours of Work (Industry) (1919), C2 Unemployment Convention (1919), C3 Maternity Protection Convention (1919), C4 Night Work (Women) (1919) (abolished on 30.06.1936), C5 Minimum Age (Industry) (1919) (abolished on 14.03.1986), and C6 Night Work of Young Persons (Industry) (1919).

174 Amitsis, G. (ed.) (2003), p. 20.

175 For a complete list of the ILO Conventions ratified as well as denounced by Greece, see ILO (2011a), p. 1. For the ratification status of the up-to-date conventions for Greece and the possibilities for ratification by the country, see ILO (2011b), p. 1.

176 These (8) up-to-date ILO Social Security Conventions are the only ones for which ratification is still to be promoted by the ILO.

177 C17 and C42 have been replaced by C121. Be that as it may, Greece has not ratified C121. Consequently, these two Conventions still apply to Greece (despite the fact that they are regarded as containing pre-war standards).

3.2.2 GREECE AND THE ADOPTED CoE INSTRUMENTS

In 1949, Greece became the 11th member state of the Council of Europe,[178] and has ratified, but also simply signed, a significant number of its adopted instruments. To date, Greece has ratified 94 instruments.[179]

In the field of social protection, and social security in particular, Greece has ratified the following instruments: the European Social Charter (1961) (sanctioned by Statute No. 1426/1984), the Additional Protocol to the European Social Charter (1988) and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995) (both sanctioned by Statute No. 2595/1998), the Protocol Amending the European Social Charter (1991) (sanctioned by Statute No. 2422/1996), and the European Code of Social Security (1964) (sanctioned by Statute No. 1136/1981 – however, Greece has not accepted Parts IV and VII on Unemployment Benefits and Family Benefits, respectively).

Greece has also signed, but not ratified the following instruments: the Protocol to the European Code of Social Security (1964) (signed: 25/5/1978), the Revised European Code of Social Security (1990) (signed: 6/11/1990), the Revised European Social Charter (1996) (signed: 3/5/1996), the European Convention on Social Security (1972) (signed: 21/4/1977), the Supplementary Agreement for the Application of the European Convention on Social Security (1972) (signed: 25/5/1978), and the Protocol to the European Convention on Social Security (1994) (signed: 11/5/1994).

3.2.3 GREEK ADMINISTRATION AND DIVISION OF COMPETENCES IN RELATION TO THE INTERNATIONAL SOCIAL SECURITY INSTRUMENTS

The general responsibility for ILO matters in Greece rests with the Section for Relations with the ILO, which belongs to the International Relations Department of the Ministry of Employment and Social Protection. This Ministerial Section

178 Currently, the Council of Europe has 47 Member States.

179 For a complete list of the treaties ratified, unratified, signed, unsigned, as well as those denounced by Greece, see Council of Europe (2011a), p. 1.

undertakes, on behalf of the government, to fulfill obligations under the ILO Constitution relating to the international labour standards. In particular, it:[180]

a) it communicates formally and directly with the ILO;
b) organises the participation of the Ministry and the country's representatives in the International Labour Conference (ILC), as well as all the other ILO related issues, it procures for the proper examination and consideration of matters in hand, and ensures that the questionnaires sent by the ILO Bureau are answered on time;
c) submits the Conventions and the Recommendations adopted by the ILC to the Hellenic Parliament, while ensuring that all competent public authorities as well as services, and the representative organizations of employers and workers, are properly informed about these international instruments (as the principle of *tripartism* foresees);
d) goes through the content of the international instruments and compiles the propositions regarding the possibility of their sanction, acceptance, or application;
e) processes the legislative or normative texts pertaining to the sanction and application of the international instruments, while also assisting with their compilation;
f) composes the Greek reports on the ratified as well as on the unratified Conventions;
g) replies to the complaints, which may be sent by the representative organizations of employers and employees to the ILO Bureau, involving matters in the field of the freedom of association;
h) replies to questionnaires and documents sent by the ILO Bureau regarding the preparation of Regional European Conferences and Sessions of the Industrial ILO Committees.

Be that as it may, for the ILO Conventions referring to social security, either as a whole or in part, close collaboration takes place between the Section for Relations with the ILO and the Section for Relations with International Organizations, which falls under the General Secretariat of Social Security of the same Ministry.

The main role of the *Section for Relations with International Organizations* is to fulfill the government's obligations to the CoE.[181] It is responsible for reporting

[180] Information obtained from the discussions held with civil servants working in the Section for Relations with the ILO/International Relations Department/Ministry of Employment and Social Protection during the research visits in Greece. The list of all the interviewees is available in Appendix A of this PhD thesis.

[181] The Section for Relations with International Organizations of the General Secretariat for Social Security/Ministry of Employment and Social Protection also interacts and cooperates with other international organizations such as the Organization for Economic Co-operation

both on the ratified and unratified (signed) international social protection and social security instruments adopted by the CoE, replying to questions and comments made by the Committee of experts of social security (CS-SS), and in this respect it also asks for information and maintains contact with the departments of the social security funds and other services. Be that as it may, this ministerial department also provides information – on request – and refers to the *Section for Relations with the ILO* on social security matters.

By way of illustration, and in terms of clarity, it provides the necessary information and data so as the reports on the following ratified ILO Conventions can be completed: C102 *Social Security (Minimum Standards)* (1952) and (certain parts) of the C103 *Maternity Protection (Revised)* (1952). It informs and elaborates on the reasons why certain ILO social security Conventions or parts of them could or cannot be ratified.[182] It also contacts, when considered necessary, the departments of the (several) social security funds, in order to obtain information needed and to discuss with them standing, or future issues.

Yet, as already referred above, the *Section for Relations with the ILO* is the only one which communicates directly and formally with the ILO, and sends the relevant reports to its Bureau, after first finalizing their composition based on the data and information received. Moreover, the fact that the *Section for Relations with International Organizations* contacts – when appropriate – the social security funds and other public services does not mean that the *Section for Relations with the ILO* cannot itself contact these social security funds, or other competent public authorities as well as services directly, in order to obtain necessary information or data on social security issues, and this is something which happens frequently.

It is useful here to refer a bit more analytically to the issue of submission of the international instruments to the competent national authorities for sanction and ratification, which is also a matter in which these two Ministerial Sections get involved.

In Greece, as previously mentioned, the passage of bills falls under the competence of the Hellenic Parliament[183] (in full session (plenary)). With respect to the sanctioning procedure, which is followed in the case of both the Conventions adopted by the ILO International Labour Conference (ILC) and the CoE instruments adopted by the Committee of Ministers, 'this is definitely under the competence of the Parliament in full session, because in most of the cases these

and Development (OECD), the International Social Security Association (ISSA), and the United Nations (UN).

182 Such as: the C128, the C157, *etc*. (Internal Ministerial Document (1993a), pp. 1–3).

183 For detailed information regarding the Legislative Function of the Parliament, see Articles 73 to 77 of the Hellenic Constitution (Hellenic Parliament (2004), pp. 80–85).

instruments concern the enjoyment and protection of individual rights – part of them also being social rights.'[184]

The *Section for Relations with the ILO* provides the Ministry with all the necessary information pertaining to the ILO Conventions that are to be introduced to the Parliament. Similarly, the *Section for Relations with International Organizations* provides the necessary information on the CoE instruments. Actually, both Sections prepare and compose the relevant propositions regarding the possibility of an international acceptance of these instruments on behalf of the Ministry (actually, the competent Minister).

As far as the ILO Conventions are concerned, before the proposition is composed and finalized, the Ministry has to consult the social partners. In this respect, *the Section on the promotion and application of international labour rules* of the Supreme Labour Council (*Anotato Symboulio Ergasias* (ASE)) meets.[185] It is composed of Ministry Representatives[186] as well as employers' and employees' representatives. There, discussions take place regarding the possibility of sanctioning (or not) the newly adopted Conventions and the opinions of the participating representatives are expressed. After the meeting, the proposition is finalized.

Usually, the government will sanction an international treaty. Through the competent Minister, the government introduces to the Parliament the proposition prepared and a 'draft statute/law'.[187] However, in the case of international labour Conventions adopted by the ILO, it should be noted that such an initiative may also come from the Parliament, through its members, in the form of a 'proposal for a statute'.[188, 189] After the introduction of the proposition and the 'draft statute',

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184 Koukouli-Spiliotopoulou, S. (1985), p. 143.

185 The *Section on the promotion and application of international labour rules* of the Supreme Labour Council (*Anotato Symboulio Ergasias* (ASE)) was introduced by the Presidential Degree No. 296/1991 (Article 1§1 of this Presidential Degree was altered by the Presidential Degree No. 88); see Official Gazette of the Hellenic Republic (1991), pp. 1526–1527; Official Gazette of the Hellenic Republic (1995), p. 3227.

186 The Secretary General of the Ministry of Employment and Social Protection (as President), the Head of the International Relations Department, and the Head of the Section for Relations with the ILO of the same Ministry.

187 The two aforementioned Ministerial Sections help as well to also help with the compilation of the draft law (statute).

188 Nevertheless, such a proposal should not contravene Article 73§3 of the Constitution: 'No bill or amendment or addition, which originated in Parliament, shall be introduced for debate if it results in an expenditure or a reduction of revenues or assets for the State or local government agencies or other public law legal persons, for the purpose of paying a salary or pension or otherwise benefiting a person.'

189 'Actually, this possibility is based on the particularity of these international legal instruments, which lies in the fact that they are adopted by an international body, composed not only of government representatives, but also employees' and employers' representatives, so negotiations are not taking place between government representatives alone. It is, therefore,

and through the completion of the relevant discussions in Parliament, it will be decided whether or not the international treaty will be finally sanctioned and subsequently ratified.

3.3 REASONS FOR RATIFYING INTERNATIONAL SOCIAL SECURITY INSTRUMENTS

Usually, if not always, the decision of a government to proceed with the ratification of an international instrument (in a given policy field) is based on politics. Thus, it is always interesting for academic readers as well as for the general public to learn more about the reasons (motives) behind a political decision at a given point in time. Besides, ratification as an international act presupposes responsibility and commitment on the part of a state in fulfilling the requirements set within the relevant instrument.

Hereunder, the reasons which led Greece to the ratification of each of the previously mentioned international instruments (see Sections 3.2.1 and 3.2.2) are given. Some of the ratified instruments pertain exclusively to international social security standards (ISSS): namely, the ILO C102, the European Code, and the ILO C103. Others guarantee social and economic rights in general; however, for the fulfillment of social protection rights, reference is also expressly made to the international social security standards: the European Social Charter and its attendant treaties (the Protocol Amending the European Social Charter, the Additional Protocol to the European Social Charter, and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints).

For the ratified instruments that records of parliamentary documentation were available, parts of the discussions held are laid out below. This will enable the reader to have a complete view and better grasp of the political scenery (context) of the period before consensus was reached on the ratification of a particular instrument, as well as the reasons for the final consensus. For the instruments for which no records of parliamentary documentation were available, the reasons for ratification are described based on the information obtained from the interviews that took place during the research visits to the country.[190]

To this end, it should be also noted that for all draft law(s) (statutes), or proposals for a statute that were submitted to the Hellenic Parliament for the enactment of

normal that the initiative for sanctioning is not left to the government alone' (Koukouli-Spiliotopoulou, S. (1985), pp. 140–141).

190 The list of all the interviewees is available in Appendix A.

legislation in the period prior to the so-called *Metapolitefsi*,[191] no parliamentary records of proceedings exist.

A comprehensive analysis of the overall reasons for ratification of these international instruments by Greece follows in Chapter 5.

3.3.1 THE RATIFICATION OF THE ILO SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION No. 102 (1952)

As seen above, from the so-called up-to-date ILO Conventions in the field of social security, Greece has ratified only the C102.[192] All parts of this Convention have been accepted, except Part VII on Family Benefits.[193] Since no record of parliamentary proceedings exists with regard to the ratification of this instrument, the description of the ratifying reasons is based on the information given in the open-ended interviews.

It is considered that the main reason leading to the ratification of the C102 was the fact that by the time it was adopted by the International Labour Conference (ILC), Greece had already established a social insurance system and fulfilled the requirements set out in this Convention almost in their entirety. As also stated, this is actually why ratification took place within a relatively short time period after the opening of this instrument for ratification. The ILO C102 was adopted in 1952 and its ratification took place in 1955.

Moreover, it was noted that the decision to proceed with this ratification – as with other European countries – was influenced by the general political, economic and social context prevailing globally in the period after WWII.

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191 The *Metapolitefsi* (Μεταπολίτευση), which is translated as polity or regime change, was a period in Greek history after the fall of the Greek military junta of 1967–1974, which includes the transitional period from the fall of the dictatorship to the Greek legislative elections of 1974 and the democratic period immediately after these elections. Dictatorship was established in Greece in April 1967 and democracy was restored in July 1974.

192 During the period in which the ratification of the C102 took place, Greece had a Constitutional Monarchy.

193 Information on why this part of the C102 was accepted by Greece is given in Chapter 4. No particular comments concerning the non-ratification of these Parts were made during the open-ended interviews (the list of all the interviewees is available in Appendix A).

3.3.2 THE RATIFICATION OF THE ILO MATERNITY PROTECTION CONVENTION (REVISED) No. 103 (1952)

The C103 was ratified by Greece almost 30 years after its adoption by the ILO ILC. It was adopted in 1952 and its ratification took place in 1982. As stated, the main reason for its late ratification was the need to ensure that national social insurance legislation fulfilled all the requirements set out in this instrument.[194] Be that as it may, and as seen below, opinions to the contrary were also expressed, as well as viewpoints that its ratification would have no particular value. The draft law, despite the criticism it received from the political minority, was passed unanimously in Parliament.

From the parliamentary record of proceedings, the following statements and comments have been traced, which reveal the opinions expressed in relation to the ratification of this instrument by Greece and the final consensus reached:[195]

> *Propositions/Positions of the majority*[196]
>
> 'The Governing Party had promised the Greek people before the national elections that when in power, it would take measures for the social protection of working women in the fields of welfare, maternity and social insurance. This draft law, which is to be discussed, aims to ratify ILO Convention No. 103 concerning the protection of maternity, and constitutes the delivery of this promise, particularly in the field of maternity (p. 2).'
>
> 'In order to understand what this International Labour Convention offers to working women, it is sensible to refer to the existing national status quo (p. 2).'
>
> 'A point of departure is Law No. 1912, according to which (initially) the employment of working women for eight weeks was forbidden, in total and after childbirth (p. 2).' 'The most complete protection of working women came with ILO Convention No. 3 Maternity Convention (1919) on the employment of women before and after childbirth. This Convention included in the personal scope of application all women, irrespective of age, employee or worker category, nationality, *etc*. (p. 2).'
>
> 'In practice, its application encountered several difficulties, in particular, in the section pertaining to the social provisions; meaning those related to compensation and medical care. This actually happened because its implementation was

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194 As stated during the open-ended interviews, the legislation of IKA-ETAM on maternity protection incorporated all the provisions included in this Convention (the list of all the interviewees is available in Appendix A).

195 Hellenic Parliament (1982), pp. 1–4.

196 The governing political party at that time (1982) in Greece was the Pan-Hellenic Socialist Movement (*Panellinio Sosialistikó Kínima* (PASOK)). It has always been the main centre-left political party in Greece. In 1982, it also held the majority in the Hellenic Parliament.

connected with the existence of an insurance fund. The insurance fund – Social Insurance Institute (*Idryma Koinonikon Asfaliseon*) (IKA) – was established later on. As a result, in the beginning, the ILO Convention No. 3 (1919) did not serve its intended purpose. The weird thing, though, is that since the establishment of the IKA of the IKA and to date (1982) there has been no Greek law that aims to maternity, as set out in this Convention. The protection has been restricted to women insured under the IKA and who fulfil certain obligations (p. 3).'

'The characteristics of the Convention No. 103 Maternity Convention (Revised) (1952) are as follows: (a) the personal scope of application is significantly extended beyond the women employed in industrial or commercial enterprises, and also covers women who are employed in different sectors and to women employed in agriculture. Moreover, protection is being provided to women who are not engaged in dependent employment, but who are being paid for doing work at home at the request of the employer; (b) as far as maternity leave is concerned, the minimum standard of 12 weeks is being set, from which national legislation is obliged to set the provision of at least 6 weeks after childbirth; (c) the Convention intends that maternity leave should not be only sufficient for the subsistence of the mother and the child, but it should be sufficient for a full, healthy subsistence. This is actually a different wording and formation from the text of Convention No. 103, which wants the relevant benefit to be capable of guaranteeing a truly human level of life; (d) medical and hospital care is extended; (e) a primary aim is to avoid the risk that the employers will not proceed with the employment of women; the principle of covering all the maternity (social) provisions set out in Convention No. 103 is repeated, firstly through a system of obligatory social insurance, and also through the state budget. Therefore, in this way, the employer is alleviated from such a burden, and what is more, the fact that a company employees, or decides to employee, a 50% or 70% female staff is no longer a disincentive, since this does not place a further burden on the employer, but actually the burden is subdivided within the different systems, and the employment of women ceases to be seen as a disincentive (pp. 3–4).' 'Furthermore, the right of the working mother to interrupt her work for the breastfeeding of her child is modified in a more flexible way, through the possibility provided to her by the domestic legislation, meaning that she can either have a one hour break within the day, or she can start work one hour late, or leave work one hour earlier (p. 4).' 'Finally, the prohibition of denouncing (terminating) the contract of employment during the period in which the woman is absent from her work because of childbirth is repeated (p. 4).'

'These are the main characteristics of Convention No. 103, and based on these thoughts, the passage of the relevant draft law is proposed (p. 4).'

Propositions/Positions of the minority[197]

'First of all, I would like to say that I agree with the ratification of the Convention No. 103 Maternity Convention (Revised) (1952); however, the difference being that I consider this Convention to be out-of-date (old) and in my opinion, it has nothing more to offer women from than the current national legislation (by the term 'current legislation', I also mean the legislation of 1912 and of 1919). The only thing that this Convention actually does is to simply extend the personal scope of application.'

'Consequently, I believe that this ratification has nothing substantial to offer to the working mother; at least, nothing more than what is already offered today.' 'Therefore, I suggest that the following should be taken into account: Within the Ministry of Social Affairs, an extended survey has been carried out. This survey found that this conventional law was delayed and that many other countries have not ratified it, and have developed their own national legislation to such an extent that this Convention, either ratified or not, has nothing more to offer. This survey has been completed. It was indeed and both progressive and protective on the part of the working mothers, and I believe that if you take this survey thoroughly into account, we will have to follow also this way and the ratification of this Convention to be just of a typical character, since it has nothing substantial to offer us.' 'Thus, I think that through this draft law we are simply ratifying something. This is of course important to the extent that there will be an extension of coverage to certain categories of working mothers, but at the end of the day, I frankly do not think that such a draft law covers our needs (pp. 4–5).'

In sum, from the above it is clear that the main reasons for the ratification of the C103 pertain to: the conformity of national social security legislation with the ISSS prior to ratification, the advantage and superiority ascribed to an international instrument in relation to the national social security legislation, the influence of the 'political ideology' prevailing at the time, and the existence of a strong political interest and will in relation to ratification.

3.3.3 THE RATIFICATION OF THE CoE EUROPEAN CODE OF SOCIAL SECURITY (1964)

It has been stated that the ratification of the ECSS came as a natural consequence to the ratification of the C102, since the ECSS had similar – although in certain

[197] The main opposition party at that time (1982) in Greece was New Democracy (*Néa Dimokratía* (ND)). It is the main centre-right political party in Greece and is one of the two major political parties in the country (the other being PASOK).

cases higher – standards to those included in the C102.[198] Greece, however, did not proceed with the acceptance of Part IV on Unemployment Benefits and Part VII on Family Benefits of the ECSS.[199]

From the parliamentary record of proceedings the following statements and comments have been obtained, revealing the opinions expressed regarding the ratification of the ECSS and the final consensus reached to this end:[200]

> *Propositions/Positions of the majority*[201]
>
> '… the first Greek law on social insurance(s) was Law No. 5733/11-10-1932. During the formulation of this law, the ILO Social Security Director, Mr. Tixier, and the ILO expert on social insurance mathematics, Mr. Shoebaum, were consulted. Through subsequent modifications, Law No. 6298/10-10-1934 was enacted, which established the first Administrative Board. This Board was responsible for the proper functioning of the institution of social insurance in Greece. However, the institution of social insurance was remolded by Law No. 1846/1951, which actually reformed the Greek social insurance system, based on new ideas in the aftermath of World War II, and which were, in particular, determined by the address of President Roosevelt on the 6th of January 1941 (known as the Four Freedoms speech), the Atlantic Charter and the Declaration of Philadelphia formulated by the ILO on the 10th of March 1944 (p. 2).' 'The above-mentioned international texts aimed at human release from need and want. Law No. 1846/1951 determines the general principles and gives the Administrative Board the means, through the composition of regulations approved by the competent Minister, to further define details (p. 2).'
>
> 'The social insurance system, set out in Law No. 1846/1951, is the so-called pay-as-you-go system. This means, it does not create reserves, but distributes the collected revenues (incomes). The same Law, in Article 5, attempted to merge the main social insurance funds, providing that the insurance organizations giving out smaller provisions than that of IKA would be would be incorporated into the IKA. Moreover, this Law contains a provision according to which, apart from the contributions paid into the system by the employers and the insured persons, the state is obliged to help the system, through the provision of special financial support, and this relates to the fact that the IKA not only pays the pensions of the

198 This information was given during the interviews (the list of all the interviewees is available in Appendix A). Indeed, the sets of rules in the C102 and the European Code share similarities regarding both their general principles and the terminology used.

199 Information on why these parts of the Code were not accepted by Greece is given in Chapter 4. No particular comments concerning the non-ratification of these Parts were made during the research interviews (the list of all the interviewees is available in Appendix A).

200 Hellenic Parliament (1981a), pp. 1–5.

201 The Governing political party at that time in Greece (1981) was New Democracy (*Néa Dimokratía* (ND). It also had the majority in the Hellenic Parliament. It has been the main centre-right political party in Greece, and one of the two major political parties in Greece (the other one being PASOK).

insured workers who have the right to receive them based on the work they do and the contributions they pay into the system, but also the pensions, which basically consist of social welfare provisions (i.e. pensions are paid to persons working in Egypt and Konstantinopolis (İstanbul) without any contributions having been paid by the employer and the insured persons themselves). Furthermore, through Law No. 825/1978, the position of the insured persons in the IKA has been improved since, through this Law, the provision of a full pension has been established for persons who have reached 56 years of age and have completed 35 years of actual service.' 'Therefore, the Greek legislation concerning the "protection of insured persons" stands at a much higher level than the one set in the European Code of Social Security. Consequently, we are in a position to propose the Code's ratification (pp. 2–3).'

'It should be also mentioned at this point that the European Code of Social Security, which was formed in Strasbourg on the 16th April 1964 and came into force on the 17th March 1968, has been ratified by the following States: Sweden, Norway, the Netherlands, Luxembourg, the United Kingdom, Belgium, Germany, Ireland, Denmark, Italy, Switzerland and Turkey. The European Code of Social Security has also been signed by Austria, France and Greece; while Malta, Spain, Portugal and Lichtenstein have not signed it yet (pp. 3–4).'

Propositions/Positions of the minority[202]

'Indeed, the European Code of Social Security provides for minimum standards in relation to our legislation. We are going to proceed with its ratification, because we are obliged to ratify it. However, I would like to propose to the Minister to proceed also with the ratification of the Parts IV and VII of the Code, pertaining to the unemployment and family benefits, respectively. Moreover, I would like to stress the fact that you bring before us these minimum provisions for ratification in a specific time period; namely, before the national elections (p. 4).'

'It also comes to my surprise that the draft law in relation to the European Code of Social Security is being proposed in what is a busy period for the Greek Parliament', when the European Code of Social Security was signed by Greece on the 21st of April 1977. Taking into account the essence and the substance of the European Code of Social Security, this instrument has been drawn up by the European Council in order to establish social insurance institutions in countries that have yet to introduce them. In our country, the institution of social insurance was introduced already 43 years ago, and despite its shortcomings and injustices, covers almost the 92% of the Greek population. What is more, the progressive provisions of the European Code of Social Security are those pertaining to the unemployment benefit (Part IV) and family benefit (Part VII), which are not

202 The presentation of the propositions/positions of the main opposition political party at the time (in 1981) in Greece – the Pan-Hellenic Socialist Movement (*Panellinio Sosialistikó Kínima* (PASOK)) – was made by a Special Speaker of this political party. PASOK has always been the main centre-left political party in Greece, and one of the two major political parties in the country (the other one being ND).

going to be ratified by Greece. If the standards (rules) on family benefits were to be implemented in Greece, we, as a country, would have better development and advancement in the field of social insurance(s). Therefore, I express my wish for the government to proceed to the ratification of the European Code of Social Security, even in the case that the two previously mentioned Parts are not accepted (pp. 4–5).'

Propositions/Positions of the majority[203]

'This draft law cannot be considered as a pre-election draft law, because – as the previous colleagues have commented – the standards set by the European Code of Social Security are already covered by Greek legislation. With respect to the ratification of Part IV on unemployment benefit and of Part VII on family benefit, the Ministry of Labour is responsible. In any case, though, our national legislation leaves these two social insurance domains uncovered. So, it is confirmed that the text of the European Code of Social Security was written in a period of – in a sense – fruitfulness in the economically robust countries, which are now reconsidering their decisions (i.e. Sweden and Germany). We do not participate to a lesser extent in the European Code. Moreover, states that have ratified the European Code of Social Security are already having reservations. We simply do not ratify these two pre-mentioned Parts. Our ratification is typical, because we have to harmonize our legislation with international legislation and to integrate with the countries, which have already ratified the European Code of Social Security (p. 5).'

The draft law in relation to the ECSS was prepared and brought before the Greek Social Affairs Parliamentary Committee on the 10th of February 1981. The acceptance of the draft law was unanimous, and only certain modifications, pertaining to language, were made to the text, by special linguists.[204]

In sum, and as can be seen from the previous display of the discussions held, the main reasons for the ratification of the ECSS related to: the conformity of national social security legislation with the ISSS prior to ratification, the fact that national legislation was considered to stand at a much higher level of protection than the one set in the Code, the example of other countries, the matter of national pride and international appraisal (reputation), and the existence of a strong political interest and will in relation to ratification.

[203] Response given, by the then Deputy Minister of Social Services of the governing political party, New Democracy, to the propositions/positions presented by the main opposition political party, PASOK.

[204] Hellenic Parliament (1981a), pp. 6–7; Hellenic Parliament (1981b), pp. 1–2.

3.3.4 THE RATIFICATION OF THE CoE EUROPEAN SOCIAL CHARTER (1961)

The draft law concerning the ratification of the ESC was submitted for elaboration to the competent Parliamentary Committee in October 1983. The relevant law was adopted in early 1984 (the ECSS had been ratified three years earlier). The members of the Parliamentary Committee did not debate very much on the proposal for acceptance and adoption of the relevant draft law submitted.

From the parliamentary record of proceedings, the following statements and comments have been obtained, which reveal the unanimous decision taken on the ratification of this international instrument by Greece:[205]

> *Propositions/Positions of the majority*[206]
>
> '… the government has the political will to proceed quickly with the improvement of the economic and social standards of living for all citizens, without any discrimination. One step towards such an effort is to prepare and bring before you this draft law, through which our country will proceed to the ratification of the European Social Charter. The European Social Charter holds a distinct position within the history of Western Europe as a whole, and in relation to the cooperation and the undertaking of international obligations in the social field in particular. The European Social Charter formulates and sets out' the progressive ideas of European States concerning human rights. When the European Member States composed the European Social Charter, they actually emphasized their decision to make every possible effort to improve the living standards and advance social prosperity of the urban and rural populations, through appropriate actions, believing that the enjoyment of social rights must be assured without discrimination on grounds of race, colour, gender, religion, political beliefs or social origin. The European Social Charter was signed on the 18th of October 1961, and was voted by the European Member States, among them Greece. Four years later, in 1965, it was ratified by five European States and came into force. The time has come now, also, for Greece to ratify the European Social Charter, and in this way to enhance its prestige both in the European and International spheres and to improve the social protection of the persons covered by the provisions of the Charter. I believe that this ratification will be unanimously accepted (p. 2–3).'

As a result, the ESC was unanimously accepted both in principle and by majority per article. Only certain language corrections were made in the text by special linguists. In general terms, the procedure for the ratification of the Charter was very quick.

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205 Hellenic Parliament (1983a), p. 1; Hellenic Parliament (1983b), pp. 2–3.

206 The Governing political party at that time (1984) in Greece was the Pan-Hellenic Socialist Movement (*Panellinio Sosialistikó Kínima* (PASOK)). It has always been the main centre-left political party in Greece. In 1984, it also held the majority in the Hellenic Parliament.

In sum, and from the above discussion of the main viewpoints expressed by the political majority, the reasons behind the ratification of the Code pertained to: the example of other countries, the matter of national pride and international appraisal (reputation), the influence of the prevailing 'political ideology' at the time, and the existence of a strong political interest and will in relation to ratification.

3.3.5 THE RATIFICATION OF THE CoE PROTOCOL AMENDING THE EUROPEAN SOCIAL CHARTER (1991)

The relevant draft law on the ratification of the Protocol Amending the ESC was submitted by the then Minister of Labour and Social Insurances (now Minister of Labour and Social Security) to the Standing Committee of Social Affairs for elaboration on the 30th of May 1996.

From the parliamentary record of proceedings the following statements and comments have been obtained, revealing the opinions expressed with regard to the ratification of this Additional Protocol by Greece and the final outcome:[207]

> *Propositions/Positions of the majority*[208]
>
> 'The European Social Charter is the most significant mechanism for promoting and guaranteeing social rights in all the European nations, particularly the rights of employees. It has presented a progressive route with substantial modifications, which have been included in the Protocol Amending this Charter, which was adopted on the 21st of October 1991. We are called upon today to ratify this protocol. I believe that the relevant draft law should be unanimously accepted (p. 2(436)).'
>
> *Propositions/Positions of the minority*[209]
>
> 'We have no reason not to vote in favour of this Protocol. However, I would like to ask why there has been such a delay in its submission. Specifically, the Protocol was adopted in 1991, but yet has taken five years to be made into a draft law. Moreover, I want to ask what else we have not ratified to date. What happened with regard to other instruments such as the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (1995), because here, today, we

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207 Hellenic Parliament (1996), pp. 1–7 (pp. 435–441).

208 The Governing political party at that time (1996) in Greece was the Pan-Hellenic Socialist Movement (*Panellinio Sosialistikó Kínima* (PASOK)). It has always been the main centre-left political party in Greece. In 1996, it also held the majority in the Hellenic Parliament.

209 The response given to the propositions/positions presented by the governing party, PASOK, came from a special speaker, belonging to a conservative political party called Political Spring (*Politiki Anixi*).

> are only debating the Protocol Amending the European Social Charter (1991). What happened to the Protocol on collective complaints? Have we signed it? How come and it has not been brought before us, together with the amending Protocol.' 'Finally, we are in favour of this Protocol (p. 4(438)).'
>
> *Propositions/Positions of the majority*[210]
>
> 'I believe that even with the delay, the acceptance of this Protocol enhances an effort being made by all the Member States of the Council of Europe to extend social rights in Europe'. 'Certainly, we should not stop at this ratification (p. 6(440)).'

The submitted draft law was finally passed by a majority vote. The main reasons behind the ratification of this Additional Protocol were, in principle: the example of other countries, the matter of national pride and international appraisal, the advantage and superiority ascribed to an international in relation to national legislation; the influence of the prevailing political ideology at the time, and the existence of a strong political interest and will in relation to ratification.

3.3.6 THE RATIFICATION OF THE CoE ADDITIONAL PROTOCOL TO THE EUROPEAN SOCIAL CHARTER (1988) AND OF THE ADDITIONAL PROTOCOL TO THE EUROPEAN SOCIAL CHARTER PROVIDING FOR A SYSTEM OF COLLECTIVE COMPLAINTS (1995)

The Additional Protocol to the ESC (1988) and the Additional Protocol to the ESC providing for a System of Collective Complaints (1995) were both submitted for elaboration to the Standing Committee of National Defence and Foreign Affairs on the 24th of February 1998 by the then Minister of Foreign Affairs.

From the parliamentary record of proceedings, the following statements and comments have been obtained, revealing the opinions expressed concerning the ratification of these two Protocols and the final consensus reached:[211]

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210 Response given, by the (at that time) Deputy Minister of Labour and Social Insurances of the Governing political party PASOK, to the speech made, by a member coming from the political opposition within the country.

211 Hellenic Parliament (1998a), pp. 2556–2577.

Propositions/Positions of the majority[212]

'Our Committee is called upon today to discuss and proceed to the acceptance of the Additional Protocol to the European Social Charter (1988) and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (1995). These two Protocols have as a common goal the preservation of the functioning of the European Social Charter, signed in Turin, Italy on the 18th October 1961, and sanctioned in 1984 through formal statute No. 1426. We would like to remind you that the European Social Charter was signed by members of the Council of Europe, within the framework of safeguarding human rights and fundamental freedoms, in Rome on the 4thNovember 1950, while the additional Protocol to this international instrument was signed in Paris on the 20th March 1952. The Member States of the Council of Europe agreed to guarantee the civic and political rights and freedoms of their populations, which are f set out' in the texts of these international instruments (pp. 2557–2558)'. '… the promotion and implementation of the obligations stemming from the 2nd Part of the Protocol can be achieved through legislation, or administrative actions based on collective labour agreements, or through any other suitable means.' 'The state budget is not under any pressure.' 'The text of the Protocol brings improvements concerning the preservation of social rights. The whole mechanism can be considered as remaining loose (soft) and it cannot be considered easily that retains the dynamic of the Charter of 1961 referred previously.' 'The Protocol marks a significant development for social rights, particularly those of employees, and I ask the Committee to accept it (pp. 2560–2561).'

Propositions/Positions of the minority[213]

'… the Additional Protocol to the European Social Charter (1988) and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (1995), which we are called upon today to ratify, have as a common goal the improvement of the functioning of the European Social Charter (1961) – a social contract, which opened new horizons, which pioneering legislation at the time of its adoption, and which governs, even today, the labour and social relations of the Member States (p. 2561).' 'These texts express the efforts and the agonies experienced by the Council of Europe in attempting to improve the protection of social rights in the European sphere. It is profound that labour relations are trying to enter into new ways and to find new horizons (p. 2561).'

'… despite improvements in both Protocols, the whole mechanism, in our opinion, is rather loose (soft). However, just because the mechanism is a step in the right

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212 The Governing political party at that time (1998) in Greece was the Pan-Hellenic Socialist Movement (Panellinio Sosialistikó Kínima (in Greek)) (PASOK). It has always been the main centre-left political party in Greece. In 1998, it held also the majority in the Hellenic Parliament.

213 The main opposition political party at that time (1998) in Greece was New Democracy (*Néa Dimokratía* (ND)). It is the main centre-right political party in Greece and one of the two major political parties in the country (the other one being PASOK).

direction, which is included in the European Social Charter (1961), and this direction is indeed pioneering with regard to labour relations, the involvement of Greece in such a framework constitutes actual proof of our country's interest in moving forward and giving real substance to the social rights regime in the European field. Therefore, we cannot opt out of' these initiatives. The recent measures of the Council of Europe tend towards the gradual realization of the principle of undivided character of human rights, the intrinsic nature of human rights, which reflects the Greek Constitution. We consider that the Protocol opens a new door. It is up to us whether we keep it open (p. 2563).'

Propositions/Positions of the minority[214]

'… there is one question: why did a decade pass before the Protocol was brought before the Hellenic Parliament for sanctioning? In any case, the substantial challenge within this Protocol is its credit, in the sense that the safeguarding and enhancement of these rights is being jeopardized. We stand in favour of the ratification of both Protocols (p. 2568).'

Propositions/Positions of the minority[215]

'It should be noted that there has been a significant delay in this draft law coming before us … It is out of the question not to be in favour of its ratification. We also support its passage, in order to show that we intend to move forward, and our approval and acceptance is certainly not a way to show that we are fulfilling our duty (p. 2568).'

Propositions/Positions of the majority[216]

'The Council of Europe has played a significant role in the European area, to the enhancement of human rights, and has systematically contributed to the establishment of democracy in our region. I want to remind to all of you that in 1968 the Council of Europe pointed the finger at Greece, because at the time our country was under dictatorship. As a result, Greece was excluded. Greece is shortly going to assume the Presidency of the Council of Europe, and for this exact reason we have a chance to boost the principles and directions, so that we enhance the role of this international organization in respect of the protection of human rights on the European continent (p. 2570).' 'The Protocol has been ratified by

214 Response given to the propositions/positions presented by the governing party, PASOK, by a special speaker belonging to a left-wing political party called Coalition of the Left and Progress (*Synaspismós tīs Aristerás kai tīs Proódou* (SYN)). This left-wing political party was reformed in 2004 and now exists in Greece as the left-wing party of the Coalition of the Radical Left (SYRIZA), a part of which has been also formed the left-wing part of Democratic Left (*Dimokratiki Aristera*).

215 Response given to the propositions/positions presented by the governing party (PASOK) at the time (1998) by a special speaker, belonging to a socialist left-wing political party called Democratic Social Movement (*Dimokratiko Koinoniko Kinima* (DIKKI)).

216 This response was given by the (at that time) Alternate Minister of Foreign Affairs of the governing political party (PASOK) to the propositions/positions made by speakers from the opposition.

Denmark, Finland, Italy, the Netherlands, Sweden and Norway. The Netherlands has not ratified the 4th Article of this Protocol referring to the right of elderly persons to social protection. We are going to ratify this Article and this will bring significant financial consequences to out state budget (p. 2571).' 'The difference between the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (1995) and the equivalent procedures existing in the International Labour Organization (ILO) is that in the ILO there are complaints, which mainly relate to the right to organize, while the Protocol, which we are discussing here today, goes further, and also touches upon matters of the broader employment field, social insurance and health (p. 2572).' 'In short', I want to say that we have to vote for such Protocols and international Conventions of the Council of Europe and in preparation for our Presidency of the Council of Europe and because we consider the Council of Europe to be an international organization that can play a significant role in broader Europe, in terms of stability and democratization, in particular in neighboring countries, such as Turkey, where the governments and military leadership contravenes human rights and democratic rules. Consequently, the support of this international organization will contribute to enhancing democratic institutions in the broader area of Europe and will introduce a new political stability and cooperation between nations (p. 2574).'

Propositions/Positions of the minority[217]

'… apart from what has been stated so far, I would like to remind you that with regard to the rights of the employees, working conditions, work regulations, social insurance, etc., the Conventions of the ILO also exist, which are much more comprehensive, analytical, and which were adopted in a period in which the global labour movement had different standards (p. 2574).'

Propositions/Positions of the majority[218]

'The Council of Europe mechanisms on the supervision and implementation of these treaties and protocols are much more strict and systematic than the ones employed by the ILO (p. 2576).'

The draft law was finally accepted by a majority of votes. As can be seen from the evidence of the discussions held, the main reasons for the ratification of these two Additional Protocols pertained to: the example of other countries, the matter of national pride and international appraisal, the influence of the political ideology prevailing at the time, and the existence of a strong political interest and will in relation to ratification.

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217 Response given to the propositions/positions presented by the governing party (PASOK) at the time (1998) by a special speaker, belonging to the communist party called Communist Party of Greece (*Kommounistikó Kómma Elládas* (KKE)).

218 Response given, by the then Alternate Minister of Foreign Affairs of the governing political party, PASOK, to the propositions/positions made by the speaker from the Communist Party of Greece (*Kommounistikó Kómma Elládas* (KKE)).

3.4 REASONS FOR NOT RATIFYING INTERNATIONAL SOCIAL SECURITY INSTRUMENTS

Data on the non-ratified up-to-date ILO Conventions and CoE instruments in the field of social security are generally restricted, and the little information available does not always provide for exact answers or detailed explanations of the reasons for their non-ratification. This is also the case for a number of other countries besides (i.e. Spain, Germany, France, etc.).[219]

To this end, contributes significantly the fact that the international adoption (of several) of these instruments dates back many years, or even decades. Therefore, even in the archives of the competent national Ministries, it is not always easy to locate the relevant documents, or even obtain this kind of information.[220] Sometimes, access to information may also be restricted (for instance, based on the perception of the government that information cannot be communicated to the public, since it is confidential and concerns only the relationship between the country and the international organizations).[221]

Particularly in the case of Greece, and as already mentioned, for all draft laws – or even proposals for a statute – submitted to the competent parliamentary committees for the enactment of legislation during the period before the so-called *Metapolitefsi*, no records of parliamentary proceedings are available. Nevertheless, and despite the difficulties, it was possible for Greece to gather some information on the non-ratification of specific instruments (although not for all of them),[222] and it is set out below.

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219 See, for example, Pennings, F. (ed.) (2006b), pp. 72, 129, 151 and 166.

220 Similarly, the civil servants working in the competent Ministerial departments may not always be in a position to provide concrete answers with respect to the non-ratification of certain international instruments, since such information is usually rather old (and they would also have to refer to official documents), or because they were not employed at the time the discussions were taking place.

221 For example, the Section for Relations with the ILO/International Relations Department of the Greek Ministry of Employment and Social Protection did not provide the researcher with access to the Greek reports submitted to the ILO on the ILO Conventions not ratified by Greece, or to the Greek reports on the non-ratified Parts of certain ILO Conventions in the field of social security (such as Part VII on Family Benefits of C102).

222 No specific information was found regarding the non-ratification of the Supplementary Agreement for the Application of the European Convention on Social Security (1972) of the CoE and of the Protocol to the European Convention on Social Security (1994).

3.4.1 THE NON-RATIFICATION OF THE ILO INVALIDITY, OLD-AGE AND SURVIVORS' BENEFITS CONVENTION No. 128 (1967)

In 1987, the Greek government, after receiving replies from several public sector agencies, decided not to proceed with the ratification of the C128. The reasons cited pertained mainly to economic difficulties; however, references to interpretation problems were also made.[223]

In particular, at the time, the Maritime Pension Fund (NAT) could not meet the expenses that would result from the ratification. The acquisition of (social) insurance rights not only from the seafarers/seamen who were nationals of the Member States of the then European Economic Community, but also from those who were nationals of Member Countries of the Council of Europe, would create straitened circumstances. Moreover, the application of the Convention would put a great financial burden to the IKA (at the time the fund covered more than 46% of the Greek economically active population).

Thereafter, the IKA officials who were part of the Ministry of Health, Welfare and Social Insurances Working Group remarked that several clauses in the text of the Convention were fuzzy and incoherent, causing problems in respect of their interpretation. The clauses in question were those of Articles 11, 18 and 24 of the Convention, which refer to the conditions for the provision of the social security benefits (pensions). As also stated, the IKA sent a relevant document to the ILO Bureau asking for clarification on these matters.

However, it is interesting to note that despite the government's decision the Greek General Confederation of Labour (*Geniki Synomospondia Ergaton Ellados* (GSEE)) – the most representative trade union organization in the country – was firmly in favour of the ratification of the C128.

Moreover, and more recently, in 2001 the Greek government noted that legislative reforms needed to be made before the question of the ratification of the C128 could be considered.[224]

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223 The information given below is included in Internal Ministerial Document (1987), p. 1.

224 International Labour Office (2001), p. 47.

3.4.2 THE NON-RATIFICATION OF THE ILO EMPLOYMENT INJURY BENEFITS CONVENTION No. 121 (1964)

With reference to the C121, ratification was said to be hindered because of the fact that in the Greek social security legislation no specific catalogue for occupational diseases was included. According to Article 8 this Convention: 'Each Member shall (a) prescribe a list of diseases, comprising at least the diseases enumerated in Schedule I to this Convention, which shall be regarded as occupational diseases under prescribed conditions; or (b) include in its legislation a general definition of occupational diseases broad enough to cover at least the diseases enumerated in Schedule I to this Convention; or (c) prescribe a list of diseases in conformity with clause (a), complemented by a general definition of occupational diseases or by other provisions for establishing the occupational origin of diseases not so listed or manifesting themselves under conditions different from those prescribed.'

Certain other problematic matters though were also mentioned, relating to the category of arduous and unhealthy occupations. In 2001, the government informed the ILO that 'the question of ratification of the Convention No. 121 could only be examined after national reforms had been completed.'[225]

3.4.3 THE NON-RATIFICATION OF THE ILO MATERNITY PROTECTION CONVENTION (REVISED) No. 183 (2000)

In 2001, the section of the International Relations Department of the Greek Ministry of Employment and Social Protection responsible for relations with international organizations was asked to prepare a report and give its opinion on whether the ratification of the C183 would be possible. After the completion of the assessment, it was found that Greek national social insurance legislation: (a) fulfilled the standards set out in the new Convention pertaining to the persons covered as well as the benefits to be provided (both in cash and in kind – namely, Articles 2, 4, and 5, 6, 7, and 11); and (b) was in agreement with the relevant provisions. Also, with regard to ILO Recommendation No. 191, accompanying C183, it was stated that Greek legislation was almost, in its entirety, compliant with the standards set therein, and no specific problems of applicability were present.[226]

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225 International Labour Office (2001), p. 59.
226 Internal Ministerial Document (2001), p. 1–5.

Accordingly, the Parliament, after the submission of a relevant draft law, could proceed with the ratification of this Convention for the women who were dependent salaried employees and for those who fell under the framework of informal forms of work (Article 2 of Convention No. 183). All the same, the section of the Department of Working Terms of the Ministry of Employment and Social Protection responsible for Equal Working Terms appeared to have certain objections concerning the ratification of the Convention.[227] The submission of the Convention for ratification eventually did not take place.[228]

3.4.4 THE NON-RATIFICATION OF OTHER ADOPTED UP-TO-DATE ILO CONVENTIONS IN THE FIELD OF SOCIAL SECURITY

With regard to the remaining up-to-date ILO Conventions in the field of social security (namely, the C118, the C130 and the C168), it was stated in 2001 that the Greek government would be in a position to examine the possibility of their ratification as soon as national legislative reforms of the social security system were complete.[229]

Thereafter, Greece did not move along with the ratification of the C157,[230] since the bilateral social security agreements already concluded guaranteed similar rights. In addition, it was pointed out that in the policy field relevant to this Convention, the EU Coordination Regulation No. 1408/71[231] was applicable; and that since the entry into force of this EU Coordination Regulation in the field of social security, several bilateral social security agreements had been annulled.[232] However, the Greek government informed the ILO in 2001 that Greece was 'to consider ratification of this Convention upon completion of reforms under way or to be undertaken shortly.'[233]

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227 No further information on this issue has been provided by the Ministry.

228 The non-submission of this Convention to Parliament was also confirmed by the relevant department of the Hellenic Parliament after research of its archives and databases (the list of all the interviewees is available in Appendix A).

229 International Labour Office (2001), pp. 16, 34, 68.

230 Despite the fact that social security coordination, as such, falls outside of the scope of this PhD thesis, reference is made here to the reasons cited for the non-ratification of the C157 for informative purposes.

231 This Regulation coordinates national social security legislation in order to protect the social security rights of persons moving within the European Union. Recently, it was replaced by EU Regulation No. 883/2004 on the coordination of social security systems, and its relevant implementing Regulation No. 987/2009.

232 Information obtained from the discussions with civil servants working in the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Employment and Social Protection, during the research visits to Greece (the list of all the interviewees is available in Appendix A).

233 International Labour Office (2001), p. 22.

3.4.5 THE NON-RATIFICATION OF SIGNED CoE INSTRUMENTS IN THE FIELD OF SOCIAL SECURITY

As far as the Protocol to the ECSS (1964) is concerned, it was argued that this instrument set higher standards than those that could be met by national social security legislation.[234] Thus, it was asserted that ratification was not possible. Nevertheless, it was also stated that if technical support was given to Greece, perhaps it could try to ratify certain parts of the Protocol.[235]

The same argument was given regarding the non-ratification of the Revised ECSS (1990): namely, that the Revised ECSS set much higher standards than those that could be met by the current national social security legislation. In 1993, an effort was made to promote the process of examining the possibility of ratification;[236] however, discussions on this issue have yet to take place.

With regard to the Revised ESC (1996), a specialist committee has been established, which has recently been examining the possibility of ratification by Greece.[237]

On this point, and as regards the reasons for the non-ratification of the Protocol, the Revised ECSS and the Revised ESC interesting is the standpoint expressed that in general, the last years in Greece – but actually not only in Greece – there is a tendency to reduce social security provisions (benefits). Such a phenomenon is also reflected in the changes that have been made to the national social security legislation, and it certainly does not facilitate the ratification of higher social security standards or more advanced social rights in general.[238]

Next, with regard to the European Convention on Social Security (1972), during the 1990s, the Ministry of Labour and Social Security established a Working Group, which examined the possibility of ratification. The conclusion reached was negative. The most important reason for not ratifying this Convention was

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234 Internal Ministerial Document (1993b): p. 1.

235 Information obtained from the discussions with civil servants working in the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Employment and Social Protection during the research visits to Greece (the list of all the interviewees is available in Appendix A).

236 General Secretariat of Social Security (1993), p. 3.

237 Information obtained from the discussions held with civil servants working in the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Employment and Social Protection during the research visits to Greece (the list of all the interviewees is available in Appendix A).

238 Information obtained from the discussions held with academics/lawyers, as well as with civil servants working in the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Employment and Social Protection during the research visits to Greece (the list of all the interviewees is available in Appendix A).

the persistent opposition on the part of the Ministry of Mercantile Marine to including seafarers in the personal scope of application of the Convention. Certain issues pertaining to external relations were also cited in the arguments against the ratification. Moreover, it was stated that the establishment of the European Economic Area (EEA) would extend the scope of application of the regulations relevant to the European Economic Community (EEC) to include the countries of the European Free Trade Association (EFTA).[239] Finally, it was noted that Greece had already concluded a significant number of bilateral social security agreements, and that this was actually one of the main purposes set out in the provisions of the Convention.[240]

3.4.6 OTHER OPINIONS EXPRESSED ON THE NON-RATIFICATION OF INTERNATIONAL INSTRUMENTS IN THE FIELD OF SOCIAL SECURITY

Most of the reasons discussed for the non-ratification of the previously mentioned international instruments refer to circumstances prevailing years ago. Based on more recently expressed opinions,[241] perhaps it would be possible to try to accept and ratify parts of certain international social security instruments (for example, parts of the *C128* and of the *Protocol to the ECSS*), as long as the ILO Bureau provided the proper technical support.[242]

That being said, the issue of the re-examination of ratification has not been brought up since it was first considered for each one of the instruments previously mentioned. Thus, such a *silence* implies that Greek governments have no intention or interest in future the ratification of these instruments; otherwise, any such desire would have already been expressed. It was also stated that future

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239 In General Secretariat of Social Security (1992), p. 1; General Secretariat of Social Security (1993b), p. 4.

240 Information obtained from the discussions held with civil servants working in the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Employment and Social Protection during the research visits to Greece (the list of all the interviewees is available in Appendix A).

241 Information obtained from the discussions held with civil servants working in the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Employment and Social Protection during the research visits to Greece (the list of all the interviewees is available in Appendix A).

242 The ILO Bureau provides technical support not only regarding ILO (Labour and Social Security) Conventions, but also CoE instruments, such as the ECSS (1964), the Protocol to the ECSS (1964) and the Revised ECSS (1990). It should be also noted that the technical support provided by the ILO is very important, and can indeed facilitate the process of ratification as well as the correction of cases of non-compliance with international standards. The European Union (EU) in relation to the ILO provides a different kind of support, working mainly with the employment of independent experts in each field.

ratifications are not to be anticipated.[243] Even for instruments that are modern and more flexible, ratification remains doubtful. A characteristic example is the aforementioned C183, but also the C168.

Following this, and still concerning the Greek reluctance to make future ratifications, especially of ILO social security conventions, reference should also be made to certain other, quite intriguing, opinions expressed.[244] They actually pertain to the different way in which the international social security instruments developed by the ILO and the CoE are perceived within the national context. For instance, the ESC, and in recent years, the Revised ESC, are regarded as the basic international social (security) protection instruments. They are presumed to ultra-cover in a sense even the specialized social security instruments developed both by the ILO and the CoE. The social security Conventions as well as the ECSS are perceived as being rather too technical in nature, and in several occasions referring to out-of-date circumstances'. Moreover, the ILO social security Conventions in particular are basically seen as simple international safeguards against decreases in protection levels and exclusions in personal coverage (this should be also considered in combination with the principle of the equality of treatment). Within a similar context, it has also been stated that the ratifications of the C102 and of the CoE ECSS are more than sufficient. They clearly show that the level of social (security) protection provided within the country (Greece) is extensive and the personal coverage is satisfactory. Therefore, the promotion of ratification of the remaining up-to-date ILO social security Conventions is not seen as necessary, since doing so would not bring added value, or because, simply, priority is given to the ratification of ILO Conventions mainly in the field of labour law, which is, at the end of day, the core business of the ILO.

Finally, and despite the fact that it relates indirectly to the reasons discussed for the non-ratification of international social security instruments, it has been found[245] that there is a significant lack of academic interest in the field of international social security standards. It is rare to find specialist Greek studies,

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243 Information obtained from the discussions held with academics, lawyers, independent social security experts, as well as the civil servants working in the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Employment and Social Protection, during the research visits to Greece (the list of all the interviewees is available in Appendix A).

244 The information given hereunder was obtained from discussions held with academics, lawyers, independent social security experts, trade unions, as well as the civil servants working in the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Employment and Social Protection, during the research visits to Greece (the list of all the interviewees is available in Appendix A).

245 I came to this conclusion after the completion of the necessary literature review and the completion of interviews with academics, lawyers and independent experts involved in the area of social security and social protection (the list of all the interviewees is available in Appendix A).

as well as *ad hoc* publications on the ILO and CoE social security instruments. When reference is made, it is only indirect, rather short and synoptic (without any specific elaboration of the actual content of these instruments), and involves general aspects of the relationship between international and national law. Relevant to this are statements on the subject matter of social security asserting that the Greek academic community is rather poor, and that there is no form of academic lobby in this policy field – not to say in the field of international social security law.

3.5 THE ROLE OF RATIFIED INTERNATIONAL SOCIAL SECURITY INSTRUMENTS IN GREEK LAW AND POLICY-MAKING PROCESSES

The ratification of international (legal) instruments is considered to have an important impact on the national legislation process,[246] since when new laws are passed, or similarly, modifications to national social security legislation are being made, experts in the competent national Ministries are called upon to check the compliance of new rules with the ratified ILO and CoE instruments. This way, potential contradictions, or occurring problems can be discussed with the international independent experts of the ILO, or the CoE, respectively.[247]

It is interesting therefore, before forming any opinion regarding the actual role of the ratified international social security (legal) instruments in the Greek social security law-making process, and by extension, in the Greek policy-making process, to share findings – and where appropriate, to comment on them – from two different sources: (a) the views expressed by the people working for the Greek administration (civil servants); (b) the (available) relevant Greek documentation giving a record of how social security law and policy-making has evolved. Some tentative remarks on the role of these instruments – and the international social security standards set therein – in Greek social security law and policy-making will then be made.

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246 See also Korda, M. and Pennings, F. (2008), p. 141.

247 See Nickless, J. (2002), p. 23. See also Article 74 of the ECSS; Article 74 of the Protocol to the ECSS; Article 79 of the Revised ECSS. With respect to the ILO Conventions, in Article 19§5(d) of the ILO Constitution, which refers to the obligations arising out of ratification, it is stated that the Member State 'will take such action as may be necessary to make effective the provisions' of the ratified Convention. This means that the Member State has to make sure that the ratified Convention is being implemented in practice, as well as that the Member State will give effect to these provisions in national law. Moreover, it derives from Article 22 of the ILO Constitution that Member States should inform the competent supervisory bodies of any changes to national legislation, or any other changes which may affect the application of the ratified Convention.

3.5.1 ONE SIDE OF THE COIN[248]

In Greece, civil servants follow the international supervisory procedure(s) and submit the required national reports at regular intervals. There have been cases, however, of the submission of the requested national reports being delayed (as stated, this may have been due to different circumstances such as the need to collect required information from other public services, the completion of certain (internal) administrative procedures, etc). However, it was noted that this is not a common phenomenon, as such (particularly in relation to the ratified CoE instruments). Hence, the experts working for the international organizations are able to examine the fulfilment of the legal obligations stemming from ratification and to submit relevant observations if considered necessary.

With regard to situations in which new national laws are to be introduced, or alterations to national legislation are about to be made, it has been stated that the competent ministerial departments[249] do take into account the international social security standards set out in the ratified ILO C102 and the CoE European Code. It has been acknowledged, though, that there have been cases in which even when compatibility with the international social security standards was checked in advance, certain problems occurred (usually this has been due to negligence, or a failure to properly examination the relevant provisions).

By way of illustration, it was stated at the beginning of the 1990s, when Law No. 2084/1992 – 'Social Insurance Reformation and other provisions' – was passed, that prior examination of the compliance of its provisions with the accepted ISSS took place. It emerged, however, that prior examination was not properly completed, and only after observations made by the competent international supervisory committees on incompatibility (there were indeed a lot of legislative changes to that Law) did the government take a thorough look, and try, gradually, to bring domestic law into line with the ratified ISSS. For example, survivors' benefits, as well as the old-age benefits, were under the limits (standards) set in the ECSS. No readjustment of benefits had been foreseen, and if left as such the result would be that the amount of pensions would be lower than that envisaged in the ECSS. The government finally proceeded with the readjustment.[250]

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248 The composition of this section is based mainly on the information taken from the discussions held with civil servants working in the Section for Relations with International Organizations/ General Secretariat of Social Security and in the Section for Relations with the ILO/ International Relations Department of the Ministry of Employment and Social Protection during the research visits to Greece (the list of all the interviewees is available in Appendix A).

249 The Section for Relations with the ILO/International Relations Department of the Ministry of Employment and Social Protection and the Section for Relations with International Organizations/General Secretariat of Social Security of the same Ministry.

250 On that occasion, the supplementary/auxiliary pensions were also taken into account.

Consequently, the general perception, based on the previous description, is that the compatibility of new social security legislative arrangements with the provisions included in the ratified international social security legal instruments – involving minimum international norms – is checked beforehand. Thus, the minimum ISSS play a substantial role in lawmaking in Greece, and the government ensures that they are applied properly.

All the same, it is interesting to note, in this respect, the following cases (the first dates back to the beginning of the 1990s, and actually precedes the aforementioned one; the second developed in mid-2008), from which it is clear that the ISSS do not always play a role in national lawmaking, and that the government does not always remedy incompliance, particularly in years.

In particular, when Law No. 1902/1990 – 'Arrangement of pensions and other relevant matters' – was passed (this Law was the forerunner of the above-mentioned Law No. 2084/1992), according to Greek civil servants, the examination of the compatibility of the provisions of this law with the accepted ISSS was carried out in advance. Once again, however, it emerged (and despite the prior examination) that incompatibility existed with certain standards and international observations in relation both to the ECSS and the C102 were made. In this case however, and to date, the problems found are yet to be settled by the government. Discussions are still taking place in an attempt to reach a compromise between the Greek Ministry and both the ILO and the CoE.[251]

The more recent case, which actually shows that the accepted ISSS have not been taken into account at all in national lawmaking, pertains to the introduction of Law No. 3655/2008 – 'Administrative and Organizational Reformation of the Social Insurance System and other insurance provisions'. For this Law – and despite the fact that it could be argued that it did not involve arrangements bringing changes to the minimum social insurance protection provided in Greece[252] – no prior examination of the ISSS was completed. The main argument out forward in this respect was the fact that this law was submitted to the Hellenic Parliament with an urgent status (however, most Greek laws on social security matters – of not all – are submitted (particularly in the last decade) to the Hellenic Parliament with an urgent status).

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251 Detailed discussion on this issue follows in Chapter 4.

252 Through Law No. 3655/2008, certain legislative changes were brought about, which do affect the preservation of the international minimum social insurance requirements in Greece, and pertain to the ECSS and the C102. The same goes for certain provisions included in the latest Law No. 3863/2010. Detailed discussion of these issues follows in Chapters 4 and 5, respectively.

3.5.2 THE OTHER SIDE OF THE COIN[253]

When the Greek government intends to reform the social security system through the passage of a new law, or intends to modify the existing social security legislative framework, before the preparation of any draft law and before submitting any draft law to the Parliament, the competent Minister usually proposes a series of issues for social dialogue. To this end, and through Ministerial Decision, a so-called *Committee of Experts* is formed, composed of independent experts on different areas of the social security system, representatives of the social partners, as well as of the political leadership of the Ministry, in order to openly discuss the issues raised. Thereafter, the Committee submits its observations and findings and its conclusions and proposals in the form of a report, to the Ministry. The Ministry will then begin drafting the law.

Since these Committees examine of the state of the social security system and the issues on the agenda, it would be logical for one to assume that during their deliberations, reference is made to the ratified international social security legal instruments, and their provisions. In other words, one would expect the Committees to draw it to the attention of the government if the new changes, modifications, or amendments may affect the principles envisaged under international social security law, as well as the compatibility with the ratified ISSS. Moreover, even if the issues under discussion are not considered to directly involve aspects of the ISSS, one would think that at least reference to the existence of these standards would be made.

Over the years, and in particular from 1990 to date,[254] a considerable number of such reports have been submitted to the Ministry. This correlates with the fact that during this time period, several new laws have been introduced concerning the reformation of the Greek social insurance system (either involving administrative and functional aspects of the system, or legislative arrangements, or both). Nevertheless, and from the study of a fair sample of these reports,[255] it appears that no reference has been made to provisions included in the international social security legal instruments ratified by Greece. Actually, no reference at all to the

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253 The information given in this section is based on the in-depth study of the following Greek documentation from 1990-2010: Reports prepared by Greek Committees of Experts, introductory reports to draft laws submitted to the Greek Parliament for the enactment of legislation, and records of parliamentary proceedings.

254 As stated in Chapter 1, the research period involves the period from 1990 to 2010.

255 The following reports have been studied: Greek Committee of Experts (1990), pp. 1–13; Greek Committee of Experts (1992), pp. 1–93; Greek Committee of Experts (1994), pp. 1–65; Greek Committee of Experts (1997), pp. i–xxxvii and pp. 1–120; Greek Committee of Experts (1998), pp. 1–167; Greek Committee of Experts (2007), pp. 1–12. The following reports/proposals have also been studied: Petroulas, P., Robolis, S. and Roupakiotis, C. (1992), p. 14; Ministry of Labour and Social Insurances (2001), pp. 1–43.

instruments as such has been made, or to the basic principles set out therein. This is quite strange, since there have been certain matters, or aspects of them, which either directly, or indirectly, pertained to the ISSS, for example:, increases in the amount of contributions to be paid, the issue of benefit readjustment and methods for their readjustment, pension freezing, mergers of social insurance funds, the absence of actuarial studies and the necessity for the conduction of actuarial studies, proposals for increasing the general pensionable age, proposals for the possibility of introducing funding elements into the system, benefit replacement rates, the possibility of following more active policies, proposals for the re-examination of the institution of arduous and unhealthy occupations, concerns regarding the provision of invalidity benefits and the respective percentages of invalidity, etc. Moreover, although the international supervisory Committees of the ILO and the CoE had sent the country observations and requests concerning the remedy of incompliance found between the Law No. 1902/1990 and certain minimum international social security standards, no discussions took place in this respect. On the contrary, very often references were made to the EU legislation, to paradigm and practices followed in other European countries and their situations, as well as to the policy and findings of the OECD.

The only exception has been the report composed by the Committee of Experts in 2010 on the request of the Minister, before proceeding with the formulation of the draft law on the 'New Insurance System and relevant provisions – arrangements on labour relations', which was passed in the Hellenic Parliament in July 2010, and became the Law No. 3863/2010.

In this report, explicit and implicit references were made to the international social security legal instruments ratified by Greece and their provisions. In particular:[256]

> '…the reform of the pension system cannot proceed unless our priorities and targets are clear; the targets of the pension system are not placed outside the regulatory framework, but are connected with fundamental consent, as they have been written down in the Constitution and impressed within the international obligations of our country (International Labour Conventions, European Social Charter, European Code of Social Security, Charter of Fundamental Rights) (p. 8–9).'
>
> 'The role of guarantor that the state has undertaken is a direct consequence of the public character of social insurance'; state power is the guarantor of the existence (foundation) of the pension system; therefore, the state has the main responsibility for making up the deficits of the insurance funds (p. 10).'

[256] The statements reproduced hereunder are included in: Greek Committee of Experts (2010), pp. 8–10, 13, 15–16, 20, 23, 27–28, 84–85, 94.

'The compulsory character of social insurance is intertwined with the statutory nature of the institution of social insurance; at the same time, the compulsory character of social insurance is directly related to social solidarity (p.10).'

'The legislative mechanism must allow for the preservation of the purchasing power of pensions; besides, the obligation of the proper readjustment of benefits stems from ILO Convention No. 102 (Article 66§8), as well as from the European Code of Social Security (Article 65§1) (p. 13).'

'Among the t objectives of our pension system is the preservation and restoration – in the case of disturbance – of its sustainability, meaning, the long-term maintenance of the ability of the system to provide the pensions for current and future beneficiaries (p. 15).'

'The sustainability of the system becomes a problem from the moment a deficient pension system is maintained, without any effort being made to find additional resources, or safeguard expenditure; returning back to the economic sustainability does not relate to any specific way of counterbalancing the choice of specific measures is actually a political matter; however, any such choice should be made within the regulatory framework of the Constitution and the International Conventions (p. 16).'

'When the state does not fulfill its obligations in respect of the pension system, it actually undermines any effort to reform the system as such (p. 20).'

'Before any discussion takes place on the future of the social insurance system, the conduction of actuarial studies per fund – as well as per branch – must take place and should be completed in advance, in order for possible problems with regards to the provision of the benefits to be detected; the findings of these actuarial studies should precede, and should constitute the point of departure of, any scientific, or social dialogue on the future of the social insurance system, and should not follow the scientific or social dialogue, as well as the relevant dispositions/intentions expressed (p. 23).'

'The National Actuarial Authority should be further supported so as to properly fulfill its function and purpose of establishment (p. 27).'

'The conduction of actuarial studies must take place on an annual basis, and must, in any case, precede any modification of the national social insurance legislation (p. 28).'

'The state does not have to guarantee a specific level of provision, or a specific system of readjustment of benefits, but the state has to guarantee that the provisions/benefits will not be less than, or inferior to, the ones guaranteed under ILO Convention No. 102 (p. 94).'

'In relation to occupational diseases, we need to highlight the need to incorporate the European catalogue of occupational diseases into our national legislation, taking into account European Commission Recommendation 2003/670/EC, as

> well as ILO Recommendation No. 194 – List of Occupational Diseases (2002). The old-fashioned and particularly confined list of occupational diseases, which is included in Article 40 of the Insurance Regulation, does not cover current and emerging occupational diseases or the special circumstances of their appearance. Moreover, this list, indubitably, does not create an incentive to communicate and declare the disease; that is why in our country, cases involving the provision of invalidity pensions, where the invalidity has been caused by an occupational disease, are very limited (p. 84–85).'

Just the same, it is worth noting that in all the reports – including the 2010 report previously mentioned – no reference has been made to Greece's obligation to restore compliance between the national Law No. 1902/1990 and the provisions included in theC102 and the ECSS. This fact becomes even more intriguing when one takes into account the fact that there have been points in certain reports[257] where the issue of re-examining the legislative arrangements introduced in the period 1990-1993 by certain laws has been raised. To this end, it should be noted here that the latest Greek Committee of Experts (2010) even engaged with the issue of re-examining the system of invalidity pension provision as a whole and referred, among others, to the social risk of invalidity in its report: 'we need to pinpoint that in the case of retirement due to the existence of 50% invalidity, the given amount of pension is particularly low, and no one can claim that they actually restore replacement of the lost income based on the verification of social risk of invalidity.'[258] Likewise, no comments have been made on the issue of increasing the minimum qualifying conditions for access to medical care and provision of the sickness benefit introduced by the Law No. 3655/2008.[259]

Further, and in similar terms, from the study of a representative sample of the so-called introductory or explanatory reports that accompany the submission of a draft law to Parliament for the enactment of legislation, no reference to the international social security legal instruments and their respective provisions ratified by Greece has been found.[260]

Last, but not least, attention should be paid to Greek parliamentary documentation. Based on the study of records of proceedings, from meetings

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257 Greek Committee of Experts (1994), pp. 5, 7, 22–23; Greek Committee of Experts (2010), pp. 83–84; Petroulas, P., Robolis, S. and Roupakiotis, C. (1992), p. 14; Ministry of Labour and Social Insurances (2001), p. 3.

258 Greek Committee of Experts (2010), p. 84.

259 Detailed discussion of this issue follows in Chapter 4.

260 The following introductory/explanatory reports have been studied: Ministry of Health, Welfare and Social Insurances (1992), pp. 1–26; Ministry of Labor and Social Insurance (1998), pp. 1–29; Ministry of Labour and Social Insurances (2002), pp. 1–29; Ministry of Employment and Social Protection (2008a), pp. 1–127; Ministry of Labor and Social Insurance (2010), pp. 1–34.

of the relevant parliamentary standing committees for the period from 1990 to 2008, no reference was made to the need to restore issues of incompliance with certain ratified ISSS, or to the international social security legal instruments in general and their respective provisions ratified by Greece, although there were, once again, quite a few opportunities to do so.[261]

For example: discussions on the general principles of the social insurance system; observations on the absence of actuarial studies and the need to establish the obligation for actuarial studies to be conducted before the passage of any draft law; matters of financial sustainability of the system; the need to restrict the provision of invalidity pensions, or to control the number of the invalidity pensions granted; the abolition of the method of automatic readjustment to the cost of living indexation and discussions on the methods of benefit readjustment; minimum levels of pensions; contribution increments; benefit replacement rates; issues on the modification of pensionable ages and early retirement; tripartite financing and other aspects pertaining to the financing of the system; increases in the minimum requirements for access to medical care and the provision of the sickness benefit; pensioner employment; the provision of medical services pertaining to preventive services, etc.

Moreover, the following observation is noteworthy. Within the records of proceedings of the draft law on the 'New Insurance System and relevant provisions – arrangements on labour relations',[262] which was passed in the Greek Parliament in July 2010 and became Law No. 3863/2010, one can notice several remarks and discussions between the members of the parliamentary standing committee on comments made by the ILO Committee on the Freedom of Association on a decision taken by this Committee back in 2003 regarding certain international provisions included in ILO Convention No. 98 'Right to Organize and Collective Bargaining (1949)', as well as ILO Convention No. 157 'Collective Bargaining (1981)' (both ratified by Greece) and the obligation of Greece on respecting and

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261 The following parliamentary documentation has been studied: Hellenic Parliament (1990a), pp. 1–93 (pp. 1121–1213); Hellenic Parliament (1990b), pp. 1–92 (pp. 1214–2005); Hellenic Parliament (1990c), pp. 1–113 (pp. 2006–2118); Hellenic Parliament (1990d), pp. 1–11 (pp. 1111–1120); Hellenic Parliament (1992a), pp. 1–20 (pp. 3933–3952); Hellenic Parliament (1992b), pp. 1–86 (pp. 3953–4038); Hellenic Parliament (1992c), pp. 1–68 (pp. 4039–4111); Hellenic Parliament (1998b), pp. 1–73 (pp. 4223–4295); Hellenic Parliament (1998c), pp. 1–57 (pp. 4314–4373); Hellenic Parliament (1998d), pp. 1–65 (pp. 4374–4438); Hellenic Parliament (1998e), pp. 1–40 (pp. 4439–4478); Hellenic Parliament (2002a), pp. 1–42 (pp. 5007–5048); Hellenic Parliament (2002b), pp. 1–66 (pp. 5049–5114); Hellenic Parliament (2002c), pp. 1–73 (pp. 5139–5211); Hellenic Parliament (2002d), pp. 1–69 (pp. 5212–5280); Hellenic Parliament (2002e), pp. 1–27 (pp. 5281–5308); Hellenic Parliament (2008a), pp. 1–59; Hellenic Parliament (2008b), pp. 1–59; Hellenic Parliament (2008c), pp. 1–92; Hellenic Parliament (2008d), pp. 1–56; Hellenic Parliament (2008e), pp. 1–57; Hellenic Parliament (2008f), pp. 1–56.

262 Hellenic Parliament (2010b); Hellenic Parliament (2010c); Hellenic Parliament (2010d); Hellenic Parliament (2010e); Hellenic Parliament (2010f).

fulfilling international obligations. What is more, in relation to issues involving labour relations, the role and contribution of the ILO was particularly endorsed by the members of the parliamentary standing committee.

On the contrary, no particular discussions took place, or remarks were made, on the role and utility of the ISSS, despite the fact that there were issues on which reference to these standards could have been made, and discussions could have taken place. For example: the conduction of actuarial studies; the freezing of pensions; benefit replacement rates; the role of the state as the final guarantor of pension provision (both main and auxiliary pensions); level of the introduced basic pension; reconsideration of the status of invalidity pensions; increases in the average pensionable age; readjustment of pensions; extension of the personal scope of application of the IKA-ETAM; arduous and unhealthy occupations; pensioner employment; increase in the years required for the provision of a full pension.

Only one particular reference to the C102 has been found, according to which the government was asked to pay attention to the preservation of the principle of social solidarity, which was considered to have been infringed by the new structure of the pension system.

Furthermore, just like with the Greek Committees of Experts reports, in the parliamentary documentation no reference to the country's obligation to restore compliance between national Law No. 1902/1990 and provisions included in the C102 and the ECSS has been found (not even within the record of proceedings concerning Law No. 2084/1992 'Social Insurance Reformation and other provisions', which followed immediately Law No. 1902/1990 'Arrangement of pensions and other relevant matters'). However, references to EU legislation and the example of other countries are present.

In addition, certain common characteristics relating to the submission of draft laws to the Hellenic Parliament and their passage involve the speed with which the Parliamentary legislative work is completed, as well as the absence – in most cases – of substantive dialogue between the members of the standing committees and the constraint of the biggest part of the discussions on critics of political choices of the leading political party.

3.5.3 SOME TENTATIVE REMARKS

It is true that a government is not legally obliged to check the compatibility of new laws or legislative modifications with the ratified ISSS in advance – in other words, before a new draft law has been enacted or legislative modifications have

been introduced. However, the government has the legal obligation – as soon as a new law has been passed and changes to the existing legislative framework have been completed – to fully inform the competent international supervisory bodies of the changes to national law and regulations, how actual effect is given to the provisions covered by ratification, and it must provide evidence of compliance and show how the accepted international provisions are implemented in practice, etc. This is done through the submission of national reports prepared by civil servants on behalf of the Ministry on the application of the ratified ILO and CoE social security instruments.

Ergo, it is a much better idea for a government to check beforehand whether the provisions of draft laws and any proposed legislative changes uphold the ISSS to which the country has committed itself through ratification, than to have to rectify the situation later in order to fulfil its international obligations if law and practice are found not to give full effect to the nationally accepted international provisions. Thus, it could be said that not procuring on time for observing the rules is a risk that a government wishes to take.

In this respect, the following can be observed: at the end of the day, the examination of the compatibility of new laws being developed and any other changes with the ratified instruments, their provisions and principles relies on the will of each government. Consequently, whether or not the role the ISSS play in national lawmaking will be a decisive one, ultimately depends on this governmental will and the general political intentions of the government.

To clarify, the following possibilities exist: (a) when, through Ministerial decision, the Committee of Experts at a national level is called upon to examine and elaborate on the social security issues raised by the Minister, this Committee may take (by itself) the ISSS into account and make either direct or indirect references to them, or it may not. It actually depends, to a significant extent, on the composition of this Committee, as well as the knowledge and expertise its members have, whether reference to the ISSS is made. The feature of the discussion matters, though, may also affect the reference to international social security standards. Be that as it may, even in the case that the Greek Committee of Experts does not refer to the ISSS, the government – through the competent Minister – may request special attention to be paid by the Committee to the ISSS,. Even if the issues under discussion do not affect the standards, the Minister could ask the Committee to confirm this; (b) if the Committee has taken into account the ISSS by itself and relevant comments/remarks have been made, it is, once again, up to the government whether the ISSS will be thoroughly taken into account. That is why governmental political will is considered to be a determining factor in the role that the ISSS will eventually play in national lawmaking.

Be that as it may, one could say that the governmental will may be affected by the behavior of other actors towards the ISSS. Put differently, if the members of the national Committee of Experts, the members of the parliamentary standing committees working on the submission of a draft law to the Parliament, and also the civil servants working in the Ministry and preparing the national reports on the application of the standards, were more active in drawing the attention of the government to the ISSS, governmental will might change. Nevertheless, as described earlier, this does not seem to be the case in Greece.

Overall, it could be said that the role ratified international social security legal instruments and their respective provisions have played so far in Greek lawmaking varies from fluctuant (at the beginning of the 1990s) to absent (at the end of 2010), while governmental will affects significantly the role of the ISSS. So far, over the years there have been not so many cases of clear incompliance,[263] but it has been shown that in most cases the standards are not taken thoroughly into account in advance. Even if they are taken into account in advance, there have been cases that incompatibilities have occurred, which were either settled after a certain time period or not settled at all, and still a compromise is expected to be found between the country and the international organizations.

Last, and relating to the role ratified international social security legal instruments and their respective provisions play in Greek policy-making processes, it is asserted that no particular interest has been shown in them. As it has also been stated,[264] their influence at a policy level is very restricted, if not to say marginal. To this end, one could say that this is linked with the fact that the ratified international social security instruments merely involve legal matters, and not policy-making within a country – which is not actually true, since usually policy decisions need to have legal foundations. But still, even if such reasoning is to be accepted, then the ILO Recommendations are involved', as well as other ILO and CoE social security instruments, which although not ratified, can serve as guidelines steering national policy and action, just like the Recommendations. Recommendations, although not legally binding, very commonly accompany adopted Conventions and provide indications on how a country could improve its level of social protection; in many cases, the compilation of certain Conventions is based on them. However, both Recommendations and non-ratified international social security instruments do not affect policy-making in Greece.

263 Detailed discussion of this issue follows in Chapter 4.

264 Information obtained from discussions held with academics, lawyers, independent social security experts, as well as the civil servants working in the Directorate for Social Policy of the Greek Ministry of Economy and Finance (the list of all the interviewees is available in Appendix A).

3.6 THE ATTITUDE OF TRADE UNIONS TOWARDS THE INTERNATIONAL SOCIAL SECURITY STANDARDS[265]

The main trade union organization in Greece[266] is the Greek General Confederation of Labour *(Geniki Synomospondia Ergaton Ellados)* (GSEE). Established in 1918, it co-ordinates the activities of its members and 'represents, *vis-à-vis* the government and the employers, the bulk of workers in the private sector of the economy, and in the broader public sector',[267] both at a national and at an international level. Among the primary goals of this Confederation, is to safeguard workers' social security rights.

Despite the fact that domestically, and with respect to social security matters, GSEE in general terms does not seem to let the grass grow under its feet (in the sense that it is rather active in trying to represent workers' rights, usually keeps track of developments, expresses opinions, interferes and tries to exert influence on the content and distributive outcome of social security reforms),[268] when it comes to issues pertaining to the ISSS, it does not get involved so much.

This is actually quite intriguing, since the Confederation is well aware of the tasks to be undertaken with regard to these standards, and – as is clear from its Charter (Statutes) – among the basic principles and aims of the Confederation is the promotion of international standards.[269] Moreover, as stated, a standing and pursuant demand of GSEE is the sanctioning and ratification of international

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265 For the composition of this section, information obtained from discussions held with persons working in the Legal Section of the General Greek Confederation of Labour (GSEE) and the Scientific Councilor of the Labour Institute INE/GSEE-ADEDY, during research visits to Greece, have been used (the list of all the interviewees is available in Appendix A). The overall observations and remarks given are based on my work and appraisal of the Greek trade unions attitude towards the ratified international social security standards.

266 'Union structure in Greece is somewhat peculiar in that two non-rival peak-level confederations coexist. The demarcation lines are categorical: civil servants and other tenured public sector workers belong to the Confederation of Civil Servants' Trade Union ADEDY; other wage earners are covered by the Greek General Confederation of Labour GSEE. Recently, both confederations have passed resolutions in favor of a future merger. However, so far little progress has been made in this respect, except for the creation of the Labour Institute (INE-GSEE-ADEDY) as a common resource to support policy and promote research', in Matsaganis, M. (2007), p. 541. For the purpose of this thesis, and since in the ILO International Labour Conference (ILC) Employers' and Workers' delegates are nominated in agreement with the most representative national organizations of employers and workers, attention is centered on GSEE, which is considered the foremost representative workers' organization in Greece.

267 In public utilities corporations, banks, etc. See GSEE (2007), p. 5.

268 Opinions to the contrary, though, exist in international literature, supporting the view that Greek social partners in general are not so much energetic in serving their aim of existence. For example, it has been noted that social partners share their own responsibility for national stagnation and divergence. See in: Venieris, D. (2003b), pp. 143–144.

269 In Article 3(10) of the memorandum explicit reference is made to the basic principles included in the: Declaration of Philadelphia (1944); the Atlantic Charter (1941); the European Social

labour and social security instruments, and of international treaties in general. However, no substantial effort has been made to this end.

More precisely, in the last two decades no explicit action has been taken on the part of GSEE to press the Greek government either to settle standing issues of incompliance with certain nationally accepted ISSS, or to ask for the sanctioning and ratification of new instruments in the field of social security, which have so far not been accepted, and may, could or should have been accepted.

For example since 1992, both the ILO CEACR and the Committee of Ministers have repeatedly asked the Greek government to abide by the standards set in Article 36§2 of the C102 and of the ECSS – Part VI on Employment Injury Benefit – and to re-establish in Greek legislation the right to long-term benefit at a reduced rate for victims of employment injury with incapacity of less than 50%.[270] However, the Confederation has not expressed any interest on this issue for quite some time (almost 18 years now), and has not sent any annotations or commentaries to the competent Minister(s) on the issue, as would normally be the case.

Intriguing, in this respect also, is the situation described hereunder Based on discussions that took place in the legal service of GSEE, it was stated that the Confederation had no idea of the issue of incompliance. Moreover, the general impression given was that even if the Confederation was aware of the situation, it would not press the government to remedy the situation simply because such an act would have financial implications and would, eventually, burden the citizens of the country (be it in one way or another). This alleged unawareness of the Confederation regarding the long-standing issue of incompliance, was rebutted by the information given in the Section for Relations with International Organizations/General Secretariat for Social Security of the Greek Employment and Social Protection Ministry. According to this Ministerial Section, several requests were made to GSEE in order to take action and press the government so that the matter could be resolved; something, which did not happen.

Actually, back in 1992, in a report by certain scientific members of GSEE submitted to the government within the framework of social dialogue on the reformation of the Greek social insurance system, the Confederation proposed the introduction of following legal arrangements: ‘ the provision of full pension to persons with invalidity of 67% or more, the provision of ¾ of the full pension to persons with invalidity between 50–66%, and the provision of a readjustment

Charter (1961), etc. See: GSEE (*s.d.*), "Statute" (in Greek), in: http://www.gsee.gr/userfiles/file/KATASTATIKO/katastatiko_gsee.pdf (last visit: 21/10/2008), p. 3.

270 Further in-depth discussion of this issue follows in Chapter 4.

benefit to those persons with invalidity of a lesser extent.'[271] Nevertheless, and from this proposal, no reference was made to the issue of incompliance with the ISSS, or to the government's obligation to fulfil its international obligations, although such references were possible.

Additionally, within the ILC this issue was not brought up – actually in the meetings of the relevant Committee on the Application of Standards. Maybe this has to do with the fact that both the government and the Confederation (this is the case for most countries) do not want to come into conflict during an ILC, unless there it concerns a matter of utmost importance. Usually such discussions, if they are to take place, will take place beforehand (domestically).

This becomes even more interesting if one takes into account the fact that the government sends copies of all reports on the application of ratified ILO Conventions to the Confederation. Even if it is argued that the government does not fulfil the obligation of consulting the representatives of employers' and workers' organizations on questions arising from the reports to be made on ratified Conventions,[272] the Confederation can see in the submitted reports the answers given by the government to questions sent by the international bodies, and can get involved itself by starting an investigation on the issues, and based on the replies given by the government each time. This way it could actually make (real) use of the right attributed to it, however, this, once again, does not seem to have happened.

To this end, it is worth mentioning that through such indifference, citizens are also unaware of the incompliance of Greek social security law with the international standards accepted by the country , which, at the end of the day (and in this specific case), involves their right to receive benefits and their right to minimum social security protection. The only way for citizens to become informed is through their representatives.

Further, in the reports prepared every year by the Labour Institute INE-GSEE-ADEDY,[273] no reference to the above-mentioned issue of incompliance could be found. Likewise, no particular reference to the existence and utility of the ISSS in general has been made, or to the relationship that they may have had with other national legislative modifications or changes. Only certain remarks have been made – and occasionally – about the fact that (according to the Labour Institute)

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271 See Petroulas, P., Robolis, S. and Roupakiotis, C. (1992), p. 14.

272 Article 5§1(d) of the ILO Convention No. 144 on Tripartite Consultation (International Labour Standards) (1976).

273 As already mentioned above, this Labour Institute is a common resource of the two main trade union confederations in Greece: the GSEE and the Confederation of Civil Servants' Trade Union (ADEDY). It was established to support policy and promote research.

the government has concentrated too much on the views and recommendations put forward by the European Commission and the other EU organs over the years, while corresponding initiatives and views of the ILO Bureau have been neglected. Be that as it may, references to the ILO are limited to the presentation of its overall action and aims in the social protection field, and not explicitly linked to the ISSS, the purpose they come to serve, as well as the international obligations stemming from the acceptance of these standards by the Greek state.[274] What is more, in its annual report of 2008, the Labour Institute noted that the ILO, in recent years, seems also to have retreated from its traditional standpoint on social security and to have gradually adhered – even not to an absolute degree – to the conceptual approaches of the World Bank (WB), the Internationally Monetary Fund (IMF) and the OECD in relation to social security.[275]

Thereafter, with regard to the non-ratified ILO social security Conventions, and particularly those whose ratification is still promoted by the ILO in the field of social security,[276] once again no interest has been shown in trying to persuade the government to proceed with their ratification (or parts of them) where this would be possible, or desirable. Annotations or commentaries have not been sent to the competent Minister(s) in this respect either. Even in cases that in the past the Confederation had supported ratification (such as that ofC128),[277] the matter has not been brought up again. This means that even at a later stage, the Confederation did not take it upon itself to examine whether this Convention (or parts of it) could be ratified, and to come up with a suggestion for the government. It could have also advised the government to ask for technical support from the ILO if it considered ratification to be possible. The same goes with more recent ILO instruments, such as the C183.

In similar terms, the following contradiction is also worth looking at. It has been stated that when modifications or reforms are going to take place, or draft laws are to be introduced or submitted, conformity with the ISSS will be usually examined by the Confederation. Still, most emphasis will be placed on these instruments when a decrease or. or abatement in the social security rights is observed. Just the same, in the records of proceedings of the parliamentary standing committees, during the discussions that have taken place (the Confederation is, most of the time, if not always, invited to express its opinion on draft laws submitted to Parliament for the enactment of legislation), no comments or remarks have been made concerning the ISSS. Maybe separate annotations or commentaries have

274 Labour Institute INE-GSEE-ADEDY (2004), pp. 281–308; Labour Institute INE-GSEE-ADEDY (2007), pp. 341–363; Labour Institute INE-GSEE-ADEDY (2009), pp. 323–348.
275 Labour Institute INE-GSEE-ADEDY (2008), pp. 333–358.
276 For example, Conventions Nos.: 121, 130, 183, 168, etc.
277 Internal Ministerial Document (1987), p. 1.

been sent to the Ministry asking for attention to be paid to the ISSS; however, this does not seem to be the case.[278]

On the contrary, the trade union movement in general places much more emphasis on matters relating to their core business – the right to organize, collective bargaining, freedom of association[279] – and it appears that on matters pertaining to labour standards, activation is much more profound, in several aspects: the following-up of adopted Conventions, compatibility of national law with international requirements, cases of incompliance, lobbying for ratification, references in parliamentary discussions, etc.

What has been also expressed during the discussions is that since the establishment of the ILO, the focus of attention has been on labour rights. Social security rights were treated as part of labour rights, and one can see that this tendency continues even today, and has been extended. So, emphasis on labour rather than on social security standards is seen not only in Greece, but globally. Moreover, it has been stated that even the ILO itself places more emphasis on the fundamental and priority Conventions, within which social security is not included. Even the supervisory mechanisms chosen differ.

Last, it is worth noting that knowledge of ILO and its general standard-setting activity is limited to the international department of the Confederation (people working in this department are usually those who represent GSEE – actually the whole trade union movement within Greece – at the ILC each year). In the other departments, knowledge of ILO Conventions is very restricted, if not lacking. What is more, there is no exchange of information between the international and the national departments of GSEE. Actually, what happens in reality is that those who do not participate in the ILC do not show an interest in knowing what is discussed at an international level, while those who participate do not show an interest in informing others of the international developments.[280]

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278 See references to the parliamentary documentation under the Section 3.5 above.

279 See, for example, the references of the Confederation to the autonomy of the mutual funds and to the so-called special accounts in relation to the normative framework under the Greek Constitution and the C 87, as well as the C98 in: Petroulas, P., Robolis, S. and Roupakiotis, C. (1992), p. 11.

280 As it has been mentioned, this is a phenomenon that involves not only international organizations, but also European ones]. Representatives are not so keen on policy developments and discussions taking place outside their domestic territory.

3.7 THE RELATIONSHIP BETWEEN DOMESTIC LAW AND INTERNATIONAL LAW

3.7.1 HIERARCHY AND INCORPORATION OF INTERNATIONAL LEGAL RULES AND INSTRUMENTS IN THE DOMESTIC LEGAL SYSTEM

The Hellenic Constitution, under Article 28§1, determines the position held by international customary and conventional law within domestic law (hierarchy of laws). In particular, it is stated that:

> 'The generally recognised rules of international law and 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.'[281]

Consequently, according to the aforementioned provisions: (a) rules which have been established at an international level and have gained their strength from universal acceptance,[282] as well as (b) international conventions[283] which have

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281 Hellenic Parliament (2008g), p. 45.

282 'The term customary international law refers to the body of law which is accepted as applying universally and it is consistent with the practice of countries, and is: generally regarded as including the fundamental freedoms and human rights; can be likened to international 'common law' in that it is evolutionary; the major sources of customary international law are found in international treaties, covenants and conventions, constitutions of international bodies as well as national constitutions, international and national judicial and arbitral decisions and writings of eminent jurists and academics. Customary international law may apply within a country regardless of whether there has been a ratification and/or incorporation of a convention' in Layton, R. (2006), pp. 10–11. In other words, it relates to evidence of state practice and *opinio juris* (practice accepted as required by law) (see Article 38 (1) (b) – Statute of the International Court of Justice, in United Nations (UN) (1945), p. 26). The recognition of customary law, in practice, relates to the recognition of the supremacy of customary law and takes place through the so-called *opinio juris* – meaning that judges uphold the opinion and truly believe that recognizing the supremacy of customary international law over domestic law is indeed legally binding.

283 On this point it should be noted that in the Hellenic Constitution, the terms 'convention' and 'treaty' are used interchangeably as having the same meaning. Indeed, the term international convention is similar to that of an international treaty. Besides, Article 2§1a of the Vienna Convention on the Law of the Treaties reads that '"treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation', and Article 5 of the same Convention adds that 'The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization', see United Nations (UN) (2005), pp. 3–4. Particularly as far as the ILO Constitution is concerned, it is noted that the Hellenic Constitution, in certain cases, refers to it as an international convention (in Article 28§1), while in others as an international treaty (in Article 36).

been ratified by formal statute and have been enacted, form an inextricable part of the domestic legal system and have supra-legislative force and value if there is a conflict between national and international legislation, i.e. supremacy over domestic law.

However, a significant remark should be made on this point. According to Greek law, only the act of sanction is carried out by formal statute.[284] This is explicitly stated in Article 36§2 and §4 of the Hellenic Constitution:

> '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 (nomos) or which may burden the Greeks individually, shall not be operative without a formal statute (typikos nomos) which sanctions them (kyronei) and which is voted by the Parliament.'[285]

> '4. The ratification of international treaties may not be the object of delegation of legislative power as specified in Article 43 paragraphs 2 and 4.'

Besides, according to Article 2§1 of the Vienna Convention on the Law of the Treaties it is clear that ratification means: '… the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.'[286]

Therefore, Article 36§2 is the one stipulating both the exact way an international conventional law becomes an integral part of domestic Greek law and is considered as being domestic Greek law (incorporation/integration), while Article 28§1 specifies the position international customary law and international conventional law – after being sanctioned by a formal statute and ratified – obtains supremacy in the domestic Greek legal order (hierarchy of laws) over domestic law: 'shall prevail over any contrary provision of the law.'[287]

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284 As also stated, 'the international act of ratification is not possible to be done by statute', in Koukouli-Spiliotopoulou, S. (1985), p. 157.

285 In the text above, I have included the English translation of Article 36§2, which – in my opinion – better reproduces in English the Greek wording of Article 36§2, in comparison to the English translation currently provided – to wit: '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*', see Hellenic Parliament (2008g), p. 53.

286 See also the Articles 11 & 14 of the Vienna Convention on the Law of the Treaties, in: United Nations (UN) (2005), pp. 3–4.

287 Based also on discussions held with experts during the research visits to Greece (the list of all the interviewees is available in Appendix A), the type of treaties expressly stated in

Regarding the confusion currently prevailing concerning the use of the wording 'ratified by law'[288] in Article 28§1 of the Hellenic Constitution, certain opinions have been expressed for many years now: 'either the term ratification has been used because of *lapsus linguae* of the constitutional legislator; or, that the use of the term ratification is well-grounded, but the constitutional legislator because of *lapsus linguae* left out the wording *sanctioned by law* – the text would then have as follows: The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by law, ratified 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; or that the wording *by law* implies after sanction by formal statute'.[289] However, following the latest revision of the Hellenic Constitution, which took place in 2008, the wording of both Articles 28§1 and 36§2 has remained unchanged.

It is interesting to note, in this respect, that in the CoE country factsheets, which provide a short presentation of the ESC's implementation in its States Parties, it is correctly written concerning the Charter's status in domestic (Greek) law that: 'Under Article 28(1) of the Constitution: "International conventions as of the time they are sanctioned 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."'[290]

3.7.2 GREEK 'QUASI-DUALISM' AND THE INCORPORATION OF INTERNATIONAL LEGAL INSTRUMENTS

It is known that 'traditional distinctions have been drawn between theories of "monism" and "dualism"' and that there is 'categorization of countries being either "monist" or "dualist" states.'[291] 'Although this terminology has been criticized

Article 36(2) and (4) of the Hellenic Constitution must be incorporated by formal statute in order to be operative in domestic law, while all other treaties may be operative even without incorporation by formal statute. For example, when certain issues are considered of secondary importance, they could be regulated simply through Presidential Decrees, and not sanctioned by formal statute. International treaties/conventions, however, which are considered to have particular significance, and particularly the international treaties/conventions explicitly stated in Article 36 of the Hellenic Constitution, have to be sanctioned by formal statute. They cannot prevail over domestic law, save their incorporation by formal statute.

288 Such wording has been also characterized as non-precise and inappropriate, in Koukouli-Spiliotopoulou, S. (1985), p. 157.

289 Koukouli-Spiliotopoulou, S. (1985), pp. 21, 157; Miliarakis, P.I. (2008), pp. 87–114.

290 See Council of Europe (2011b), p. 1.

291 Layton, R. (2006), p. 3.

as too rigid, as many countries have aspects of both systems; nonetheless, the essential distinction is still relevant and helpful in demonstrating some major differences in the manner of application of international law.'[292]

According to monism, international law and national law are two components of a single body of law. International law can have direct effect (self-execution), provided that its wording is clear enough and suitable to be applied by a judge (automatic incorporation). Furthermore, in the case of conflict between international and national law, international law prevails. In dualism, international law and national law are two different legal systems. Ergo, for international law to apply in the national sphere the relevant provisions have to be transformed by the normal national method (legislative incorporation) – they have to be translated into national law (there is also no hierarchy). Thus, by definition, in a dualist state, international treaties/conventions are not self-executing and need to have been incorporated into national law before they can have any legal effect.[293]

Therefore, taking these two theories into account, Greece can be categorized as being a rather *quasi-dualist state*. Actually, the solution the Hellenic Constitution opts for cuts the classical theoretical discussion in two, but lies closer to the basic ingredient of the dualistic approach. The Hellenic Constitution regulates the position of international law. International law does not destroy its special character, but is integrated into the hierarchy of national legal rules.

More precisely, as far as Greece is concerned, the main characteristic of dualism pertains to the fact that the rules of international law do not apply in the country unless they are incorporated into the national legal order through an act – in particular, through sanction by formal statute. What, though, distinguishes the Greek legal order from purely dualistic approaches (solutions) is that customary international law as well as (in general) all international rules, which have been established at an international level and have gained their strength from universal acceptance, are automatically incorporated, and they do not need to be sanctioned by formal statute. Be that as it may, such rules are subject to the principle of reciprocity when applied to aliens. Thus, with regard to international conventional law, direct applicability cannot be recognized without the prior existence of the act of sanction by formal statute.

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292 Layton, R. (2006), p. 3.

293 See also Tsatsos, D.Th. (1994), pp. 366–367; Mavrias, K.G. (2001), pp. 248–249; Roukounas, E. (2004), p.66–69; Brownlie, I. (2003), pp. 31–33; Nickless, J. (2002), p. 23. Particularly with respect to dualism, distinctive features exist, upon which a country could be characterized as a dualist one. See in-depth Layton, R. (2006), p. 3. Additionally, and as already pointed out 'there are variations between countries as to the manner and effect of incorporation of conventions', in Layton, R. (2006), p. 4.

Furthermore, it is worth mentioning that in a (basically) dualist system, as the Greek one, the case may be that even if international conventional law has been incorporated into the national legal order (legislative incorporation) (in such a case it has the validity of binding law), further clarification and/or elucidation may be considered necessary. With particular reference to the Greek case, an international treaty/convention, which has been sanctioned by formal statute, is indeed an integral part of domestic law, nevertheless, national courts and judges may still regard its provisions as general and/or abstract, therefore, further action is considered necessary. Within such content, the provisions of the international treaty/convention need to be further specified. This is done by another statute or (presidential) degree, through the intervention of the national legislature, in order for them to be directly applicable.

Thereafter, and as already mentioned,[294] 'in several dualist countries, as far as conventional law is concerned, certain procedures have been established, which are separate from the one of ratification. These procedures intend to incorporate the provisions of conventional law in domestic law. They are the so-called *sanctioning* procedure and the *publication* procedure.[295] Especially the *sanctioning* procedure is considered as a *dualistic appendage*.'[296]

'Despite the fact that the normal procedural sequence has as follows: ratification – sanctioning – publication, in many dualist countries the stages of ratification and sanctioning get entwined.'[297]

The sanctioning and publication procedures still exist today in the Greek legal system. Therefore, in order for an international legal instrument to become operative and, hence, to be applied at a national level, it should be not only ratified, but also incorporated (integrated) into domestic Greek law. As clarified, the incorporation cannot take place without the existence of a formal statute, which sanctions the international legal instrument. This formal statute actually comprises the consent of the Parliament for the ratification of a treaty, or a convention.

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294 See Sub-Section 3.7.1, above.

295 'The term "sanctioning" signifies an explicit act (statute, decree, decision, etc. (the kind of this act depends on the subject of the treaty as well as the need for the treaty to be placed hierarchically within domestic law)) done by the competent state bodies, which includes the text of the treaty, or repeats the content of the treaty in another form, and which gives to it (according to the wording which prevails in Greek) "complete and legal validity" or "complete law status". The pre-mentioned act, through the *publication* procedure, is registered in the Official State Gazette', in Roukounas, E. (2004), p. 161.

296 Roukounas, E. (2004), pp. 161–162.

297 Roukounas, E. (2004), p. 161.

The sanctioning procedure is clearly stated in Article 36§2 of the Hellenic Constitution[298] in the wording: 'shall not be operative without a formal statute (typikos nomos), which sanctions (validates) (kyronei) them and which is voted by the Parliament.' The publication procedure is also foreseen, since this formal statute, as soon as it is voted by the Parliament and is sanctioned and issued by the Head of the State, is published in the Official Gazette[299] according to the specifications set out in the Constitution.[300]

Therefore, after the completion of these two procedures, an international treaty/convention obtains a twofold character: international and integral legal document.

However, what should be noted – and particularly regarding the ILO Conventions – is that sanctioning in the Greek system has precedence over ratification.[301] This is also in line with the Article 19§5(d) of the ILO Constitution, which posits that '… the consent of the authority or authorities within whose competence the matter lies …' should be given before the ratification of the convention. 'The consent is considered as precondition and essential element of ratification' and ratification actually 'consists of the announcement of the completion of the sanctioning procedure (actually the sanction of a Convention by a formal statute) to the Director-General of the ILO Bureau.'[302]

3.7.3 NATIONAL COURTS, GREEK CASE LAW AND THE IMPACT OF THE INTERNATIONALLY DEVELOPED SOCIAL SECURITY STANDARDS

So far, it has become clear (based also on the previous description and analysis of the relevant Greek constitutional provisions) that international law has priority over national law. Nevertheless, emphasis should still be placed on another

298 See Sub-Section 3.7.1, above.

299 'Every Bill, accompanied by an *explanatory report*, is introduced for debate and if accepted, by Parliament, the President of the Republic shall *sanction* and *publish* it as a statute (or act of Parliament). The explanatory reports and the minutes of the Parliamentary debates are quite often referred to as a valuable assistance for the interpretation and application of the law. In most cases, bills are, prior to their introduction to the Parliament, referred to a *Scientific Research Service to the Parliament*, which has been established under the Constitution, to assist Parliament in its legislative work. Moreover, bills of major importance in the area of industrial relations, social security and the Government's overall economic and social policy, are referred to a special *Economic and Social Committee*, which gives a non-binding comprehensive opinion on the content of the bill', in Ktistakis, Y. (2005), p. 3.

300 See Articles 72–76 and 42 of the Hellenic Constitution. See also Koukouli-Spiliotopoulou, S. (1985), p. 140.

301 The same counts for the CoE legal instruments.

302 Koukouli-Spiliotopoulou, S. (1985), pp. 127–128.

important matter: the self-execution (direct applicability)[303] of international legal rules, which actually affects, to a significant extent, their legal, and by extension, practical, impacts at a national level.

As it is known, for an international legal instrument – and in particular, for its provisions – to directly apply (have direct effect in other words) in internal law, certain requirements must be met. The rules or standards the provisions prescribe should be unconditional, as well as clear and precise enough in order to be directly applied by a judge. Moreover, they need to create a subjective (personal) entitlement for a citizen.[304]

Although, in theory, the supremacy of international law over national law is not determined by, or depends on, the direct applicability of a provision,[305] in practice, the recognition by a national judge that a certain provision is self-executing strengthens the supremacy of international law over national law. In other words, it enhances the impact of international rules on domestic legal arrangements.

However, acceptance of direct applicability does not happen often, particularly in the field of social security.[306] This does not mean that the supremacy of international law over national law vanishes; it still, however, remains inert. This is also applicable in the Greek case. National judges do not often recognize, on their own initiative that a provision of an international convention sanctioned by formal statute is self-executing, as further illustrated below.

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303 It should be noted on this point that I use the term 'self-execution' not as it is used to describe direct effect of international treaties/conventions in a monist legal system, but as a term to describe direct applicability of international treaties/conventions after their legislative incorporation in a dualist legal system.

304 'In case the provisions of an international convention or treaty, which has been incorporated in the domestic legal system, are "self-executing", no complementary legislative or executive acts are necessary for the application of the provisions from national courts', see Roukounas, E. (2004), p. 188. 'If there are any doubts about this, the judge can take into account other aspects, such as the intensions of the Contracting Parties at the time the convention was adopted as well as the context of the provision.' 'In this respect, the interpretation by the supervisory body of a provision is very important for the national judge to decide that it has direct effect'; see, respectively De Vries, T. (2007), p. 92; Dijkhoff, T. and Pennings, F. (2007), p. 166. See also Brownlie, I. (2003), p. 48. Nickless, J. (2002), p. 23.

305 Whether international law has priority over national law is a matter defined under the Constitution of each State. 'The priority of international law remains a fact, whether this law is or is not self-executing. A state cannot invoke its national law as a reason not to respect its international obligations. In case of non-self-executing rules, it is obliged to change its national law or to take certain measures. It violates international law if it does not do so.' 'The general principle of international law is that a state cannot plead a rule or a gap in its own municipal law as a defence to a claim based on international law', in Akehurst, M. (1991), p. 43. 'The fact that a conflicting domestic provision is contained in the national constitution does not absolve the State Party concerned from international responsibility', Rosas, A. (1995), p. 67.

306 See Pennings, F. (2007), p. 15; Schoukens, P. (2007), p. 84. See also a number of court cases in which no direct effect was accepted in Korda, M. and Pennings, F. (2008), pp. 146–147.

Being more precise, in Greek law[307] 'the international treaties/conventions, after their legislative incorporation (and under the precondition that their provisions are sufficiently precise and clear) function as directly binding legal rules and have supra-legislative power.'[308] Likewise, 'the generally recognised rules of international law, for which direct applicability is given, prevail over any contrary provision of the law, irrespectively of whether national legislation has precedence, or has been adopted subsequently.'[309]

Therefore, taking all these into account, it would be logical for one to presume that the impact of the ISSS sanctioned by formal statute and (nationally) accepted on Greek social security law is considerable. All the same, things are not quite like that. So far, 'the case law of the Greek Supreme Administrative Court – Council of State *(Symboulio tis Epikrateias)*[310] – considers most of the international provisions in the sphere of social law – and among them those on social security – not self-executing.' This actually predicates that 'they do not have any directly binding lawful consequences unless the common legislator intervenes.'[311] As a consequence, 'even international clauses, which are clear and precise enough (self-executing), and could be directly enforced because they establish subjective

307 See Article 28§1 of the Hellenic Constitution, in Hellenic Parliament (2008g), p. 45.

308 In: Katrougalos, G. (2002).

309 'According to older decisions of the Council of State (decision: StE 1975/86; similar decisions were: StE 2678/92, StE 1975/84, StE 4505/83, 2239/80), the international treaties or conventions, which had been validated by formal statute before the entre into force of the new Hellenic Constitution were excluded from the scope of application of Article 28§1 and they were considered as not having supra-legislative power – the Convention No. 102 was also among these treaties', see Koukouli-Spiliotopoulou, S. (1985), p. 156 (footnote No. 265). However, these *contra constitutionem* judgments were invalidated by new, and certainly correct ones, such as: StE (Plenum) 4569/1996; StE 1975/91; see, further, Katrougalos, G. (2008b), p. 388. The Hellenic Constitution was drawn up and adopted by the Fifth Revisionary Parliament of the Hellenes and entered into force in 1975. Since then the Constitution has undergone several revisions.

310 The Council of the State *(To Symboulio tis Epikrateias)* is both an administrative organ – one of the three big bodies of the Greek Public Administration (the other two are the Chamber of Accounts and the Legal Council) – and the Greek Supreme Administrative Court. It executes its jurisdiction in Plenary Session or in six-chamber judicial formations (A', B', Γ', Δ', E' and ΣΤ), and the cases are introduced with the following legal means or remedies: writ of annulment, writ of certiorari, clerical recourse and appeal; see, in-depth, Spiliotopoulos, E. (2001), pp. 457–59. Social security matters are dealt within Chamber A, but also in Plenum when cases of particular significance occur. Despite the fact that (in general) judgment of an administrative court is final, appeal against a decision may be made to the *Council;* however, in such a case, the *Council* judges solely the legality of the litigious decision (points of law and not the true facts). With respect to cases on social security, when they reach the *Council* (they must have been first heard before the other administrative courts), the annulment of an administrative act is (usually) pursued. For detailed information regarding claims and adjudication (judicial review) with regard to social security, see Kremalis, K. (2004), pp. 179–185; Amitsis, G. (ed.) (2003), p. 53; Pieters, D. (2002), pp. 184–185.

311 The common legislature can also authorize the executive branch (Government) to act normatively. See StE 2398/1992 (Chamber A'); StE 3465/2006 (Chamber A').

rights, are treated as a source of inspiration.'[312] The European Convention on Human Rights (ECHR) is a notable exception in this respect, since national courts – particularly in recent years – recognize direct applicability.

Indeed, in judgments concerning cases of social security brought before the Court over the years, and in which certain provisions of the C102 and the ECSS (sanctioned by formal statutes and ratified) were invoked,[313] it has been stated, on the one hand, that these provisions are not binding and that direct applicability is not accepted, while on the other hand, that these provisions just consist of guidelines, or, to put it differently, recommendations the national legislature could consider.[314]

In similar terms, it has been also pointed out several times that the provisions included in these treaties do not obstruct the national legislature.[315] This actually means that the national legislature has a margin of appreciation, or, put differently, has broad margin of discretion and can proceed with different arrangements, if considered appropriate to do so. Be that as it may, it should be stressed that the national legislature cannot make arrangements which go against, or are contrary to, the main content of the provisions included in the nationally accepted international legal instruments (treaties/conventions, which have been sanctioned by formal statute and ratified). In other words, the arrangements that the national legislature will make cannot worsen the so-called *vested rights*, or in other words, the already existing and established *minima* within the country. The national legislature needs, also, to take into account that any arrangements can by no means worsen the accepted minimum ISSS.[316] As correctly pointed out,

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312 Katrougalos, G. (2008b), pp. 388–389. See other international court cases in which Conventions are given direct effect in: Korda, M. and Pennings, F. (2008), pp. 144–146.

313 I have included in Appendix B English translations of four Decisions of the Hellenic Council of State (in chronological order) to which reference is made in this sub-section – namely: StE 2606/1989 (Plenary Session); StE 2348/1991 (Chamber A); StE 2254/1994 (Chamber A); StE 3465/2006 (Chamber A) – as a representative sample of the way the accepted ISSS are dealt with by Greek judges.

314 See, for example, the reasoning in: StE 2398/1992 (Chamber A'); StE 3970/1990 (Chamber A'/7Members); StE 2254/1994 (Chamber A'); StE 3465/2006 (Chamber A'); StE 4275/1997 (Chamber A'). Certain other judgments also follow a similar approach, see: StE 2641/1998 (Chamber A'); StE 3603/1997 (Chamber A'); StE 282/2001 (Chamber A'); StE 3343-3356/1997 (consecutive judgments) (Chamber A'); StE 3356/1997 (Chamber A'); StE 3595-3603/1997 (consecutive judgments) (Chamber A'); StE 1248/1998 (Chamber A'); StE 3970/1990 (Chamber A'/7Members). See also Kremalis, K. (1985), p. 42.

315 See, for example, the reasoning in: StE 2606/1989 (Plenary Session); StE 393/1990 (Chamber A').

316 The following remark should be made on this point, which pertains to the effect of Conventions on more favourable existing internal law provisions. An action on the part of the national legislature would be indeed appropriate and justifiable if the level of social protection provided in the country is higher than the one prescribed in the international provision – when the national arrangements are more favourable for the persons concerned. Particularly regarding the ILO Conventions, Article 19 of the ILO Constitution stipulates that: 'In no case shall the

it should be always borne in mind that in the case that 'a conflicting domestic provision is contained in the national constitution, this does not absolve the State Party concerned from international responsibility.'[317] Likewise, 'a state cannot invoke its national law as a reason not to respect its international obligations.'[318]

Additionally, it has been expressed that in case a provision of an international convention contains arrangements which are not considered affined or relevant to the ones provided under the domestic Greek legislation, it shall not be applied as well.[319] Consequently, national judges do not apply directly these provisions, since no relevant prior arrangements exist in national social security legislation.

In general, the mentality prevailing in Greek courts is that since these international provisions are not considered directly applicable (they cannot produce immediate legal effects, due to their purported abstract character), judges act like they do not even exist. Of course this is the *theory* developed by Greek courts and judges (it is the line that the courts follow when using these instruments), and does not coincide with the international (legal) theory, as well as with the fact that the Article 28§1 recognizes the supremacy of international law, and particularly when the provisions are clear enough and precise enough to be applied by a judge; still it is followed. In other words, one could say that the issue in question does not relate as such – although this becomes also somewhat dubious – to the validity of the Conventions as binding law, since they are already sanctioned by law and ratified, but to the (in a sense) general prejudice that almost all their provisions have a programmatic character, and for this reason, need executing legislation, which shall make the related rights more concrete.[320] It should be noted in relation to this matter that the national legislature has complicated matters as well, since in reality has not procured for the full adjustment of domestic law to these international instruments, and this way it becomes uncertain whether subjective rights can still be derived from them.

Legally speaking, such standpoints underestimate the value of the internationally developed and nationally accepted social security standards. They diminish, in a

adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation', in ILO (2006), p. 7. Any action to the contrary, though, is a violation of the Convention and of the obligations of the country in respect of the Convention.

317 Rosas, A. (1995), p. 67.

318 Akehurst, M. (1991), p. 43.

319 See, for example, the reasoning in StE 2254/1994 (Chamber A').

320 As an example, a similar discussion has evolved with regard to the Greek constitutional provisions on social rights – notably, case law generally considers that social rights need implementing legislation before producing justiciable demands, not because they are not binding norms, but simply because they have a general character.

sense, not only their normative power, but also their potency, since the utilization of their interpretation is also being overlooked.[321]

Thereafter, it should be noted that the Council of State (as well as the other administrative courts) shall not, when giving a decision on a case, refer, itself, to ILO or CoE instruments, or in general, to international legal instruments. It shall not examine compliance with these instruments as such.[322] Advocates are the ones who should primarily have recourse to these instruments and base their claims on relevant provisions in their documents, so the court can adjudicate. Nonetheless, reference is somewhat limited, although it has indeed increased in comparison to previous decades. But still, it concerns more instruments such as the Convention for the Protection of Human Rights and Fundamental Freedoms[323] and the ESC, or certain ILO Conventions in the field of labour law (core labour standards),[324] and not so much the ILO social security Conventions and the ECSS.[325] The ILO social security Conventions and the ECSS are used as an auxiliary in order to strengthen one's position, and not in order to entrench rights.

Further, another interesting matter should be mentioned here. 'To date, there is not even one judgment on a case brought before the Council of State, which has been based merely on an international rule (standard) of social law; neither when the *annulment* of an administrative act was pursued, nor when a case was introduced with *writ of certiorari*.'[326] By way of illustration, and to focus attention on the internationally developed social security standards, the Council of State has not referred solely to these standards, but always in conjunction with the applicable domestic social security legislation, to the relevant Greek constitutional clauses, as well as the formal statute (voted by the Parliament) which has sanctioned the international instrument including the social security standards.[327]

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321 See also Katrougalos, G. (2008b), pp. 388–389, 392–395. As has been pointed out, even if an international provision is not recognized as *self-executing* 'it may still have an impact on how national judges interpret national law.' 'This is because the national court may assume that, when passing domestic legislation, the national legislator would not disregard its international obligations unless this divergence from international standards is made absolutely clear in the legislation itself'; see Nickless, J. (2002), p. 23.

322 However, the international legal instruments in the sphere of social law to which reference has more often been made in the case law of the Council of State are: the UN ICESCR, certain ILO Conventions on labour matters and CoE human rights instruments.

323 Also known as the European Convention on Human Rights (ECHR).

324 Such as the: ILO Conventions C87 and C98.

325 This statement is based on the relevant research completed, as well as on the discussions held with legal academics and advocates during my research visits to Greece (the list of all the interviewees is available in Appendix A).

326 See Katrougalos, G. (2008b), p. 389.

327 See StE 503/1993 (Chamber A'/7Members) (Reference on Article 3 of the ILO C103); StE 2348/1991 (Chamber A') (Reference on Articles 3 and 4 of the ILO C103).

By inference, in the case law of the Greek Supreme Administrative Court, it can be noted that there are not so many cases relating to the internationally developed social security standards, and that their impact is (rather) restricted. Apart from the fact that direct applicability is not recognized, these standards are simply considered as guidelines for the national legislature, while at the very best are used to strengthen a judgment reached by the Court. This is indeed regretful, since the Recommendations adopted by the ILO are the ones that serve as guidelines, and the Conventions, as soon as they have been nationally accepted, are legal binding instruments. Such *modus operandi* indeed deprives international rules, particularly in the sphere of social law and social security, both of their legal and practical value. Hope remains, though, from certain remarks of the Council of State, which imply that maybe in future the provisions of the international legal instruments referring to the international social security standards sanctioned by formal statute(s) may found to be directly applicable.[328]

[328] See, for example, the decision StE 3465/2006 (Chamber A'), where it is stated: 'independently of whether the provisions of these international conventions are self-executing, so as to be possible for the individual to draw rights from them and to invoke them before the national courts.'

CHAPTER 4

DESCRIPTION AND COMPARISON OF THE GREEK SOCIAL SECURITY LEGISLATION WITH THE INTERNATIONAL SOCIAL SECURITY STANDARDS

For the things we have to learn before we can do them,
we learn by doing them … – Aristotle

One should always look to the end of everything,
how it will finally come out … – Herodotus

Young men's minds are always changeable,
but when an old man is concerned about a matter,
he looks both before and after… – Homer

PART I
PRELIMINARIES

4.1 INTRODUCTION

In the previous Chapter, a general description of social protection in Greece, as well as of the recent administrative and organizational developments that have taken place, was given.[1] Particular attention was paid to the enactment of Law No. 3655/2008[2] and the changes it brought to the Greek SIS. This Law, as already mentioned, was a continuation of several other reforms undertaken over the last two decades. It basically involved an administrative restructuring of the system, through which a significantly smaller number of funds were established by

1 See Chapter 3, Section 3.1 and Sub-Section 3.1.1.
2 See Official Gazette of the Hellenic Republic (2008a), pp. 961–1068.

unifying funds into new funds, or by integrating funds and branches into other already existing funds. As reported, by the process of unification undertaken 'none of the current benefits are being lost, given that the terms, conditions and amounts are not changed, as they will remain as they are in effect at the time being.'[3] Nevertheless, and as shown later on, certain changes to specific terms and conditions have taken place. Consequently, a thorough and complete unification effort in respect of the affiliation rules and entitlement conditions to receive benefits, between the different first pillar funds, has not yet taken place. However, even in a rather disjointed way, certain legislative harmonization efforts to this end have commenced. Reference was also made to the most recently adopted Law No. 3863/2010.[4] Nevertheless, as specified,[5] the alterations and modifications enacted through this last Law, and relating also to the nationally accepted ISSS, will be presented and analyzed in the subsequent Chapter.[6]

In this Chapter, and since currently the legislative framework of the IKA-ETAM 'serves as a model for the other social insurance funds and the minimum benefit level under this main social insurance fund is also applicable for other funds',[7] Greek social security legislation is described and compared with the internationally developed social security standards examined in this Ph.D thesis based on the legislation of the IKA-ETAM. Besides, all the national reports submitted by Greece to date, both on the accepted and non-accepted international legal instruments developed by the ILO and the CoE in the field of social security, are based on the legislation of the IKA-ETAM.[8]

4.2 THE SOCIAL RISKS COVERED BY THE IKA-ETAM

The social risks[9] covered by the IKA-ETAM[10] are explicitly set out in Article 1 of Law No. 1846/51,[11] and consist of the following: (i) the sickness branch – this

3 In General Secretariat of Social Security (2008a), p. 1; General Secretariat of Social Security (2008b), p. 1.

4 See Official Gazette of the Hellenic Republic (2010c), pp. 2771–2818.

5 See Chapter 3, Section 3.1, Sub-Section 3.1.1.

6 See Chapter 5, Section 5.4, Sub-Section 5.4.1.

7 See Pieters, D. (2002), p. 158; Amitsis, G. (ed.) (2003), pp.16–17; Stergiou, A. (1999), p. 165.

8 As characteristically stated back in 2003, 'IKA is to undertake the leading role in a voluntary merger of relevant schemes and is currently itself under a wide-ranging programme of administrative modernization', in Venieris, D. (2003b), p. 142.

9 At the same time they make up the social insurance branches of this fund.

10 For a general presentation of the IKA-ETAM, see Chapter 3, Sub-Section 3.1.1.

11 This law replaced Law No. 6298/1934, see Official Gazette of the Hellenic Republic (1934), pp. 2155–2178 and Official Gazette of the Hellenic Republic (1951), pp. 1–53. It stands and it is applied even to date. However, it has been amended by Legislative Degree No. 4104/1960 (see Official Gazette of the Hellenic Republic (1960), pp. 1577–1584) (and certain other bodies of law on several points), but not in its principia The most serious intervention in the IKA-ETAM

branch encompasses the social risks of *sickness* and *maternity*: (a) sickness and maternity benefits in kind (medical, hospital, pharmaceutical care, etc.) and (b) sickness and maternity benefits in cash (sickness benefits, child-birth benefits, injury benefits, etc.); (ii) the pensions branch – it covers the social risks of *old age, invalidity and death* (survivorship/bereavement). Pensions are provided on the occurrence of the risk. Moreover, in this branch old-age pension is provided at an earlier pensionable age in the case of employment in arduous or unhealthy occupations.

Employment injuries and *occupational diseases* are also covered by the IKA-ETAM. Particularly with regard to the social risk of *employment injury*, if it causes sickness, or temporary incapacity for work, coverage is provided under the sickness branch, If, however, the employment injury causes death or invalidity, coverage is provided under the pensions branch.

Thereafter, *unemployment* and *family benefits* are also provided by the IKA-ETAM to its insured persons. However, they are administered by the Manpower Employment Organization (OAED). The IKA-ETAM collects the contributions paid for the OAED.[12] The OAED is a special insurance organization,[13] which comprises the following branches:[14] (i) the *unemployment* branch – benefits in cash and integration services; (ii) the *enlistment* branch – reservist benefits; and (iii) the *family benefits* branch – child benefit, child-raising allowance and child care allowance as well as certain other benefits and allowances. It should be noted that OAED provides the family benefits through a special account/branch called

legislation took place during the period 1990–1992 with Law No. 1902/1990 (see Official Gazette of the Hellenic Republic (1990), pp. 1167–1186) and Law No. 2084/1992 (see in: Official Gazette of the Hellenic Republic (1992), pp. 3007–3042).

12 It should be noted that a significant part of the overall contributions collected by the IKA-ETAM is collected by the IKA-ETAM on behalf of other organizations. In particular, the IKA-ETAM collects, as mentioned above, contributions with respect to the social risk of unemployment and a series of other functions of OAED, and also collects contributions on behalf of the Workers' Housing Organization (OEK) and the Workers' Foundations (EE). See MISSOC (2010b), p. 25. See also in: Papadopoulos, T. (2002), pp. 1–61.

13 Despite the fact that the compulsory Law No. 1846/1951 provided that the IKA-ETAM (originally the IKA) also included unemployment and enlistment branches, these branches were detached from the IKA (according to Legislative Degree No. 2961/1954) and were placed under the OAED (originally the OAAA (Organization for Employment and Unemployment Insurance)). The OAAA was renamed to OAED with Legislative Degree No. 212/1969. See, further, Official Gazette of the Hellenic Republic (1951), pp. 1–53; Official Gazette of the Hellenic Republic (1954), pp. 1595–1602; Official Gazette of the Hellenic Republic (1969), pp. 889–892.

14 Apart from these insurance branches, OAED also comprises the following three: the Special Account for the Enhancement of the Professional Training Programme (ELEPEE), the Account for the Protection of Employees from Unreliable Employers (LPEAE), and the Special Common Account for Unemployment (EKLA).

the Distributive Fund for Employee Family Allowances (DLOEM), established with Legislative Degree No. 3868/1958[15] under OAED.

The IKA-ETAM is the largest main social insurance fund in Greece and covers the largest majority of salaried workers, as well as employees. The insurance is compulsory[16] and *ipso jure* from the first day of employment for all the persons who provide dependent work for remuneration within the territory of the country.

4.2.1 INFORMATION ON SPECIAL PENSION ARRANGEMENTS

Before starting with the description (see below) of the pre-conditions covering the provision of benefit in the occurrence of the risks of old age, invalidity and death (survivorship/bereavement) under the IKA-ETAM (i.e. the prescribed pensionable age, required insurance period, etc.), particular reference should be made at this point to Law No. 2084/1992.[17] This Law was a continuation of the reform process, which began with Law No. 1902/1990.[18] Through the enactment of Law No. 2084/1992, insured persons in Greece were divided into two large categories: (a) the *old insured* – this category includes persons insured up to 31/12/1992; and (b) the *newly insured* – this category includes persons insured for the first time from 01/01/1993 onwards. Apart from this categorization certain differences apply concerning the insurance conditions that need to be met by each category of persons for entitlement to pensions.[19]

It should be also mentioned that the period during which the insured person has been receiving an invalidity benefit can be counted towards the completion of the *minimum conditions* required for the receipt of a full old-age benefit (Article 5§4, Law No. 2335/1995).[20]

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15 See Official Gazette of the Hellenic Republic (1958), pp. 1555–1557.

16 This means that it does not depend on the good will of the employer or the employee. Insurance is compulsory, with no exception (there are, of course, situations of benefit suspension in certain cases, as discussed subsequently in this Chapter). However, it should be noted that after the introduction of Law No. 2084/1992, and as subsequently amended and currently applies, there are certain exceptions, which involve the avoidance of double insurance (coverage) for newly insured persons. Newly insured persons now can have only one insurance status for every risk, even if they perform more than one insured employment (work) (this situation was different for old insured persons, who, if they had different insured employments, had to be insured for each risk in more than one fund; put differently, they had multiple insurances per risk.

17 See Official Gazette of the Hellenic Republic (1992), pp. 3007–3042.

18 See Official Gazette of the Hellenic Republic (1990), pp. 1167–1186.

19 See also Internal Ministerial Document (1993c), p. 1; Amitsis, G. (2003), pp. 32–33.

20 See Official Gazette of the Hellenic Republic (1995), p. 5469. As analytically described below, the minimum qualifying condition that needs to be fulfilled for the provision of a full old-age

Thereafter, and by taking into account Article 6[21] of C102 (as well as Article 6[22] of the ECSS, which includes identical provisions), it is worth mentioning that Law No. 1902/1990 (Article 36)[23] introduced *voluntary insurance*.[24]

More precisely, in order to guarantee the full protection of persons who – for any reason – remained uninsured, an account of voluntary insurance called 'Special Account of Self-Insurance'[25] was set up within the framework of the IKA-ETAM. Persons aged between 16 and 63 in the case of men, and between 16 and 58 in the case of women, are entitled to be voluntarily insured in this special account against the risks of old age, invalidity and death – medical, pharmaceutical as well as hospital treatment is also provided for the pensioners – under the condition that they reside in the territory of Greece and they have not been compulsorily or voluntarily insured in any other existing social insurance organization (it refers only to the main insurance organizations). The insurance in this special account is a kind of main insurance. The account is managed by the bodies responsible for the administration of the IKA-ETAM and has its own budget, report and balance sheet (the budget and the balance sheet of this special account are authorized in the same way as the relevant ones of the IKA-ETAM).[26] The institution of voluntary insurance also applies to newly insured persons.

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benefit is 15 years of insurance (a contribution record of 4,500 working days). See also Lanaras, K. (2008), p. 329; Stergiou, A. (1999), pp. 256, 411.

21 Article 6 of the ILO Convention No. 102 reads: 'For the purpose of compliance with Parts II, III, IV, V, VIII (in so far as it relates to medical care), IX or X of this Convention, a Member may take account of protection effected by means of insurance which, although not made compulsory by national laws or regulations for the persons to be protected: (a) is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of employers and workers; (b) covers a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee; and (c) complies, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Convention.'

22 Article 6 of the ECSS reads: 'For the purpose of compliance with Parts II, III, IV, V, VIII (in so far as it relates to medical care), IX or X of this Code, a Contracting Party may take account of protection effected by means of insurance which, although not made compulsory by national laws or regulations for the persons to be protected: (a) is subsidised by the public authorities or, where such insurance is complementary only, is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of employers and workers; (b) covers a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee, determined in accordance with Article 65; and (c) complies, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Code.'

23 See Official Gazette of the Hellenic Republic (1990), p. 1179.

24 Based on the information obtained from the discussions held during my research visits to the ILO Social Security Department in Geneva (17–18/01/2008), supplementary, as well as occupational schemes are allowed, as long as they fulfil (cover) the requirements set in Article 6 of C 102 (i.e. to be supervised by the State and the involvement of the State to be assured (this is for example, also the case if a central bank is under public authority)); nevertheless, savings accounts or private schemes are excluded when only financed by employees).

25 See also Lanaras, K. (2008), pp. 171–172. See also the website of the IKA-ETAM.

26 See also Council of Europe (1993), pp. 3–4; General Secretariat of Social Security (2006), p. 2; Amitsis, G. (2003), p. 32; Lanaras, K. (2008), pp. 171–172.

In similar terms, under the provisions of Article 10[27] of Law No. 2874/2000, 'the long-term unemployed people insured with the IKA-ETAM, who are five years short of full old-age pension entitlement, are given the opportunity to voluntarily continue their insurance by payment of contributions. Payments are made to the Manpower Employment Organization (OAED) under the nomination "Account for employment and professional training (LAEK)".[28] This measure concerns people affiliated to the IKA-ETAM or to funds of Supplementary Insurance (for salaried people who are insured with IKA for basic insurance) who meet the following requirements: (a) they have been unemployed for at least 12 months and are in possession of an unemployment card, which is to be renewed every month; (b) they have reached the age of 60 for men and 55 for women; (c) they are not disabled when the claim for a full old-age pension is made; (d) the time remaining to complete the minimum insurance days for full entitlement to old-age pensions from IKA or IKA-TEAM does not exceed 1,500 days or 5 years.'[29] The same requirements were set for the newly insured persons.

Thereafter, through Article 5[30] of Law No. 3385/2005, the possibility of *repurchasing insurance time* was provided for the establishment of the right to retire due to old age, invalidity and death. However, this possibility was valid

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27 See Official Gazette of the Hellenic Republic (2000), pp. 4104–4105. See also the website of the IKA-ETAM.

28 The OAED pays the remaining contributions until the requirement of the completion of the 4,500 insurance days to the IKA-ETAM (as well as to the IKA- ETEAM). For example: a woman of 56 years of age has completed 4,000 insurance days, is unemployed and has been registered in the unemployed records of the OAED, holds an unemployment card, which is renewed every month, and is also, during this period, not insured in any other social insurance fund. She is then registers with the above-mentioned Account for employment and professional training (LAEK), and thus begins the continuation of her voluntary insurance under the IKA-ETAM. The relevant contributions to the IKA-ETAM are actually paid by the OAED. Within one year and eight months the requirement of completing the 4,500 insurance days (one year plus eight months, adds up to 20 months; multiplied by 25 insurance days per month, equals 500 insurance days). The woman by then is 57 years old and 8 months. However, it should be noted that she cannot request a reduced pension, for which the women insured under the IKA-ETAM would qualify when upon reaching the age of 55 years and above and have completed at least 4,500 insurance days (and in any case from the 100 insurance days at least every year during the last five years before the submission of the pension application) (it should be also noted that these reduced pensions are provided subject to a reduction, which is as higher as the period that the applicant abstains from the (each case) pensionable age limit for entitlement to a full pension). More precisely, since 01/01/2009, the reduction equals to 0.5% for each month. Maximum reduction: five years (60 months multiplied by 0.5% equals 30% lower pension, if a woman – not belonging to the category of arduous and unhealthy occupations (AUOs) – retires at the age of 55 years instead of at 60 years of age). The woman in this example, who has benefited from Article 10 of Law No. 2874/2000, needs, however, to wait until she reaches 60 years of age to receive her pension (her pension of course will not be subject to a reduction). In other words, she does not have the right to request a reduced pension before than she reaches 60 years of age, despite the fact that she will have completed the minimum requirement of 4,500 insurance days.

29 See International Social Security Association (ISSA) (2009).

30 See Official Gazette of the Hellenic Republic (2005), p. 3304.

for only three years following the date of the enactment of Law No. 3385/2005 (it was valid until 19/08/2008). This opportunity – to establish the right to retirement through the method of *repurchasing insurance time* – was created with the sole purpose of enabling and facilitating the meeting of minimal retirement conditions. It was provided in all the insurance institutions for salaried people (main and complementary insurance of the Ministry of Employment and Social Protection).[31]

Further, the possibility of *recognizing remaining (insurance) time* has also been introduced. A first condition for such recognition is that the insured people are not eligible to receive a pension from the state, or from any other organization or sector of main and auxiliary insurance. Certain other conditions apply as well. They are as follows, depending on the type of retirement right:[32] (a) for the establishment of the right to retire due to old age, the insured persons can recognize 150 days, or six months of insurance for the completion of the *minimal conditions required for retirement* (4,500 days or 15 years) if they have reached the age of 65 (for men) or 60 (for women); (b) for the establishment of the right to retire due to invalidity, the invalids with 67% invalidity and more (ordinary/actuarial invalidity) can recognize until 50 days, or 2 months of insurance for the completion of *general minimal conditions* or *special conditions*, where required (1,500 days of insurance, of which 600 must be in the 5 years preceding the onset of invalidity); (c) for the establishment of the right to retire due to death with the *minimal conditions of retirement*, the survivors can recognize until 50 days, or 2 months of insurance for the completion of *general minimal conditions* or *special conditions*, where required (1,500 days of insurance, of which 300 must be in the last 5 years before the death occurs).

PART II
THE TRADITIONAL SOCIAL CONTINGENCIES

4.3 MEDICAL CARE

4.3.1 INTRODUCTION

The applicable statutory basis for medical care is Law No. 1846/1951[33] on 'Social Insurances' and Law No. 1902/1990[34] on the 'Arrangement of Pensions and other

31 Since such an arrangement would probably create a kind of abnormality in the general SIS, it was introduced for a specific time period.
32 See General Secretariat of Social Security (2006), pp. 2–3.
33 See Official Gazette of the Hellenic Republic (1951), pp. 1–53.
34 See Official Gazette of the Hellenic Republic (1990), pp. 1167–1186.

relevant matters' (as modified by Law No. 2676/1999[35] on 'Organizational and Functional Re-Structuring of Social Insurance Bodies and other provisions' and Law No. 3655/2008[36] on 'Administrative and Organizational Reform of the Greek Social Insurance System and other social insurance provisions'). The social insurance scheme is compulsory for all employees and assimilated groups, and there are no exceptions to compulsory insurance.[37]

4.3.2 PERSONAL AND MATERIAL SCOPE OF APPLICATION

Medical care is provided to the directly insured salaried people of the private and public sector, or pensioners and to the members of their family (indirectly insured persons/dependants) as follows (Article 33§1 of Law No. 1846/1951):[38] (a) the wife, or the husband of the insured person, provided that he/she does not work; (b) all the unmarried children (natural, recognized, adopted) until they reach 18 years of age; (c) the unemployed children until they reach 24 years of age; (d) the children continuing their studies (attending a University, or a Higher Education Institution) until they reach 26 years of age and up to two years after the completion of their studies on condition that they are under the age of 25 years; (e) the children who are unable to perform any kind of every work (in this case the right corresponds to the whole period of their incapacity). The insurance of the dependants arises from the right of employees to be insured, so they are not obliged to be insured in schemes of voluntary insurance.[39]

As far as voluntary insurance is concerned, it is possible for persons who are no longer insured because of long-term unemployment, or because they were insured as dependants and this dependency no longer exists due to divorce.[40]

The term 'medical care' refers to 'the use of health services for the general prevention, diagnosis and treatment of an illness, and every necessary paraclinical examination or special treatment. The general and specialist services of doctors and dentists are included here, as well as the duties of other medical personnel (nurses, physiotherapists, etc.). The provision of therapeutically means and orthopedic devices, like pacemakers, dentures, hearing aids, wheelchairs, etc. is also part of medical care. Preventive care is omitted, but not incompatible

35 See Official Gazette of the Hellenic Republic (1999), pp. 1–40.
36 See Official Gazette of the Hellenic Republic (2008a), pp. 961–1068.
37 See MISSOC (2010).
38 See also Official Gazette of the Hellenic Republic (1951), pp. 34–35.
39 See General Secretariat of Social Security (2006), pp. 3–4. See also Kremalis, K. (2004), p. 62; MISSOC (2010); MERCER (2005), p. 169.
40 See also MISSOC (2010).

with social insurance. Moreover, after the ratification of the Council of Europe's ESC, Greece undertook a specific obligation to take preventive measures, such as vaccinations to fight epidemics and other diseases (Article 11§3[41] of Law No. 1426/1984)."[42]

More precisely, all the benefits in kind provided for under the relevant provisions of C102 (Article 10) and of the ECSS (Article 10) are provided.[43] Namely:

- In the case of *a morbid condition*:
  - General practitioner care, including domiciliary visiting.
  - Specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals.
  - The essential pharmaceutical supplies as prescribed by medical or other qualified practitioners.
  - Hospitalization where necessary.

- In the case of *pregnancy* and *confinement* and their consequences:
  - Prenatal, confinement and post-natal care, either by medical practitioners, or by qualified midwives.
  - Hospitalization where necessary.

The IKA-ETAM has also drawn up a list of pharmaceutical supplies in force.[44] The medicines are administered only by prescription from the competent doctor of the IKA-ETAM during the medical visit. Medicine prescriptions can also be issued to the persons insured with IKA-ETAM by the doctors of the National Health System (NHS) Health Centres (IKA-ETAM Circular 88/1989). In urgent cases is the use of the following is permitted: (a) medicines not prescribed by an IKA-ETAM doctor and (b) medicines that do not belong in the pharmaceutical list of the IKA-ETAM. However, in both cases the IKA-ETAM Health Service has to examine the purpose for which the medicines have been issued and must approve the prescription. The insured person then has the right to be reimbursed for the cost of for the medicines.[45]

As far as hospitalization is concerned, the insured person has the right to be hospitalized in a public hospital, in a registered clinic designated by the insurance institute, or in a hospital of the social insurance institute.[46] Hospitalization

41 See Official Gazette of the Hellenic Republic (1984), p. 261.
42 See Kremalis, K. (2004), p. 63.
43 See General Secretariat of Social Security (2006), p. 4. See also Leontaris, M. (2007), pp. 361–366, 368–372; Lanaras, K. (2008), pp. 363–394.
44 See General Secretariat of Social Security (2006), p. 4.
45 See Leontaris, M. (2007), pp. 369–370.
46 See also MISSOC (2010).

involves equally – apart from the admission to any hospital – the provision of medical and pharmaceutical care, the expenses for taking people to and from hospital, as well as the use of a personal nurse during the night in the case of serious illness. The IKA-ETAM covers the expenses for the admission to state hospitals and the private clinics with which it has a contract.[47]

Thereafter, with regard to the previously mentioned provision of sickness benefits in kind, *cost-sharing* is not required by the insured persons and their dependants (for example, hospitalization, medical treatment). However, the following exceptions exist: (a) for pharmaceutical supplies there is cost-sharing, but it does not exceed, in any case, 25% of the total cost; and (b) for the medical examinations completed in medical establishments that are not parties to a contract with the IKA-ETAM, cost-sharing also applies, but it cannot though exceed, in any case, 20% of the total cost. Furthermore, the contribution paid by low-paid pensioners (retired persons receiving the minimum pension) for medicines has been reduced from 25% to 10%, while no contribution needs to be paid by patients in need of medicines used in the treatment of AIDS and organ transplants. With regard to medicines necessary for the treatment of serious diseases, as well medicines of a high cost, the cost-sharing is reduced (for example, a 10% contribution is paid towards the cost of medication prescribed for illnesses such as Parkinson's Disease, Paget's Disease, Crohn's Disease, etc. (Ministerial Decisions 7/1143/90 and 7/280/91)), or the medicines can be also provided without charge. For prostheses, spectacles, and hearing aids, a charge is limited to 25%, maximum. Finally, cost-sharing is not required in the case of pregnancy, confinement and their consequences.[48]

4.3.3 QUALIFYING CONDITIONS

Medical care is not provided to directly insured persons immediately (meaning not from the first day they become employed). They need first to have fulfilled certain time related criteria. In particular, the beneficiaries and their dependants, in order to receive the relevant benefits in kind, from the 1st of March of each year and during the 12-month period, should have completed at least 50 working days (Article 31§1[49] of Law No. 1846/1951). This actually means that the insured need to complete 50 working days every year. This number of working days will increasing by 10 days per year starting on 01/01/2009 – a modification caused by Article 148§1[50] of Law No. 3655/2008 – until 100 working days are completed for

47 See General Secretariat of Social Security (2006), p. 4.

48 General Secretariat of Social Security (2006), p. 4. See also Leontaris, M. (2007), pp. 369–371; Lanaras, K. (2008), pp. 377–378; MERCER (2005), p. 169; MISSOC (2010).

49 See Official Gazette of the Hellenic Republic (1951), pp. 32–33.

50 See Official Gazette of the Hellenic Republic (2008a), p. 1063.

standard employees, and 80 working days for construction workers. The above number of working days should be completed either during the previous calendar year, or during the 15 months preceding sickness or probable date of childbirth, without including the working days completed during the last calendar trimester of the 15-month period.[51]

Moreover, directly insured persons also have the right to receive sickness benefit in kind in the case of a *non-employment injury*. All the same, the time requirement in the latter differs, and the directly insured needs only to have completed half of the working days required for the provision of the sickness benefit in kind (Article 34§1,[52] Law No. 1846/1951). This adds up to 25 working days, and taking into account the new arrangements placed by the Article 148§2[53] of Law No. 3655/2008, the maximum time requirement will eventually increase to 50 working days.

4.3.4 DURATION

In the event of hospitalization, Greek legislation – except for certain medical examinations that have a high cost (for example, axial, magnetic tomography, etc.), which may be done when this is considered necessary, provided they are prescribed by a practitioner as well as authorized under a special procedure – does not set any limits regarding the provision of medical care. Similarly, no limit is set concerning the provision of medical care to out-patients, except, once again, in the case of certain medical examinations that have a high cost (for example: axial, magnetic tomography, triplex, etc.) and which may be carried out (if deemed appropriate) provided that they are prescribed by a practitioner and authorized according to a special procedure. It should be noted, however, that the amount of the cash sickness benefit is reduced by 2/3 in the event of hospitalization and for as long as the person concerned is in hospital (provided that he does not have any dependants). In any case, the protected person receives both sickness benefits in cash and in kind when morbidity is present.[54]

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51 General Secretariat of Social Security (2006), pp. 4–5; General Secretariat of Social Security (2008b), pp. 2–3. See also Leontaris, M. (2007), p. 358; Lanaras, K. (2008), pp. 363–364; MERCER (2005), p. 169.

52 See Official Gazette of the Hellenic Republic (1951), p. 35.

53 See Official Gazette of the Hellenic Republic (2008a), p. 1063.

54 See General Secretariat of Social Security (2006), p. 5.

4.3.5 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

Greece fulfils the requirements set out both in C102 and in the ECSS regarding the personal scope of application, by protecting more than 50% of all employees within the country.[55] Be that as it may, an exact answer to the question of whether Greece fulfils the personal scope of application under the Protocol to the ECSS and the Revised ECSS cannot be given due to the absence of proper statistics. As far as the personal scope of application is concerned, the Protocol increases the percentage of coverage of employees from 50% to 80% (Article 9(a)). Despite the fact that Greece should not encounter any substantial difficulties in fulfilling such a requirement, the absence of statistical data makes difficult for one to come to a final conclusion in this respect.

At this point it should be noted that based on the Report Form issued by the ILO Bureau, which is to be used by the countries which have ratified the ILO C102 (this report form has also been approved by the ILO GB in accordance with Article 22 of the ILO Constitution), the national governments are requested to furnish statistical information under each of the Articles of C102, referring to the persons protected per accepted social risk.[56] The structure of the national reports required to be submitted under Article 74 of the ECSS is very similar to those required by C102. Therefore, countries can fulfil their reporting obligations under the ECSS by submitting the same report they produce for C102.[57] Additionally, only if the protection provided by the country pertained to all the employees, the entire economically active population, or all residents, would it be sufficient for the country to indicate this in the submitted national reports, without supplying any statistics.[58]

With respect to the Revised ECSS, a problem exists regarding personal coverage, since it allows for a small derogation of 5% in respect of coverage of all employees' (Article 9§2(a)). It also worth mentioning that precise statistical data, so as to see the exact parentages of those insured in relation to the whole number of employees, have been also requested by the ECSR, which examines the application

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55 The country is making use of Article 9(a) of C102 so as to determine the persons to be protected, according to which: 'The persons protected shall comprise prescribed classes of employees, constituting not less than 50 per cent of all employees…'. An identical provision is Article 9(a) of the ECSS. See also General Secretariat of Social Security (2006), p. 3.

56 See, for example, the Report Form [report?] composed for C102, in: International Labour Office (1980), pp. 1–39.

57 See also Nickless, J. (2002), p. 24.

58 See, for example, the reference included in the Form for the Biennial Report on the European Code of Social Security, Council of Europe (*s.d.*), "Form for the Biennial Report on the European Code of Social Security", Strasbourg, p. 1.

of the ESC, especially in relation to maternity benefits, unemployment benefits, and work accidents or occupational disease benefits.[59]

Thereafter, and as described above, under national social security legislation all the benefits in kind provided for under the relevant provisions of C102 (Article 10) and of the ECSS (Article 10) are provided.[60] Therefore, Greece fulfils the international requirements set in C102 and in the ECSS regarding both the benefits in kind that should be provided in the case of a morbidity, as well as cost-sharing. In particular, regarding cost-sharing, the aforementioned international instruments postulate that 'the beneficiary or his breadwinner may be required to share in the cost of the medical care the beneficiary receives in respect of a morbid condition; the rules concerning such cost-sharing shall be so designated as to avoid hardship' (Article 10(2) both in C102 and the ECSS). However, the researcher has reservations about the issue of 'avoiding hardship'. This is due to the fact that based on the ECSS, Member States are obliged to provide detailed statistics to the Committee of Experts on this matter, and[61] such statistics have not been included in the national reports submitted to date.

With respect to the Protocol to the ECSS and the material scope of application (Article 10§1&2) (in other words, what exactly the benefit shall include), care by general practitioners is provided, and home visits care by specialists, hospitalization, nursing, and auxiliary services, are included. Still, the requirement imposed by the Protocol for the provision of both non-proprietary pharmaceutical supplies and proprietary preparations has not been clarified in the submitted national reports. In Greece in principle, there is a list of pharmaceutical supplies and the medicines need to be prescribed by doctors. Of course, the person can pay the full amount themselves for medicines that are not on the list. There are also cases that when a medicine is deemed to be absolutely necessary for treatment, the insurance organization will pay the entire amount for the medicine or a specific part. Moreover, dental care is provided in Greece as part of health care and only in the case of dental prosthesis (cosmetic dentistry'/'crowns'/'veneers'/dentures) is cost-sharing of 25%. More explicitly, with regard to cost-sharing, and for medicines in the case of pregnancy, confinement and their consequences, there is no cost-sharing, but there is no information available on medicines which are not prescribed, and based on the Protocol, the range of pharmaceutical supplies should not be limited to those prescribed by a medical practitioner. In general, for pharmaceutical supplies, where there is cost-sharing as already described above, the threshold imposed by the Protocol is fulfilled. Finally, there is no limit regarding hospitalization (duration of the provision of the sickness benefit

59 See Council of Europe (2006), p. 350.

60 See General Secretariat of Social Security (2006), p. 4. See also Leontaris, M. (2007), pp. 361–366, 368–372; Lanaras, K. (2008), pp. 363–394.

61 See also Nickless, J. (2002), p. 33.

in kind) (Article 12), save for certain medical examinations that have a high cost. Therefore, it could be said that with certain legislative changes, the Part II (Medical Care) of the Protocol to the ECSS could be ratified by Greece'.

As far as the definition of medical care given in the Revised ECSS (Article 8) is concerned, Greece seems to comply with it, since at a national level medical care of a curative nature is provided and the Revised ECSS stipulations regarding medical care of a preventive nature are also provided under prescribed conditions. In similar terms, concerning what medical care should comprise (Article 10), Greece seems to fulfil most of the requirements.[62] With respect to cost-sharing, the Revised ECSS does not impose any specific rules, but simply states that cost-sharing, where it applies, 'should avoid hardship'.[63] Consequently, based on proper national legislative arrangements a consideration of accepting Part II (Medical Care) of the Revised ECSS could take place.

Further, according to Article 12§1 of C102 and Article 12 of the ECSS, the sickness benefit in kind 'shall be granted throughout the contingency covered, except that in the case of a morbidity, its duration may be limited to 26 weeks in each case, but the benefit shall not be suspended while a sickness benefit continues to be paid, and provision shall be made to enable the limit to be extended for prescribed diseases recognized as entailing prolonged care.'[64] Consequently, national legislation

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62 General practitioner and specialist care provided inside hospitals, in institutions other than hospitals and at the patient's home.; care provided by 'a member of a profession legally recognised as allied to the medical profession, under the supervision of a medical, or other qualified, practitioner'. What this means is not precisely clear, and rests on what is legally recognised as an allied profession according to the law of the contracting party. No similar comment appears in the Code, but reference is made to 'nursing and auxiliary services' in the Protocol. This new definition in the Revised Code relies upon national legislation as to whether the following types of professional are covered: specialised nurses, anaesthetists, ward nurses, physiotherapists, speech therapists, etc; necessary pharmaceuticals as prescribed by medical or other practitioners. Unlike the Protocol, the Revised Code does not, therefore, stem to necessary medicines that are not prescribed by a doctor; maintenance in a hospital or other medical institution, which covers the so-called 'hotel costs' of food and board; dental care and all necessary dental prosthesis for all insured persons. This is a significant step up from the Code, which does not mention dental treatment at all, and the Protocol, which only provides conservative dental care for children; medical rehabilitation including the supply and maintenance of orthopaedic and prosthetic appliances. No mention of these services is made in either the Code or the Protocol; transport of patients, as prescribed by national law. This leaves a wide range of discretion to the contracting parties. No such provision appears in either the ECSS or the Protocol to the ECSS.

63 'This means that the commission of experts will not be able to assess co-payments against a hard and fast background as is done with the Protocol. The new approach adopted in the Revised Code will allow the commission to look beyond just percentages and pay very careful consideration to how the whole system of co-payment operates. Of course, there is nothing to stop the commission finding that co-payments that are lower than the percentages set by the Protocol still violate the new provisions of the Revised Code; essentially, the Revised Code enables deeper investigation', in Nickless, J. (2002), p. 34.

64 The provision stipulates that: 'medical care should be granted as long as required by the condition of the person protected. However, in case of a morbid condition a maximum benefit

is in line with the aforementioned international requirements. With respect to the Revised ECSS, Greece also seems to fulfil the requirements regarding the duration of the medical care (Article 12), where medical care should be provided throughout the contingency.

Finally, as regards the qualifying conditions, and as already described above, medical care is not provided to the directly insured persons immediately. In order to receive the relevant benefits in kind, the beneficiaries and their dependants should have completed at least 50 working days from 1st March of each year and during the 12-month period, (Article 31§1 of Law No. 1846/1951). This actually means that they need to complete 50 working days every year and such a condition goes against the spirit and principles of the international instruments.

Thereafter, according to Article 11 both in C102 and the ECSS, medical care 'shall be secured at least to a person protected who has completed, or whose breadwinner has completed, such qualifying period as may be considered necessary to preclude abuse.' Therefore, the exact qualifying period is to be determined at a national level, as long as it ensures 'that the benefits are, in fact, received by the categories of the persons for whom they are intended … the length of the period of contribution, employment, or residence, as the case may be, would depend largely on the scope of protection and the nature of the scheme concerned.'[65]

At first glance, the national legislation seems to be in line with the above described international provisions for access to medical care, since the exact qualifying period is determined at a national level.

Nevertheless, there is an issue worth noting here. Under the recent Greek Law No. 3655/2008, the qualifying conditions to be met to gain access to medical care have been harshened considerably (similarly, the qualifying conditions to be met to gain access to sickness benefit have also been harshened).[66]

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period may be prescribed, provided that such period is not less than 26 weeks in each case of treatment. If medical is required in respect of a disease other than that which led to the previous treatment, the person protected should be entitled to a new period of treatment of up to 26 weeks. It must be taken into account that medical care should not be suspended as long as the beneficiary receives a sickness allowance. This implies that medical care may have to be given for more than 26 weeks in case the patient already received medical care before becoming incapable of work. Pre-natal, childbirth and post-natal care should be granted throughout the contingency. The last point of the provision with regard to the duration is the requirement to extend the maximum benefit period in the case of patients suffering from diseases recognised as entailing prolonged care, for instance tuberculosis, heart disease or mental illness. To which diseases this provision exactly refers may be prescribed by national laws or regulation', see Dijkhoff, T. (2011), p. 49.

65 See Dijkhoff, T. (2011), p. 51.

66 The relevant description follows below in Section 4.4, Sub-Section 4.4.3.

In particular, the number of working days that a person should have completed per year in order to have the right to receive medical care have been doubled from 50 to 100 working days.

Apart from the fact that harshening conditions can easily cause hardship, since they make it more difficult for persons to establish the right to medical care in the first place (the number of working days needs to have been completed prior to a person's need for medical care), they actually also contravene the Hellenic Constitution and the state's obligations to procure for the social security protection of the population.[67]

Additionally, and in relation to the accepted international standards, it may be that the exact qualifying period for medical care is to be determined at a national level, however, the state, as already mentioned, has to make sure that the benefits prescribed under these standards are, in fact, received, and can be received by all beneficiaries. What is more, the extent of the period of contribution, employment, or residence (as the case may be) that the state imposes should reflect' the scope of protection and the nature of the scheme concerned.[68] The Greek state does not appear to have looked after these matters properly, particularly because through legislative modifications certain categories of the population are affected more than others[69] for example, part-time workers and the unemployed (see below).

Even the previous requirement of completing 50 working days could be considered quite high for access to medical care, particularly if one takes into account that under the pre-war Conventions no qualifying period was prescribed for medical care.[70]

It is interesting to note that in the annual Greek reports on the application of the ECSS, no justification is given as to why the government decided to proceed with such legislative modifications concerning the qualifying conditions for medical care (as well as sickness benefit).[71] Only in the 19th Report on the implementation of the ESC submitted by the Greek government on Articles 3, 12, and 13 (for the period from 01/01/2005 to 31/12/2007) is an explanation given, and only with regard to medical care, stating:

> 'The reason justifying this increase is that, as proved in practice, the period of 50 days' wages does not cover the benefits granted by the institution in relation to the contributions paid. Furthermore, it is dissuasive as to whether the worker to

67 See also Katrougalos, G. (2009), pp. 53–54.
68 See also Dijkhoff, T. (2011), p. 51.
69 See also Council of Europe (2010), p. 23.
70 See also Dijkhoff, T. (2011), p. 52.
71 See below under Section 4.4, Sub-Section 4.4.6.

> continue to be insured with the Institution, since he/she and the members of his/her family can receive care both for the current year and the next year on the basis of this minimum number of days' wages.'[72]

Be that as it may, the above stated reason is of an economic nature; this is actually not acceptable under the spirit and the principles embodied in the ISSS. Increasing the qualifying conditions for access to a benefit significantly – and, as a matter of fact, doubling the number of working days to be completed (in the case of medical care) is not done in order to preclude abuse, but in order to limit the expenses of the national social security system. Abuse could be tackled with other non-economic measures. Therefore, it could be said that Greece does not fully comply with the requirements set out in the international social security standards.

Finally, and in order to support the above assertion that such increases are not imposed in order to preclude abuse, but in order to limit the expenses of the national social security system, the following evidence from Greek parliamentary documentation is set out below.

a. The parliamentary discussions concerning the increase of the qualifying conditions for medical care and sickness benefit

Extensive discussions took place within the Greek parliamentary standing committee on social affairs with regard to the governmental decision to make harsher the minimum qualifying conditions required for acquiring access to medical care and establishing the right to receive sickness benefit.

The following statement (setting out part of the proposition of the majority justifying (on the part of the government[73]) the introduction of the legislative changes) is noteworthy, and is included in the record of proceedings of the parliamentary standing committee on social affairs, which elaborated and examined the submission of the draft law 'Administrative and Organizational Reformation of the Social Insurance System and other insurance provisions' (now Law No. 3655/2008) to the Greek Parliament:[74]

> 'Indeed we increase the number of working days that a person needs to have completed in order to acquire the right to receive a sickness insurance book from 50 to 100. In Greece, 10% of the citizens are economic migrants. Greek legislation has helped these persons to work, since the domestic labour market also needed

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72 See Council of Europe (2009), p. 65.

73 The governing political party was New Democracy ((ND) Νέα Δημοκρατία/*Néa Dimokratía*). This party has been the main centre-right political party in Greece for decades, and one of the two major political parties (the other being the Pan-Hellenic Socialist Movement (PASOK) (Πανελλήνιο Σοσιαλιστικό Κίνημα).

74 See Hellenic Parliament (2008f), pp. 4–5.

> them (as it has been proven over the years) and gave them the possibility the possibility of accessing health care even with only 50 days' wages (working days). Otherwise, they would not have been able to survive and they would have lived in greater poverty than they were facing in their home countries. However, the completion of 50 working days as a requirement can cause the members of a person's family become dependent on his/her sickness insurance book, and, as a consequence, the state has to pay for the export of Greek medicines without any control, without a national social insurance number, and without control on the prescription of medicines, all of which becomes a big burden for the state. It is a big economic burden, it is unfair on the rest of the citizens and it is unfair on the government, but also it is not right for the guarantee that we have given as a state on matters of health, which do not only concern each citizen working in Greece separately, but the general health of the population. Therefore, the increase of the number of working days completed from 50 to 100 adds, to a significant extent, to our efforts to combat insurance contribution evasion' evasion. Besides, no person can live on only 50, or even 100, days' wages. If a person were in such a situation, he/she would not be covered under social insurance, but under social welfare, or unemployment insurance. You also know that the long-term unemployed are covered in terms of medical care by state welfare and not by social insurance. The welfare funds exist and you all know how 'spacious' is the democratic nature of our form of government, and also how each one of us, but also the state, helps. That is another matter; and another is contribution evasion; another, the illegal exportation of medicines; another, the big burden placed on Greek society as a whole; and another, the game of the falseness of the fictitious daily wages between employer and employee and the *common agreement* on contribution evasion, which we are called upon to combat in every form and to every degree that we can, and this is possible. We do this without policing low-wage earners or the poor, but working to ensure fairness in our social insurance system.'

Several comments were made during the parliamentary discussions on the fact that the government harshened the qualifying conditions for access to medical care and for the provision of sickness benefit. Particularly regarding the above given justification, it was expressly noted that the legislative modifications concerned not only economic migrants, but all the citizens, and that such legislative modifications revealed the anti-social logic under which the government acts, while at the same time abolishing social solidarity.

Particular emphasis was placed on the effect that this legislative change has on certain categories of the population: those in part-time employment, those in temporary employment contracts, those working in seasonal professions (i.e. construction workers, agricultural workers, etc.), economic migrants, indirectly insured persons, the unemployed, etc. In general, it was stated that flexible forms of employment have dramatically increased the last years and that those in such occupations should at least be ensured access to medical care.

Some of the questions raised were as follows: 'What happens, for example, if a person has completed 95 working days and becomes sick, or needs to be operated immediately?' 'What happens if in a family neither the man nor the woman can work and complete more than 50 working days?' 'What happens when a person reaches the age of 60, does not receive a pension, and health problems occur?' A number of remarks also pertained to the fact that such negative legislative modifications relate, simply, to the government's desire to ensure the financing of the state budget and to reduce the public deficit. The observation that normally there should be no qualifying conditions imposed when a person is in the need of medical care is noteworthy. It was expressly stated that a country with the principle of the Social State of Law incorporated into its Constitution (since the revision of the Hellenic Constitution in 2001[75]) in order to guarantee the right to social security set out in the Constitution, and to be acknowledged as a 'social state', should loosen or even abolish the qualifying conditions for access to medical care and the provision of sickness benefit, and not to harshen them: 'Why should we, as a state, make our citizens pay in order to fulfill/complete/reach the required number of working days in order to be entitled to medical care and sickness benefits?' 'Through such legislative arrangements we are punishing thousands of insured citizens – and not only the economic migrants, who have similar rights as all the other citizens – and also because the issue is presented as an issue of the economic migrants who, in a sense, are presented to cooperate for the exportation of medicines abroad.' 'There are other circles that should be combated, there is a clear need for better control mechanisms in the IKA-ETAM and other drastic measures.' 'The main objective of the state should be – particularly for medical care, if not for sickness benefit – to facilitate access to more and more people and not to limit it.'[76]

Consequently, it becomes clear once again that the legislative modifications took place in order to limit the expenses of the national social security system, and more precisely, to combat contribution evasion. Indeed, combating contribution evasion is a serious matter and is an obligation of each government. The rise of such a phenomenon can have tremendous implications on the proper functioning of the social security system as a whole (and on pension schemes in particular). Nevertheless, there should be other ways of dealing with this problem.

Finally it is noteworthy that no references were made to the international social security legal instruments and their relevant provisions sanctioned and ratified by Greece, despite the fact that such a reference would be both accurate and substantive.

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75 See Amitsis, G. (ed.) (2003), p. 16. See also the initial report of Greece on the application of the ICESCR for the period from 1996 to 2001, in UN (2004), p. 2.

76 See Hellenic Parliament (2008a), pp. 26, 29, 44; Hellenic Parliament (2008b), pp. 4, 6, 11, 27; Hellenic Parliament (2008e), pp. 20, 26–27, 32, 48; Hellenic Parliament (2008f), pp. 8–9, 23, 26.

4.4 SICKNESS BENEFIT

4.4.1 INTRODUCTION

The applicable statutory basis for sickness benefits in cash is Law No. 1846/1951[77] on 'Social Insurances', which also governs the IKA-ETAM, as subsequently amended by Law No. 3655/2008.[78] Social insurance coverage is compulsory for employees (without exception) and the benefits are earnings related. Moreover, no membership ceiling exists.[79]

4.4.2 PERSONAL AND MATERIAL SCOPE OF APPLICATION

In general terms, in Greece incapacity for work is regulated according to the effect on the insured person. A distinction is also made between sickness insurance and invalidity insurance.[80] As already mentioned above, the sickness branch covers medical care and the loss of income due to sickness (temporary/short-term incapacity for work) as well as maternity, while invalidity (long-term/permanent incapacity for work) is covered under the pensions' branch. As far as the *sickness benefit in cash* is concerned, it is provided only to directly insured persons,[81] and if they are incapable of carrying out their employment due to illness or an accident. However, the directly insured person should not be responsible for the cause of his/her illness. It should also be noted that incapacity for work exists not only when the directly insured person cannot carry out his/her employment because of illness, but also when he/she is in a position to continue his/her employment, but doing so will put his/her health at risk (Articles 31 and 35 of Law No. 1846/1951,[82] and IKA-ETAM Insurance Regulation 33a)).[83]

In order for the sickness benefit to become invalidity benefit, the responsible doctor(s) (of the IKA-ETAM) encourages the insured person to submit the relevant application for the receipt of an invalidity benefit due to the deterioration in their health condition. Moreover, the insured person can submit such an application on his/her own initiative. The right of the insured person to submit an application requesting the transformation of the sickness benefit into invalidity

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77 See Official Gazette of the Hellenic Republic (1951), pp. 1–53.
78 See Official Gazette of the Hellenic Republic (2008a), pp. 961–1068.
79 See MISSOC (2010). The absence of a membership ceiling is relating to the applicability of the principle of universality.
80 See also Amitsis, G. (2003), p. 36; Pieters, D. (2002), pp. 173–174.
81 See General Secretariat of Social Security (2006), p. 5.
82 See Official Gazette of the Hellenic Republic (1951), pp. 32–33, 35–36.
83 See also Leontaris, M. (2007), p. 372; Lanaras, K. (2008), pp. 394–395.

benefit always exists. However, whether the insured persons request is accepted or not is decided by the health committees of the IKA-ETAM.[84]

As already mentioned, the IKA-ETAM covers the largest majority of salaried workers as well as employees in Greece.[85]

4.4.3 QUALIFYING CONDITIONS

Directly insured persons who are working and who are protected by the IKA-ETAM have the right to receive sickness benefit as long the attending physician of the IKA-ETAM has declared that they are temporarily incapable of performing their duties (proof of incapacity for work). In other words, they should be incapable of working and should abstain from working. The temporary incapacity for work should last at least 4 days and should be determined as of the first day of illness. The attending physician can sign a certificate of work incapacity for up to 15 days every year. For cases of over 15 days of incapacity for work, the certificate should be signed by the Health Committee.[86]

It should be also noted that the cash sickness benefit is provided for the duration of the incapacity for work and the benefit is provided regardless of whether or not there is a need for medical care (the necessary condition being that the person abstains from working). In any case, though, whether or not the employer pays – full, or partial – wages, does not matter, and the IKA-ETAM provides the cash sickness benefit in full.[87]

In order for directly insured persons to have the right to receive the cash sickness benefit they must not receive any statutory pension and should have completed 100 days of insurance (100 working days subject to contributions) during the calendar year preceding the year in which the declaration of illness takes place, or in the first 12 months of the 15 months preceding the illness.[88] However, it should be noted that with the enactment of Law No. 3655/2008, and according to Article 148§2[89] on health care provisions, since 01/01/2009 this number will increase by 10 per year until it reaches 120 working days. Moreover, limited time conditions are provided for certain other professional groups. For example,

84 See also in the website of the IKA-ETAM.
85 See General Secretariat of Social Security (2006), p. 2; Council of Europe (2001), p. 2.
86 See also the website of the IKA-ETAM.
87 See also Lanaras, K. (2008), p. 395.
88 See General Secretariat of Social Security (2006), p. 6. See also in: Lanaras, K. (2008), pp. 395; Leontaris, M. (2007), p. 372.
89 See Official Gazette of the Hellenic Republic (2008a), p. 1063.

construction workers must have completed 80 working days. Similarly, this time requirement will increase by 10 until it reaches 100 workings days.[90]

Directly insured persons also have the right to receive cash sickness benefit in the case of a *non-employment injury*. All the same, the time requirement in this case differs, and directly insured persons need only to have completed half of the working days required for the provision of the sickness benefit (Article 34§1, Law No. 1846/1951) – 50 working days, and taking into account the new arrangements put in place by Article 148§2[91] of Law No. 3655/2008, the maximum time requirement will gradually be increased to 60 working days.

4.4.4 DURATION

The directly insured person is entitled to a cash sickness benefit for up to 182 days for the same illness, or for different illnesses in the same year if the necessary time requirements are fulfilled. To wit: 100 working days should have been completed during the year preceding the illness, or during the last 15 months, excluding the last 3 months. From 01/01/2009 the number of working days to be completed will be increased by 10 until it reaches 120.

Thereafter, the cash sickness benefit is provided for up to 360 days for the same illness if the directly insured person has completed 300 working days during the 2 years preceding the declaration of illness, or in the last 30 months, excluding the days completed in the last 3 months.

Last, cash sickness benefit can also be paid for the same illness for up to 720 days if the directly insured person fulfils the requirements set out in the Article 28[92] of Law No. 1846/1951 (invalidity pension), specifically:

a) 1500 working days, provided that 600 of them were completed in the 5 years preceding the date of the declaration of illness;
b) 4500 working days before the date of the declaration of illness;
c) If the requirements described under (a) and (b) are not fulfilled, then 10000 working days in total before the declaration of illness are sufficient for the provision of the benefit;
d) Last, if none of the requirements described under (a), (b) and (c) are fulfilled, then the directly insured person has the right to receive the cash sickness benefit if he/she has completed 300 working days and he/she is not more

90 See General Secretariat of Social Security (2008b), p. 3.
91 See Official Gazette of the Hellenic Republic (2008a), p. 1063.
92 See Official Gazette of the Hellenic Republic (1951), pp. 28–30.

than 21 years old. This minimum number of 300 working days is increased by 120 working days on average every year after they have reached 21 and up to the age 54, for which 4200 working days are required. It is necessary, however, that 300 of them are completed in the 5 years preceding the date of the declaration of illness.

The cash sickness benefit is provided to directly insured persons (who provide dependent work) from the 4th day after illness has been declared. Consequently, there is a waiting period of 3 days (Article 35(d) and Article 38§3, Law No. 1846/1951,[93] as amended by Article 39§1[94] of Legislative Degree No. 2698/1953).

To this end, the issue was raised of whether the IKA-ETAM has the right to take into account the waiting period of 3 days only once per year, or in every case of the occurrence of the risk, or illness (so accordingly, the employer may/may not have to pay the wage). According to the prevailing opinion, with which both theory and case law agree, and which IKA-ETAM follows today, the waiting period of 3 days is only taken into account once per year. However, if the directly insured person becomes ill again in the same year, then, in order for him/her to receive the benefit from the first day the illness is declared, he/she should be incapable of working for more than 3 days. Therefore, if the incapacity for work lasts only for 3 days, or less than 3 days, the IKA-ETAM is not obliged to pay the benefit to the directly insured person. Concluding, at present the following rules apply:[95]

(a) If the directly insured person becomes ill and is off work for 3 days (regardless of how many times this happens within the same year), he/she does not have the right to receive benefit. Moreover, this time is not considered as waiting period for another occasion of illness. This means that if he/she becomes ill again within the same year for more than 3 days, then the sickness benefit will be granted only from the 4th day of illness onwards. In any case, the employer is obliged to pay wages for the 3 days of illness on every occasion of illness, but not continuously – only until the one month, or half month is completed (according to the working days that the directly insured person has completed). It should be noted that for the 1–3 days for which no benefit is being paid by the IKA-ETAM, the employer pays only half of the daily wage;
(b) If the directly insured person becomes ill and is off work for more than 3 days, e.g. 12 days, he/she has the right to receive the sickness benefit from the IKA-ETAM only for the 9 days. The waiting period of 3 days is subtracted from the benefit. The employer pays the benefit for the first 3 days (half of the daily

93 See Official Gazette of the Hellenic Republic (1951), pp. 36, 38.
94 See Official Gazette of the Hellenic Republic (1953), p. 16.
95 See Leontaris, M. (2007), pp. 375–376; Lanaras, K. (2008), pp. 401–402.

wage), and for the remaining 9 days the employer pays the difference between the benefit paid by the IKA-ETAM and the daily wage.

4.4.5 DEATH GRANT

A death grant is provided, which corresponds to at least 8 times the reckonable earnings of the highest group.[96] More precise, the death grant is provided for the funeral expenses of the directly insured person, or pensioner because of old-age, invalidity and decease. For the death grant provision the directly insured person must have completed 100 working days during the previous calendar year.[97]

4.4.6 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

Greece fulfils the requirements set out both in the C102 and in the ECSS regarding the material scope of application. The country also fulfils the standards set out in relation to the personal scope of application, by protecting more than 50% of all employees within the country.[98] All the same, exact statistical data (percentages) have not been provided within the nationally submitted annual general and detailed reports on the application of the accepted standards.[99] As already mentioned, precise statistical data to determine the exact parentages of those insured in relation to the whole number of employees have been also requested by the ECSR, which examines the application of the ESC, particularly in relation to maternity benefits, unemployment benefits, and work accident or occupational disease benefits.[100] As far as the Protocol to the ECSS is concerned, and with respect to the definition of the contingency, no changes have been foreseen to the standards. Consequently, Greece fulfils the standards set. With regard to the personal scope of application (Article 15(a)) of the Protocol to the ECSS, the percentage of coverage increases from 50% to 80% for employees. Despite the fact that no precise statistics are available at a country level, it seems that Greece may fulfil the set standard, since the IKA-ETAM covers almost all the employees within the territory of the country. With respect to the Revised ECSS and in relation to the definition of the contingency (Article 13), national

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96 See MISSOC (2008).

97 See also in the website of the IKA-ETAM.

98 Greece makes use of Article 15(a) of the C102, so as to determine the persons protected, according to which: 'The persons protected shall comprise prescribed classes of employees, constituting not less than 50 per cent of all employees…'. Identical provision is Article 15 of the ECSS. See also General Secretariat of Social Security (2006), p. 5.

99 See also the remarks already made in the Section 4.3, Sub-Section 4.3.5, above.

100 See Council of Europe (2006), p. 350.

legislation fulfils the standard set, since the contingency covers incapacity for work resulting from an illness or an accident involving suspension of earnings. The fulfilment of the personal scope of application may cause difficulty, since the Revised ECSS requires (Article 14§1a) all employees, including apprentices, to be covered. In Greece almost all employees are insured with the IKA-ETAM and there is also the possibility of voluntary insurance with the IKA-ETAM for certain categories of people, however, no exact statistical data are available to enable a proper assessment of the fulfilment of the relevant standards.

The waiting period of three days set out under national legislation is in line with the international standards set in the C102 (Article 18) and in the ECSS, according to which: 'the benefit shall be granted throughout the contingency, except that the benefit may be limited to 26 weeks in each case of sickness and need not be paid for the first three days of suspension of earnings.' With regard to the aforementioned exception, which, based on the set standards, 'may be limited to 26 weeks in each case of sickness', according to national legislation the sickness benefit is provided for up to 182 days for the same sickness or for different illnesses. Thus, for the same sickness, Greek law complies with the international standards, but for different illnesses there seems to be a problem, since according to the ISSS the sickness benefit needs to be provided for each illness up to 26 weeks. In the Protocol to the ECSS, the period of entitlement is increased (Article 18) and the fulfilment of the standards should be seen based on legislative initiatives for modification. In the Protocol, there is no reference to a waiting period. The Revised ECSS sets a longer duration of the payment of cash sickness benefit (Article 17) in relation to the national legislation, but the waiting period allowed is once again three days, so it is the same with the waiting period set at a national level.

Going further, the international social security standards set in the C102 and in the ECSS do not include any reference to the provision of a death grant. Conversely, in the Revised ECSS, under Article 18(1) it is stated that 'in the case of the death of a person who was in receipt of, or entitled to receive, sickness cash benefit, a grant for funeral costs shall, under prescribed conditions, be paid to the survivors, dependants or other persons specified by national legislation.' Thus, Greek legislation fulfils this standard of the Revised ECSS. The Protocol to the ECSS makes no reference to the provision of a death grant as such.

Finally, in relation to the qualifying conditions and according to Article 17 both in the C102 and the ECSS, the sickness benefit 'shall be secured at least to a person protected who has completed such qualifying period as may be considered necessary to preclude abuse.' Consequently, once again the qualifying period that needs to be completed for the provision of the sickness benefit is to be determined at the national level as long as it ensures that 'the benefits are, in

fact, received by the categories of the persons for whom they are intended'[101] and 'precludes abuse'.[102] The Protocol to the ECSS contains no changes with respect to the qualifying conditions set by the ECSS, while the qualifying conditions (Article 16) set in the Revised ECSS are fulfilled by the Greek legislation and the benefit is also a periodical payment (Article 15).

At first glance, and as with the case of medical care,[103] national legislation seems to be in line with the above described and accepted international standards of the C102 and the ECSS for the provision of the sickness benefit, since the exact qualifying condition is to be determined at a national level.

Still, the following is worth mentioning at this point. The recently passed Law No. 3655/2008 introduced increases in relation to the qualifying conditions needed for the provision of the sickness benefit. More precisely, instead of completing 100 working days, a person would now have to complete 120 working days for the receipt of the sickness benefit. Apart from the fact that this increase can cause hardship, since they make the conditions under which persons may establish the right to a sickness benefit (the number of working days needs to have been completed prior to a person's need for sickness benefit) stricter, they actually go also against the Greek Constitution, and the state's obligations to procure for the social security protection of the population.[104] Additionally, and in relation to the international standards, it may be that the exact qualifying period for sickness benefit is to be determined at a national level, however, the state has to make sure that the benefits prescribed under international law are, in fact, received and can be received by all beneficiaries. The Greek state does not give the impression that has looked after these matters carefully, particularly since through such legislative modifications certain categories of the population are affected more than others,[105] for example, the part-time workers, the unemployed, etc.[106]

Similarly with medical care, in the annual Greek reports on the application of the ECSS, no justification has been given for why the government decided to proceed with such legislative modifications concerning the qualifying conditions for a sickness benefit. It was only in the 19th Greek Report on the implementation of the ESC that certain explanations were given, but only with regard to medical care, not for the sickness benefit.[107]

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101 See Dijkhoff, T. (2011), p. 63.
102 See Dijkhoff, T. (2011), p. 62.
103 See above Section 4.3, Sub-Section 4.3.5.
104 See also Katrougalos, G. (2009b), pp. 53–54.
105 See also Council of Europe (2010), p. 23.
106 As already referred above, see Section 4.3, Sub-Section 4.3.5.
107 See the Section 4.3, Sub-Section 4.3.5.

Be that as it may, the proclaimed reasoning is of an economic nature and thus not acceptable under the spirit and the principles embodied in the ISSS. Increasing the qualifying conditions for access to the benefit is not taking place in order to preclude abuse, but in order to limit the expenses of the national social security system. It seems like consideration of how to combat abuse through other non-economic measures was not possible at that time by in Greece. Therefore, Greece does not fully comply with the requirements set under international social security law.

Last, from the Greek parliamentary record of proceedings, and in particular from the discussions held, and the standpoints expressed, in the parliamentary standing committee on social affairs[108] concerning the modifications that Law No. 3655/2008 would bring in relation to the provision of the sickness benefit, it is even more clear that such increases have not been imposed in order to preclude abuse, but in order to limit the expenses of the national social security system.

4.5 UNEMPLOYMENT BENEFIT

4.5.1 INTRODUCTION

As early as 1954, an independent social security institution had been established – the Manpower Employment Organization (OAED) (*Organismos Apasholisis Ergatikou Dynamikou*) (Legislative Decree No. 212/1969)[109] – as a legal entity of public law. According to Article 1 (General Provisions) of Law No. 1545/1985, the OAED is entrusted with the 'implementation and operation of the national system of protection against unemployment (*Ethniko Systima Prostasias apo tin Anergia* (ESPA)) with a view to protect employees[110] from the consequences

[108] See Section 4.3, Sub-Section 4.3.5.

[109] See Official Gazette of the Hellenic Republic (1969), pp. 889–892.

[110] 'According to theory and case law, *an employee* is a worker who receives a salary, regardless of the manner in which it is determined and paid, and furthermore is subjected to lawful subordination by the employer which is manifested in the employer's right to exercise control and supervision as regards the place, the time and the manner in which work is provided and to issue orders and instructions that are binding on the worker regarding the correct performance of the work, irrespective of whether the employer exercises this right in practice or leaves the worker leeway to take initiatives, provided however that this option does not extend to abolition of the obligation to obey the employer and creation of a respective right to official action free from the employer's control. In the opposite case, the work is not performed in a position of subordination', see Lampousaki, S. (2009).

of unemployment and to fulfil the State's obligation.'[111] In brief, the main competencies of the OAED involve:[112]

- Unemployment insurance and the provision of reservists' benefits (as well as family benefits);
- Facilitation of the intercourse between work demand and work supply;
- Occupational guidance of the labour force and vocational training;
- Implementation of several subsidized programmes targeting enterprises that employee young people or vulnerable groups, as well as subsidized programmes for the creation of labour market opportunities;
- Implementation of measures supporting the development of entrepreneurship and facilitation of the workforce mobility;
- Implementation of measures preventing and countering unemployment;
- Enrolment of the unemployed both at a national and local level and placement in work positions based on their general and special qualifications;
- Collaboration with the National Centre for Vocational Orientation (EKEP), especially on the determination of the general directions concerning vocational orientation.

Over the years, the applicable statutory basis[113] concerning the protection against unemployment can be found in the following legal documents:

(a) Legislative Decree No. 2961/1954 (Article 11)[114] as amended by: Law No. 3198/1955,[115] Law No. 3252/1955,[116] Law No. 3464/1955,[117] Law No. 74/1975,[118] and Law No. 1082/1980;[119]

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111 See Official Gazette of the Hellenic Republic (1985), p. 1799.

112 See Leontaris, M. (2007), pp. 416–417. For further information with respect to Unemployment, Labour Provision and Job Creation Programmes, see Kremalis, K. (2004), pp. 104–110. See also the website of the OAED and of the National Centre for Vocational Orientation (EKEP).

113 In the 13th Biannual Report on the non-accepted parts of the ECSS, submitted by the government of Greece for the period from 1 July 2008 to 30 June 2010, reference was made only to some of the aforementioned laws. It particular, it was stated that 'the basic legislation concerning the unemployment benefits (part IV of the European Code of Social Security), is as follows: Legislative Decree No. 2961/1954 (A, 197 – Article 11); Law No. 1545/1985 (A, 91) which is in force as amended by Law Nos. 1836/1989 (A,79 – Article 15); 1874/1990 (A, 18); 1876/1990 (A 27); 1892/1990 (A, 101 – Article 37) and 2224/1994 (A 112)', in Council of Europe (2010b), p.2.

114 See Official Gazette of the Hellenic Republic (1954), p. 1596.

115 See Official Gazette of the Hellenic Republic (1955), pp. 636–638.

116 See Official Gazette of the Hellenic Republic (1955b), pp. 1063–1066.

117 See Official Gazette of the Hellenic Republic (1955c), pp. 2841–2843.

118 See Official Gazette of the Hellenic Republic (1975), pp. 375–377.

119 See Official Gazette of the Hellenic Republic (1980), pp. 2923–2930.

(b) Law No. 1545/1985[120] as amended by Law No. 1836/1989 (Article 15),[121] Law No. 1874/1990,[122] Law No. 1876/1990,[123] Law No. 1892/1990 (Article 37),[124] Law No. 2224/1994,[125] and Law No. 3552/2007 (Article 5).[126]

A system of compulsory protection for salaried people has been established and there is no possibility of voluntary insurance.[127] Moreover, Law No. 3016/2002 (Article 27)[128] sets the exact terms and requirements for the provision of a benefit to the long-term unemployed.

It is worth mentioning that the OAED does not cover all types of unemployment, but mainly the short-term unemployment of dependent workers.[129] Moreover, there are certain other unemployment insurance organizations, or insurance branches, which provide coverage against the social risk of unemployment to certain special professional groups. By way of illustration: the Seamen's Unemployment and Sickness Fund, or the unemployment insurance branch, which has been created by the newly established main social insurance fund for the Mass Media Workers (ETAP-MME) (Law No. 3655/2008).[130]

4.5.2 PERSONAL AND MATERIAL SCOPE OF APPLICATION

In Greece, the provision of unemployment benefit is directly related to salaried dependent work. In other words, a person has the right to receive protection against the social risk of unemployment if he/she is a salaried worker (*misthotos*) and offers/provides his/her work to other individuals, or to legal entities on the basis of a labour contract of dependent work.

According to Article 11 of legislative Decree 2961/1954,[131] the unemployment insurance scheme of the OAED contains people who, irrespective of their

120 See Official Gazette of the Hellenic Republic (1985), pp. 1799–1806.
121 See Official Gazette of the Hellenic Republic (1989), p. 1074–1075.
122 See Official Gazette of the Hellenic Republic (1990b), pp. 133–135.
123 See Official Gazette of the Hellenic Republic (1990c), pp. 187–198.
124 See Official Gazette of the Hellenic Republic (1990d), p. 883.
125 See Official Gazette of the Hellenic Republic (1994), pp. 1469–1492.
126 See Official Gazette of the Hellenic Republic (2007), pp. 1814–1815.
127 In Council of Europe (1993b), p. 2; Council of Europe (1997), p. 1; Council of Europe (2001b), p. 1; General Secretariat of Social Security (2003), p. 1; General Secretariat of Social Security (2006b), p. 1; OAED (2008), p. 1; Kremalis, K. (2004), p. 103; MISSOC (2010).
128 See Official Gazette of the Hellenic Republic (2002b), pp. 1734–1735.
129 See also Kremalis, K. (2004), p. 111.
130 See Official Gazette of the Hellenic Republic (2008a), pp. 991–992. See also Chapter 3, Section 3.1.1.
131 See Official Gazette of the Hellenic Republic (1954), p. 1596. Such a requirement is not explicitly set out in Article 1 of Law No. 1545/1985.

nationality (being Greek nationals, or not), offer salaried dependent work (either of a temporary, or permanent nature), and who are insured against sickness with the IKA-ETAM, or another social insurance organization. What is more, those employed in branches that have been integrated into the OAED also enjoy protection against unemployment.[132]

With regard to the provision of medical care (sickness benefit in kind) to the unemployed, national social security law stipulates the following:[133]

(a) Article 18, Law No. 2639/1998,[134] 'Provision of Medical Care to the unemployed until the age of 29' – the unemployed have the right to receive medical care until they reach the age of 29, as long as they have remained enrolled in the unemployed records of the OAED for at least an uninterrupted period of two months;
(b) Article 5, Law No. 2768/1999,[135] 'Provision of Medical Care to the unemployed older than 29 years *of* age and until they reach the age of 55' – unemployed persons belonging in this age category have the right to receive medical care as long as they have remained enrolled in the unemployed records of the OAED for at least twelve months. In this case, however, the unemployed person should have also completed 600 working days under the insurance of any social insurance organization in the country (the 600 working days are increased by 100 each year once the unemployed person reaches the age of 30 and until they are 54 years of age);
(c) Article 10, Law No. 2434/1996[136] and Article 18, Law No. 3144/2003,[137] 'Provision of medical care to the elderly long-term unemployed' – unemployed persons that have reached the age of 55 have the right to receive medical care, as long as they have remained enrolled in the unemployed records of the OAED for at least 12 months. Nevertheless, they should have completed at least 3000 daily incomes under the sickness branch of the IKA-ETAM. Moreover, the long-term unemployed above the age of 55 that have completed the required (according to their social insurance organization) number of daily incomes for the provision of the minimum pension (4500 daily incomes) also have access to medical care.

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132 See also Kremalis, K. (2004), p. 111; Greek Ombudsman (2007), p. 7; OAED (2008b), p. 1; OAED (2008), pp. 1–2.
133 See also Lanaras, K. (2008), pp. 369–370; OAED (2008c), p. 1.
134 See Official Gazette of the Hellenic Republic (1998), p. 3109.
135 See Official Gazette of the Hellenic Republic (1999b), pp. 4903–4904.
136 See Official Gazette of the Hellenic Republic (1996), p. 3337.
137 See Official Gazette of the Hellenic Republic (2003), pp. 1709–1710.

However, in Greece there is no protection against the social risk of unemployment for the agricultural workers, the self-employed and civil servants.[138] Therefore, it could be also said that insurance coverage against unemployment is one of the advantages of doing salaried work rather than independent work.[139] Furthermore, and particularly in respect of civil servants, it should be noted that unemployment coverage is considered unnecessary, since they enjoy protection from another legal institution – the so-called permanency.[140]

Thereafter, according to the definition given in Greek legislation (Article 3, Law No. 1545/1985)[141] an unemployed person – and entitled to a regular unemployment benefit – is a person who, following the termination or expiry of his/her employment relationship, is available for work and is actively seeking for work, is prepared to accept an offer of employment from the appropriate services of the OAED within a fairly broad definition of his/her occupational sphere, or agrees to pursue vocational training, or re-training courses, and generally takes advantage of every employment opportunity.[142] It should be noted at this point that the case of dismissal is also covered.[143]

4.5.3 QUALIFYING CONDITIONS

a. General conditions[144]

A person who is insured against the risk of unemployment, in order to be entitled to receive an unemployment benefit, should have become unemployed after a

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138 See also in: Council of Europe (2005), p. 1; Kremalis, K. (2004), p. 114; Lampousaki, S. (2009), p. 1; MISSOC (2008b), pp. 11–12; Greek Ombudsman (2007), pp. 7, 12.

139 As also pointed out, "according to the principle of universality, which actually orients the social insurance coverage towards the whole working population facing the risk of unemployment, protection against unemployment should be legislative covered and should involve all professional categories – not only salaried workers (since in Greece there is also absence of a unified social insurance system)", in: Greek Ombudsman (2007), p. 12.

140 The term 'permanency' refers to the permanency of position. Civil servants qualifying for permanency become permanent by act of the body responsible for their appointment. Even under the revision of the Greek Code of Civil Servants, the legal institution of permanency has not been affected. See further in: Karakioulafis, C. (2006), p. 1.

141 See Official Gazette of the Hellenic Republic (1985), pp. 1799–1800. An in-depth elaboration of the events related to the social risk of unemployment – involuntary loss of work, work ability, availability for work and insurance period – can be also found in: Kremalis, K. (2004), pp. 112–114. Here the analysis is concentrated on the aspects, which mainly involve the international standards.

142 See also in: General Secretariat of Social Security (2003), p. 1; Council of Europe (2010b), p. 3; Eurofound (2007), p. 1.

143 See also in: Council of Europe (2010b), p. 3; General Secretariat of Social Security (2008c), p. 2; General Secretariat of Social Security (2006b), p. 2; Council of Europe (2001b), p. 1; Council of Europe (1997), p. 1.

144 See also in: Leontaris, M. (2007), pp. 419–420.

valid termination of his employment contract (Article 15§1, Legislative Decree 2961/1954).[145] A person whose contract of employment has been annulled – in other words, the wrongfully dismissed (*akyros apolyomenos*) – is not entitled to an unemployment benefit, since he/she has the right to claim delinquency salaries (unpaid wages) from his/her employer. As already mentioned, a person who becomes voluntarily unemployed does not have the right to receive unemployment benefits, as well as the person who voluntarily terminated his/her working status (Article 7§2, Law No. 1545/1985).[146]

What is more, if the dismissal of a person took place after the lodgement of a complaint, which was the result of a punishable action that took place during the course of employment, the dismissed person does not have the right to receive an unemployment benefit, except if he/she is later found to be innocent. There is the condition, though, that the dismissed should submit the relevant application for the provision of the unemployment benefit within 30 days of the day that the exculpatory decision has been passed (Article 7§3, Law No. 1545/1985).[147]

Moreover, persons who have been dismissed due to their participation in a strike have the right to receive unemployment benefit. Furthermore, a person who has been employed in more than one job (offers his work to more than one employers), is considered to be unemployed when his/her dismissal results in the loss of more than half of his/her income. However, the person does not receive the benefit automatically, but needs to make an application for the provision of the benefit to the OAED within 60 days. Last, the general condition exists of registering in the unemployed records of the OAED.

b. Specific time requirements[148]

In order to be entitled to an unemployment benefit, an unemployed person, apart from the aforementioned general conditions, needs to have also completed a certain number of working days under the insurance branch of the OAED. In particular (Article 4 & 5, Law No. 1545/1985):[149]

– *1st time entitlement*: 125 working days, which need to have been completed in the 14 months preceding the termination of the employment relationship,

145 See in: Official Gazette of the Hellenic Republic (1954), p. 1597.
146 See Official Gazette of the Hellenic Republic (1985), p. 1801.
147 See Official Gazette of the Hellenic Republic (1985), p. 1801.
148 See also General Secretariat of Social Security (2006b), p. 2; OAED (2008), pp. 1–2; General Secretariat of Social Security (2008c), p. 2; Council of Europe (2010b), p. 3; Leontaris, M. (2007), p. 420; MISSOC (2008); Eurofound (2007), p. 1.
149 See Official Gazette of the Hellenic Republic (1985), p. 1800.

without taking into account the daily wages of the last two months.[150] An additional requirement is that an insured unemployed person receiving unemployment benefit for the first time needs to have worked for at least 80 days in each of the two years preceding the payment of the unemployment benefit.[151] Moreover, an insured unemployed person who is going to receive an unemployment benefit for the first time also has the right to receive the unemployment benefit if he/she has completed 200 working days in the two years preceding the termination of the employment relationship, of which 80 working days should have been completed in each of the two years preceding the payment of the unemployment benefit, without taking into account the daily wages of the last two months.

– *2nd time entitlement*: 125 working days in the 14 months preceding the termination of the employment relationship, without taking into account the salaries of the last two months.[152]

However, there is a differentiation in the conditions for entitlement to an unemployment benefit for certain categories of workers, in the sense that reduced time requirements apply. By way of illustration, seasonal workers (construction workers, tourism professionals, etc.) have the right to receive an unemployment benefit as soon as they have completed 100 working days[153] in the insurance branch against unemployment in the 14 months preceding the termination of the employment relationship, without taking into account the daily wages of the last two months. Moreover, all trade union members, if they have completed five years as regular or irregular members in the administration of professional organizations, have the right to receive unemployment benefit for one year, with the only requirement of having completed (in total) 750 working days of insurance.

4.5.4 DURATION

The duration of the unemployment benefit depends on how many working days have been completed by the insured person within a given time period.[154] From the combined relevant clauses of: Legislative Decree 2961/1954,[155]

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150 Since the unemployment benefit is determined as flat-rate, only the total number of daily earnings is taken into account.

151 This requirement does not apply to reservists who have just completed their military obligations.

152 This is applied very often in practice.

153 See also Council of Europe (2001b), p. 3.

154 In other words, the duration of the payment is generally proportional to the periods of employment. See also Council of Europe (2010b), pp. 3–4.

155 See Official Gazette of the Hellenic Republic (1954), pp. 1595–1602.

Law No. 1545/1985,[156] Law No. 1892/1990 (Article 37),[157] Law No. 1836/1989 (Article 15)[158] and Law No. 3552/2007 (Article 5),[159] the duration of the unemployment benefit has as follows:

– *1st Category – 2nd time entitlement*
  - The benefit is paid for five months (20 weeks) when the insured person has completed at least 125 working days and 100 working days in the case of seasonal workers (this is actually the minimum time requirement).
  - The benefit is paid for six months when the insured person has completed at least 150 working days.
  - The benefit is paid for eight months when the insured person has completed 180 working days.
  - The benefit is paid for 10 months when the insured person has completed 220 working days.
  - The benefit is pad for 12 months when the insured person has completed 250 working days.

The same duration applies to persons receiving an unemployment benefit for the first time, as long as they have also completed 80 working days in each of the last two years.

– *2nd Category – Insured persons receiving an unemployment benefit for the first time and having completed 200 working days*
  - The benefit is paid for five months for the insured person who has completed at least 200 working days.
  - The benefit is paid for six months for the insured person who has completed at least 250 working days.
  - The benefit is paid for eight months for the insured person who has competed 300 working days.

– *3rd Category – Insured persons who have reached 49 years of age*
  Persons, who have reached 49 years of age are also entitled to an unemployment benefit for a period of 12 months, on the condition that they have completed 210 working days during the 14 months preceding the termination of the employment relationship, or during the 12 months preceding the termination of the employment relationship for those who have been employed for at least 2 years in seasonal professions. Moreover, the insured persons who have reached the age of 49 can also receive an unemployment benefit (1st time

156 See Official Gazette of the Hellenic Republic (1985), pp. 1799–1806.
157 See Official Gazette of the Hellenic Republic (1990d), p. 883.
158 See Official Gazette of the Hellenic Republic (1989), pp. 1071–1086.
159 See Official Gazette of the Hellenic Republic (2007), pp. 1813–1816.

entitlement) if they have completed 350 working days in the two years preceding the termination of the employment relationship.

– *4th Category – Completion of a certain number of working days*
This 4th category includes insured persons who have completed 4050 working days and who fall under either the 1st or 2nd above-mentioned categories. They receive the unemployment benefit for a period of 12 months.

In any case, the unemployment benefit is paid once a month for 25 days. The insured person needs though to submit an application to the OAED, within 60 days of the date that the person's employment contract was terminated, in order to have the right to receive the benefit. If the time period of 60 days elapses, then the person loses the right to receive the unemployment benefit.

The provision of the unemployment benefit starts from the day of registration with the local service of the OAED. For unemployment applications submitted during the first seven days after the termination of the employment relationship, the benefit is paid as from the 7th day,[160] so there is a waiting period of six days. According to Article 18 of Legislative Decree 2961/1954,[161] 'the unemployment benefit is payable after the waiting time, which begins with the termination of the employment relationship and lasts for six days.'[162] For example, if a person is declared unemployed on the same day that his/her employment contract is terminated, he/she will receive the unemployment benefit from the 7th day. If a person is declared unemployed on the 10th day after the termination of the employment relationship and registers with the local service of the OAED on the 10th day, the payment starts immediately. Furthermore, if an unemployed person causes the suspension of the benefit to which he/she is entitled (as may be the case if he/she starts a new job), and later on he/she becomes entitled to the same benefit, there is no waiting period.[163]

4.5.5 REASONS FOR THE 'NON-RATIFICATION' OF PART IV (UNEMPLOYMENT BENEFIT) OF THE EUROPEAN CODE OF SOCIAL SECURITY

By 1955, Greece sanctioned and ratified eight parts of the C102, including Part IV on Unemployment Benefit, the only exception being Part VII on Family Benefits. The acceptance of Part IV was also facilitated, to a significant extent, by the establishment of the OAED in 1954.

160 See also OAED (2008), pp. 1–2.
161 See Official Gazette of the Hellenic Republic (1954), p. 1598.
162 See General Secretariat of Social Security (2003), p. 2.
163 See General Secretariat of Social Security (2003), p. 2.

Despite the fact that the provisions included in Part IV of the C102 set similar international obligations to the ones included in Part IV of the ECSS on Unemployment Benefit, in 1981 Greece proceeded with the acceptance of all Parts of the ECSS, with the exception of Parts IV and VII (Unemployment Benefit and Family Benefit, respectively).

For many years, and particularly since 2005, both the Committee of Experts on Social Security (CS-SS) and the Committee of Ministers of the CoE have been inviting the Greek government to consider the acceptance of Parts IV and VII of the ECSS, as well as the higher standards established by the Protocol to the ECSS. Particularly with respect to Part IV of the ECSS, the Committee of Ministers expressly noted that 'the government should not have any difficulties, as it has already accepted similar obligations contained in Part IV of the Convention No. 102'.[164]

The government has been examining the possibility of sanctioning and ratifying Part IV of the ECSS for quite a long time. Particularly since 1997, the biennial reports concerning the ECSS – submitted under Article 76[165] of the ECSS – have stated every time that 'as regards the statements of the consultants, particularly for Part IV of the ECSS, the competent authorities will examine the possibility of ratification.'[166]

It is also worth mentioning that from 1994 onwards, the unemployment rates have been increasing significantly in Greece, whereas the country 'ranked by far the lowest in the EU for spending against unemployment; unemployment benefits corresponded to only half of the minimum wage of an unskilled worker – and Greece has no serious institutional arrangements for dealing otherwise with

164 See Committee of Ministers (2005), p. 1.

165 'Article 76 obliges the contracting parties to submit reports every two years on the law and practice relating to the parts of the Code that it has not yet adopted. The parts that have not been adopted are often referred to as non-accepted provisions. The reports on non-accepted provisions are not subject to the supervision procedure, but are assessed by independent experts appointed by the Council of Europe. The experts look at whether the law and practice comes up to the minimum standards provided for in the Code, and if not, then it gives suggestions on how compliance could be secured. It is hoped that if states realize that the provisions of the Code are already fulfilled or could be satisfied with only a small amount of effort, then they are more likely to adopt the provisions formally.' 'Article 82 of the Revised Code provides for reporting on non-accepted provisions every four years instead of two. It also provides for a more formal appraisal of these reports than the Code. Whereas the Code does not specify which experts shall assess the reports on non-accepted provisions, the Revised Code on the other hand states that these reports shall be considered by the European Commission of Independent Experts (the "Commission"). The conclusions are then forward to the Secretary General who passes them on to the contracting parties.' See Nickless, J. (2002), p. 27.

166 See Council of Europe (1997), p. 7; Council of Europe (2001b), p. 7.

poverty, being the only EU country which has no national minimum guaranteed income scheme.'[167]

The Committee of Ministers – noting that the matter of ratification has been examined by the competent Greek authorities for a rather lengthy time-period – emphasized the opportunity provided to countries to have recourse to the technical assistance and expertise of the ILO, so as to increase the ability of ratifying the non-accepted parts of the ECSS and of the other international instruments adopted in the field of social security as well.[168]

Similarly, the Section for Relations with International Organizations/General Secretariat of Social Security/Ministry of Labour and Social Security has been constantly drawing the government's attention to the fact that technical assistance can be provided by the ILO, upon request, so as to help the Members to adjust domestic legislation to the ISSS. Moreover, it has repeatedly stressed that the issue of accepting Part IV is of particular importance, and that an opportunity should be taken for it to be discussed in the highest Labour Council for a substantive opinion to be formed, giving a well-formulated answer to the suggestions made both by the ILO and the CoE.[169]

In 2005, an independent expert appointed by the CoE commented that the report submitted by Greece for the period 2002–2004[170] 'lacks enough information on the personal scope of its unemployment benefit in order to evaluate the situation'; 'this problem being expressed by the consultative group for the fourth time.'[171] This statement shows that the previous reports submitted by Greece also did not provide precise and accurate information so as for a proper assessment to take place.

The independent expert consultant continued by saying that Greece 'not only fails on the personal scope, but the amount of the benefit is absent also from the report.' Thereafter, on the personal scope it was further noted that 'only industrial and services employees can take advantage of the coverage – that is persons under the IKA (Social Insurance Institute) – and not agricultural workers under the OGA organization, or autonomous workers, or public employees.'[172]

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167 See Venieris, D. (2003b), pp. 138–139, 140, 145.
168 See Committee of Ministers (2005), p. 1.
169 Internal Ministerial Document (2006), pp. 1–2.
170 The independent expert was referring to the 10th Greek biennial report on the non-accepted provisions of the ECSS.
171 Council of Europe (2005), p. 1.
172 Council of Europe (2005), p. 1.

Finally, in the rough estimation given by the Expert, due to the insufficient data provided, it was stated: 'The personal scope of the unemployment benefit in Greece probably does not meet the standard of the 50 per 100 of all the employed persons in the country, as required by Article 21 (a) of the ECSS. Regarding the amount of the benefits, it is 50 per 100 of the respective category of worker during at least five months for a minimal career period of 125 days. In comparison to the 45 per 100 stipulated in the ECSS for at least 91 days (13 weeks), this level seems enough to satisfy the requirements of Articles 22 of the ECSS, but the report does not contain the data about the Standard industrial worker of Article 65 of the ECSS.' The overall conclusion, therefore, is that 'it is not possible to give out a well-grounded opinion with only the vague report submitted by the government of Greece.'[173]

It is interesting to note that similar comments regarding the absence of accurate information have also been made in the past by the CEACR. When Law No. 1545/1985 was introduced,[174] the CEACR had sent an individual direct request to the Greek government concerning the application of Part IV of the C102, in which it was expressly stated that 'the Committee is bound to note once again that the government's report contains no information on the application of Part IV (Unemployment Benefit) of the Convention. In these circumstances, the Committee can only hope that the government will not fail to supply detailed information in its next report on the application of each Article of Part IV of the Convention, taking due account of the provisions of new Act No. 1545 of 1985 regarding protection against unemployment, and that, in particular, it will supply the statistical information that is necessary to verify that the scope and level of unemployment benefits meet the level set in the Convention.'[175]

Moreover, on several occasions in the past (and not only in relation to unemployment benefit) the CEACR has asked the Greek government to supply for each accepted Part of C102 the statistical data required by the report form adopted by the GB, in addition to the general information that needs to be provided on the application of each accepted Part.[176]

In 2006, Greece stated[177] that the competent organization – OAED – gave a positive answer regarding the acceptance of Part IV of the ECSS.[178] Furthermore, one year earlier, the government had already replied to the Committee of Ministers that

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173 Council of Europe (2005), p. 1.
174 See Official Gazette of the Hellenic Republic (1985), pp. 1799–1806.
175 See, for example, CEACR (1990); CEACR (1991a), p. x; CEACR (1991b).
176 See, for example, CEACR (1993b); CEACR (1997f); CEACR (2008b).
177 Information included in the 11th biennial report on the non-accepted provisions of the ECSS. See Annex in General Secretariat of Social Security (2006b), p. 6.
178 See General Secretariat of Social Security (2006b), p. 6.

the possibility of having recourse to the technical expertise of the ILO would be considered.[179]

However, in 2008 the positive answer regarding the ratification of the Part IV was somewhat altered. In particular it was stated the acceptance of Part IV would create no problems at all for the competent Greek service, 'provided that the Code forecasts a "clause of reciprocity" relative to that of Article 68[180] of ILO Convention 102.'[181] The exact same reply was given in the Greek biannual report submitted in 2010.[182]

Part IV of the ECSS has still not been accepted. A commentary and analysis with respect to this disinclination on the part of the Greek government follows in a subsequent chapter of this thesis.[183]

Last, it is worth mentioning that based on the parliamentary record of proceedings, and before final consensus was reached on the sanctioning and ratification of the ECSS by the Parliament, emphasis was also placed on the acceptance of Parts IV (Unemployment Benefit) of the ECSS from the political minority. The reply given by the then Deputy Minister of Social Services was simply that the national authority responsible for such a decision was the Ministry of Labour.[184]

4.5.6 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

At first glance, and taking into account that both C102 (Article 20) and the ECSS (Article 20) stipulate that 'the contingency covered shall include suspension of earnings, as defined by national laws or regulations, due to inability to obtain suitable employment in the case of a person protected who is capable of, and

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179 See Committee of Ministers (2006), p. 1.

180 Article 68 of the ILO Convention No. 102 concerns Equality of Treatment of Non-National Residents and it expressly states that: '1. Non-national residents shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of the public funds and in respect of transitional schemes. 2. Under contributory social security schemes which protect employees, the persons protected who are nationals of another Member which has accepted the obligations of the relevant Part of the Convention shall have, under that Part, the same rights as nationals of the Member concerned: Provided that the application of this paragraph may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity.'

181 See Annex in General Secretariat of Social Security (2008c), p. 4.

182 See Annex in Council of Europe (2010b), p. 5.

183 See Chapter 5, Sub-Section 5.3.2.

184 See Chapter 3, Sub-Section 3.3.3.

available for, work', one could say that in general terms Greece complies with the international standards. However, further attention should be paid to the issues of (a) someone being available for work and (b) suitable employment – and more precisely to the phrase: '…suspension of earnings…due to inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work' (Article 20).

As discussed in the subsequent Chapter of this thesis,[185] Greek legislation does not seem to fulfil the previously mentioned international standards in their entirety, since the attention paid at the national level to the issue of suitable employment is rather poor, while at the same time there is no initial period during which the unemployed person can reject a job offer as being unsuitable.

Going further, with regard to Article 21 of C102 on the personal scope of application, paragraph one (1) is applicable to Greece, according to which 'prescribed classes of employees, constituting not less than 50% of all employees' should be covered against unemployment. An identical provision is included in the ECSS (Article 21§1). As stated, in Greece almost all the salaried persons are covered against unemployment.[186] However, and as already mentioned, only in the case that the protection provided by the country and pertaining to all the employees, the entire economically active population or all residents, would it be sufficient for the country to indicate this in the submitted national reports, without supplying any statistics,[187] and more particularly data on exact percentages.

Hereunder, data are provided for the years from 2000 to mid-2010.

185 See Chapter 5, Sub-Section 5.4.1.

186 See General Secretariat of Social Security (2006b), pp. 1–2; General Secretariat of Social Security (2008c), pp. 1–2; Council of Europe (2010b), p. 2.

187 See, for example, the reference included in the Form for the Biennial Report on the European Code of Social Security, in Council of Europe (*s.d.*), "Form for the Biennial Report on the European Code of Social Security", Strasbourg, p. 1.

The data provided by IKA-ETAM (salaried persons) for the period 2004–2006 is as follows:[188]

	2000	2001	2002	2003	2004
Directly Insured Persons	1,941,265	1,949,495	1,952,232	1,956,878	1,961,815
Family Members	2,148,149	2,125,961	2,110,684	2,102,883	2,099,274
Total	**4,089,414**	**4,075,456**	**4,062,916**	**4,059,761**	**4,061,089**

(a)	Total number of residents	10,934,097 (cen. 2001)
(b)	Total number of labour force (in 2006)	4,873,100 (473,100 unemployed persons – percentage 9.7%)
(c)	Total number of salaried people (in 2005)	2,139,298
(d)	Total number of salaried people entitled to unemployment benefits (in 2005)	2,000,000
(e)	Total number of children (0-19 years)	2,387,073 (cen. 2001)
(f)	Total number of entitled persons (DLOEM) in 2005	350,000
(g)	Total amount granted in 2005	120,000,000 (an amount of them (4,000,000) was granted as family grant for the 3rd child)

The statistical data provided by IKA-ETAM (salaried persons) for the period 2006–2008 is as follows:[189]

	2007	2008
Directly insured persons	2,114,000	2,184,000
Family members	2,311,000	2,375,000
Total	**4,425,000**	**4,559,000**
(a) Total number of residents	10,934,097 (cen. 2001) (estimated cen. 1st January 2009: 11,262,539)	
(b) Total number of labour force	5,170,000	
(c) Total number of salaried persons	3,215,000	

(d) Total number of salaried persons entitled to unemployment benefits

2006	2007	1st Semester 2008
355,504	358,606	87,866

Amounts granted (Euro)

2006	2007	1st Semester 2008
97,704,938.58	97,740,931.65	32,389,751.40

188 The information presented here was included in the 11th Greek Biennial Report on Article 76 of the European Code of Social Security on the Non-Accepted Parts: IV and VII. See General Secretariat of Social Security (2006b), pp. 1–2.

189 The information presented here was included in the12th Greek Biennial Report on Article 76 of the European Code of Social Security on the Non-Accepted Parts: IV and VII. See General Secretariat of Social Security (2008c), pp. 1–2.

The statistical data provided by IKA-ETAM (salaried persons) for the period 2008–2010 is as follows:[190]

	2008	**2009**
Direct insured persons	2,026,879	2,222,347
Family members	2,570,000	2,531,278
Total	**4,596,879**	**4,753,625**

(a) Total number of residents	10,934,097 (cen. 2001)[191]
(b) Total number of labour force	4,614,556
(c) Total number of salaried persons	3,180,000

(d) Total number of salaried persons entitled to unemployment benefits

2008	**2009**	**A' semester 2010**
541,787	675,000	400,000

Amounts granted (Euro)

2008	**2009**	**A' semester 2010**
1,083,574,330,38	1,418,860,472,39	733,000,000

As further discussed in the subsequent Chapter of this thesis,[192] exact figures proving the fulfilment of the ISSS are missing from the relevant Greek reports submitted to date. Moreover, no reference exists concerning any exceptions to personal coverage. Most probably the previously provided figures refer to persons in receipt of unemployment benefit. Still, no clarification of the term 'directly insured persons' is actually given.

Thus, if indeed almost all salaried people are covered in the country, then Greece also fulfils the requirements set in the Protocol to the ECSS: 'prescribed classes of employees constituting not less than 55% of all employees' (Article 21§a). However, Greece does not fulfil the personal scope coverage required under the Revised ECSS, Article 20, and that of the contingency as well, since Article 19 places a lot of emphasis on the suitability factor of the employment, and also mentions partial unemployment.

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190 The information presented here was included in the13th Greek Biennial Report on Article 76 of the European Code of Social Security on the Non-Accepted Parts: IV and VII. See Council of Europe (2010b), pp. 2–3.

191 The latest Greek census took place in 2001. In Greece, the general population census, which also examines other statistical data apart from the total population of the country and the places of residence, has taken place every ten years since 1920. The General Secretariat of National Statistical Service of Greece, which belongs to the Greek Ministry of Economy and Finance, is responsible for the compilation of the census papers as well as the compilation of census papers for other statistical data of the population, employment indicators, educational indicators, etc. According to recent estimations, the total population of Greece on the 1st of January 2009 was approximately 11,262,539.

192 See Chapter 5, Sub-Section 5.3.2.

The term 'partial unemployment' pertains to unemployment resulting from the seasonal fluctuations in certain branches of the economy (building sector, hotel industry, artistic professions, etc.). An employee of a certain social and professional category must certify a definite number of insurance days for the year preceding the payment of the unemployment benefit (minimum 50–210, and maximum 240, insurance days). If the conditions necessary for a monthly unemployment benefit are not fulfilled, the insured person can benefit from a special unemployment benefit. The special benefit is paid yearly in a lump sum. This actually does not satisfy the standards set in the C102 and the ECSS. The amount varies according to the social and professional category of the beneficiary. The special unemployment benefit is not paid if the beneficiary receives other insurance benefits with a rate higher than that of the minimum old-age pension.[193]

Thereafter, according to Article 23 of C102 'the benefit shall … be secured at least to a person protected who has completed such qualifying period as may be considered necessary to preclude abuse.' An identical provision is included in the ECSS (Article 23). Therefore, the exact qualifying period is to be determined at a national level as long as 'it ensures that the benefits are in fact received by the categories of the persons for whom they are intended' and 'the length of the period of contribution, employment, or residence, as the case may be, would depend largely on the scope of protection and the nature of the scheme concerned.'[194]

Thus, Greece seems to fulfil the time requirements set in the relevant international provisions – both C102 and the ECSS. As far the Protocol to the ECSS is concerned, there are no alterations concerning the qualifying period prescribed in the ECSS. With regard to the Revised ECSS, Greece equally seems to fulfil the requirements set, since Article 22 stipulates that if the entitlement to the unemployment benefit is made conditional upon the completion of a qualifying period, 'that period shall be no longer than is considered necessary to prevent abuse.' Moreover, regarding seasonal workers also, the qualifying period may be adapted to the conditions of their occupational activity. So, once again the qualifying period is determined at a national level. However, it should be noted that the current national qualifying conditions influence the seasonal workers, as well as persons working part-time, negatively.

With respect to the duration of the unemployment benefit, according to Article 24§1(a) of the C102 'the benefit … shall be granted throughout the contingency, except that its duration may be limited (a) where classes of employees are protected, to 13 weeks within a period of 12 months'; an identical provision is included in the ECSS (Article 24). Since the minimum duration for the payment

193 See MISSOC (2008).
194 See Dijkhoff, T. (2011), pp. 69–70.

of the unemployment benefit in Greece is five months (in other words 20 weeks) Greece fulfils the requirements set in the international provisions regarding the duration of the unemployment benefit. However, as far the Protocol to the ECSS is concerned, Article 24 is altered. The Protocol stipulates that 'where classes of employees are protected, the duration of the benefit specified in Article 22 may be limited to 21 weeks within a period of 12 months, or to 21 weeks in each case of suspension of earnings.' Consequently, there is one week's difference in relation to the duration of the unemployment benefit in Greece (20 weeks). Nevertheless, such an obstacle could be overcome (a suitable compromise could be found). The same counts for the Revised ECSS.[195]

Last, as far as the waiting period is concerned, Greece is in line with Article 24§3 of the C102, since 'the benefit need not be paid for a waiting period of the first seven days in each case of suspension of earnings, counting days of unemployment before and after temporary employment lasting not more than a prescribed period as part of the same case of suspension of earnings.' An identical provision is included in the ECSS (Article 24§3). Similarly, Greece fulfils the waiting period prescribed under the Protocol to the ECSS and that of the Revised ECSS.

4.6 FAMILY BENEFIT

4.6.1 INTRODUCTION

The IKA-ETAM[196] also provides family benefits to the insured. These benefits are administered – just like the unemployment benefits – by the OAED. It should, however, be noted that the OAED provides family benefits through a special account (or, in other words, the family allowance branch): the so-called Distributive Fund for Employees Family Allowances (DLOEM). This account was established by Legislative Degree No. 3868/1958[197] under OAED. It is basically

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195 With respect to the Protocol to the ECSS, one could also come to the conclusion that Greece fulfils the specific standard set, if calculations were made as follows: since there are 52 weeks in a year and 12 months, dividing 52 by 12 equals 4.33; multiplying 4.33 by 5 months, then the total is 21.65 weeks ≈ 21.7 weeks. A similar formula of calculation could be followed in the case of the Revised ECSS, which stipulates in Article 24§1 that: 'The cash benefit referred to in Article 21 shall be payable throughout the duration of the contingencies referred to in paragraph 1 of Article 19, or until the payment of old-age, invalidity or rehabilitation cash benefit. However, in the contingency referred to in sub-paragraph a of paragraph 1 of Article 19, the duration of cash benefit payment in the form laid down in paragraph 1 of Article 21 may be limited either to thirty-nine weeks in a period of twenty-four months or to thirty-nine weeks in each case of unemployment. In the contingency referred to in sub-paragraph b of paragraph 1 of Article 19, the duration of payment of cash benefit may be limited to a prescribed period.'

196 See above, Section 4.2.

197 See Official Gazette of the Hellenic Republic (1958), pp. 1555–1557.

financed by insurance contributions and involves only private sector employees with children.[198]

The applicable statutory basis concerning family benefits provided by OAED through DLOEM can be found in the following national legislative documentation:[199]

- Legislative Decree No. 3868/1958;[200]
- Royal Order No. 20, 23/12/1959;[201]
- Presidential Decree No. 1178/1980;
- Law No. 1346/1983 (Art. 18);[202]
- Presidential Decree No. 527/1984;[203]
- Law No. 1483/1984 (Art. 23);[204]
- Presidential Decree No. 412/1985;[205]
- Presidential Decree No. 123/1996;[206]
- Presidential Decree No. 206/1998 (Art. 164);[207]
- Law No. 2747/1999;[208]
- Presidential Decree No. 154/2004;[209]
- KYA No. DOLKEP/F.15/10/16891.[210]

Through the above-mentioned legislation, a system of compulsory protection has been established for private sector salaried employees (*misthotos*). Voluntary coverage is not possible.[211]

However, before embarking with the description of the family benefit provided by the social insurance scheme of DLOEM/OAED, a short overview of certain

198 See also Leontaris, M. (2007), p. 40.
199 The following mentioned legislative documentation can be found in OAED (2009), p. 3. See also Council of Europe (1997), p. 1; Council of Europe (2001b), p. 1; General Secretariat of Social Security (2003), p. 1; General Secretariat of Social Security (2006b), p. 1; General Secretariat of Social Security (2008c), p. 1; Council of Europe (2010b), p. 2; Papadopoulos, T. (2002), p. 27. pp. 1–61. MISSOC (2008); See as well the website of the ISSA.
200 See also Official Gazette of the Hellenic Republic (1958), pp. 1555–1557.
201 As modified by the Presidential Degree No. 527/1984. See Official Gazette of the Hellenic Republic (1984b), pp. 2182–2184.
202 See also Official Gazette of the Hellenic Republic (1983), p. 665.
203 See Official Gazette of the Hellenic Republic (1984b), pp. 2182–2184.
204 See Official Gazette of the Hellenic Republic (1984c), p. 1843.
205 See Official Gazette of the Hellenic Republic (1985b), pp. 2299–2300
206 See Official Gazette of the Hellenic Republic (1996b), pp. 1553–1554.
207 See Official Gazette of the Hellenic Republic (1998b), pp. 2569–2570.
208 See Official Gazette of the Hellenic Republic (1999c), pp. 4341–4348.
209 See Official Gazette of the Hellenic Republic (2004d), pp. 5079–5080.
210 See also the website of OAED.
211 See also the website of the ISSA.

important aspects characterizing the family policy followed in Greece is given, so as to describe the general situation concerning family protection in the country.

a. General information

In Greece there is no uniform family benefits scheme.[212] Actually, overall, Greek family policy is highly fragmented and categorical in nature, placing emphasis on selective and targeted policies. It is a mixture of several means of protection, such as benefits in cash and in kind, tax allowances, social services, etc., which, however, are targeted at different recipients and under different preconditions.[213] That is also why Greek family policy has been characterized as being a '"patchwork" of policy measures developed on an ad hoc basis, each following their own policy trajectories and rationale.'[214]

By way of illustration, there is the distinction between child benefits paid to the public sector employees and child benefits paid to the private sector employees. The benefits, in each category, vary considerably in several aspects. As a matter of fact, the system of child benefits for the public sector employees could be considered to be somewhat more favourable, since, for example: the benefits are paid by the state as the employer, so no contributions are paid as in the case of the private sector employees; in the public sector the child age limit – through which the duration of the provision of the benefit is determined – is set at 24 years of age if the children are still in higher education, while for those employed in the private sector the child age limit is set at 22 years of age if the children are still in higher education; if both parents work in the public sector, both of them have the right to apply and receive child benefit, whereas this not the case for the private sector employees – only one of the parents can apply and receive child benefit, even if both of them are working, etc.[215]

Furthermore, there are no family benefits for the self-employed,[216] or for farmers. However, there are certain special family protection programmes through which

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212 See Amitsis, G. (2003), p. 40; Pieters, D. (2002), p. 179; Kremalis, K. (2004), p. 75; Clearinghouse on International Developments in Child, Youth and Family Policies (2004), p. 1.

213 See Papadopoulos, T. (2002), p. 26; Clearinghouse on International Developments in Child, Youth and Family Policies (2004), p. 1.

214 In Papadopoulos, T. (2002), p. 26.

215 In October 1999, the European Court of Justice (ECJ) issued a decision according to which family benefits form part of the remuneration and are thus subject to EU equal pay rules. The fact that until then both spouses did not have equal entitlement to family and marriage benefits was a matter of long-standing controversy in Greece. Actually, the government was concerned about the cost of paying full family benefits to both spouses. Finally, in March 2001, the Greek Supreme Special Court decided that family benefits should be paid to both spouses. However, this decision refers solely to workers in the public and broader public sector. See, in depth, Soumeli, E. (2001), p. 1. See also Papadopoulos, T. (2002), pp. 27–28.

216 See Lampousaki, S. (2009).

allowances are provided to large families (families with at least three children). The OGA is the responsible institution for the provision of the allowances (as designated by the Greek Ministry of Health and Social Solidarity). Financing comes from the state budget and these allowances could be characterized as 'mixed social security benefits, since they combine elements of social insurance and social assistance.'[217, 218]

In particular, through the family benefits branch of OGA, the following allowances are provided (there is no income testing for the provision of these benefits):[219]

- *lump sum benefit* (€2000) – it is provided to the mother who (after the 01/01/2006) gives birth to a third child, or to a fourth child, fifth child, etc. (the benefit is provided for each of these children);
- *child benefit for the third child* (€174.28 monthly) (Article 63, Law No. 1892/1990[220] & Article 39, Law No. 2459/1997[221]) – it is provided to the mother who has a third child;
- *benefit for large families (four or more children)* (€43.55 monthly for every child) *(Polytekno Epidoma*) (Article 63, Law No. 1892/1990;[222] Article 2, Law No. 2163/1993;[223] Article 39, Law No. 2459/1997[224]) – it is provided to the mother who has four children; to the lone parent without a spouse (mother or father) with three children, and on the condition that he/she has the custody and parental care of the children and is the only one responsible for their alimentation (well being); and to the disabled parent (mother or father) who has three children and has at least 67% disability, etc.;
- *child benefit for the families with three children* (€100.24 monthly)[225] (*Polytekno Epidoma stis Triteknes Oikogenies*) (Article 6, Law No. 3631/2008)[226] – it is provided to the mother who has, or will have, three children for every child above the age of 23; to the father who has three children from different marriages, or legally recognized or adopted children, as long as he has sole responsibility for the alimentation (well being) of the children and the mother is not receiving any other benefits;

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217 In Amitsis, G. (2003), p. 41.

218 See also Clearinghouse on International Developments in Child, Youth and Family Policies (2004), p. 5; Papadopoulos, T. (2002), pp. 29–31; Kremalis, K. (2004), p. 73–84.

219 See also the website of the OGA.

220 See Official Gazette of the Hellenic Republic (1990d), pp. 889–890.

221 See Official Gazette of the Hellenic Republic (1997), pp. 162–163.

222 See Official Gazette of the Hellenic Republic (1990d), pp. 889–890.

223 See Official Gazette of the Hellenic Republic (1993), p. 3865.

224 See Official Gazette of the Hellenic Republic (1997), pp. 162–163.

225 For further information on measures and provisions granted by the Greek state for the families with three children, see the website of the OGA.

226 See Official Gazette of the Hellenic Republic (2008d), pp. 45–46.

– *lifelong pension* (€100.24 monthly) (Article 63, Law No. 1892/1990;[227] Article 2, Law No. 2163/1993;[228] Article 39, Law No. 2459/1997;[229] Article 11, Law No. 2819/2000[230]) – it is paid to the mother who no longer receives the *benefit for large families (four or more children)*, because all her children have reached the age of 23, or they are married; and to the mother that although she had four children or more, she did not meet the requirements to receive the benefit, etc.

These benefits as well as the lifelong pension are paid to the beneficiary, irrespective of whether he/she receives any other benefit, wage, pension, etc.[231]

4.6.2 PERSONAL AND MATERIAL SCOPE OF APPLICATION

According to the provisions of Legislative Degree No. 3868/1958[232] on the establishment of the DLOEM, family benefits are provided to salaried people who offer dependent work to any employer in the country under an employment contract of private law.

However, the salaried people who receive, from their employer (on the basis of a collective agreement, or law, or company statute, or any other provision), family benefit higher than that provided by the DLOEM, do not have the right to receive family benefit from DLOEM (Article 18§4, Law No. 1346/1983).[233] Moreover, the salaried persons who offer dependent work privately to any employer in the country are not paid family allowance higher than that granted by DLOEM by their employer.[234]

The DLOEM covers almost the total number of salaried people who offer dependent work privately throughout the country.[235] The principal aim of family benefit is to cover the additional expenses of a household arising from the

227 See Official Gazette of the Hellenic Republic (1990d), pp. 889–890.
228 See Official Gazette of the Hellenic Republic (1993), p. 3865.
229 See Official Gazette of the Hellenic Republic (1997), pp. 162–163.
230 See Official Gazette of the Hellenic Republic (2000b), p. 1659.
231 See, further, the OGA website.
232 See Official Gazette of the Hellenic Republic (1958), pp. 1555–1557.
233 See OAED (2009), p. 2. See also Leontaris, M. (2007), p. 424. See also Official Gazette of the Hellenic Republic (1983), p. 665.
234 See Council of Europe (2010b), p. 4.
235 In Council of Europe (2010b), pp. 2, 4; General Secretariat of Social Security (2008c), pp. 1, 3; General Secretariat of Social Security (2006b), pp. 1, 4.

existence of children, or the birth of new children. Moreover, they are granted to all children of the entitled salaried person, irrespective of the number.[236]

4.6.3 QUALIFYING CONDITIONS[237]

a. With regard to the parents

Insured parents who are entitled to family benefit must have completed at least 50 working days during the last calendar year. However, after a decision taken by the OAED, it is possible that these 50 working days (set as a requirement) to be covered by two months regular payment of an unemployment benefit, or the two months of constant incapacity for work due to sickness.

b. With regard to the child(ren)

The DLOEM provides family benefit for the legal, the recognized and the adopted children, as long as:

a) They are under 18 years of age or 22 years of age if they are students.
b) They are incapable of working, and for as long as the incapacity for work lasts.
c) They are not married.
d) They live permanently in Greece, or in a country that is a Member State of the European Union (EU).

As regards the issue of to whom the family benefit is paid (Article 1§4[238] of Presidential Decree No. 527/1984), it should be noted that if both parents are working, and both of them fulfil the previously described requirements, only one of the parents has the right to receive the family benefit (this is actually determined after the submission of a common declaration). Moreover, the family benefit is paid as a whole to the working parent if the other is not working, or is working, but is not entitled to receive the family benefit according to the relevant provisions of the OAED. Last, if the parents are divorced or are separated, only the parent who has the custody of the child(ren) has the right to receive the family benefit, even if he/she is not working. As already previously referred, the family

[236] In General Secretariat of Social Security (2008c), p. 3; General Secretariat of Social Security (2006b), p. 4.
[237] The following references have been used: OAED (2009), p. 2; Leontaris, M. (2007), pp. 424–425; General Secretariat of Social Security (2008c), p. 3; General Secretariat of Social Security (2006b), pp. 3–4; Council of Europe (2010b), p. 4.
[238] See Official Gazette of the Hellenic Republic (1984b), p. 2182.

allowances are granted to all children of the entitled employee, irrespective of their number.[239]

4.6.4 DURATION

The family benefit consists of a periodical payment provided to each insured person who has completed the qualifying period mentioned above. Furthermore, the family benefit is granted throughout the contingency – meaning until the child reaches the age of 18, or the age of 22 if he/she is a student.

4.6.5 REASONS FOR THE 'NON-RATIFICATION' OF PART VII (FAMILY BENEFIT) OF THE ILO CONVENTION No. 102 AND THE EUROPEAN CODE OF SOCIAL SECURITY

The Part VII (Family Benefit) is the only one, both in the C102 and in the ECSS, which has not been accepted by Greece. Actually, with regard to the C102, the non-ratification of this Part is even more striking, since in 1955 Greece proceeded with the ratification of all parts of the Convention, the only exception being (still, today) that of the family benefit. The ratification of the ECSS took place much later, in 1981; likewise, Part VII (Family Benefit) was not accepted.

For quite a long time, and in particular since 2005, both the CS-SS and the Committee of Ministers – also taking into account the objective set out in the Preamble to the ECSS, which pertains to the encouragement of all members to develop further the protection provided by their social security systems, and recalling also Article 4, which encourages each Contracting Party to accept the obligations in respect of any part of the ECSS not included in its ratification – have been inviting Greece to consider accepting the obligations under the ECSS in respect of Part IV (Unemployment Benefit) and Part VII (Family Benefit), as well as the higher standards established by the Protocol.[240]

Moreover, the Committee of Ministers particularly emphasized that Greece has accepted Article 12 of the ESC, which obliges it not only 'to maintain the social security system at a satisfactory level at least equal to that required for the ratification of the International Labour Convention (No. 102) Concerning

239 See Council of Europe (2010b), p. 4.
240 See, in particular, Committee of Ministers (2005), p. 1.

Minimum Standards of Social Security' (paragraph 2), but also 'to endeavor to raise progressively the system of social security to a higher level (paragraph 3).'[241]

Nevertheless, and especially with regard to Part VII (Family Benefit), the Greek government still does not seem to be interested in making efforts to facilitate the acceptance (both in the ECSS and in the C102).

As a matter of fact, for the ECSS this becomes even more evident from the statements included in the Greek biennial reports on Article 76 submitted to the CoE,[242] where it has been stated that 'as concerns the statements of the consultants … and especially Part IV (Unemployment) of the ECSS, the competent authorities will examine the possibility of ratification of this part.'[243] So, in this phrase, it is obvious that the possibility of ratification involves only the unemployment benefit part of the ECSS, and an examination will take place only to this extent.

Actually, this is logical, since Greek legislation (as further illustrated)[244] is not compatible with certain requirements set in the ECSS concerning Part VII. However, what is not logical is the statement included in one of the most recent Greek biennial report on Article 76 of the ECSS (for the period 2006–2008), according to which 'ratification of Parts IV and VII of the ECSS, as regards unemployment and family benefits would absolutely not create any problems for our Service, provided that the ECSS forecasts a "clause of reciprocity", relative to that of Article 68 of ILO Convention No. 102'.[245] The exact same reasoning was repeated in the most recent Greek biennial report on Article 76 of the ECSS (for the period 2008–2010).[246] From such a statement, one can easily draw the conclusion that Greek legislation is fully compatible with the international requirements set out in the ECSS, and that the only problem hindering ratification is the absence of the stated *reciprocity clause* (whereas in reality further issues exist).[247]

Hence, Greece satisfies the qualifying period requirements set out in C102.[248] However, so far, this part of the Convention has also not been accepted, and this, despite the fact that in the case of C102, such a clause of reciprocity exists. No specific reasoning has been provided for this.

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241 See, in particular, Committee of Ministers (2004), p. 1.

242 As already mentioned, in these national biennial reports the position of national law and practice, with respect to the matters dealt with in Parts of the ECSS, which have not been specified in the ratification of the ECSS or in a subsequent ratification, is described.

243 See, for example, Council of Europe (1997), p. 7; Council of Europe (2001b), p. 7.

244 See Chapter 5, Sub-Section 5.3.2; Council of Europe (2003a), p. 1. See also Sub-Section 4.6.6.

245 See General Secretariat of Social Security (2008c), p. 4.

246 See Council of Europe (2010b), p. 5.

247 See, further, Sub-Section 4.6.6. See also Chapter 5, Sub-Section 5.3.2.

248 See, further, Sub-Section 4.6.6.

Both the Committee of Ministers and the CEACR have made explicit reference to the opportunity offered to Greece to have recourse to the technical assistance of the ILO in order to solve problems of incompatibility. Greece does not seem to have considered taking advantage of this opportunity yet.

Last, it is worth mentioning that based on the parliamentary record of proceedings, and before final consensus was reached on the sanctioning and ratification of the ECSS[249] by the Parliament, emphasis was also placed on the acceptance of both Parts IV (Unemployment Benefit) and VII (Family Benefit) of the ECSS – with particular interest shown in Part VII (Family Benefit) – by the political minority. The response of the then Deputy Minister of Social Services was simply that the national authority responsible for such a decision was the Ministry of Labour.[250]

A commentary and analysis with respect to the disinclination on the part of the Greek government to accept Part VII (Family Benefit) of the C102 and of the ECSS, follows in the subsequent chapter of this thesis.[251]

4.6.6 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

As stated,[252] the DLOEM covers almost the total number of the salaried people who offer dependent work privately throughout the country. Taking this into account, it seems that Greece fulfils the personal scope requirements set out in the C102 (Article 41§1), as well as in the ECSS (Article 41§1), according to which the persons protected shall comprise 'prescribed classes of employees, constituting not less than 50% of all employees.' Hereunder, the available data are provided for the years from 2000 to mid-2010. However, only in the case that the protection provided by the country pertained to all employees, the entire economically active population or all residents, would it be sufficient for the country to indicate this in the submitted national reports, without supplying any statistics,[253] and more particularly, data on exact percentages.

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249 See Section 4.5, Sub-Section 4.5.5, above.

250 See, for analysis, Chapter 3, Sub-Section 3.3.3.

251 See Chapter 5, Sub-Section 5.3.2.

252 See General Secretariat of Social Security (2008c), pp. 1, 3; General Secretariat of Social Security (2006b), pp. 1, 4; Council of Europe (2010b), pp. 2, 4.

253 See, for example, the reference included in the Form for the Biennial Report on the European Code of Social Security, in Council of Europe (*s.d.*), "Form for the Biennial Report on the European Code of Social Security", Strasbourg, p. 1.

The data provided by IKA-ETAM (salaried persons) for the period 2004–2006 is as follows:[254]

	2000	2001	2002	2003	2004
Directly insured persons	1,941,265	1,949,495	1,952,232	1,956,878	1,961,815
Family members	2,148,149	2,125,961	2,110,684	2,102,883	2,099,274
Total	**4,089,414**	**4,075,456**	**4,062,916**	**4,059,761**	**4,061,089**

(a)	Total number of residents	10,934,097 (cen. 2001)
(b)	Total number of labour force (in 2006)	4,873,100 (473,100 unemployed persons – Percentage 9.7%)
(c)	Total number of salaried people (in 2005)	2,139,298
(d)	Total number of salaried people entitled to unemployment benefits (in 2005)	2,000,000
(e)	Total number of children (0-19 years)	2,387,073 (cen. 2001)
(f)	Total number of entitled persons DLOEM) in 2005	350,000
(g)	Total amount granted in 2005	120,000,000 (an amount of them (4,000,000) was granted as family grant for the 3rd child)

The statistical data provided by IKA-ETAM (salaried persons) for the period 2006–2008 is as follows:[255]

	2007	2008
Directly insured persons	2,114,000	2,184,000
Family members	2,311,000	2,375,000
Total	**4,425,000**	**4,559,000**

(a)	Total number of residents	10,934,097 (cen. 2001) (estimated cen. 1st January 2009: 11.262.539)
(b)	Total number of labour force	5,170,000
(c)	Total number of salaried persons	3,215,000

(d) Total number of salaried persons entitled to unemployment benefits

2006	2007	1st Semester 2008
355,504	358,606	87,866

Amounts granted (Euro)

2006	2007	1st Semester 2008
97,704,38.58	97,740,931.65	32,389,51.40

254 The information presented here was included in the 11th Greek Biennial Report on Article 76 of the European Code of Social Security on the Non-Accepted Parts: IV and VII. See General Secretariat of Social Security (2006b), pp. 1–2.

255 The information presented here was included in the12th Greek Biennial Report on Article 76 of the European Code of Social Security on the Non-Accepted Parts: IV and VII. See General Secretariat of Social Security (2008c), pp. 1–2.

The statistical data provided by IKA-ETAM (salaried persons) for the period 2008–2010 is as follows:[256]

	2008	**2009**
Direct insured persons	2,026,879	2,222,347
Family members	2,570,000	2,531,278
Total	**4,596,879**	**4,753,625**

(a) Total number of residents 10,934,097 (cen. 2001)[257]
(b) Total number of labour force 4,614,556
(c) Total number of salaried persons 3,180,000

(d) Total number of salaried persons entitled to unemployment benefits

2008	**2009**	**A' semester 2010**
541,787	675,000	400,000

Amounts granted (Euro)

2008	**2009**	**A' semester 2010**
1,083,574,330.38	1,418,860,472.39	733,000,000

Nevertheless, no exact statistical data (in percentages) have been given in the most recent Greek biennial reports on the non-accepted parts of the ECSS in general.

Due to the absence of precise statistical data on the percentage of personal coverage, it cannot be said with certainty whether Greece fulfils the personal scope requirements set in the Protocol to the ECSS, according to which Article 41§1 of ECSS is changed and reads that 'the persons protected shall comprise, in so far as periodical payments are concerned: (a) prescribed classes of employees, constituting not less than 80% of all employees.' Nevertheless, the phrase 'almost the total number of the salaried people who offer dependent work privately throughout the country' are covered by DLOEM could imply that Greece fulfils the 80% coverage of all employees set by the two international social security instruments. Still, a clear-cut answer cannot be given without exact statistical data.

256 The information presented here was included in the13th Greek Biennial Report on Article 76 of the European Code of Social Security on the Non-Accepted Parts: IV and VII. See Council of Europe (2010b), pp. 2–3.

257 The latest Greek census took place in 2001. In Greece, the general population census, which also examines other statistical data apart from the total population in the country and the places of residence, has taken place every 10 years since 1920. The General Secretariat of National Statistical Service of Greece, which belongs to the Greek Ministry of Economy and Finance, is responsible for the compilation of the census papers, as well as the compilation of census papers for other statistical data on the population, employment indicators, educational indicators, etc. According to recent estimations, the total population of Greece on the 1st of January 2009 was approximately 11,262,539.

Moreover, and as far as the Revised ECSS is concerned, Greece does not seem to fulfil the requirements set, since the Article 45§1 states that 'the persons protected shall comprise: (a) the children of all employees, including apprentices.' Even if Greece avails itself from the exclusion provided in Article 45§2 of the Revised ECSS, according to which any Party may exclude from the application of the part on family benefits 'the children of classes of employees constituting in all no more than 5% of all employees', reducing, this way, the percentage of coverage to 95% of all employees, still, it cannot be said with certainty that the international requirements are fulfilled.

As regards the contingency to be covered, and as already mentioned, the principal aim of family benefits is to cover the additional expenses of a household arising from the existence of children, or the birth of new children. Moreover, family benefit is granted to all children of the entitled salaried person, irrespective of their number.[258] Thus, national legislation is in line with Article 40 of the C102, Article 40 of the ECSS, as well as Article 45 of the Revised ECSS, which include identical provisions on increased flexibility. No changes are imposed by the Protocol to the ECSS. In all the previously mentioned international instruments 'the contingency covered shall be responsibility for the maintenance of children as prescribed.' This means that in order to comply with the international requirements, necessary legal arrangements must be made at a national level so as to assist the beneficiary in carrying out the range of duties relating to the maintenance of children. The researcher has a reservation on this issue, in particular, on whether indeed the level of family benefit fulfils the scope of the contingency; in other words, whether the obligation concerning the maintenance of children is fulfilled, since no proof to this end has been provided by the government.[259]w

Going further, according to Article 43 of the C102, family benefit 'shall be secured at least to a person protected who, within a prescribed period, has completed a qualifying period which may be three months of contribution or employment, or one year of residence, as may be prescribed.' Greek legislation gives the right to the insured person to receive the family benefit when he/she has completed 50 working days during the last calendar year – in other words, when he/she has completed two months of employment (25 working days are recognized in a month). This means that national legislation imposes less strict requirements concerning the recognition of entitlement to the family benefit than those imposed by the C102. Consequently, it fulfils the requirements set out in Article 43 of the previous Convention.

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258 See General Secretariat of Social Security (2008c), p. 3; General Secretariat of Social Security (2006b), p. 4.

259 See, further Section 4.12, Sub-Section 4.12.3, as well as Section 4.14, below.

Contrarily, however, Greece does not fulfil the requirements set out in the ECSS. In particular, according to Article 43, family benefit 'shall be secured at least to a person who, within a prescribed period, has completed a qualifying period which may be one month of contribution or employment, or six months of residence, as may be prescribed.' Under the Greek legislation, the insured person, in order to be entitled to family benefit must have completed, as already mentioned above, two months of employment (50 working days). So, Greece imposes stricter requirements in relation to those in the ECSS.[260]

The Protocol to the ECSS imposes no changes concerning the qualifying period to be completed for the receipt of family benefit in relation to the ECSS. Last, and with regard to the Revised ECSS, Greece does not fulfil the requirements, since in Article 48§1 the Revised ECSS states that 'where a Party applies sub-paragraph a or b of paragraph 1 of Article 46, entitlement to benefit shall not be made conditional on the completion of a qualifying period', and under the Greek legislation the entitlement to benefit is conditional upon the completion of 50 working days.

Last, since the family benefit, according to national social security legislation is granted throughout the contingency, it meets the relevant standards set out in the international instruments – meaning: Article 45 of the C102, Article 45 of the ECSS, and Article 50 of the Revised ECSS. The Protocol to the ECSS does not impose any changes in relation to the form of the family benefit.

4.7 EMPLOYMENT INJURY BENEFIT

4.7.1 INTRODUCTION

The protection of persons who are victims of employment injuries, and/or occupational diseases was a matter of concern long before the establishment of social insurance as an institution in Greece.[261] To this effect, several legislative arrangements were in place quite early on. Nevertheless, the social risk(s) of employment injury and occupational disease never had their own distinct social insurance branches, although they have been always of great importance in social insurance. They have been covered by the insurance branches for sickness and pensions (invalidity/death). Insurance is compulsory, and there is no possibility

260 The independent consulting expert – appointed by the CoE to access the submitted Greek biennial report on the non-accepted parts of the ECSS – came to the same conclusion in his report. See Council of Europe (2003a), p. 1.

261 Concerning the establishment of social insurance as an institution, see Chapter 3, Section 3.1, Sub-Section 3.1.1.

of voluntary insurance.[262] The most important provisions can be found in the following national (labour and social insurance) legislation:[263]

(a) Law No. 551 (31.12.1914/08.01.1915),[264] referring to 'the responsibility of compensating workers, or employees who have been victims of an accident while doing their work';[265]
(b) Law No. 2078/1952,[266] through which the ILO C17 Workmen's Compensation (Accidents) (1925) has been sanctioned and ratified;
(c) Law No. 2080/1952,[267] through which the ILO C42 Workmen's Compensation (Occupational Diseases) (Revised) (1934) has been promulgated and ratified;
(d) several other bodies of laws, such as Law Nos. 5511/1932,[268] 5598/1932,[269] 6424/1934;[270] and the special Laws 649/1937,[271] 1955/1939[272] regarding accidents in public works as well as special law 596/1937 for air accidents, etc.;
(e) certain provisions of the Civil Code, such as Articles 914, 922, 928–930, 299 concerning the compensation of the injured stipendiary; and Articles 657–658 concerning the salary that should be paid to the employed person in the case of physical impediment that was not his fault;
(f) the relevant social insurance provisions included in the (compulsory) Law No. 1846/1951[273] regarding *Social Insurances* governing IKA and some other Laws, which amended this law subsequently (such as: Law Nos. 1902/1990,[274] 1976/1991,[275] 2084/1992,[276] etc.), as well as the provisions included in Law No. 3251/1955,[277] through which the ILO C102 Social Security (Minimum Standards) (1952) was sanctioned and ratified; and Law No. 1136/1981,[278] through which the ECSS of the CoE was sanctioned and ratified.

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262 See MISSOC (2010).
263 See also the websites of ELINYAE.
264 See Official Gazette of the Hellenic Republic (1914), pp. 1–5.
265 This Law has been codified by the Royal Order issued: 24.07/25.08.1920, both amended and modified by other bodies of law (i.e. Legislative Degrees: 20/24.01.1923 and 27.07/15.08.1923) as well as Law Nos. 4705/1930, 5241/1931, 408/1941, 6234/1934, 1224/1944. See Official Gazette of the Hellenic Republic (1930), pp. 1336–1337; Official Gazette of the Hellenic Republic (1931), p. 2069; Official Gazette of the Hellenic Republic (1941), p. 1509; Official Gazette of the Hellenic Republic (1944), p. 152. See also Mekou, K.Z. (2006), pp. 89–92.
266 See Official Gazette of the Hellenic Republic (1952), pp. 725–728.
267 See Official Gazette of the Hellenic Republic (1952b), pp. 660–666.
268 See Official Gazette of the Hellenic Republic (1932), pp. 1179–1180.
269 See Official Gazette of the Hellenic Republic (1932b), pp.1983–1986.
270 See Official Gazette of the Hellenic Republic (1934b), pp. 2637–2638.
271 See Official Gazette of the Hellenic Republic (1937), pp. 1022.
272 See Official Gazette of the Hellenic Republic (1939), pp. 2483.
273 See Official Gazette of the Hellenic Republic (1951), , pp. 1–53.
274 See Official Gazette of the Hellenic Republic (1990), pp. 1167–1186.
275 See Official Gazette of the Hellenic Republic (1991b), pp. 3148–3172.
276 See Official Gazette of the Hellenic Republic (1992), pp. 3007–3042.
277 See Official Gazette of the Hellenic Republic (1955d), pp. 981–104.
278 See Official Gazette of the Hellenic Republic (1981), pp. 573–600.

4.7.2 PERSONAL AND MATERIAL SCOPE OF APPLICATION[279]

As it derives from the Articles 8§4 and 34§1 of Law No. 1846/1951,[280] an employment injury (labour/industrial accident) is considered to be the physical and/or mental health damage brought about by a violent and sudden event that happened during the exercise of work,[281] or due to work,[282] and which came as a consequence of an external action not caused by the injured person (health damage which the insured person wilfully caused is not regarded as an employment injury; however, health damage, which is the insured person's responsibility, but which was caused because of the person's negligence, is considered to be an employment injury).[283]

Furthermore, according to the relevant case law, as well as the social insurance practice currently followed, the concept of an employment injury has been broadened over the years so as to also include accidents which happen when the insured person is travelling to and from work,[284] as long as, of course, the person intends to arrive at the workplace, or to return home, and the route taken has not been interrupted by other actions, relating to a different purpose other than work.[285] Thus, in order for an injury to be regarded as an employment injury, there must be a causal affinity (nexus) between injury and work.[286] Any other injury, which has absolutely no relation to the insured person's work, is a non-employment injury.

Since with the occurrence of the employment injury – apart from a morbid condition – incapacity for work also occurs, involving suspension of earnings as a result of a morbid condition, protection is imperative and the insured person is

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279 For the composition of this Section, the following sources have been also consulted (apart from the references mentioned in the text): Official Gazette of the Hellenic Republic (1951), pp. 1–53; Lanaras, K. (2008), pp. 406–410; Leontaris, M. (2007), p. 379; Kremalis, K. (2004), pp. 95–98; MISSOC (2008).

280 See also Official Gazette of the Hellenic Republic (1951), pp. 7–8.

281 For example, injury caused by a tool used during the exercise of work, or from a work machine, or because of a fall during construction, etc. In general, injuries directly and closely related to the exercise of work, or occurring during the exercise of work.

282 Those injuries that occur not as a direct consequence of work, but which are caused because work exposed the worker to the violent and sudden event causing the health damage.

283 For a more detailed analysis of the basic conditions that must be satisfied so as to establish the concept of employment injury, see Kremalis, K. (2004), p. 96.

284 Decision StE 1953/1965.

285 Certain other cases are also covered. For instance, injuries that happen during the lunch break (Decision StE 1264/1960), when there is aggravation of a former disease or malady, making the insured person incapacitated for work (Decisions: StE 188/1983, Chamber A'; StE 732/1983 Chamber A'). Moreover, injuries that happen during professional education, or training programmes, etc. are also considered to be employment injuries, according to special legislative provisions, which have been enacted and have also applied to the insured from 01.01.1993 onwards. See Internal Ministerial Document (1993d), p. 1.

286 Decisions StE 2111/1967; StE 1924/1968.

covered so as to be able to deal with the resultant negative financial implications. Moreover, in the case that the employment injury is fatal, the insured persons' dependants are also covered.

It should be noted here that the occupational disease, according to the aforementioned legislative provisions, is also added up to the employment injury (Articles 8§4, 34§1, 37§c and 40 of Law No. 1846/1951[287] – such an arrangement exists also in Law No. 2084/1992[288]).[289] More precisely, an occupational disease is considered to be the morbid condition resulting from the harmful effect of the insured person's work.[290] In other words, it is the severe or chronic illness caused by a professional harmful effect, reducing the insured person's ability to work.[291]

Article 40 of the IKA-ETAM Sickness Regulation enumerates the diseases, which are recognized as occupational. In sum: lead poisoning; diseases caused by mercury, carbon, benzol (benzene); diseases of natural causes, such as those associated with X-rays and radioactivity; leptospirosis, also known as the Weil disease, ulcerations caused by the influence of chromic acid and even by chromic alkalis; tetanus; professional skin diseases; carbon disulfide; pneumoconiosis; poisoning caused by phosphorous and hydrocarbons; protopathic (primary) skin epitheliums; diseases caused by arsenic as well as hydrogen).[292]

The IKA-ETAM covers all the insured workers who are not in a position to work due to an industrial accident, or an occupational disease. They are entitled to an invalidity benefit, as well as the relevant necessary medical services.[293]

4.7.3 QUALIFYING CONDITIONS

Under Greek law, special treatment has been foreseen in the case of an employment injury. Thus, more favourable conditions apply for the provision of benefits. As already stated, if the employment injury causes *sickness*, or *temporary incapacity for work* (temporary health damage), coverage is provided under the sickness

287 See also Official Gazette of the Hellenic Republic (1951), pp. 7–8, 35, 37–39.
288 See also Official Gazette of the Hellenic Republic (1992), pp. 3007–3008, 3019.
289 See Internal Ministerial Document (1993c), p. 4.
290 For example, diseases caused by lead, the alloys and their composition, mercury, carbon, benzol, rays and radioactive substances, etc.
291 'Contrary to the employment injury, occupational disease affects the human body in an imperceptible, gradual, but steady way; consequently, it is not possible to predict precisely the occurrence of this risk. These different characteristics justify the classification of the common prerequisites of the professional disease as follows: (a) typical symptoms of certain disease; (b) dangerous enterprises, occupations and professions; (c) minimum time of employment'; see Kremalis, K. (2004), pp. 97–98.
292 See Leontaris, M. (2007), p. 379.
293 In General Secretariat of Social Security (2006), pp. 13–14; Council of Europe (2001), p. 17.

branch. When the employment injury causes *invalidity* or *death*, coverage is provided under the pensions' branch.

a. Conditions for entitlement to sickness benefits (in cash and in kind) due to an employment injury, or an occupational disease

– *Employment Injury*: the insured persons are entitled to benefits both in cash and in kind (medical, pharmaceutical and hospital care), irrespective of the insurance period. In other words, they do not need to have completed a specific number of working days. Consequently, one day of insurance (or even a few working hours) is sufficient if the insured person has been a victim of an employment injury (Article 34§1,[294] Law No. 1846/1951). Insurance coverage starts as of the very first day of the affiliation with the insurance fund. Concerning medical services, they are ordinarily provided directly to patients through the facilities of the IKA-ETAM. Benefits include general and specialist care; care in a hospital, sanatorium, or nursing home; medicines; maternity care; dental care; appliances; and transportation. There is no cost-sharing and there is no limit to duration.[295]
– *Occupational Disease*: as in the case of an employment injury, the insured person has the right to receive the relevant benefits in cash and in kind, irrespective of the completed insurance period (Articles 8§4 and 34§1, Law No. 1846/1951),[296] and the IKA-ETAM needs to be notified as soon as the symptoms of the occupational disease appear. The prerequisites for the recognition of a disease as occupational include: (a) the infected insured person must have been/be employed in work indicated in Article 40 of the IKA-ETAM Sickness Regulation for a time period equal to the time period specified for every disease contained in the table of Article 40;[297] (b) the infection of the insured person must be determined, as specified in Article 40 of the IKA-ETAM Sickness Regulation.[298]

The sickness benefit is granted when the absence from work caused by the disease has lasted for more than three days. The employer has to pay to the worker the wage for the first three days.[299]

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294 See Official Gazette of the Hellenic Republic (1951), p. 35.
295 See also the website of the ISSA, under Country Profiles/Greece.
296 The same conditions exist in Law No. 2084/1992, see Internal Ministerial Document (1993d), p. 4.
297 The minimum qualifying period is set by law for each of the specified occupational disease. In certain cases, eligibility is determined by the Health Commission of the IKA-ETAM. See also the website of the ISSA, under Country Profiles/Greece.
298 See Lanaras, K. (2008), pp. 417–418; Leontaris, M. (2007), p. 379.
299 See General Secretariat of Social Security (2006), p. 12.

b. Conditions for entitlement to invalidity benefit (pension) due to employment injury, or occupational disease

– The insured person, who became an invalid because of an *employment injury*, or an *occupational disease*, is entitled to an invalidity pension, irrespective of the insurance period. In other words, the insured person does not need to have completed a specific number of working days. Even one working day (or a few working hours) of insurance is sufficient (insurance coverage starts on the very first day of the affiliation with the insurance fund).[300]
However, if the invalidity is due *to both an employment injury* and *a common disease*, the insured person has the right to receive invalidity benefit either because of an employment injury, or because of a common disease, depending on which of the two causes (risks) is greater, according to the assessment of the competent health and administrative organ of the IKA-ETAM.[301]

c. Conditions for entitlement to survivors' benefit (pension) due to an employment injury

– *Employment Injury*: If the death of the insured person is caused by an employment injury, his/her family members have the right to receive survivors' benefit, irrespective of the number of working days that the insured person had completed under the insurance of the IKA-ETAM. In other words, only one working day (or a few working hours) completed under the insurance of the IKA-ETAM is sufficient. Insurance coverage starts on the very first day of the affiliation with the insurance fund.
– *Occupational Disease*: If the death of the insured person is caused by an occupational disease, members of his/her family have the right to receive survivors' benefit (pension), as long as the insured person had been affiliated with the IKA-ETAM for the minimum time period required (as specified in Article 40 of the Sickness Regulation of IKA-ETAM), depending on the kind of the occupational disease that caused his/her death.[302]

d. Further conditions to be fulfilled for the recognition of the risk[303]

In addition to the aforementioned conditions, there are certain other conditions that need to be fulfilled so as for the employment injury to be recognized by the

300 See Lanaras, K. (2008), pp. 465–466; Leontaris, M. (2007), pp. 293–295; MERCER (2005), p. 169.
301 See Lanaras, K. (2008), p. 466.
302 See also the website of the IKA-ETAM.
303 See Lanaras, K. (2008), pp. 410–413; Leontaris, M. (2007), pp.378–379; Kremalis, K. (2004), pp. 99–100.

IKA-ETAM. These conditions involve:[304] (a) the *declaration* of the injury, and (b) the *deadline for the declaration* – the announcement of the injury within a prescribed time limit. In particular:

- As far as the *declaration*[305] is concerned, the employer, or the representative of the employee, the insured person, and in case of infirmity or death of the insured person, any of the beneficiaries, the doctor who provided first aid, and any other IKA-ETAM employee who has been informed about the health damage caused to the insured person or about the death of the insured, *have the obligation to declare* to the IKA-ETAM the accident that occurred during the exercise of work, or due to work.[306]
- As far as the *deadline for the declaration* is concerned, the announcement of the employment injury needs to take place (in general) within 5 working days of the injury (meaning that the day that the injury happened is not included in these 5 working days) for the injury to be recognized by the IKA-ETAM.[307] However, the doctor and any other IKA-ETAM employee have to declare the accident within 24 hours of the moment they were informed of the accident. The IKA-ETAM may also accept a declaration made after the prescribed time limit (and provide the benefits) if it is convinced that there were serious reasons that hindered the announcement in due time. In such cases, the deadline for the declaration is extended to 60 days. This deadline is extended for up to one year only if the injury caused total invalidity and for up to two years if the insured person died.

4.7.4 BENEFITS AND DURATION

a. Sickness benefits in kind (Medical Care (Treatment))

In the case of a morbid condition caused by an employment injury, the IKA-ETAM provides the following kinds of medical care to the insured persons:

- General practitioner and specialist in-patient care and out-patient care, including domiciliary visiting;
- Dental care;
- Nursing care at home or in hospital or other medical institutions;

304 These conditions apply equally in the case of a non-employment injury.

305 The declaration does not have to be written. An oral declaration is also valid, as long as it meets the required deadline.

306 In the case of a non-employment injury, the insured person (or in the case of infirmity or death of the insured person, any of the beneficiaries as well as the doctor who provided first aid), have the obligation to make the relevant declaration to the IKA-ETAM.

307 See also the website of the IKA-ETAM.

- Maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
- Dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances, kept in repair; and spectacles; and
- The care furnished by members of such other professions legally recognized as being allied to the medical profession, under the supervision of a medical or dental practitioner.

The insured person is not required to share in the cost of the medical care provided. In other words, *no co-payment of the beneficiary exists.*[308] Full payment is made by the competent institution.[309]

b. Sickness benefits in cash – Temporary Incapacity for Work (or Short-Term Incapacity for Work)

When the employment injury causes *temporary incapacity for work*, this situation is regarded as a sickness situation. Therefore, sickness benefit in cash is provided to the directly insured person. There is no waiting period for the provision of the benefit.[310] It is paid from the day that the employment injury is declared to the IKA-ETAM – this is usually also the first day of the accident – and *for a period of 720 days* on the premise that the incapacity for work lasts for more than three days.[311]

As already mentioned above, eligibility for sickness benefit may not be subject to the length of employment, or to the time spent in insurance in the case of employment injury or occupational disease.[312]

c. Invalidity benefit (pension)

The directly insured person, in order to be entitled to invalidity benefit due to an employment injury (or an occupational disease), has to be considered to be an invalid by the competent health committees of the IKA-ETAM to a degree of *at least* 50% (there is a possibility of review on request of the person concerned every six months). In other words, the minimum level of incapacity resulting in entitlement to compensation – in the form of an invalidity benefit – is a 50%

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308 See Council of Europe (2001), p. 16; General Secretariat of Social Security (2006), p. 12; Internal Ministerial Document (1993c), p. 9.

309 See Internal Ministerial Document (1993d): p. 3; General Secretariat of Social Security (2007), p. 5; MISSOC (2008).

310 On the contrary, and as it will be described later on, a three-day waiting period is taken into account in the case of temporary incapacity for work caused by common illness.

311 See Lanaras, K. (2008), p. 407; General Secretariat of Social Security (2006), pp. 7, 14; MISSOC (2008).

312 See Council of Europe (1993c), p. 1.

reduction in working capacity. This is actually considered to be *partial invalidity* (starting from 50% to 66.66%).[313]

It should be also noted that the invalidity benefit (pension) – irrespective of whether the invalidity is due to employment injury, occupational disease or common disease – is granted for the period of time for which the person concerned has been considered to be an invalid by the competent health committees to a degree of invalidity 50% or more.[314]

Consequently, according to these legislative arrangements, if the directly insured person is found to be an invalid to a degree less than 50%, no entitlement to invalidity benefit (pension) is established and the person instead receives sickness benefit for 720 days (see above).

d. Survivors' benefit (pension)

The survivors' benefits, in the cases of employment injuries, or occupational diseases, are basically subject to the same regulations in place for death caused by a common disease. The main reason is that in Greek legislation, no independent social insurance branch for labour accidents or occupational diseases exists.[315]

As already mentioned above, if the death of the insured person is caused by an employment injury, the members of his/her family have the right to receive survivors' benefit, irrespective of the number of working days that the insured person had completed under the insurance of the IKA-ETAM. These are the conditions that need to be completed on the part of the deceased insured person. There are, however, certain conditions that need to be fulfilled on the part of those who suffer the loss of support resulting from the death of the directly insured person.

Before describing these conditions, it should be noted that if the deceased was affiliated with the IKA-ETAM after the 01.01.1993, only the widow(er) and children are entitled to receive survivors' benefit. If the deceased was affiliated with IKA-ETAM before the 01.01.1993, the members of his/her family, in general, are entitled to receive survivors' benefit (the surviving spouses, divorced spouses, the children (lawful children, adopted children, etc.), grandchildren, predecessors, the parents (whether foster, adoptive or biological)).[316]

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313 See General Secretariat of Social Security (2006), pp. 12, 14; Council of Europe (1993), p. 17; MISSOC (2008); Leontaris, M. (2007), p. 293.

314 See General Secretariat of Social Security (2006), p. 14.

315 See also Kremalis, K. (2004), p. 99.

316 See General Secretariat of Social Security (2006), p. 13; MISSOC (2008).

Moreover, according to Article 62 of Law No. 2676/1999,[317] as it has been replaced by Article 4 of Law No. 3385/2005,[318] there is no differentiation between widows and widowers. This means that the widower receives survivors' benefit under the same terms and conditions with those applied to widows.[319]

As far as the widow(er) is concerned, and if the deceased was insured by 31.12.1992, she/he is entitled to the benefit for three years from the date of death, independently of age (in other words, the benefit is paid to the surviving spouse unconditionally for an initial period of three years following the death of the insured party, or his/her retirement).[320] Previously, she/he continued to receive the benefit after the first three years if she/he had reached 40 years of age on the date of the directly insured person's death.[321] However, this condition of reaching 40 years of age on the date of the directly insured person's death has been abolished.[322]

If the deceased was insured after 01.01.1993, and after the end of the three-year period, entitlement to the survivors' benefit is then dependent upon the completion of other requirements. More specifically, survivors' benefit is granted to: (a) the widow(er) with at least 67% invalidity on the date that the directly insured person dies, for as long as his/her invalidity lasts (no further conditions need to be met); (b) the widow(er) with monthly income less than 40 times the minimum daily wage of an unskilled blue-collar worker – adjusted by 20% per dependent child (if the monthly income is higher, half the normal pension is awarded).[323]

For persons retired after the 5th of January 1999, the widow(er), irrespective of age, is entitled to the benefit. If the surviving spouse works or receives a pension, he/she is entitled to 50% of the normal survivors' pension. If the surviving spouse is suffering from a physical or mental disability of at least 67%, he/she is entitled to full survivors' pension. A pension, which has been reduced, will again be paid in full to the surviving spouse as from the age of 65. If the latter continues to work or receive any other form of pension after the age of 65, he/she will receive only 70% of the survivors' benefit.[324]

317 See Official Gazette of the Hellenic Republic (1999), p. 29.
318 See Official Gazette of the Hellenic Republic (2005), p. 3304.
319 See also Lanaras, K. (2008), pp. 465–466.
320 See also Pieters, D. (2002), p. 172.
321 See Council of Europe (2001), p. 15; Internal Ministerial Document (2001b), p. 6; Lanaras, K. (2008), p. 480.
322 See Lanaras, K. (2008), p. 480.
323 See MISSOC (2008).
324 See Official Gazette of the Hellenic Republic (2005), p. 3304. See also Leontaris, M. (2007), p. 293; Lanaras, K. (2008), pp. 479–480; MISSOC (2008).

There are no conditions regarding the marriage duration if the death of the insured has been caused by an employment injury[325] (on the contrary, there are marriage duration conditions when death has been caused by something other than employment injury).[326] However, in order for the widow(er) to receive the survivors' benefit, it is absolutely necessary that the marriage is lawful and valid at the time that the insured person dies.[327] The pension, however, ceases to be paid on remarriage.[328]

Last, the children have the right to receive survivors' benefit in the following cases: (a) if they are not married, if they do not receive a pension and if they are not over 18 years of age; (b) they continue to receive survivors' benefit if they come of age (reach 18 years of age) and until they reach the age of 24 if they are in full-time education, they do not work and they do not receive any pension as a result of their own work; (c) if they have lost both parents; (d) if their subsistence depended on the deceased parent who was abandoned by the other parent; (e) if they are fully incapacitated and their incapacity occurred before the age of 18. In this case, they receive the survivors' benefit irrespective of age (there are no age requirements) for the duration of their incapacity.[329]

4.7.5 REHABILITATION

The IKA-ETAM does not have any special rehabilitation services for disabled persons. There is, however, a vocational rehabilitation service, which operates in the Manpower Employment Organization (OAED) and provides the disabled with vocational guidance as well as training (under the supervision of the Ministry of Labour and Social Security).

325 See MERCER (2005), p. 167.
326 See Internal Ministerial Document (2001b), p. 11, as well as MISSOC (2008). See also Section 4.11, *Survivors' Benefit*, sub-section 4.11.4, *Duration of the Benefit*, below.
327 See also Lanaras, K. (2008), p. 481.
328 See also the website of the IKA-ETAM.
329 See Lanaras, K. (2008), pp. 481–482; Leontaris, M. (2007), p. 304; MISSOC (2008); Pieters, D. (2002), p. 172. See also the website of the IKA-ETAM.

4.7.6 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

a. Obtaining compliance with the international social security standards: provision of nursing care at home[330]

With respect to the material scope of application, and in particular with the provision of *nursing care at home*, Greece was, for a long time, not in compliance with the relevant ISSS. The country started to make the necessary arrangements in order to provide this kind of medical care quite late, particularly if one takes into account the fact that Part VI (Employment Injury) of C102 was ratified in 1955 and the identical Part VI in the ECSS, in 1981.

In particular, in the reports submitted to the CoE on the application of the ECSS by the government of Greece during the period between 1991 and 1995,[331] the information given on the medical care provided in the case of employment injury or occupational disease referred to all kinds of medical care required under the Article 34 of the ECSS, except nursing care at home.

In 1996, the Committee of Ministers of the CoE noted that the medical care provided by the then IKA did not include nursing care at home. Consequently, it asked the Greek government to indicate the manner in which, and the provisions under which, effect was given to Article 34§2(c) of the ECSS, which postulates that nursing care at home should be also provided.[332] The exact same question was posed by the CEACR, since the Part VI (Employment Injury Benefit) of C102 includes an identical provision (Article 34§2(c)).[333]

With regard to the way that effect would be given to the provision requiring nursing care at home, in 1998, the government stated that 'the IKA, in its intention to soon start offering medical care at home to insured persons suffering from incurable or chronic illnesses, or to persons who, for various reasons, cannot visit the IKA's health centres, has sent a circular letter to all competent units, so that these units can proceed with the registration of the above categories of needy

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330 Reference to this issue can be also found Gomez-Heredero, A. (2009a), pp. 143–144.

331 From 1991 to 1995 the following five reports had been submitted by the government of Greece to the Council of Europe: the 10th Annual (Detailed) Report for the period from 1 July 1991 to 30 June 1992; the 11th Annual Report for the period of 1 July 1992 to 30 June 1993; the 12th Annual Report for the period from 1 July 1993 to 30 June 1994; the 13th Annual Report for the period from 1 July 1994 to 30 June 1995; the 14th Annual Report for the period from 1 July 1995 to 30 June 1996. See Council of Europe (1993c), pp. pp. 1–3; Conseil de l'Europe (1994), pp. 6, 23–24, 28–30; Council of Europe (1995), p. 4; Conseil de l'Europe (1996), p. 4.

332 See Committee of Ministers (2004), p. 1.

333 See CEACR (1996c).

persons, a registration which is already in its final stages. Besides, the Greek Ministry of Health and Welfare is also examining the implementation of similar measures.'[334]

Thereafter, in 2000, it was reported that the IKA had already started to offer medical care at home to all insured persons who suffered from incurable or chronic illnesses – including the insured persons who were victims of employment injury – and who were unable, for various reasons, to go to the IKA's health centres. Furthermore, a pilot programme for home medical care was launched for all IKA insured people, in the areas of Athens and Piraeus. The programme also became operational in certain Greek prefectures. Doctors as well as general practitioners paid visits – twice or three times per month – to the lonely, bedridden persons, registered on the IKA Health Unit's lists as persons with the right to receive medical and pharmaceutical care. Home medical service was also provided by physiotherapists and nurses of the Social Insurance Institute (IKA).[335]

With respect to the legislative provisions giving effect to Article 34§2(c) of the ECSS (and Article 34§2(c) of the C102), the government, in 1997, made reference to a general legislative framework for nursing care at home according to Law 2071/1992 on the *Modernization and Organization of the Health System*, and more specifically to Articles 28 and 30.[336] However, it was noted that this Law was not yet in force.[337] Later, in 2002 and 2003, it was stated that under Articles 10 and 11 of the IKA's Sickness Regulation, nursing at home was provided: (a) in cases of medical treatment and (b) in cases of complementary health services offered by nurses, physiotherapists, etc.[338]

However, no copies of these national legislative provisions were sent to the Council of Europe or the ILO for two years, despite of the fact that both in 2002 and in 2003 these supervisory bodies had asked for relevant proof.[339] It was only in 2004 that the Greek government sent the requested copy of Articles 10 and 11 of the Sickness Regulation of the IKA to the Council of Europe. This copy was not received by the ILO until 2007.[340]

Nevertheless, no reply was given to certain other questions posed by the Council of Europe on the matter. Namely: (a) 'whether there has been an extension of nursing care at home to the whole country, indicating in particular to what extent

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334 See Council of Europe (1998b), p. 3.
335 See Council of Europe (2000), p. 6. See also in: Venieris, D. (2003b), p. 138.
336 See Official Gazette of the Hellenic Republic (1992b), p. 2357.
337 See General Secretariat of Social Security (1997), p. 3.
338 See Council of Europe (2002), p. 5; Council of Europe (2003b), p. 8; Internal Ministerial Document (2001b), p. 19.
339 See Committee of Ministers (2004), p. 1; CEACR (2002).
340 See (CEACR 2006b); (CEACR 2007).

existing programmes of medical care at home are made available to victims of employment injury, in accordance to the provision of the ECSS and to indicate also whether, as indicated in the 16th annual report (in 1998), in addition to the IKA's health centres, medical care at home is also provided by the health services of the Ministry of Health and Welfare'; and (b) 'whether the sections of Articles 28 and 30 of Law No. 2071/1992 have entered into force, and if not, to indicate which of the provisions establish the general framework for medical care at home, particularly as regards nursing care, covering all providers of such care for victims of employment injury, and to provide copies of all the corresponding provision.'[341]

In any case, and especially through Article 11 of the IKA's Sickness Regulation, it was reaffirmed that in the case of an occupational accident medical care is granted to the insured persons either at the IKA's health centres, or at the practices of contracting physicians, or at the patient's home. Home care is provided when the patient calls the Institution's physicians serving the local IKA units for emergencies. Additionally, the IKA provides physical therapy, injections at home, and other similar services.[342]

Of course, it might be that the above-requested information – together with the relevant supporting documents – was sent to the Council of Europe at another (suitable) time. What should be mentioned this point, however, is that home nursing services were indeed established by Law No. 2071/1992 (this document provided the details and the conditions for the provision of home health care (HHC), and stated that nurses were the primary group responsible for the provision of such services). Moreover, a department of home nursing services was established at the Ministry of Health, with the aim of co-ordinating and promoting of HHC.[343]

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341 See Committee of Ministers (2004), p. 1.

342 See Council of Europe (2004), p. 220.

343 The institutions that have the capability of organizing and providing home nursing services are: (a) NHS Health Centres or smaller primary health care units; (b) Health Centres organized and run by social security, social welfare and non-governmental organizations; (c) Primary health care (PHC) sections of NHS hospitals; (d) Private hospitals or PHC centres under the auspices and control of the Ministry of Health. In addition to home nursing services that are under the auspices of the NHS, there are HHC services run by municipalities that provide home nursing, as well as home help and social care services, to older individuals – and to people with special needs – in need of such services. These HHC services were established in the second half of 1990s and there are plans for the future development of home care complementary to National Health Service (NHS). HHC services can be organized as general or specialized. The core of the HHC team consists of the general or family doctor, community nurses, health visitors, and other health and social care workers. Each of these professionals works independently, but in cooperation with the each other, for the complete treatment of the patients' problems. Moreover, interconnection with specialized services such as specialist physicians, physiotherapists, midwives, occupational therapists, speech therapists, psychologists, etc., is essential for the treatment of special problems; Kalokerinou, A., Frounta, M., Karagiannis, J., Mellou, K. and Sourtzi, P. (2004), p. 2.

From the above description, full compliance of Greek legislation with Article 34 of the ECSS – and of the C102 – took place after almost nine years. It is worth mentioning that the comments made both by the Committee of Ministers and the CEACR contributed to this result as well. Of course the government had the intention and wanted to bring the legislation in line with the international requirements, but also these Committees, through their requests, further promoted the resolution of the issue. Last, the medical care prescribed in Article 34§2 of the ECSS – and similarly in Article 34§2 of C102 – according to Article 38 of the ECSS and of C102, is granted *throughout the contingency*. No waiting period is provided for in the case of incapacity for work.[344]

b. Long-standing incompatibility with the international social security standards: incompleteness of the national list of occupational diseases

Despite the fact that Greece foresees protection against occupational diseases, its national legislation is not fully compatible with the international standards. More precisely, there is an issue of inconformity of the national list of occupational diseases with the Schedule (referred under Article 2) established by C42.

Indeed, for many years now and even more scholarly since 1990, the CEACR 'has been drawing the Greek government's attention to the need to complete the lists of occupational diseases contained in section 40 of the Regulations on occupational diseases of the Social Insurance Institute (IKA)',[345] and has been asking the government to make all the necessary arrangements to this end.[346] In 1991, the Greek government indicated that the question of bringing national legislation into conformity with the specific requirements of the C42 'will shortly be referred

344 General Secretariat of Social Security (2006), p. 14.

345 International Labour Office (2008), p. 627.

346 The list of occupational diseases given in Ministerial Orders Nos. 416/1959, of January 1979 and 416/1862 of 27 December 1979 of the Minister of Social Affairs should have been completed so as to take into account, in accordance with Article 2 of the Convention No. 42, the following points: (a) the sections concerning lead poisoning (No. 1) (for example, no mention is made of gastritis, gastric ulcers, or a number of liver disorders, etc.), mercury poisoning (No. 2) (for example, no mention is made of acute bronchitis, certain psychological disorders, or dermatitis, etc.) are illustrations in point; (b) it would also appear that the very title of the section 'acute poisoning caused by arsenic' (Nos. 15 and 16) is of a restrictive nature (for example, occupational cancer is not included in the pathological manifestations of arsenic related illness), since the left-hand column of the list of diseases and toxic substances contained in the Schedule appended to the Convention refers in a general way to poisoning caused by arsenic; (c) the activities that may cause anthrax infection (section No. 25) should also include 'the loading, unloading or transport of merchandise' in general, as does the Convention; (d) it would appear that the lists of occupational diseases, unlike the Convention, do not contain a section on primary epitheliomatous cancer of the skin and the activities that may lead to it; see CEACR (1990b).

to a special committee for examination'. However, the CEACR recalled that 'the government has been stating that this examination will last for several years.'[347]

The Section for Relations with International Organizations (General Secretariat of Social Security), noting the previous observation made by the CEACR in 1991 (within its remit and after making the necessary contact with the IKA administration), informed the Section for Relations with the ILO (Ministry of Labour and Social Security) in 1993 that the IKA intended to form a special committee, comprising doctors specializing in labour matters and members of the health committees on occupational diseases. This special committee would look at the necessity of modifying, broadening, etc. the current Greek list of occupational diseases included in Article 40 of the IKA Sickness Regulation in relation to the occupational diseases set out in C42. Thereafter, the responsible services of the IKA would proceed with the modification of the relevant national legislation according to this special committee's conclusions.[348]

Nevertheless, in 1994, after receiving the information provided by the government, which contained nothing new apart from the fact that the matter would be referred for examination to a special committee, the CEACR once again urged Greece to ensure that all the appropriate steps were taken in the near future to complete the list of occupational diseases. It also noted that the adoption of Act No. 2084/1992 reforming the Greek social security scheme contained no provisions concerning the updating of the national occupational diseases list.[349]

Five years later, in 1999, the government stated that 'in view of the evolution of medical and technical knowledge, the IKA has decided to set up a committee to prepare a new and more extensive list of occupational diseases which will contain an *indicative* description, and no longer a limited list of major pathological manifestations, as well as the main activities likely to cause them.'[350] However, in its most recent report, the government 'indicates that no new texts respecting the application of the Convention have been adopted … It nevertheless adds that all the bodies concerned acknowledge the fact that the list of occupational diseases currently contained in the above IKA regulations needs to be amended and completed. In this respect, a tripartite committee is to be entrusted with this mission in the framework of the Higher Labour Council.'[351]

Taking all this into account, in 2008 the observation published by the CEACR characteristically stated that 'the Committee is bound to note that no progress

347 See CEACR (1991c).
348 See Internal Ministerial Document (1993d), p. 5.
349 See CEACR (1994d).
350 See CEACR (2001). See also Internal Ministerial Document (2006b), p. 2.
351 See CEACR (2008c).

has been achieved in the implementation of the Convention … Indeed, the establishment of a committee to prepare proposals for the amendment of the list of occupational diseases, announced in the previous report, although within the framework of the IKA, has not yet been given effect. Under these conditions, the Committee cannot but once again expresses the hope that the government will, without further delay, take all the necessary measures to bring the national legislation fully into conformity with Article 2 of the Convention, on which it has been commenting for many years …'[352]

It is indeed striking that for more than 18 years now Greece has failed to bring its national legislation in full conformity with a Convention ratified 56 years ago, and in a sense temporizes the settlement of the matter by actually establishing such special committees to undertake and administer the issue for such long periods of time. Even more striking is the latest aforementioned statement according to which 'all the bodies concerned acknowledge the fact that the list of occupational diseases currently contained in the above IKA regulations needs to be amended and completed.' Such a statement truly makes one wonder how many more years of incompliance with international law may remain if this fact has not been acknowledged. Equally, it is worth noting that this issue of incompliance is also one of the reasons[353] that Greece has not proceeded with the ratification of C121.[354]

The following national development is also intriguing. In 2009, the then Minister of Labour and Social Security initiated a procedure for the compilation of a national catalogue of occupational diseases. A specialist committee was also set up to this end. The compilation and adoption of this catalogue aimed to equally apply to insured persons both in the private and public sector and not only to those under the IKA-ETAM. This is the first time that an analytical and detailed listing of all the relevant occupational diseases has been undertaken at a national level. The national catalogue is expected to include diseases caused by chemical substances (agents); skin diseases; diseases caused by the inhalation of substances

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352 See CEACR (2008c).

353 See also Chapter 3, Section 3.4, Sub-Section 3.4.2.

354 It is worth mentioning that ILO Recommendation No. 121, which accompanies the ILO Employment Injury Benefits Convention, 1964 (No. 121), states in paragraph 6 that '6. Each Member should, under prescribed conditions, regard diseases known to arise out of the exposure to substances or dangerous conditions in processes, trades or occupations as occupational diseases. (2) Unless proof to the contrary is brought, there should be a presumption of the occupational origin of such diseases where the employee: (a) was exposed for at least a specified period; and (b) has developed symptoms of the disease within a specified period following termination of the last employment involving exposure. (3) When prescribing and bringing up to date national lists of occupational diseases, Members should give special consideration to any list of occupational diseases which may from time to time be approved by the Governing Body of the International Labour Office.' See the website of the ILO International Labour Standards.

(for example, diseases of the respiratory system and cancer); and diseases caused by physical agents. The branch of Actuarial Studies and Statistics of the IKA-ETAM, in collaboration with the Diagnostic Centre and Occupational Medicine of the IKA-ETAM, began gathering and listing the occupational diseases in 2003 from the pension files, and according to the methodology used by the EU in order that the relevant data can also be sent to Eurostat.[355]

This initiative of the government is directly related to the European Commission Recommendation of 2003,[356] concerning the European schedule of occupational diseases. The text of this European Recommendation contains a very similar structure and content[357] to the text of ILO Recommendation No. 194,[358] referring to a list of occupational diseases, and adopted one year earlier, in 2002. Still, in the text of the European Commission Recommendation, no reference to ILO R194 is made, or to any other of the relevant ILO instruments (such as C42, C121 and R121) that refer to a sequence of lists of occupational diseases – notwithstanding that it is obvious that its text has been based on these ILO instruments.

Therefore, it could be said that the Greek government places much more emphasis in general on the Recommendations adopted by the European Commission, despite the fact that the issue of modernizing and clarifying the national catalogue of occupational diseases has been highlighted for many years by the ILO and its supervising bodies. Moreover, if Greece had made the necessary legislative arrangements in order to bring national legislation into conformity with the list of occupational diseases enumerated in the Schedule (referred under Article 2) established by C42, it would have been one step ahead in implementing the European Commission Recommendation.

Last, it is interesting to note that after a long time the latest Greek Committee of Experts noted in 2010 that 'in relation to occupational diseases there is an urgent need to incorporate the European catalogue of occupational diseases into our national legislation, taking into account the Recommendation of the European Commission of 2003/607/EC, as well as ILO Recommendation No. 194 of 2002 referring to a list of occupational diseases. The outdated and particularly restricted catalogue of occupational diseases included in Article 40 of the Insurance Regulation by no means covers the contemporary and recently discovered occupational diseases, as well as the circumstances under which they

355 See for example Stauropierrakou, S. (2009).
356 See Official Journal of the European Union (2003), pp. 0028–0034.
357 The researcher came to this conclusion after studying and comparing the relevant texts of the following international instruments: the European Commission Recommendation of 2003 concerning the European schedule of occupational diseases; ILO Recommendation No. 194 (2002), referring to a list of occupational diseases; ILO C42; ILO C121 and ILO R121.
358 See the website of the ILO – International Labour Standards.

may occur. Moreover, in our country the cases in which invalidity pensions are provided due to occupational diseases are worryingly restricted.'[359]

c. Long-standing incompatibility with international social security standards: lack of provision of a reduced long-term benefit to victims of an employment injury[360]

Before Law No. 1902/1990 entered into force, Article 28§2[361] of the compulsory Law No. 1846/1951 prescribed, regarding the concept of *total invalidity*[362] and the right of the insured person to *retirement due* to *total invalidity*, the following: the directly insured person had the right to receive invalidity benefit (pension) when – because of a disease damage, injury, impairment, etc., physical or mental, which lasted for more than six months – he/she could not earn, from an employment corresponding to his/her education, profession, etc., more than the one third of what could be earned by a physically and mentally well person with the same education, profession, etc. This was the concept of (insurance) invalidity, as defined by law, and which should exist at a percentage of two thirds (or 66.66% and above) so as for the provision of the pension to be justifiable. The primary and secondary health committees of the then IKA were nominated as the competent bodies to judge and grade invalidity. Moreover, the Law recognized the cases of *partial invalidity* (percentage above 1/2 (50%) and up to 2/3 (66.66%)) and of *reduced invalidity* (percentage above 1/3 (33.33%) and up to 2/3 (66.66%)). In the case of *partial invalidity*, a reduced pension was provided, while in the case of *reduced invalidity*, a re-adjustment benefit was provided. Last, the insured persons received basically two categories of pension: an invalidity pension due to an employment injury or occupational disease, and invalidity pension due to other reasons (caused by any disease/illness).[363]

Invalidity categories	**Degree of invalidity (%)**
Total (absolute) invalidity	From ***66.66%*** (2/3) and above
Partial invalidity	Above ***50%*** (1/2) and up to ***66.66%*** (2/3)
Reduced invalidity	Above ***33.33%*** (1/3) and up to (2/3) ***66.66%***

After the enactment of Law No. 1902/1990, certain changes took place. The provisions of Article 27[364] of this Law regulated, on a new basis, the pensionable status – by reason of invalidity – in respect of insurance time requirements,

359 See Greek Committee of Experts (2010), pp. 84–85.
360 Reference to this issue can be also found in Gomez-Heredero, A. (2009a), pp. 145–146.
361 See Official Gazette of the Hellenic Republic (1951), pp. 28–29.
362 It has been also referred as: full invalidity, absolute invalidity, heavy invalidity, complete incapacity.
363 See also Leontaris, M. (2007), pp. 292–293.
364 See Official Gazette of the Hellenic Republic (1990), pp. 1175–1176.

pension percentages, pre-existing invalidity and insurance related invalidity. More precisely:[365]

(a) The directly insured person, in order to have a right to an invalidity pension – in the case that the disease existed before the person was insured (pre-existing invalidity) – the deterioration of the disease should constitute, according to medical judgment, at least 50% of the total invalidity. If the disease appeared after the person was insured with the IKA, no requirements need to be fulfilled. However, this law stipulates that there is a regulation in which the percentage of invalidity is predetermined by centesimal analogy (centage). Once again, the primary and secondary health committees of the IKA are the ones to judge and grade invalidity.
(b) The duration of the invalidity, which is determined according to medical prediction (in practice, most of the time this medical prediction takes place for a duration of two years, rarely for one or three years, and very rarely for six months), both regarding the determination and the extent of the invalidity, is differentiated. Consequently, the new categories of invalidity are: (i) *heavy invalidity* (or absolute (total) invalidity): at least one year in duration and the degree of invalidity is at least 80% and above;[366] (ii) *usual invalidity* (or ordinary invalidity): at least one year in duration and the degree of invalidity is at least 66.66%;[367] (iii) *partial invalidity* – at least six months in duration and the degree of invalidity is at least 50% and not more than 66.66%.[368] Thereafter, the amount of invalidity benefit (pension) for all the above-mentioned categories is as follows: (i) degree of invalidity 80%: full pension; (ii) degree of invalidity 66.66%: 3/4 of the amount of full pension; (iii) degree of invalidity 50%: 1/2 of the amount of full pension.

Invalidity categories	**Degree of invalidity (%)**
Heavy (total/absolute) invalidity	At least ***80%*** and over
Usual invalidity	At least ***66.66%*** (2/3) and not more than ***79.9%***
Partial invalidity	At least ***50%*** and not more than ***66.66%***

365 See also Leontaris, M. (2007), p. 293; Council of Europe (1993), p. 17; Internal Ministerial Document (1993c), pp. 16–17; Council of Europe (1993c), p. 3.

366 The directly insured person cannot earn from employment – corresponding to his/her powers, prowess, capacity and ability and education – more than 1/5 of the amount that is usually earned by a physically and mentally well person with the same education.

367 The directly insured person cannot earn from employment – corresponding to his/her powers, prowess, capacity and ability, education and his/her, usual professional employment – more than 1/3 of the amount that is earned in the same professional category by a physically and mentally well person with the same education.

368 The directly insured person cannot earn from employment – corresponding to his/her powers, prowess, capacity and ability, education and his/her usual professional employment – more than 1/2 of the amount usually earned in the same field and professional category by a physically and mentally well person with the same education.

(c) The qualifying employment period for invalidity benefit (pension) is as follows: (i) invalidity due to a *common disease*: 4500 working days (increased gradually from 4050 working days (4350 working days are required for 1993)) completed at any time; or 1500 working days performed at any time, of which 600 working days have to be completed during the 5 years preceding the occurrence of the event resulting in invalidity; or 300 working days up to the age of 21years (the 300 working days shall be increased by 120 working days each year after reaching 21 years of age); (ii) invalidity due to *employment injury*, or *occupational disease*: as of the first working day; (iii) invalidity due to an *accident that did not happen at the workplace:* half the number of working days required for a common disease.

'Since 1990, the CEACR insisted on the need to re-establish in Greek legislation the right to long-term benefit at a reduced rate for victims of employment injury with incapacity of less than 50 per cent',[369] who currently only receive sickness benefits for a period of 720 days, so as to bring the legislation into conformity with Article 36§2 and Article 38 of C102, Article 36§2 and Article 38 of the ECSS and Article 5 of C17.[370]

These provisions clearly stipulate that the benefit *shall be a periodical payment representing a suitable proportion of that specified for total loss of earning capacity* and shall be granted *throughout the contingency*.

Similarly, and after receiving the Reports submitted on the application of the ECSS from 1992 onwards, the Committee of Ministers of the CoE has repeatedly observed and suggested that the Greek government make the necessary legislative adjustments so as to provide a reduced benefit – in the form of periodical payment – in the case of invalidity caused by employment injury, when the incapacity for work is below 50%, stressing the importance that the periodical payment should correspond to a proportional percentage of the amount foreseen in the case of total invalidity.[371]

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369 See CEACR (2008b).

370 Article 36§2, both in C102 and in the ECSS, states that 'In case of partial loss of earning capacity likely to be permanent, or corresponding loss of faculty, the benefit, where payable, shall be a periodical payment representing a suitable proportion of that specified for total loss of earning capacity or corresponding loss of faculty.' Article 38, both in C102 and in the ECSS, states that 'The benefit specified in Articles 34 and 36 shall be granted throughout the contingency, except that, in respect of incapacity for work, the benefit need not be paid for the first three days in each case of suspension of earnings.' Article 5 of C17 states that 'The compensation payable to the injured workman, or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments; provided that it may be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly utilised.'

371 See also Internal Ministerial Document (2004), p. 3.

Moreover, in 2006, the European Committee of Social Rights (ECSR) of the CoE – in their conclusions on the application of Article 12 of the ESC by Greece –[372] also emphasized that Greece should finally settle the question of re-establishing the aforementioned right, and asked to be informed of the progression of the issue.[373]

Both the Committee of Ministers and the CEACR felt that for many years Greek legislation complied with, and fulfilled, the requirements of the ECSS, and those of the other ILO international social security instruments – C102 & C17 – through the provision of a re-adjustment benefit for a two-year period when invalidity caused by an employment injury was 33.33%. However, the provision of this benefit was abolished by Article 27 of Law No. 1902/1990, passed in 1990.[374] Moreover, it should also have been emphasized that the relevant benefit – and based on the ISSS – should be granted throughout the contingency.

In 1993, Greece, with reference to the first relevant comments received[375] by the then European Committee for Social Security (CDSS),[376] simply replied: 'in order to clear up this point, please note that the re-adjustment benefit paid for two years in the case of invalidity (degree of invalidity 33.33%) to persons aged over 55 years has been maintained by Act. No. 1759/1988"; by Act No. 1902/1990, Article 27, the above benefit had been withheld and new conditions concerning retirement due to invalidity have been established. This benefit, because it was granted in cases of very low degree of invalidity in order to justify retirement due to invalidity, was replaced by the sickness benefit, the maximum period for which this benefit is paid has been increased from 360 days to 720 days by the same Act".[377]

Thus, no specific or substantial explanation was given as to why the legislature decided to proceed with such a change, and the main argument used in response to the accusations of incompliance for quite a long time was that the duration of the sickness benefit – provided instead of an invalidity benefit – had been extended from 360 to 720 days.[378]

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372 These Conclusions were based on the information provided by Greece in the 16th Greek Report (01/01/2003 – 31/12/2004) on the application of the ESC (Articles 1, 12, 13, 16, and 19); see Council of Europe (2004), pp. 208–222.

373 See Council of Europe (2006), p. 353.

374 See Internal Ministerial Document (2001c), p. 2; CEACR (2007b); CEACR (2003d); CEACR (2008d).

375 These comments were included in the Conclusions of the European Committee for Social Security (CDSS) concerning the application of the European Code of Social Security adopted during the 42nd meeting (23–25 November 1993) – Appendix VII-CDSS (93) Misc 2.

376 This Committee has been renamed the Committee of Experts on Social Security (CS-SS).

377 See Council of Europe (1993c), p. 1.

378 See Internal Ministerial Document (2004), p.3; Internal Ministerial Document (2002), p. 2.

As expected, the Committees replied that the provision of the sickness benefit fulfils the requirements set for the coverage in the case of sickness, but does not fulfil those set by the international social security legislation in the case of employment injury or occupational disease (once again referring to the relevant Articles and the provisions included therein).[379] Consequently, the government was again asked to make all the necessary arrangements in order to resolve the matter.

In 1997, the political leadership of the Greek General Secretariat of Social Security finally agreed to proceed with the legislative settlement of the situation. Nevertheless, it was stated that before making any changes, the competent services of the biggest social insurance fund for salaried people – the IKA-ETAM – should examine the possibility of re-establishing the right to a long-term benefit at a reduced rate.[380]

The response of the IKA-ETAM contained information on the financial cost that such a legislative adjustment would bring. Accordingly, in 2000 the Greek government reported that 'the provision of such a reduced pension has a very large financial cost for the IKA-ETAM, amounting – based on an actuarial study carried out by the Institute – to 2.6 billion Dollars per year. These estimates involve approximately 3,700 persons (the estimation for the previously mentioned number of beneficiaries was made on the basis of the number of persons receiving pension after an employment injury in proportion to the duration of the benefit). Moreover, the legislative setting of the matter presupposes finding a way to cover the financial costs, given that mainly the IKA-ETAM, but also the other funds, face serious financial problems. This matter shall also be examined by the competent services of the Ministry in the near future.'[381]

Similarly, in the reports submitted to the Council of Europe in 2002 and in 2003, the response to the comments included in the Resolutions of the Committee of Ministers was that the matter was being examined by the competent Greek Ministerial services.[382]

Based on this information, it is quite logical for one to presume that the main reason for not re-establishing the right to a reduced pension for so many years, and despite the numerous requests received, was always of an economic nature.

In 2004, the Committee of Ministers explicitly noted that the matter should be settled as soon as possible and that the IKA-ETAM had to find the appropriate

379 See Internal Ministerial Document (2006b), p. 1.
380 See General Secretariat of Social Security (1997), p. 4.
381 See Council of Europe (2000), p. 5.
382 See Council of Europe (2002), p. 5; Council of Europe (2003b), p. 8.

financial means to this end.[383] The two specific points raised, on which the Committee of Ministers asked detailed explanation to be given by Greece, were indeed profound. Namely: '(a) how the number of potential beneficiaries has been established, and to what extent it corresponds to the actual number of victims of employment injury with incapacity ranging between 33.5 and 50% who were deprived of a reduced benefit after the adoption of Law No. 1902/1990; and (b) how the total cost of the benefits has been calculated, taking into account that the ECSS does not prescribe the level to be attained by a reduced benefit and leaves the Contracting Party free to determine it as a "suitable proportion" of the total incapacity benefit.' The Committee even 'recalled the government's general responsibility for the due provision of the benefits guaranteed by the Code (Article 70.3).' Moreover, it asked the government to provide 'updated statistics on the number of the victims of employment injury with incapacity between 33.5 and 50%, the amount of the benefit in proportion to the full invalidity that is deemed possible to grant them, taking into account the overall cost of the programme, as well as the changes in insurance contributions which might be necessary to maintain the financial equilibrium of the insurance scheme, particularly in relation to the IKA.'[384]

The same year, the government proposed granting the beneficiaries a proportional benefit for a period of two years.[385] However, the Committee of Ministers noted that although this could be considered as a step towards the introduction of a benefit in the form of a periodical payment throughout the contingency, it was still not sufficient to meet the international requirements set by the ECSS. It recalled once again that the previous national legislation fulfilled the requirements, asked the government to provide the requested data, and, taking into account the complex technical nature of the problem, invited Greece to have recourse to the technical assistance of the ILO in setting up a scheme, under conditions set out in Article 70.3 of the ECSS, providing information on the results of this technical assistance.[386]

Greece accepted the proposal for technical assistance in order to find an economically suitable solution to the matter, mentioning that statistical and other information would be sent from the actuarial services of the IKA-ETAM as soon as possible.[387]

In later comments, the Committee remarked that 'the importance of the economic and financial implications of the problem should not, however, overshadow its

383 See Internal Ministerial Document (2004), p. 4.
384 See Committee of Ministers (2004), p. 1.
385 See Council of Europe (2004b), p. 6.
386 See Committee of Ministers (2005), p. 1.
387 See Council of Europe (2005b), p. 6.

human dimension and the hardship which may affect partially incapacitated workers deprived of the right to the pension since 1990', and invited also Greece – together with the CEACR – 'to consider carrying out a sociological study and statistical survey on the conditions of life and work of persons with incapacity of less than 50%, in order to assess their needs in additional social protection and income maintenance.'[388]

Finally, in June 2008, delegates from the General Secretariat of Social Security and the IKA-ETAM, as well as two experts of the ILO and the Council of Europe, met with the purpose of conducting technical consultations on the application of the relevant provisions of the ECSS (and ILO Conventions Nos. 102 and 17). The consultations concentrated on 'an economically suitable solution proposed by the actuarial services of the IKA-ETAM on the basis of the estimated number of potential beneficiaries (160 people annually), the degree of incapacity to be covered (33.3 to 49.9%), the possible level of the benefit (up to 40% of the full amount of invalidity pension) and the overall cost of the programme (approximately €768.000).'[389] The experts would examine to what extent this solution gave effect to the corresponding provisions of the international instruments.

As reported by the Greek government in its annual report for the period from 1 July 2007 to 30 June 2008, 'after questions raised by the Greek side on the

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388 See CEACR (2008b); Committee of Ministers (2007), p. 1.

389 More precisely: '(a) the number of invalids caused by work accidents, within the invalidity rate of 33.3% to 49.9%, is not known because these cases have not been monitored by the relevant "councils of invalidity", thus they cannot be registered. However, the following procedure has been proposed. From the study of work accidents between the years 1999–2003, it has been estimated that the number of employees who, after accidents, were off work having been hospitalized due to mutilation, fracture or brain injury resulting in the above invalidity rates, run to approximately 160 persons annually; (b) with regard to the kind of benefit, the Actuarial Service of the IKA-ETAM assumes that the two-year period should serve as the maximum duration of a periodical benefit under the decisive condition that during the same period no sickness benefit is being paid, if so, when the amount of such a benefit falls short of the amount of the benefit, then the remainder should be paid; (c) as regards the level of the benefit, the above Service accepts that it should not exceed 40% of the full amount of invalidity pension that is paid, depending on their personal retirement records (insurance category, days of insurance, rate of invalidity). Consequently, the average amount of the periodical benefit has been estimated at €200.00 for two years duration minus the number of days of the subsidy. Moreover, this Service assumes that the relevant benefit does not have the nature of a retirement benefit – thus, it is not possible to fall within the general retirement provisions for granting neither the minimum amounts nor the EKAS (Social Solidarity Benefit). It is also accepted that the relevant benefit is personal and un-transferable, and may be paid by the main insurance fund. In accordance with all the above, the estimation of the expenses for paying the benefit by the main insurance fund (IKA-ETAM) is as follows: (a) the amount for 14 payments annually is approximately €768.000,00 (160 persons × 2 years × 12 months (2 months are deducted annually due to the subsidies) × €200,00 = €768.000,00); (b) the amount for 12 payments annually is approximately €640.00,00 (160 persons × 2 years × 10 months (2 months are deducted annually due to the subsidies) × €200,00 = €640.00,00)', in General Secretariat of Social Security (2007), pp. 5–6; Committee of Ministers (2008), p. 1.

application of this provision and the clarifications and positive guidelines given by the experts, Greece has decided to find the most suitable solution, by introducing the appropriate legislative changes in order to give effect to the corresponding provisions of the ECSS.'[390]

However, no further information was provided on how exactly conformity would be delivered, under which legislative framework, and in what time frame. Even the information included in the answer given in 2009 to the question posed in 2006 by the European Committee of Social Rights (ECSR) on how Greece intended to re-establish in national legislation the right to long-term benefit at a reduced rate for victims of employment injury with incapacity of less than 50 per cent, and what the current developments on the issue were, does not reveal something new. The ECSR was simply informed about the meeting that took place in 2008 between the employees of the competent insurance agencies and the two international experts, and was told that the Greek government, following explanations given by the international experts concerning the enforcement of the relevant provision in other European (and non-European) countries that have ratified the ECSS, decided to form a committee of social security officers of the General Secretariat for Social Security and the IKA-ETAM, to consider, *inter alia*, the economic impact on the IKA-ETAM of the enactment of the relevant provision.[391]

In similar terms, and in reply to the remarks made by the Committee of Ministers of the CoE in one of its most recent resolutions adopted in June 2009,[392] the Greek government simply replied that 'the compliance of our country with the obligations arising from Article 36.2 of the ECSS will be realized by introducing the appropriate legislative changes, after the findings of the newly established Committee for the whole Reform of Invalidity Institution in Greece (later named the Committee for the Comprehensive Reform of the Invalidity Institution in Greece), which will be reported soon.'[393]

Based on the latest Resolution adopted in September 2010, the Committee of Ministers once again made reference to the technical consultations which took place in 2008, as well as on the decision of the Greek government to introduce appropriate legislative changes in order to give effect to Article 36.2 of the ECSS by re-establishing a benefit for victims of employment injury with incapacity of less than 50%, and invited the government 'to indicate progress in its next report on legislative changes to give effect to Article 36.2 of the ECSS.'[394]

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390 See General Secretariat of Social Security (2008b), p. 6.
391 See the 19th Report on the Implementation of the ESC submitted by the Greek government: Council of Europe (2009), p. 70.
392 See Committee of Ministers (2009), p. 1.
393 See General Secretariat of Social Security (2009), p. 2.
394 See Committee of Ministers (2010), p. 1.

Be that as it may, from the latest report submitted by Greece on the application of the ECSS (for the period from 1st July 2009 to 30 June 2010), and due to the financial crisis that hit the country in this specific period (and is still ongoing), the government replied to the CoE that with regard to Article 36.2 of the ECSS 'and following the findings of the ad hoc group, constituted by our Service … our Directorate has finally resolved to a draft provision; however, due to the adverse fiscal problems in our country and the intervention of both the International Monetary Fund (IMF) and European Union (EU), a new draft law has been prepared which retrenched[395] the expenses on social security and drastically reduced benefits to avoid the collapse and bankruptcy of the social security system. Under such difficult economic circumstances, and until public finances of the country are remodelled, we doubt that the provision will be enacted soon, since it will result in an extra burden on IKA-ETAM.'[396]

Therefore, compliance with the international social security standards has yet to be delivered. However, one wonders whether indeed re-compliance with the relevant international standards would have created, or would create, such a huge economic problem (as argued by the government) for the country and for the social (security) budget (especially for the part designated for invalidity, employment injuries and occupational diseases). This is so, particularly if one takes into account the fact that for decades in Greece a proper mechanism for the inspection of the percentages of invalidity in general has been lacking.[397]

Before concluding the description of this lengthy case of incompliance, which has lasted more than twenty years, there is certain other information that is worth mentioning. The Section for Relations with International Organizations (of the General Secretariat of Social Security) has been reporting to the government(s) on a regular basis (since 1992 and particularly in the period between 2001 and until end of 2006) that the comments made by the Committee of Ministers were not at all favourable for Greece, but actually the opposite. It has also highlighted the urgent need to look the legislative arrangements concerning this issue.[398]

Furthermore, with regard to the issue of a possible *denunciation*[399] of Part VI (Employment Injury Benefit) of the ECSS to resolve the issue (which was also suggested at one point by the political leadership), the Section for Relations with

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395 This is Law No. 3863/2010; see Official Gazette of the Hellenic Republic (2010c), pp. 2771–2818. Reference to this Law was made in Chapter 3, Section 3.1, Sub-Section 3.1.1, and the description of the main changes brought about by this Law follows in Chapter 5, Section 5.4, Sub-Section 5.4.1.

396 See Council of Europe (2010c), pp. 2–3.

397 Further reference to the issue of lack of proper inspection follows below: Section on Invalidity.

398 See Internal Ministerial Document (2001c), p. 2.

399 Concerning the issue of denouncing international Conventions (in general), see also Korda, M. and Pennings, F. (2008), p. 141.

International Organizations expressed its opinion to the government, by saying that such an action would automatically create a negative image for Greece with regard to the respect of international legal rules, as well as the guarantee of a minimum social security protection level to invalid employees. What is more, it noted that the other Member States of the Council of Europe – including those recent Members (such as the Eastern European countries) – strive to ratify the ECSS and to adjust their national social security legislation in order to comply with it in any possible way. Last, it also stressed that from research conducted, it is clear that all countries that have ratified the ECSS – and in particular PART VI (Employment Injury Benefit) – cover employment injury and occupational disease when the percentage of invalidity is below 50%, providing a relevant periodical payment (even Mediterranean countries, such as Egypt, Syria, Libya), and that it is very likely that Greece is the only country not covering the risk of an employment injury according to the requirements set out in the ECSS and the other ILO social security instruments (C102 and C17).[400]

The Greek trade unions were absent from this whole discussion, which has developed through these years. No notes or commentaries have been sent to the competent Minister on the issue, or to the competent international supervisory bodies, as would normally be the case. What is more, during the recent meeting (in 2008) with the ILO and CoE experts that took place in the Ministry, from information provided it does not appear that there was a trade unions' representative at the meeting.[401]

d. Further remarks

With respect to the remaining nationally accepted international standards set out in Part VI (Employment Injury) of C102 and the ECSS, the following can be stated. Regarding the qualifying conditions, from the above description, it appears that national legislation is in compliance with the relevant international requirements imposed in the case of employment injury. In particular, both in C102 and in the ECSS, Article 37 stipulates that 'the benefit specified in Articles 34 and 36 shall, in a contingency covered, be secured at least to a person protected who was employed on the territory of the Contracting Party concerned at the time of the accident if the injury is due to accident or at the time of contracting the disease if the injury is due to a disease and, for periodical payments in respect of death of the breadwinner, to the widow and children of such person.' Accordingly, no minimum qualifying period in terms of contribution, employment or residence,

400 Internal Ministerial Document (2001c), p. 2 (pp. 1–2); Internal Ministerial Document (2002), p. 2–3 (pp. 1–4); Internal Ministerial Document (2004), p. 4 (pp. 1–11); Internal Ministerial Documents (2006c), p. 4–5 (p. 8).

401 Reference to this issue was made in Chapter 3, Section 3.6.

is required.[402] The Protocol to the ECSS imposes no changes regarding the qualifying conditions set under the ECSS.

Furthermore, national legislation is also in compliance with Article 9(2) of C121, according to which 'eligibility for benefits may not be made subject to the length of employment, to the duration of insurance or to the payment of contributions: Provided that a period of exposure may be prescribed for occupational diseases.' C121, however, has not been ratified by Greece.[403]

Under Article 40 of the Revised ECSS the 'entitlement to benefit shall not be made conditional on any qualifying period. In the case of occupational diseases, the period of exposure to risk, which may be prescribed shall not be considered as a qualifying period.' National legislation fulfils the requirements set out under the Revised ECSS, since in the case of employment injury the entitlement to benefit is not made conditional on any qualifying period. However, regarding the occurrence of an occupational disease, national legislation equates occupational disease with employment injury, in the sense that the beneficiary has the right to receive the relevant coverage from the IKA-ETAM regardless of the number of working days he/she has completed while being insured with the IKA-ETAM, but still it is not clear whether the period of exposure to the risk which is prescribed under Greek law is considered as a qualifying period or not, since – as it is stated above under the prerequisites for the recognition of a disease as occupational – the person needs to have been employed or to be employed in work listed in Article 40 of the IKA-ETAM Sickness Regulation for a time period equal to the time period specified accordingly for every disease contained in the table of Article 40.

Moreover, regarding the existence under national legislation of the declaration as well as the deadline for the declaration of the employment injury mentioned above, it could be characterized as a logical imposition for administrative purposes, or in other words of an administrative nature, and could be also seen as a threshold.[404]

National legislation is in line with Article 32(d) of the ECSS and of C102, which stipulates that one of the contingencies covered in the case of employment injury, or a prescribed disease shall include: 'the loss of support suffered by the widow or child as the result of the death of the breadwinner; in the case of a widow, the right

402 See also Nickless, J. (2002), p. 49; Dijkhoff, T. (2011), p. 85.

403 See Chapter 3, Sub-Sections 3.2.1 and 3.4.2.

404 It could be the case, though, that someone described the deadline of 5 working days as a relatively short time period for the declaration. However, as seen already, national legislation contains cases in which this deadline can be extended and even a delinquent declaration is accepted. Besides, to date there have been no comments or complaints on part of the Greek trade unions on this matter.

to benefit may be made conditional on her being presumed, in accordance with national laws or regulations, to be incapable of self-support'. The only difference being that for persons insured before 01.01.1993, national legislation satisfied the international standards to a greater extent, as not only the surviving spouse and the children, but also other dependants, were entitled to a survivors' benefit.

Similarly, the provision set out under national legislation with respect to rehabilitation services provided for the disabled is in line with Article 35 of the ECSS and of C102.[405]

Last, with regard to the personal scope of application, no specific statistical data have been provided by the IKA-ETAM (salaried persons) concerning coverage in the case of employment injury and/or occupational disease. No specific reference to the relevant provisions included both in C102 and the ECSS has been made in the detailed national reports submitted. Instead, reference has been made to the general statistical data provided under Article 6 of the ECSS and of C102.[406] Be that as it may, since both in the ECSS and in C102 Article 33 states that with respect to personal coverage, '(a) prescribed classes of employees, constituting not less than 50 per cent of all employees, and, for benefit in respect of death of the breadwinner, also their wives and children' should be protected, Greece fulfils the international standards. As stated, the IKA-ETAM covers almost all the salaried persons.

Thus, if indeed almost all salaried people are covered, then also Greece fulfils the requirements set out in the Protocol to the ECSS, which states that the persons protected 'shall comprise prescribed classes of employees constituting not less than 80 per cent of all employees and, for the benefit in respect of the death of the breadwinner, also their wives and children.' However, Greece does not fulfil the personal scope of coverage required under the Revised ECSS, Article 35, according to which the persons protected shall comprise: '(a) all employees, including apprentices, and, in the case of the death of the victim, the surviving spouse and children.'[407]

405 See also Council of Europe (2001), p. 16; General Secretariat of Social Security (2006), p. 14.
406 See, for instance, General Secretariat of Social Security (2006), p. 3.
407 See also the remarks already made under Section 4.3, Sub-Section 4.3.5, above.

4.8 MATERNITY BENEFIT

4.8.1 INTRODUCTION

Protection against the risk of maternity in Greece involves the provision of benefits in cash and in kind. The applicable statutory basis is Law No. 1846/1951[408] (as subsequently amended), through which a compulsory social insurance scheme for employees has been created.[409]

4.8.2 PERSONAL AND MATERIAL SCOPE OF APPLICATION

The IKA-ETAM, in the case of pregnancy, confinement and their consequences, covers both directly and indirectly insured women. Nevertheless, the extension of coverage differs per case. In particular, directly insured women (or retired women) have the right to receive both benefits in cash and in kind, while indirectly insured women have the right to receive only benefits in kind. Dependent widows are entitled to benefits in kind as well.[410]

Under the personal scope of application fall the salaried women of private and public sector, as well as the protected wives. According to the most recent analytical data (31/12/2003) provided in the national detailed report of 2006, the number of mothers entitled to maternity medical benefit by the IKA-ETAM was 27,266, and the number of days for which this benefit was granted reached 3,210,404. The number of women who received maternity medical care was 48,280, of which 28,876 were directly insured and 19,404 were indirectly insured.[411]

a. Benefits in kind and in cash

As already stated above, both directly insured women and indirectly insured women – in other words the protected wives, or non-working mothers – are entitled, before and after confinement, to the following maternity medical benefit:[412] (a) prenatal, confinement and postnatal care either by medical

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408 See Official Gazette of the Hellenic Republic (1951), pp. 23, 32–34, 38.

409 See also MISSOC (2010). The first relevant Law dates back to 1922. Reference is also made to Law No. 1397, 07/10/1983 concerning the National Health System, see Official Gazette of the Hellenic Republic (1983b), pp. 2229–2248. See, further, website of the International Social Security Association (ISSA).

410 See also Lanaras, K. (2008), pp. 418–419. Leontaris, M. (2007), pp. 383–385.

411 General Secretariat of Social Security (2006), p. 14.

412 See General Secretariat of Social Security (2006), pp. 14–15. See also Lanaras, K. (2008), pp. 419–420; Leontaris, M. (2007), pp. 383–385; Internal Ministerial Document (2001b), p. 8; MISSOC (2008).

practitioners or by qualified midwives; (b) hospitalization where necessary. Moreover, the beneficiary is not obliged to share in the cost of the medical care benefits during pregnancy, as well as the cost of the necessary pharmaceutical supplies. Directly insured women also receive maternity cash benefit from the IKA-ETAM.[413]

It should also be noted that if the pregnant woman prefers to give birth in a private hospital, the IKA-ETAM grants a cash benefit (lump sum)[414] in order to cover the expenses of confinement and the maternity care provided. This is actually the main reason why it is regarded as being a benefit in kind. It amounts to 30 times the daily rate of the unskilled worker and it is re-adjusted automatically every time that there is an increase in the amount of the daily wage of the unskilled worker. The amount on 01.01.2006 was 815.40 €, while on 01.09.2006, it was €838.80. However, this lump sum is not granted to the wives of directly insured persons (or pensioners) who work in the public sector or who are insured by the Agricultural Insurance Organization (OGA).

4.8.3 QUALIFYING CONDITIONS

a. Qualifying conditions for the provision of the benefits in kind

For the provision of the previously mentioned benefits in kind or the lump sum benefit, the qualifying conditions that need to be fulfilled are the same as those required for the provision of medical care. Thus, until quite recently the beneficiary needed to have completed 50 working days (Article 31§1, Law No. 1846/1951).[415] However, in 2008, with the enactment of Law No. 3655/2008, this number of working days will increase by 10 days per year starting on 01.01.2009 (Article 148§1, Law No. 3655/2008)[416] until a total of 100 working days is reached for standard employees (80 working days for construction workers). The above number of working days should be completed either during the previous calendar year, or during the 15 months preceding sickness, or probable date of childbirth, not including the working days completed during the last 3 months of the 15-month period. Therefore, the qualifying period required for the provision of the *maternity medical benefit* is also increased from 50 to 100 working days.[417]

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413 See General Secretariat of Social Security (2006), pp. 15–16; Internal Ministerial Document (2001b), p. 8; Lanaras, K. (2008), pp. 421–422; Leontaris, M. (2007), p. 384 ; MISSOC (2008).

414 See also the website of the IKA-ETAM.

415 See Official Gazette of the Hellenic Republic (1951), p. 32–33.

416 See Official Gazette of the Hellenic Republic (2008a), p. 1063.

417 See General Secretariat of Social Security (2006), p. 15. See also Lanaras, K. (2008), pp. 419–420; Leontaris, M. (2007), p. 383; MISSOC (2008).

b. Qualifying conditions for the provision of the cash benefit[418]

For the provision of the maternity cash benefit, a qualifying period of 200 working days needs to be completed during the two years prior to the presumed date of confinement (childbirth). It is worth mentioning that during the maternity leave, the employer pays the difference between her daily wage and the daily maternity cash benefit that she is receiving, but only for the time periods specified in the Articles 657–658 of the Civil Code and for the duration of her maternity leave. The OAED pays the beneficiary the difference between her daily wage and the daily maternity cash benefit from the day that her employer stops paying the previously mentioned difference and until her maternity leave is complete.[419]

4.8.4 DURATION

The maternity medical benefit is provided *throughout the contingency*.[420] With respect to the benefits in cash,[421] directly insured women receive maternity cash benefit from the IKA-ETAM. This periodical benefit is granted for 17 weeks (119 days)[422] – 8 weeks (56 days) prior to the presumed date of confinement (childbirth) and 9 weeks (63 days) after confinement (childbirth)[423] (Article 39,[424] Law No. 1846/1951 and Article 11,[425] Law No. 2874/2000). It is also paid on non-working days.[426]

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418 See General Secretariat of Social Security (2006), p. 15. See also Lanaras, K. (2008), p. 422; Leontaris, M. (2007), p. 384; MISSOC (2008).

419 See Leontaris, M. (2007), p. 385. It is indeed rather strange though that the employer has to pay for the women, because actually it would be much more difficult for the women in such a condition to be employed, while, and ideally, the social security policy followed in a country should make more favourable arrangements for pregnant women or women that become pregnant so that they have an equal chance in the labour market in relation to other women (for example, by undertaking beneficial measures in relation to cost-sharing, etc.).

420 See General Secretariat of Social Security (2006), pp. 14–15; Internal Ministerial Document (2001b), p. 8. See also Lanaras, K. (2008), pp. 419–420; Leontaris, M. (2007), pp. 383–385; MISSOC (2008).

421 See General Secretariat of Social Security (2006), pp. 15–16; Internal Ministerial Document (2001b), p. 8; Lanaras, K. (2008), pp. 421–422; Leontaris, M. (2007), p. 384 ; MISSOC (2008).

422 See the website of the IKA-ETAM.

423 According to Article 7 of the National Collective Labour Agreement for the period 2000–2001, the total maternity leave has been increased to 17 weeks. See also Internal Ministerial Document (2002b), p. 1.

424 See Official Gazette of the Hellenic Republic (1951), p.38.

425 See Official Gazette of the Hellenic Republic (2000b), p. 4105.

426 See also Leontaris, M. (2007), p. 384.

4.8.5 RECENT DEVELOPMENTS

In order to reinforce maternity protection,[427] the new Law No. 3655/2008 (Article 142)[428] stipulates that a special benefit – six months leave of absence – will be granted to working mothers employed in the private sector on the basis of working contracts with or without a predetermined date of dismissal. Since 03.04.2008, this special benefit has been provided after the end of the confinement leave and after the reduced working hours for caring for the child – according to the National General Collective Labour Agreement for the years 2004–2005 (EGSSE 2004–2005). During the period of this special kind of leave, the OAED is obliged to pay to the mother insured with the IKA-ETAM an amount equal to that regarded by the EGSSE as minimum salary each month, as well as a proportion of the amounts paid as bonuses (Christmas – Easter – Summer). It should be also noted that in order to ensure the preservation of the working mothers' insurance rights, this period is regarded by the IKA-ETAM as an insurance period.[429] As of 1 May 2009, this special benefit has been increased and the amount totals €739.56 per month.[430]

4.8.6 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

With regard to the material scope of application, through the provision of both benefits in cash and in kind, Greece fulfils the requirements set out in C102 (Article 47) and in the ECSS (Article 47), as well as the requirements set out in the Revised ECSS (Article 51). There are no changes in the Protocol to the ECSS regarding the material scope of application.

More precisely, as far as the benefits in kind are concerned, Greece fulfils the requirements set out in C102 (Article 49, Article 52) and in the ECSS (Article 49, Article 52), as well as those set out in the Protocol to the ECSS (Article 49§2), since there is no cost-sharing in respect of the pharmaceutical supplies the beneficiary receives. The Protocol imposes no changes on the duration of the maternity medical benefit. However, with regard to the Revised ECSS, Greece does not seem to provide all the kinds of medical care mentioned under Article 53. With respect to the benefits in cash, Greece also fulfils the requirements set out in C102 (Article 50, Article 52) and in the ECSS (Article 50, Article 52), as well as in the

427 See also Chapter 3, Section 3.1, Sub-Section 3.1.1.
428 See Official Gazette of the Hellenic Republic (2008a), p. 1060.
429 See General Secretariat of Social Security (2008b), p. 5. See also Stamati, A. (2008); OAED (2008d), pp. 1–4.
430 See Vima (2009), p. 1.

Revised ECSS (Article 54, Article 56§2). The Protocol to the ECSS imposes no changes regarding the form of the maternity cash benefit and its duration.

Moreover, the maternity cash benefit is provided for a longer duration than that set out in all the previously mentioned international instruments, since C102 and the ECSS set a minimum duration of 12 weeks; and the Revised ECSS, 14 weeks; while Greek legislation provides the benefit for a period of 17 weeks.

With regard to the qualifying conditions for the provision of the benefits, according to Article 51 both in C102 and the ECSS, maternity benefits both in cash and in kind 'shall be secured at least to a woman in the classes protected who has completed such qualifying period as may be considered necessary to preclude abuse', and particularly regarding the maternity medical benefit, it shall 'be secured to the wife of a man in the classes protected where the latter has completed such qualifying period.' Thus, the exact qualifying period is actually determined at a national level, as long as 'it ensures that the benefits are in fact received by the categories of the persons for whom they are intended' and 'the length of the period of contribution, employment, or residence, as the case may be, would depend largely on the scope of protection and the nature of the scheme concerned.'[431]

Consequently, at first glance, Greece fulfils the requirements set in the above-mentioned international provisions. However, Article 148§1 of Law No. 3655/2008, which doubles the number of insurance days that need to have been completed before the person comes to need maternity care cannot be considered as actually precluding abuse.

In the 19th Report on the implementation of the ESC submitted by the Greek government on Articles 3, 12, and 13 for the period 01/01/2005 – 31/12/2007, it is stated that 'the reason justifying this increase is that, as proved in practice, 50 days' wages does not cover the benefits granted by the institution in relation to the contributions paid. Furthermore, it is a disincentive for the worker to continue to be insured with the Institution, since he/she and the members of his/her family can receive care both for the current year and the next year on the basis of this minimum number of days' wages.'[432] Hence, the reasons of such an increase are based, once again, on economic criteria. Be that as it may, such economic reasoning is actually not accepted by the international requirements and the state should have found a suitable solution without making the qualifying conditions stricter.

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431 See also Dijkhoff, T. (2011), pp. 51–52.

432 See Council of Europe (2009), p. 65.

With respect to the qualifying conditions for the provision of the cash benefit, Greece fulfils the requirements set out in C102 (Article 51) and in the ECSS (Article 51), since it is stipulated that the maternity cash benefit shall be secured at least 'to a woman in the classes protected who has completed such qualifying period as may be considered necessary to preclude abuse.' Similarly, Greek legislation also fulfils the requirements set out in the Revised ECSS (Article 55), according to which 'where a Party's legislation makes entitlement to maternity cash benefit conditional on the completion of a qualifying period, that period shall be no longer than is considered necessary to prevent abuse.' The Protocol to the ECSS imposes no changes on the qualifying conditions regarding the provision of the maternity medical benefit. Once again, though, the exact qualifying period to be determined at a national level, as long as 'it ensures that the benefits are in fact received by the categories of the persons for whom they are intended', and 'the length of the period of contribution, employment, or residence, as the case may be, would depend largely on the scope of protection and the nature of the scheme concerned.'[433]

It is also interesting to note that the national legislation does not comply with Article 8§1 of the ESC,[434] since as regards the entitlement to maternity leave, 'periods of unemployment are not taken into account when calculating periods of employment needed to qualify for maternity leave.'[435]

Next, concerning the personal scope of application, once again the data provided are not up-to-date or precise. No specific percentage has been provided. Based on this information, it can only be said that the requirement set out in C102 and the ECSS (50% of the all employees) are fulfilled (since the IKA-ETAM covers almost all salaried persons in the country). However, it cannot be assessed whether the percentage of coverage required by the rest of the international social security instruments is, or could be, attained (the Protocol to the ECSS presupposes coverage of 80%; the Revised ECSS presupposes overall coverage (however there

433 See also Dijkhoff, T. (2011), pp. 51–52.

434 Article 8 of the ESC – The right of employed women to protection states: 'With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake: (1) to provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks; (2) to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence; (3) to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose; (4)(a) to regulate the employment of women workers on night work in industrial employment; (b) to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.'

435 See Council of Europe (2012), p. 4.

are certain possibilities of excluding a small percentage from the personal scope (5%)).[436]

Last, and despite the aforementioned problematic aspects, it is interesting to note that several Committee of Minister's Resolutions refer to the possible ratification of the Protocol to the ECSS by Greece in relation to the part concerning maternity benefit. Moreover, it has been stated that since Greece has already ratified C103, it could also accept the higher standards on maternity set out in the Protocol to the ECSS concerning Part VIII (maternity benefit).[437]

4.9 OLD-AGE BENEFIT

4.9.1 INTRODUCTION

The applicable statutory basis for social security protection in old age can be found in several legal documents. The most important are considered to be the following:[438]

- Law No. 1846/1951 (as amended by Law No. 2676/1999);[439]
- Law No. 1902/1990;[440]
- Law No. 2084/1992;[441]
- Law No. 2676/1999;[442]
- Law No. 3029/2002;[443]
- Law No. 2874/2000;[444]
- Law No. 3232/2004;[445]
- Law No. 3385/2005;[446]
- Law No. 3371/2005;[447]
- Law No. 3655/2008;[448]
- Law No. 3863/2010.[449]

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436 See also the remarks made in Section 4.3, Sub-Section 4.3.5, above.
437 See, further, Gomez-Heredero, A. (2009a), p. 50.
438 See also MISSOC (2010).
439 See Official Gazette of the Hellenic Republic (1951), pp. 1–53.
440 See Official Gazette of the Hellenic Republic (1990), pp. 1167–1186.
441 See Official Gazette of the Hellenic Republic (1992), pp. 3007–3042.
442 See Official Gazette of the Hellenic Republic (1999), pp. 1–40.
443 See Official Gazette of the Hellenic Republic (2002), pp. 3057–3072.
444 See Official Gazette of the Hellenic Republic (2000), pp. 4101–4116.
445 See Official Gazette of the Hellenic Republic (2004e), pp. 979–1034.
446 See Official Gazette of the Hellenic Republic (2005), pp. 3301–3308.
447 See Official Gazette of the Hellenic Republic (2005b), pp. 2857–2892.
448 See Official Gazette of the Hellenic Republic (2008a), pp. 961–1068.
449 See Official Gazette of the Hellenic Republic (2010c), pp. 2771–2818.

Through the aforementioned national legislation, insurance is compulsory with no exceptions. The pensions provided are earnings-related,[450] depending on contributions and the affiliation duration. No semi-retirement exists.[451] As already mentioned, the IKA-ETAM provides coverage to the salaried private sector employees/workers. The protection of pensioners not only involves the grant of cash benefits, but also the provision of medical care.

4.9.2 MATERIAL SCOPE OF APPLICATION AND QUALIFYING CONDITIONS

Under Greek Law, the provision of an old-age benefit (pension) is subject to two main conditions: (a) the attainment of a specific pensionable age (age limit), and (b) the completion of a certain qualifying period – in other words, the completion of a certain (minimum) insurance period. These two main conditions have also been used by international social security law when defining the risk of old age and awarding old-age benefit.[452] Through the fulfilment of these two main conditions, the right to an old-age benefit is acquired, regardless of when the person submits the relevant application for the receipt of the old-age benefit.[453]

However, these two main conditions are not always the same. This makes the framework under which pensions are regulated in Greece rather complicated. It is also worth mentioning that Greece has had the highest rates of early retirement in Europe for many years.[454]

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450 It is common knowledge that the earnings-related benefits reflect the earnings a person received from economic activity before he/she was affected by a particular social risk. Flat-rate benefits are paid to all recipients, regardless of how much they earned before becoming victim of a particular risk.

451 See also MISSOC (2009). In Greece, there is also no partial employment, which refers to the situation that a person has retired (so he/she receives a pension), but is allowed at the same time under prescribed rules to continue to work.

452 See also Chapter 2, Section 2.3, Sub-Section 2.3.2; International Labour Office (1989), p. 37; Dijkhoff, T. (2011), pp. 70–72, 75–77.

453 When exactly the person submits his/her application in order to receive an old-age benefit is not a condition for the provision of the old-age benefit. Actually, the submission of this application corresponds to the exercise of an already acquired right, since the right of a person to receive old-age benefit is not realized automatically by the responsible insurance organization. See also Lanaras, K. (2008), p. 439.

454 See also International Social Security Association (ISSA) (2009). Early retirement in Greece had been initially introduced as a privilege provided to certain categories of the working population (for example, civil servants, those working in the banking sector, etc.). Moreover, it was considered to be a positive measure, favouring working women, especially those with children. This way it was considered that the SIS would become friendlier in general to women who had to combine family life and work, and also certain other categories of workers such as invalids. During the last decade, however, policies discouraging early retirement in Greece have been introduced.

The most important categories are considered to be the following:

1st Category: Basic Old-Age Benefit

– The following conditions need to be fulfilled by *old insured persons*[455] for the provision of a *full old-age benefit*:
  (a) The pensionable age is set at 65 years for men and 60 years for women;
  (b) Both men and women need to have completed the minimum qualifying period of 15 years of insurance (a contribution record of 4,500 working days) (Article 28§1(a)[456] of Law No. 1846/1951, as replaced by the Article 27§1[457] of Law No. 1902/1990).

With regard to *newly insured persons*, the second condition referring to the completion of 15 years of insurance equally applies. Nevertheless, the age limit differs. In particular, according to Article 24§1[458] of Law No. 2084/1992, both men and women, in order to establish the right to a *full old-age benefit*, need to reach the age of 65 (equalization of the pensionable age). This change has led to stricter requirements.

It should be also noted that *the equalization of the pensionable age* to 65 both for men and women employed in the public sector will take place gradually from 2013 onwards. Greece was condemned by the European Court of Justice (ECJ) for failing to fulfil the obligations stemming from Article 141 TEC. In particular, the ECJ declared that 'by maintaining in force provisions which provide for differences between male and female workers with regard to retirement age and minimum required service under the Greek Civil and Military Pensions Code instituted by Presidential Decree No. 166/2000 of 3 July 2000, in the version applicable to the present case, the Hellenic Republic has failed to fulfil its obligations under Article 141 EC and orders the Hellenic Republic to pay the costs.'[459] The International Monetary Fund (IMF) has also been pressing the Greek government to take steps in this direction for a long time.

There is also an exception for those insured by 31.12.1991. If they have reach the age of 63 (for men) and 58 (for women), and they have completed a contribution record of 4,050 working days, they have the right to receive full old-age benefit (Article 27§1,[460] Law No. 1902/1990).

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455 Regarding the categorisation between those insured for some time and newly insured persons, see the Section 4.2 above.

456 See Official Gazette of the Hellenic Republic (1951), p. 28.

457 See Official Gazette of the Hellenic Republic (1990), p. 1175.

458 See Official Gazette of the Hellenic Republic (1992), p. 3019.

459 See the judgement of the Court (Third Chamber) of 26 March 2009 – *Commission v Greece* (Case C-559/07). See also McKay, S. (2009), p. 1.

460 See Official Gazette of the Hellenic Republic (1990), p. 1175.

The possibility under Article 2§5[461] of Law No. 3029/2002 for insured persons who had reached the age of 65 to receive an old-age benefit as long as they had completed a contribution record of 3,500 working days was abolished on 31.12.2007.

– The following conditions need to be fulfilled by *old insured persons* for the provision of a *reduced old-age benefit*:
  (a) The pensionable age is set at 60 years for men and 55 years for women;
  (b) Both men and women need to have completed the minimum qualifying period of 15 years of insurance (a contribution record of 4,500 working days) (Article 28§5(a)[462] of Law No. 1846/1951, as replaced by Article 27§1(3)[463] of Law No. 1902/1990).
  The amount of the benefit in this case is reduced by 1/267 of the full old-age benefit for each month remaining until men reach the age of 65 and women reach 60 (Article 2§12[464] of Law No. 3029/2002).

As regards *newly insured persons*, the second condition referring to the completion of 15 years of insurance equally applies, with the difference that 2.5 years of insurance must have been completed within the five years before the submission of the retirement application (Article 24§2 of Law No. 2084/1992). The age limit in this case is set at 60 years of age both for men and women.

In general, the minimum social pension requires 15 years' contributions.[465] In other words, the minimum period of membership is 15 years of insurance (4,500 working days for which contributions have been paid) both for the old and the newly insured.[466]

2nd Category: Arduous and Unhealthy Occupations (AUO)[467]

In Greece, the institution of Arduous and Unhealthy Occupations (AUOs) was introduced for the first time through Article 28§5[468] of Law No. 1846/1951, as subsequently altered and amended by several statutes (Article 5§2 of

461 See Official Gazette of the Hellenic Republic (2002), p. 3060.
462 See Official Gazette of the Hellenic Republic (1951), p. 29.
463 See Official Gazette of the Hellenic Republic (1990), p. 1177.
464 See Official Gazette of the Hellenic Republic (2002), p. 3061.
465 See OECD (2009), p. 1.
466 See also MISSOC (2009).
467 Apart from the specific references indicated within the text, the following have been also used for the composition of this part: General Secretariat of Social Security (2006), p.2; Leontaris, M. (2007), pp. 272–273; Lanaras, K. (2008), p. 439; Amitsis, G. (2003), pp. 7–8.
468 See Official Gazette of the Hellenic Republic (1951), p. 29.

Legislative Decree No. 4104/1960,[469] Law No. 4350/1964,[470] Law No. 237/1975,[471] Article 27§1(3b) of Law No. 1902/1990,[472] Article 2§6[473] of Law No. 3029/2002). AUOs are considered those occupations listed in the specific Regulation on AUOs (Articles 104–106), which came into force on 01.01.1964 under the legislative framework of the now IKA-ETAM. There are two main reasons for persons employed in AUOs receiving special treatment and for early retirement conditions being introduced for them in Greek social insurance legislation: (a) firstly, the fact that long-term work in such occupations causes serious damage of the human body (premature health damage) and, consequently, considerable employment weakness; (b) secondly, the absence of a proper legislative framework on health and safety at work.[474] Be that as it may, the opinion has been also expressed that the institutionalized concept of arduous and unhealthy occupations has, in many instances, distorted efforts to improve working conditions: trade unionists, instead of demanding a more humane work environment, have sought to obtain this classification for their particular occupations (thereby trading health for early retirement). Contributions are increased for employees classified in this insurance category.[475]

The *old insured persons*, in order to receive a *full old-age benefit* need to have completed 35 years of insurance (a contribution record of 10,500 working days), of which 25 years (a contribution record of 7,500 working days) needs to have been completed in AUO, and the person must have reached the age of 55 (both men and women). An alternative also exists, however, according to which the old insured persons have the right to receive a *full old-age benefit* as long as they have completed 15 years of insurance (a contribution record of 4,500 working days), of which 3,600 working days are days worked in AUO and 1000 working days are days worked during the 13 years preceding the retirement (Article 2§6,[476] Law No. 3029/2002 and Article 15§12,[477] Law No. 3232/2004); and have reached the ages of 60 (men) and 55 (women).[478]

The *newly insured*, in order to receive a *full old-age benefit*, need to have completed 15 years of insurance (a contribution record of 4,500 working days), of which 3/4

469 See Official Gazette of the Hellenic Republic (1960), p. 1579.
470 See Official Gazette of the Hellenic Republic (1964), pp. 597–598.
471 See Official Gazette of the Hellenic Republic (1975b), pp. 2099–2100.
472 See Official Gazette of the Hellenic Republic (1990), p. 1176.
473 See Official Gazette of the Hellenic Republic (2002), p. 3060.
474 See, further, Ministry of Health, Welfare and Social Insurances (1991), p. 1; Ministry of Employment and Social Protection (2008b), p. 15; George, A. Leventis (2007), p. 1–2.
475 See Eurofound (2009), p. 1.
476 See Official Gazette of the Hellenic Republic (2002), p. 3060.
477 See Official Gazette of the Hellenic Republic (2004e), p. 1010.
478 See also George, A. Leventis (2007), pp. 10–11; Amitsis, G. (2003), pp. 32–33; MISSOC (2009).

(135 months/3.375 working days) have been completed in AUO; and they must have reached the age of 60 (both men and women).[479]

Moreover, it should be mentioned that until recently, according to Article 32[480] of Law No. 2874/2000, since 01.01.2001, insured persons – both those insured for some time and the newly insured – who had completed, in total, 35 years of insurance (a contribution record of 10,500 working days), of which 25 years (a contribution record of 7,500 working days) were completed in AUO, had the right to receive: (a) *full old-age benefit* as soon as they reached the age of 55 (men and women) and (b) *reduced old-age benefit* as soon as they reached the age of 53.

However, according to Article 143§1[481] of the recent Law No. 3655/2008, the minimum age in the above cases will increase gradually from 01.01.2013. Consequently, the retirement age for *full pension* after 35 years of insurance coverage will be 57 years of age, and for *reduced pension* after 35 years of insurance coverage, it will be 55.

Currently, the list of AUOs in Greece is under revision.[482] As a matter of fact, in the last 18 years several attempts have been made to do this.[483] The Greek AUO list is a very long one (there are 580 groups of almost 700,000 employees which qualify as AUOs).[484] Based on a recent survey conducted on the legislative order for AUOs in other E.U. Member States,[485] Greece seems to be the only country with such an extensive regulatory framework and such a long list of occupations belonging in the category of AUOs. This is mainly due to the fact that numerous amendments have been made over the years and many new occupations have been gradually added to the list without a proper examination of their appropriateness.

The former Minister of Employment and Social Protection (under the conservative government, which lost power after the elections that took place in Greece in

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479 See George, A. Leventis (2007), pp. 10–11; Amitsis, G. (2003), p. 33.

480 See Official Gazette of the Hellenic Republic (2000), p. 4111.

481 See Official Gazette of the Hellenic Republic (2008a), p. 1060.

482 See, further, Lampousaki, S. (2008), p.1. The latest relevant documents concerning this revision are available on the website of the Ministry of Labour and Social Security.

483 See also Venieris, D. (2003b), pp. 140–141.

484 See Ministry of Employment and Social Protection (2008b), p. 25.

485 This survey was conducted with the help of the *Section* for Relations with International Organizations/General Secretariat of Social Security/Greek Ministry of Employment and Social Protection, and communication took place with the competent ministerial sections of other E.U. Member States. Based on the replies sent by 13 E.U. Member States, most of them do not even have the institution of AUOs, while in those Member States that the institution exists, there are certain special arrangements in place for certain – though few – occupations that are considered as AUOs. See, further, Ministry of Employment and Social Protection (2008b), pp. 13–14; George, A. Leventis (2007), pp. 1–26.

October 2009) had stated that Greece was proceeding 'with the rationalization and modernization of a status quo that has remained since 1951.'[486]

The first attempt to shorten this list was made in 1991 through the establishment of a special assessment Committee.[487] Despite the fact that the percentage of persons belonging to the categories of AUOs in 1991 was 38% of all those directly insured against the social risk of old age, the Committee did not sort out which occupations should be included on the list and which ought to be left out. Instead, it came up with opinions and measures that could enhance health and safety at work. A second attempt was made in 2002 with the establishment of a special scientific Committee.[488] However, the compilation of a new list was once again not accomplished, due to incapacity to objectively define the dangerousness for each occupation through the measurement of harmful factors and morbidity indicators. Another more recent effort to revise the list – the third in sequence – began in 2006 with the establishment of another Committee.[489] The aim of this third Committee was to re-determine and reassign the occupations and works that should be included on the Greek list of AUOs.[490] In 2009, the new Socialist government placed the revision of the whole institution of AUOs on the agenda for the fourth time. It has been announced that a new unified system of AUOs will be introduced (the same arrangements for those working in the public and private sector will apply) and legislative measures will be taken to modernize the AUO list. The final results are yet to be seen.

Nevertheless, what is interesting and should be mentioned here is that until the third attempt at revising the list of AUOs, the relevant Committees do not seem to have consulted ILO social security instruments in their effort to compile the new list of AUOs.

More precisely, relevance exists between occupational diseases and AUOs. Persons working in AUOs are more likely to fall victim to occupational diseases, since during the exercise of work persons are exposed to several factors causing the deterioration of their health. For example, a person who has been working in coal mines has a higher probability of developing a lung disease, or a disease caused by carbon. Similarly, persons working in any process involving exposure to radium, radioactive substances, or X-rays (health and laboratory work is very typical) are very likely to present with symptoms related to radium and its variants.

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486 See Ferliel, A. (2009), p. 1.

487 The establishment of this Committee was based on Article 32§9 of Law No. 1902/1990; See Official Gazette of the Hellenic Republic (1990), p. 1178.

488 The establishment of this second Committee was based on Law No. 3029/2002; See Official Gazette of the Hellenic Republic (2002), pp. 3057–3072.

489 The establishment of this third Committee was based on Article 18 of Law No. 3483/2006, in Official Gazette of the Hellenic Republic (2006b), p. 1988.

490 See Ministry of Employment and Social Protection (2008b), pp. 6–12.

This implies that when trying to compile a new list of AUOs, what should also be taken into consideration, among other things, are the diseases and toxic substances that relate to certain trades, industries and processes. In other words, an occupational disease is not the only factor that should be looked at when compiling a list of AUOs, but it remains an important factor.

Very helpful in this respect are the following ILO Cs: (a) C42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 and (b) C121[491] Employment Injuries Benefit Convention, 1964. Each one of them contains a schedule that describes occupational diseases and jobs involving exposition to such risk, and could be used as a valuable instrument when an effort is being made either to define or review a list of AUOs. Particularly when a country has ratified one of these two Conventions, attention should be paid to the above-mentioned schedules (as well as to R121 accompanying C121).

Greece, as already mentioned,[492] sanctioned and ratified C42 in 1952, while C121 has not yet been accepted, mainly due to the fact that issues of compliance exist between the current Greek national list of occupational diseases and Article 2 of C42, as well as certain other problems regarding the Greek list of AUOs.[493]

One, therefore, would expect, for one thing, to see in the most recent report on the 'Conclusion of the Scientific Committee concerning the Reformation of the Table of AUOs' published in July 2008 at least a reference to the international social security instruments – if not to all of them, a reference to C42, which has been sanctioned and ratified by Greece. Particularly in respect of the problem of not being able to 'objectively define the dangerousness for each occupation through the measurement of the harmful factors and morbidity indicators',[494] which was mentioned by the second Greek special scientific Committee established in 2002, what could have been done is to have had recourse for advice to the ILO asking for further technical support. Nonetheless, such an action was not taken and the instruments have not been consulted.

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491 According to Article 28 of C121: '(1) This Convention revises the Workmen's Compensation (Agriculture) Convention, 1921, the Workmen's Compensation (Accidents) Convention, 1925, the Workmen's Compensation (Occupational Diseases) Convention, 1925, and the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934; (2) Ratification of this Convention by a Member which is a party to the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934, shall, in accordance with Article 8 thereof, ipso jure involve the immediate denunciation of that Convention, if and when this Convention shall have come into force, but the coming into force of this Convention shall not close that Convention to further ratification.'

492 See Chapter 3, Sub-Section 3.2.1.

493 See Chapter 3, Sub-Section 3.4.2. See also the Section 4.7, above.

494 See Ministry of Employment and Social Protection (2008b), pp. 7–8.

Last, concerning the relationship between occupational diseases and the set – at a national level – pensionable age, there is indeed a higher risk of persons employed in AUOs becoming ill. Consequently, it is justifiable that they should be given the opportunity to retire earlier than others so as to avoid becoming ill due to bad working conditions. To this end, the international social security standards can act as a preventive mechanism rather than as a curative one. Moreover, in such a manner a further financial burden to the social security system of the country is avoided, in the sense that utilization of medical care provisions may be limited.

Additionally, it could be argued that concentrating only on the list included in the international social security instruments previously mentioned (C42 and C121) could end up limiting the social protection provided. It would be a very good starting point for a country to refer to the internationally developed standards in this respect. When a revision (or an attempt at revision) of the list of AUOs takes place, the relevant international instruments should at least be consulted, particularly if they have been ratified by the country.

3rd Category: Old-Age Benefit after the completion of 33 years of insurance

– The following conditions need to be fulfilled by the *old insured persons* for the provision of a *full old-age benefit* (Article 28§1[495] of Law No. 1846/1951, as replaced by Article 27§1[496] of Law No. 1902/1990): (a) the pensionable age is set at 62 years for men and 57 years for women; (b) both men and women need to have completed the minimum qualifying period of 33 years of insurance (a contribution record of at least 10,000 working days).

As regards the *newly insured*, there are no similar arrangements.

– The following conditions need to be fulfilled by the *old insured persons* for the provision of a *reduced old-age benefit*: (a) the pensionable age is set at 60 years for men and 55 years for women; (b) both men and women need to have completed the minimum qualifying period of 33 years of insurance (a contribution record of at least 10,000 working days). The amount of the full old-age benefit in this case is reduced by 1/200 for each month remaining until men reach the age of 62, and women, 57.

As regards the *newly insured*, there are no similar arrangements.

495 See Official Gazette of the Hellenic Republic (1951), pp. 28–30.
496 See Official Gazette of the Hellenic Republic (1990), p. 1177.

4th Category: Old-Age Benefit after the completion of 35 years of insurance

– The following conditions need to be fulfilled by the *old insured persons* for the provision of a *full old-age benefit*:

Currently, persons who are insured with IKA-ETAM and have completed approximately 35 years of insurance (a contribution record of at least 10,500 working days) under IKA-ETAM, or under any other employees' main social insurance fund, can retire as soon as they reach 58 years of age (both men and women) (Article 10[497] of Law No. 825/1978, as altered by Article 27[498] of Law No. 1902/1990, Article 48§1 and Article 70§2[499] of Law No. 2084/1992, as well as Article 25§1[500] of Law No. 2556/1997), receiving a *full old-age benefit*.

However, according to Article 143§1[501] of Law No. 3655/2008, the retirement age of 58 will increase gradually from 01.01.2013, and reaching 60 by 2016. Likewise, for those insured between 01.01.1983 and 31.12.1992 in the (former) main special employees' insurance funds[502] – which are now part of IKA-ETAM – and have completed 35 years of insurance coverage, retirement age will also increase from 58 to 60 (Article 143§2&3[503] of Law No. 3655/2008). The same increase in the retirement age requirement applies to women insured in the main social insurance branches for the self-employed, and who have completed 35 years of insurance coverage, as well as to women insured under IKA-ETAM who have completed approximately 33 years of insurance coverage (10,000 working days) (Article 143§4&5[504] of Law No. 3655/2008).

Since 1st January 1994 the provisions recognizing the grant of a reduced old-age benefit to a person who has completed 35 years of insurance (a contribution record of 10,500 working days), and has reached the age of 56, have been gradually abolished.

Regarding the *newly insured*, there are no similar arrangements.

497 See Official Gazette of the Hellenic Republic (1978), p. 1784.
498 See Official Gazette of the Hellenic Republic (1990), pp. 1175–1177.
499 See Official Gazette of the Hellenic Republic (1992), pp. 3028, 3037.
500 See Official Gazette of the Hellenic Republic (1997b), p. 9357.
501 See Official Gazette of the Hellenic Republic (2008a), p. 1060.
502 These main special employees' insurance funds are precisely defined in Article 2§1 of Law No. 3029/2002. See Official Gazette of the Hellenic Republic (2002), p. 3059.
503 See Official Gazette of the Hellenic Republic (2008a), p. 1060.
504 See Official Gazette of the Hellenic Republic (2008a), p. 1060.

– The following conditions need to be fulfilled by the *newly insured* for the provision of a *reduced old-age benefit*:

For the *newly insured*, changes have been brought about regarding the possibility of receiving a *reduced old-age benefit* on reaching the age of 55 and having completed 35 years of insurance (a contribution record of 10,500 working days). In other words, this possibility allowed *newly insured persons* to retire 10 yeas earlier than the normal retirement age of 65 for the provision of a full pension.[505] Under Article 143§6 of Law No. 3655/2008, the retirement age required in order to receive a reduced old-age benefit changed and actually rose from 55 to 60 years of age, while the requirement of completing 35 years of insurance coverage remains.

It was stated that the main reason for this change concerned the fact that the newly insured who chose to retire as soon as they turned 55 and had completed 35 years of insurance would receive a very low pension. So in any case, most of them would not use this opportunity afforded them. What is more, this change was considered profound so as to retain the equal treatment between those insured for some time and the *newly insured*.[506]

Be that as it may, one could wonder whether indeed most of them would fail to take this opportunity, since maybe they would opt for – taking into account the economic crisis – having a pension instead of being unemployed. Moreover, the question remains as to why equal treatment between those insured for some time and the newly insured should be retained in this case, while in other occasions, stricter measures have been in respect of the newly insured (while the system has always been far more generous towards those insured for some time).

5th Category: Old-Age Benefit after the completion of 37 years of insurance

Both *those insured for some time* and the *newly insured*[507] have the right to receive a *full old-age benefit* as soon as they complete 37 years of insurance (a contribution record of 11,100 working days) without any age limit (Article 2§2[508] of Law No. 3029/2002).[509]

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505 See Article 3§3(b) of Law No. 3029/2002 in Official Gazette of the Hellenic Republic (2002), p. 3062. The entitlement was established to reduce pension benefits by 1/267 for each moth remaining until they reached 65 years of age. See also Kremalis, K. (2004), p. 121.

506 See, further, Ministry of Employment and Social Protection (2008c), pp. 1–6.

507 With regard to the newly insured, the completion of the 37-year period without any age limit restriction equally applies, but pension rights cannot be established for those who have not reached 65 years of age. Exceptionally, those who have completed 35 years or 10,500 insurance days and have reached 55 years of age are entitled to reduced pension benefits by 1/267 for each month remaining until they reach 65 years of age.

508 See Official Gazette of the Hellenic Republic (2002), p. 3059.

509 See also Venieris, D. (2003b), p. 141.

It is interesting to note at this point that during the preparation of Law No. 3655/2008 a proposal was put forward to also set a specific age limit for the insured person who had completed 37 years of insurance (a contribution record of 11,100 working days). In particular, the age limit of 58 years both for men and women was considered appropriate. Nevertheless, this provision was finally withdrawn and removed from the 'draft law'. Consequently, it is still possible that when a person has been insured for 37 years, he/she can retire without the need to fulfil any specific age requirement.

6th Category: Deferred pension – Late retirement

In Greece, a person can also retire after the normal pensionable age of 65 years, as long as 35 years of insurance have been completed (a contribution record of at least 10,500 working days). In any case though, pensionable age cannot exceed the age of 68 years. As a matter of fact, 'an increased accrual rate of 3.3% is applied in the main component up to 68 years of age and for a maximum of 3 extra years; there is no accrual rate for those working after this period (maximum replacement rate of 80%).'[510]

7th Category: Other possibilities for early retirement

Under Greek social security legislation there are special conditions for the early retirement of mothers with children under the age of 18, or children incapable of self-support (unable to perform any gainful activity), irrespective of their age. In particular: (a) the old insured mothers (insured before 31.12.1992) have the right to receive a full old-age benefit as soon as they reach the age of 55 and have completed a contribution record of 5,500 working days (or 18.3 years of insurance coverage) (Article 28§3,[511] Law No. 1846/1951); (b) newly insured mothers (insured after 01.01.1993) have the right to receive a full old-age benefit as soon as they reach the age of 55 and have completed a contribution record of 6,000 working days (20 years of insurance coverage) (Article 24,[512] Law No. 2084/1992).

Moreover, women affiliated to the IKA-ETAM with at least three children (the so-called *polyteknes miteres*) as well as men insured in IKA-ETAM who: (i) have at least three children and (ii) are widow(er)s, or divorced with custody of the children under the age of 18, or the custody of disabled children according to a court decision, *both have the right to receive full pension as soon as they complete 20 years of insurance, regardless of age limit*. Nevertheless, regarding pensionable rights to be acquired from 01.01.2013 they both are obliged to reach 50 years

510 See OECD (2009), pp. 2–3. See also ISSA (2008), p. 124; MISSOC (2009).
511 See Official Gazette of the Hellenic Republic (1951), p. 29.
512 See Official Gazette of the Hellenic Republic (1992), p. 3019.

of age. In addition, for all women insured after 01.01.1993 in any main social insurance fund for at least 6,000 days and with than three children, the minimum retirement age for the provision of a full pension will be 55 years of age as of 01.01.2013.[513]

With regard to parents with disabled children, and according to Article 5§4(i)[514] of Law No. 3232/2004 as it stands after its amendment by Article 61§6[515] of Law No. 3518/2006, the mother of an disabled child – more than 67% disability – has the right to receive a full old-age benefit regardless, of her age as soon as she completes a contribution record of 7500 working days. Recently, Article 140[516] of Law No. 3655/2008 extended this right to the father. In particular, the father of the child (or children) who has been proved to have more than 67% disability has the right to retire as soon as he completes a contribution record of 7500 working days, but only if the mother has not made use of this right.[517]

4.9.3 PERSONAL SCOPE OF APPLICATION

As already mentioned above, in Greece social insurance is compulsory for all workers. It is not the workers' choice to be insured with an insurance organization covering their work. Therefore, the IKA-ETAM provides coverage to all salaried employees in the private sector in the country.[518] Based on latest data, the number of insured persons affiliated to the IKA-ETAM is 2,094,586. Of this number, the pensioners (old-age, invalidity, death) amount to 1,081,133.[519]

4.9.4 DURATION OF THE BENEFIT

The old-age benefit is paid throughout the contingency – except for the cases of suspension of the old-age benefit (described below).[520] In other words, the payment of the old-age benefit to the directly insured person ceases on his/her death.[521]

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513 'For mothers with three children, the retirement age is increased from 56 to 59; with four children from 53 to 57; and with five children from 50 to 55', see Tikos, S. (2008), p. 1–2.
514 See Official Gazette of the Hellenic Republic (2004e), p. 997.
515 See Official Gazette of the Hellenic Republic (2006c), p. 2950.
516 See Official Gazette of the Hellenic Republic (2008a), p. 1059.
517 For example, maybe the mother for certain reasons cannot get retired.
518 See General Secretariat of Social Security (2006), pp. 2, 9.
519 See General Secretariat of Social Security (2009), pp. 1–2.
520 See Part IV of this Chapter.
521 See also Leontaris, M. (2007), p. 307; Lanaras, K. (2008), p. 533.

4.9.5 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

Greek social security legislation fulfils the minimum standards set concerning the qualifying conditions that need to be completed for the provision of the old-age benefit in C102 (Article 26§1&2, Article 29§1(a)) and the ECSS (Article 26§1&2, Article 29§1(a)). The Protocol to the ECSS (Article 26§2) includes no changes to this end. Moreover, national legislation also fulfils the standards set out in C128 (Article 15§1&2, Article 18§1(a)) and the Revised ECSS (Article 26§1&2, Article 30) as regards the *age limit* and the *qualifying conditions* both in the case of *those insured for some time and the newly insured*. It also fulfils the minimum standards as regards the qualifying conditions for the provision of a reduced old-age benefit in C102 (Article 29§2(a)), the ECSS (Article 29§2(a)), C128 (Article 18§2(a)) and the Revised ECSS (Article 30). Once again, the Protocol includes no changes concerning the qualifying conditions that need to be completed.

With regard to the age limit set under C128 (Article 15§3) and the Revised ECSS (Article 27§1 (a)), if a person has been engaged in occupations that are deemed by national legislation, for the purpose of old-age, to be arduous or unhealthy (AUOs), Greece is in compliance with the international social security standards. Thereafter, concerning the qualifying conditions that need to be fulfilled for the provision of the old-age benefit, Greek social security legislation meets the standards set both in C128 (Article 18§1(a) & 2(b)) and the Revised ECSS (Article 30).

As far as the personal scope of application is concerned, and taking into account the fact that the IKA-ETAM provides coverage to all salaried employees in the private sector,[522] Greek legislation seems to meet the standards set under the ECSS (Article 27(a)), C102 (Article 27(a)), the Protocol to the ECSS (Article 27(a)), C128 (Article 16§1(a)), as well as the Revised ECSS (Article 28§1(a)). However, this cannot be confirmed, since no precise statistical data have been provided by the government in the reports submitted to the international organizations.[523]

Last, Greek social security legislation fulfils the standards set on the duration of the old-age benefit in C102 (Article 30), the ECSS (Article 30), C128 (Article 19) and the Revised ECSS (Article 31). The Protocol to the ECSS includes no changes concerning the duration of the old-age benefit.

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522 As stated in General Secretariat of Social Security (2006), pp. 2, 9.

523 See also the remarks made under the Section 4.3, Sub-Section 4.3.5, above.

4.10 INVALIDITY BENEFIT

4.10.1 INTRODUCTION

The applicable statutory basis concerning social security protection in the case of invalidity can be found in several legal documents. The most important are considered to be the following:[524]

- Law No. 1846/1951;[525]
- Law No. 1902/1990;[526]
- Law No. 2556/1997;[527]
- Law No. 2676/1999;[528]
- Law No. 3029/2002;[529]
- Law No. 3232/2004.[530]

Through the aforementioned national legislation, insurance is compulsory, with no exceptions. The pensions provided are earnings-related,[531] depending on contributions and the affiliation duration.[532] As already mentioned, the IKA-ETAM provides coverage to salaried private sector employees/workers.

4.10.2 MATERIAL SCOPE OF APPLICATION

Before Law No. 1902/1990 entered into force, Greek legislation recognized the following categories of invalidity, which corresponded to certain percentages of invalidity.[533] In particular:

Invalidity categories	**Degree of invalidity (%)**
Total (absolute) invalidity	From ***66.66%*** (2/3) and above
Partial invalidity	Above ***50%*** (1/2) and up to ***66.66%*** (2/3)
Reduced invalidity	Above ***33.33%*** (1/3) and up to ***66.66%*** (2/3)

524 See also MISSOC (2009); ISSA (2009).
525 See Official Gazette of the Hellenic Republic (1951), pp. 1–53.
526 See Official Gazette of the Hellenic Republic (1990), pp. 1167–1186.
527 See Official Gazette of the Hellenic Republic (1997b), pp. 9337–9360.
528 See Official Gazette of the Hellenic Republic (1999), pp. 1–40.
529 See Official Gazette of the Hellenic Republic (2002), pp. 3057–3072.
530 See Official Gazette of the Hellenic Republic (2004e), pp. 979–1034.
531 The earnings-related benefits reflect the earnings a person received from economic activity before he/she was affected by a particular social risk. Flat-rate benefits are paid to all recipients, regardless of how much they earned before becoming victim of a particular risk.
532 See also MISSOC (2009).
533 See also the Section 4.7, above.

In the case of total invalidity, *full pension* was provided (Article 28§2,[534] Law No. 1846/1951); in the case of partial invalidity, a *reduced pension* (Article 6§2,[535] Law No. 4476/1965); and in the case of reduced invalidity, a *re-adjustment benefit* (Article 28,[536] Law No. 1846/1951).

Particularly concerning *the re-adjustment benefit* that was provided in the case of reduced invalidity, it should be noted that its main purpose was to facilitate re-integration into the labour market. However, this intention of the legislature did not succeed in practice, since the Greek general social policy framework lacked specific vocational rehabilitation programmes for the invalids that should be provided in parallel to the grant of the re-adjustment benefit. The absence of such programmes resulted to a great misuse of the *re-adjustment benefit*. Consequently, it was mainly used by elderly insured persons who could not fulfil the required qualifying conditions for the receipt of an old-age benefit, but who were found to be 33% invalid, by also using on certain occasions (cumulatively) the deterioration of their health due to ageing. That is why the *re-adjustment benefit* was abolished (with Law No. 1759/1988)[537] and was partially replaced with the extension of the duration of the sickness benefit in cash to 720 days.[538]

Furthermore, it is worth mentioning that the right to a *reduced pension* in the case of partial invalidity (Article 6§2,[539] Law No. 4476/1965, which modified Article 28,[540] Law No. 1846/1951) was introduced in order to provide some further coverage. In other words, the person in receipt of the aforementioned *re-adjustment benefit* for two years and certified by the competent health committee as not being able to earn more than half of what could be earned by a physically and mentally well person of the same education, had the right to receive the *reduced pension*. However, this measure increased the number of people in receipt of an invalidity benefits even more.[541]

The enactment of Law No. 1902/1990 (Article 27§5)[542] brought changes with regard to the categories of invalidity and the corresponding percentages.[543] Therefore, today, the following apply:

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534 See Official Gazette of the Hellenic Republic (1951), p. 28.
535 See Official Gazette of the Hellenic Republic (1965), p. 688.
536 See Official Gazette of the Hellenic Republic (1951), p. 28.
537 See Official Gazette of the Hellenic Republic (1988), p. 565.
538 See also Stergiou, A. (1999), pp. 146–147.
539 See Official Gazette of the Hellenic Republic (1965), p. 688.
540 See Official Gazette of the Hellenic Republic (1951), p. 28.
541 See, further, Stergiou, A. (1999), pp. 147–148. It has been also stated that one of the main characteristics of the Greek (in a sense) residual welfare state has been 'the irrational expansion of disability pensions in respect of heavy and unhealthy occupations; and the implementation of social policies through social insurance schemes', in Venieris, D. (2003b), p. 134.
542 See Official Gazette of the Hellenic Republic (1990), p. 1176.
543 See also Section 4.7, above.

Invalidity categories	Degree of invalidity (%)
Heavy (total/absolute/severe) invalidity	At least ***80%*** and over
Usual (general) invalidity	At least ***66.66%*** (2/3) and up to ***79.9%***
Partial invalidity	At least ***50%*** and up to ***66.66%***

As seen in the table above the *minimum degree of invalidity* giving entitlement to an invalidity benefit should now be at least 50% – *partial invalidity* (½ of the full invalidity benefit, or ½ of the minimum pension level). *General invalidity* is recognized at a degree of 67% (¾ of the full invalidity benefit), and *total invalidity*, at a degree of 80% (full invalidity benefit).[544]

It is also worth mentioning that the definition – and by expansion the meaning – of the social risk of invalidity, as specified in the IKA-ETAM legislation, has gradually emerged as the central definition for all the Greek social insurance legislation.[545]

4.10.3 QUALIFYING CONDITIONS

With regard to the qualifying conditions that need to be fulfilled by *the old insured persons* for the provision of the invalidity benefit, Article 27§1 of Law No. 1902/1990 sets out three alternatives:[546]

(1) *Invalidity due to a common disease:* completion of 15 years of insurance (a contribution record of 4,500 working days, or 33 years of insurance) or a contribution record of at least 10,000 working days, completed at any time (during the whole working life).
(2) *Periods of contributions depending on age:* completion of 1 year of insurance – a contribution record of 300 working days, but the insured person must not yet have reached the age of 21 (the 300 working days are progressively increased by 120 working days (on average) every year after the insured person turns 21 years until a total of 4,200 working days is reached. However, these 300 working days must have been completed in the 5 years preceding the occurrence of invalidity. Through this gradual increase, the contribution record of 4,200 working days is completed when the insured person reaches

544 See also General Secretariat of Social Security (2006), p. 16; Stergiou, A. (1999), p. 259; Leontaris, M. (2007), p. 293; Lanaras, K. (2008), pp. 466–467; Kremalis, K. (2004), pp. 90–91; Amitsis, G. (2003), p. 37; ISSA (2008), p. 125; MISSOC (2009).
545 See also Stergiou, A. (1999), p. VIII.
546 For the composition of this section the following literature has been consulted: General Secretariat of Social Security (2006), p. 17; Lanaras, K. (2008), pp. 463–465; Leontaris, M. (2007), pp. 295–297; Stergiou, A. (1999), pp. 309–318; Kremalis, K. (2004), p. 89; MISSOC (2009); ISSA (2008), p. 125.

54 years of age.[547] When the insured person turns 54, the required qualifying period is limited to 4,200 working days).

(3) *If none of the above conditions ((1) & (2)) are fulfilled:* completion of a contribution record of 1500 working days completed at any time, of which 600 working days must be completed during the 5 years preceding the occurrence of invalidity.

Moreover, a fourth alternative exists if the invalidity is caused by a non-employment injury (injury occurring outside the work place). Then the insured person has the right to receive invalidity benefit as long as he/she has completed half of the number of working days required for a common disease.[548]

It should be noted that as regards the qualifying conditions that need to be fulfilled by *the newly insured*, there is a special arrangement in Article 25§1[549] of Law No. 2084/1992, which is more favourable. In particular, according to this Article the insured person has the right to receive an invalidity benefit as long as he/she has completed a contribution record of 300 working days (1 year) and has not yet reached the age of 21. The required qualifying period reaches the contribution record of 1,500 working days with the gradual increase of 120 working days in each completed year over the age of 21. Consequently, when the insured person turns 31, he/she has the right to receive an invalidity benefit with the completion of a contribution record of only 1,500 working days.

This case, which is actually reproducing, in a sense, the arrangement included in Article 27§1[550] of Law No. 1902/1990, is much more convenient and favourable. In other words, Law No. 2084/1992 still allows the newly insured – like Law No. 1902/1990 – the possibility of receiving invalidity benefit only after completing a contribution record of 4,500 working days (15 years of insurance), as well as the possibility of receiving invalidity pension upon completion of a contribution record of 1,500 working days, of which 600 working days must be performed in the 5 years preceding the occurrence of invalidity, but since these requirements are much stricter, the newly insured are more likely to prefer the option given under Article 25§1[551] of Law No. 2084/1992, and retire upon the completion of 1,500 working days with no further requirements.

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547 In particular, 21 years: 300 working days; 22 years: 420 working days; 23 years: 540 working days; 24 years: 660 working days; … 53 years: 4.140 working days; 54 years: 4.200 working days.

548 See Lanaras, K. (2008), pp. 465–466; Leontaris, M. (2007), pp. 293–295.

549 See Official Gazette of the Hellenic Republic (1992), p. 3020.

550 See Official Gazette of the Hellenic Republic (1990), p. 1175.

551 See Official Gazette of the Hellenic Republic (1992), p. 3020.

4.10.4 PERSONAL SCOPE OF APPLICATION

All persons affiliated with the IKA-ETAM and who are invalids (not fit to work) are protected as long as the degree of invalidity is at least 50% or more. According to the most recent data provided, the number of pensioners covered by the IKA-ETAM due to invalidity was 130,558 on 31.12.2005 (the pensioners granted invalidity benefit due to an employment injury or an occupational disease are also included in this number).[552]

4.10.5 DURATION OF THE BENEFIT

The invalidity benefit is granted throughout the contingency. In other words, the insured person continues to receive the invalidity benefit for as long as he/she is considered to be an invalid by the competent health committees of the IKA-ETAM. These committees re-assess the health of the invalid at regular intervals. As already mentioned above, the minimum degree of invalidity giving access to an invalidity benefit is at least 50% invalidity.[553] The invalidity benefits may be also payable after the right to a sickness benefit has expired.[554]

Nevertheless, there are certain cases (as prescribed under national legislation) in which the invalidity benefit is granted for a lifetime (irrespective of the degree of invalidity), however, specific conditions need to be fulfilled. In particular:[555]

- The following categories of *old-insured persons* do not need to undergo further examination for the provision of the invalidity benefit:
  (a) men and women who have reached the ages of 55 and 50, respectively, and who have been receiving the invalidity benefit for seven years and have been re-assessed by the health committees at least three times;
  (b) men and women who have reached the ages of 60 and 55, respectively, and who have been receiving the invalidity benefit for five years and have been re-assessed by the health committees at least three times;
  (c) insured persons who have been receiving the invalidity benefit for 12 years, regardless of their age;
  (d) insured persons who have been receiving the invalidity benefit for 12 years, either without cessation, or at intervals, regardless of their age.

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552 See General Secretariat of Social Security (2006), p. 16.

553 See General Secretariat of Social Security (2006), pp. 17–18 (pp. 1–26); Lanaras, K. (2008), pp. 470–472; Leontaris, M. (2007), pp. 299–300.

554 See also Amitsis, G. (2003), p. 37.

555 Seen also General Secretariat of Social Security (2006), pp. 17–18 (pp. 1–26); Lanaras, K. (2008), pp. 470–472; Leontaris, M. (2007), pp. 299–300.

– The following categories of *newly insured persons* do not need to undergo further examination for the provision of the invalidity benefit:
  (a) men and women who have reached the age of 55, who have been receiving the invalidity benefit for seven years, and who have been re-assessed by the health committees at least three times;
  (b) men and women who have reached the age of 60, who have been receiving the invalidity benefit for five years, and have been re-assessed by the health committees for at least three times;
  (c) insured persons who have been receiving the invalidity benefit for 12 years, regardless of their age;
  (d) insured persons who have been receiving the invalidity benefit for 12 years, either without cessation, or at intervals, regardless of their age.

The invalidity benefit can turn into an old-age benefit, provided that the insured person satisfies the age limits and the qualifying conditions required for the provision of an old-age benefit.

Moreover, it should be mentioned that the time during which the insured person has been receiving an invalidity benefit can be counted towards the completion of the *minimum qualifying conditions* (i.e. 15 years of insurance, or a contribution record of 4,500 working days) required for the receipt of a full old-age benefit (Article 5§4,[556] Law No. 2335/1995).[557]

The decision taken by the competent health committees concerning the duration of the invalidity of the insured persons, judged from 11-5-2010 to have a percentage of medical disability of 80%, was determined by Article 16[558] of Law No. 3846/2010 to be indefinite.[559]

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556 See Official Gazette of the Hellenic Republic (1995b), p. 5469.

557 See also Lanaras, K. (2008), p. 329; Stergiou, A. (1999), pp. 256, 411.

558 This provision covers insured persons of all Social Security Organisations within the competence of Ministry of Labour and Social Security who suffer from: Down's Syndrome, autism, severe learning difficulties; amputees; phocomelia; kidney failure; transplant patients; blindness; paraplegia; quadriplegia; cystic fibrosis. Furthermore, the same provision states that other incurable diseases that also cause invalidity of indefinite duration will be determined by a forthcoming Ministerial Decision. See Official Gazette of the Hellenic Republic (2010d), p. 1393.

559 See Council of Europe (2010c), pp. 2–3.

4.10.6 REHABILITATION SERVICES (RE-TRAINING) AND PREFERENTIAL EMPLOYMENT OF PERSONS WITH DISABILITIES

There are no special measures, or benefits provided for the rehabilitation of the disabled person, or for his/her re-training. There are only certain preferential employment measures for specific categories of persons with a disability (i.e. blind people).[560]

4.10.7 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

Based on the above description, Greece fulfils the international social security standards set under the ECSS (Article 54) as well as C102 (Article 54) concerning the material scope of application, since in both instruments it is stipulated that 'the contingency covered shall include inability to engage in any gainful activity, to an extent prescribed, which inability is likely to be permanent or persists after the exhaustion of sickness benefit.' Greek legislation is also in compliance with the Protocol to the ECSS (Article 54). While the ECSS allows the contracting party to prescribe the minimum degree of reduced working capacity before a benefit is paid, the Protocol states that 'this prescribed limit must be no more than two-thirds.'[561] As already seen, under Greek legislation the *minimum degree of invalidity* giving entitlement to an invalidity benefit is at least 50% and up to 66.66% (*partial invalidity*) (in this case ½ of the full invalidity benefit, or ½ of the minimum pension level, is provided), while *general invalidity* is recognized at a degree of at least 66.66% (2/3) and up to 79.9% (¾ of the full invalidity benefit is paid) and *severe invalidity* is recognized at a degree of at least 80% or more (full invalidity benefit).

Similarly, Greek legislation fulfils the requirements set out under C128 (Article 8), according to which 'the contingency covered shall include incapacity to engage in any gainful activity, to an extent prescribed, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity.'

However, based on the Revised ECSS (Article 58) 'the contingencies covered shall include: (a) in the case of an economically active person, incapacity to a prescribed extent to work or earn; (b) in the case of a person not economically

560 See also MISSOC (2009).
561 In this case we are talking about full pension.

active, incapacity to a prescribed extent to engage in his usual activities; (c) incapacity to a prescribed extent of a child resulting from congenital disability or from invalidity occurring before the school-leaving age, where such incapacity is likely to be permanent or where it persists after the expiry of a prescribed period of temporary or initial incapacity.' Greece does not seem to comply with the standards set under the Revised ECSS.

With regard to the qualifying conditions that need to be completed by the protected person prior to the occurrence of invalidity, in order to have the right to receive the invalidity benefit, Greek legislation is in compliance with both the ECSS (Article 57) and C102 (Article 57). The Protocol to the ECSS imposes no changes in this respect. Moreover, Greek legislation could also fulfil the standards set out under C128 (Article 11).

The Revised ECSS (Article 61) states that '(1) Where entitlement to invalidity benefit is conditional under a Party's legislation, upon completion of a qualifying period, that period may not be longer than five years completed in accordance with prescribed rules prior to occurrence of the contingency; (2) Where the benefits calculated in accordance with paragraphs 5 to 7 of Article 60 are guaranteed to all protected persons who have effectively completed, in accordance with prescribed rules and at a prescribed age, a qualifying period of five years or less, qualifying periods longer, depending on age, than those specified in paragraph 1 of Article 61 may be required after a prescribed age.' It seems that Greek legislation could fulfil the standards set under the Revised ECSS.

As far as the personal scope of application is concerned, and taking into account that 'all the persons affiliated to the IKA-ETAM and who are invalid (not fit to work) are protected as long as the degree of invalidity is at least 50% or more',[562] Greek legislation fulfils the standards set out under the ECSS (Article 55), C102 (Article 55), the Protocol to the ECSS (Article 55), ILO C128 (Article 9), as well as the Revised ECSS (Article 59).[563] However, no precise statistical data have been provided by the government in the annual and general reports on the implementation of the C102 and the ECSS it has submitted.[564]

Greek social security legislation also complies with the standards set out in C102 (Article 58), the ECSS (Article 58), C128 (Article 12) and the Revised ECSS (Article 63) concerning the duration of the invalidity benefit. The Protocol to the ECSS includes no changes to this end.

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562 See General Secretariat of Social Security (2006), p. 16.

563 With regard to C102 and the ECSS, Greece has undertaken to protect persons belonging to 'prescribed classes of employees, constituting not less than 50 per cent of all employees'.

564 See also the remarks made under the Section 4.3, Sub-Section 4.3.5, above.

Finally, the ECSS and C102 do not contain specific clauses stipulating that the Member State(s) should provide rehabilitation and placement services to the invalids. Contrary to this, C128, the Protocol to the ECSS and the Revised ECSS state that such services should be present within the framework of social security protection for the invalid people.

However, there is a difference between these last three instruments in this respect. C128 (Article 13) may stipulate that rehabilitation and placement services should be provided, however it allows the Member State to derogate from the provision of such services. In particular it is stated that: '1. Each Member for which this Part of this Convention is in force shall, under prescribed conditions – (a) provide rehabilitation services which are designed to prepare a disabled person wherever possible for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity; and (b) take measures to further the placement of disabled persons in suitable employment. 2. Where a declaration made in virtue of Article 4 is in force, the Member may derogate from the provisions of paragraph 1 of this Article.'

On the other hand, the Revised ECSS (Article 62) does not provide any possibility for derogation. In particular, it states that: 'Each Party shall, under prescribed conditions: (a) provide functional and occupational rehabilitation facilities to prepare disabled persons, wherever possible, for the resumption of their previous activity or, where this is not possible, for the most suitable alternative gainful activity, having regard to their aptitudes and capacities; (b) take measures to facilitate the placement of disabled persons in suitable employment; (c) grant aids to mobility and promote the social integration of disabled persons". Similarly, the Protocol to the ECSS (Article 56§2) states that "measures shall be taken to provide for functional and vocational rehabilitation services, and to maintain appropriate facilities to assist handicapped persons in obtaining suitable work, including placement services, assistance in helping them transfer to another district when necessary to find employment, and related services.'

Consequently, Greece could comply with C128 in this respect, by making use of the derogation possibility offered under Article 13, but could not comply with the requirements set in this respect in the Revised ECSS and in the Protocol to the ECSS.

4.11 SURVIVORS BENEFIT

4.11.1 INTRODUCTION

The most important Greek statutes relating to the social security protection provided in case of death are considered to be the following:[565]

- Law No. 1846/1951;[566]
- Law No. 1902/1990;[567]
- Law No. 2084/1992;[568]
- Law No. 2676/1999;[569]
- Law No. 3029/2002;[570]
- Law No. 3232/2004;[571]
- Law No. 3385/2005.[572]

Through the aforementioned national legislation, insurance is compulsory, with no exceptions. Survivors' pensions provided depend on the pension (old-age, invalidity) of the deceased person, while financing is based on contributions.[573] As already mentioned, the IKA-ETAM provides coverage to salaried private sector employees/workers.

4.11.2 MATERIAL SCOPE OF APPLICATION AND QUALIFYING CONDITIONS

If the insured person or the old-age pensioner dies, the persons who suffer the loss of support resulting from his/her death (dependants) have the right to receive survivors' benefit as long as certain *minimum qualifying conditions* have been met on the part of the deceased. According to Law No. 1902/1990, these qualifying conditions have been adjusted to those required for the provision of an invalidity benefit.

565 See also MISSOC (2009); ISSA (2009).
566 See Official Gazette of the Hellenic Republic (1951), pp. 1–53.
567 See Official Gazette of the Hellenic Republic (1990), pp. 1167–1186.
568 See Official Gazette of the Hellenic Republic (1992), pp. 3007–3042.
569 See Official Gazette of the Hellenic Republic (1999), pp. 1–40.
570 See Official Gazette of the Hellenic Republic (2002), pp. 3057–3072.
571 See Official Gazette of the Hellenic Republic (2004e), pp. 979–1034.
572 See Official Gazette of the Hellenic Republic (2005), pp. 3301–3308.
573 See also MISSOC (2009).

Consequently, for the *old insured* persons in order for their dependants to receive a survivors' benefit, the deceased should have completed: a contribution record of 4,500 working days (15 years of insurance) at any time; or 1,500 working days (5 years of insurance), of which 300 working days need to have been completed during the five years preceding the year of death; or 300 working days (1 year of insurance) if they have not yet reached the age of 21 (these 300 working days will gradually increase by 120 working days (on average) each year after the insured person turns 21 and until a total of 4,200 working days has been reached).

For the *newly insured*, in order for their dependants to receive a survivors' benefit the deceased should have completed: a contribution record of 4,500 working days (15 years of insurance) at any time; or 1,500 working days (5 years of insurance), of which 600 working days need to have been completed during the five years preceding the year of death; or 300 working days (1 year) if they have not yet reached the age of 21. The required qualifying period can reach the contribution record of 1,500 working days, through the progressive increase of 120 working days in each completed year over the age of 21 and until the age of 31 is reached.[574]

Moreover, it should be noted that in the case of a *non-employment injury*, in order for the dependants to receive a survivors' benefit, the deceased should have completed half of the number of working days (insurance period) required for the establishment of the right to survivor's benefit (this applies both for the *old* and the *newly insured*).

There are also certain conditions that need to be fulfilled on the part of the dependants so as to have the right to receive the survivors' benefit. Moreover, under the current Greek legislation, the dependants who are entitled to receive survivors' benefit differ according to whether the deceased belonged to the *old-insured*, or the *newly insured* persons. In particular:

– For the *old-insured* persons,[575] eligible survivors include the widow(er),[576] divorced spouses, children, parents and grandchildren. In other words, the members of his/her family in general are entitled to receive a survivors'

574 In particular, 21 years: 300 working days; 22 years: 420 working days; 23 years: 540 working days; 24 years: 660 working days; … 30 years: 1,380 working days; 31 years: 1,500 working days.

575 As already mentioned, this category includes persons insured up to 31/12/1992.

576 Previously, according to the Greek legislation only the *widow* and the *disabled widower without means* had the right to receive survivors' benefit. Nowadays, based on a decision taken by the Greek Chamber of Accounts (one of the three big bodies of the Greek public administration and a supreme administrative court with a special jurisdiction) and within the framework of gender equality regarding the age requirements and social security benefits established by Law No. 2084/1992, survivors' benefit is provided also to the *widower* of an insured wife under the same conditions that it is granted to a widow of an insured person (or pensioner). See also Internal Ministerial Document (1993c), p. 18.

benefit. The minimum duration of marriage required for a widow(er) to be entitled to the survivors' benefit is 6 months (2 years in the case of the death of an old-age pensioner) (unless one of the exceptions described below applies).[577] A divorced spouse is entitled to the survivors' benefit if: (a) he/she is over 65 years of age and has not remarried; (b) the income he/she receives is limited and if he/she was married to the deceased for at least 15 years and was receiving alimony.

- For the *newly insured*,[578] eligible survivors include the widow(er), divorced spouses and the children. The minimum duration of marriage required for a widow(er) to be entitled to the survivors' benefit is 12 months (2 years in the case of the death of an old-age pensioner) (unless one of the exceptions described below applies). A divorced spouse is entitled to survivors' benefit if the income he/she receives is limited and if he/she was married to the deceased for at least 15 years and was receiving alimony.
- As far as the children are concerned, they have the right to receive survivors' benefit, irrespective of whether the deceased belonged to the *old-insured*, or the *newly insured* persons, in the following cases: (a) if they are not married, if they do not receive a pension and if they are not over 18 years of age; (b) they continue to receive the survivors' benefit after they reach the age of 18 and until they reach the age of 24 if they are in full-time education, they do not work and they do not receive any pension as a result of their own work; (c) if they have lost both parents; (d) if their subsistence depended on the deceased parent who was abandoned by the other parent; (e) if they are fully incapacitated (they cannot support themselves) and their incapacity occurred before the age of 18. In this case they receive a survivors' benefit irrespective of age (there are no age requirements), and for the duration of their incapacity.[579]

Consequently, the payment of survivors' benefit to the children ceases in the following cases: s soon as they reach18 years of age or get married before they turn 18 (Article 29§6, Law No. 1846/1951). They continue, however, to receive survivors' benefit after they reach 18 years of age and until they reach the age of 24 if they are in full-time education, they do not work and they do not receive any pension as a result of their own work (Article 5§5, Law No. 825/1978) (the aforementioned

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577 This time limitation has been introduced so as to eliminate sham marriages, which would entitle the living spouse to a survivors' pension. The following exceptions exist: (a) when the death is due to an employment or non-employment injury; (b) when a child has been born, or a child has been legitimised through the marriage; (c) when the widow is pregnant at the time of the death of her husband (Article 28§7, Law No. 1846/1951). See Official Gazette of the Hellenic Republic (1951), pp. 29–30.

578 As already mentioned, this category includes those insured for the first time from 01/01/1993 onwards.

579 See also Lanaras, K. (2008), pp. 481–482; Leontaris, M. (2007), p. 304; MISSOC (2008); Pieters, D. (2002), p. 172.

age limits does not apply to invalid children incapable of performing any gainful activity).[580]

The following exceptions have been established where no further conditions need to be fulfilled for the provision of survivors' benefit to the dependants of the deceased (as already mentioned they concern the dependants of both the old and the newly insured): (a) when, during the marriage, a child has been born, or legally recognized; (b) when the widow is pregnant (the child was conceived before the death); (c) when the death of the breadwinner is due to an employment injury or another accident (non-work related injury).

The widow(er) does not have the right to receive survivors' benefit if the deceased had been receiving old-age pension, invalidity pension or re-adjustment benefit during the marriage and his/her death occurred less than 24 months from the date that the marriage took place. However, the exceptions mentioned above apply equally here.

The following conditions cover all insured persons, regardless of when the deceased entered the system: the surviving spouse, irrespective of age, is entitled to a survivors' pension for a period of 3 years from the month following the insured's death; survivors may receive benefits beyond 3 years, provided that they do not work or receive any other pension, or are certified as having a mental or physical disability of at least 67%. Survivors' pensions that have been interrupted or reduced will be paid in full when the survivor reaches the age of 65.[581]

The cases in which the entitlement to a survivors' benefit may be suspended, according to Greek legislation, are further described below.[582]

Last, a reference is made at this point to the provision of survivors' pension to divorced spouses. Previously, the divorced spouse of a deceased insured person was not entitled to receive a survivors' pension. Under Law No. 3232/2004 (Article 4),[583] a divorced spouse obtained this right, subject to meeting certain qualifying conditions:

- The surviving divorced spouse is at least 65 years of age, or was totally unable to perform any work at the time of death of the ex-spouse;
- The surviving divorced spouse was eligible for alimony;
- The surviving divorced spouse was married to the deceased for at least 15 years;

580 See also Leontaris, M. (2007), p. 308. Lanaras, K. (2008), p. 533.
581 See also ISSA (2008), p. 126.
582 See Part IV of this Chapter.
583 See Official Gazette of the Hellenic Republic (2004e), p. 996.

- The surviving divorced spouse was not responsible for the divorced;
- The surviving divorced spouse has annual personable taxable income of no more than 2,800 euro;
- The surviving divorced spouse has not remarried.

If the date of death was before 12 February 2004, the surviving divorced spouse has a right to a pension in the absence of an eligible widow or orphans. If the date of death was after 12 February 2004, a surviving divorced spouse who was married to the deceased for at least 15 years has a right to a pension equal to 30% of the survivors' pension, or 40% of the survivors' pension if they were married to the deceased for at least 25 years.

Under the law, the surviving ex-spouse is not entitled to receive the minimum survivors' pension, but can receive the pensioners' social solidarity grant.[584] Moreover, Law No. 3385/2005 amended Law No. 2676/1999 concerning survivors' pension. A survivors' pension is now payable regardless of the widowed person's age. Nonetheless, the pension may be reduced by up to 50% if the survivor is entitled to another pension. This change also permits dependent surviving children to claim any amount by which their surviving parent's pension is reduced.[585]

4.11.3 PERSONAL SCOPE OF APPLICATION

According to the Greek Reports submitted on the application of the ECSS, the IKA-ETAM covers the *widows* and *the children* of the employees in the private and public sector. Based on data included in the last detailed report of 2006, on 31.12.2005, the number of persons entitled to survivors' benefit was 243,283.[586]

4.11.4 DURATION OF THE BENEFIT

The survivors' benefit is normally granted throughout the contingency. However, as already mentioned, there are certain cases in which – according to Greek legislation – the provision of survivors' benefit is withheld (for example, as soon as the children reach18 years of age, or 24 years of age if they are in full-time education, an exception, however, has been established for children who are incapable of self-support).[587] Moreover, the provision of survivors' benefits ceases at the end of the month in which the surviving spouse remarries.

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584 See also ISSA (2009).
585 See also ISSA (2009).
586 See General Secretariat of Social Security (2006), pp. 18–19.
587 As already described above: see Sub-Section 4.10.2.

4.11.5 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

With regard to the qualifying conditions that need to be completed by the deceased, Greek social security legislation complies with the standards set out under C102 (Article 63§1 (a)), the ECSS (Article 63§1 (a)), C128 (Article 24§1 (a)) and the Revised ECSS (Article 67§1 (a)). The Protocol to the ECSS includes no changes regarding the qualifying period.

As regards the conditions that need to be fulfilled by the widow(er) for the provision of the survivors' benefit, national legislation fulfils the standards set in the ECSS (Article 60§1, Article 63§5), C102 (Article 60§1, Article 63§5), C128 (Article 21§1, 2, 3, & 4) and the Revised ECSS (Article 64§1, 2, 3 & 4). Once again, the Protocol to the ECSS includes no changes to this end. Similarly, in relation to the conditions that need to be fulfilled by the child(ren) for the provision of the survivors' benefit, the standards set in the ECSS (Article 1§1(h)), C102 (Article 1§1(e)), the Protocol to ECSS (Article 1§1(h) (i & ii)), C128 (Article 1§(h) (i & ii)) and the Revised ECSS (Article 1(h) (i & ii)), are fulfilled.

Greek legislation fulfils the standards set out under C102 (Article 61 (a)) and the ECSS (Article 61 (a)), by protecting the wives and children in prescribed classes of employees – classes that make up not less than 50% of all employees. However, it cannot be said with certainty that it equally fulfils the standards set under the: (a) Protocol to the ECSS (Article 61 (a)), under which wives and children of breadwinners in prescribed classes of employees should constitute not less than 80% of all employees; (b) the Revised ECSS (Article 65§1(a)), under which 'the persons protected shall comprise: (a) the surviving spouses and children of breadwinners who were employees or, under prescribed conditions, apprentices'; (c) C128 (Article 22§1 (a)), under which 'the persons protected shall comprise: (a) the wives, children and, as may be prescribed, other dependants of all breadwinners who were employees or apprentices.' Once more, no precise statistical data have been provided on the exact percentage of personal coverage.[588]

Last, national legislation fulfils the standards set out in C102 (Article 64), the ECSS (Article 64), C128 (Article 25) and the Revised ECSS (Article 68) concerning the duration of the survivors' benefit. The Protocol to the ECSS includes no changes regarding the duration of the survivors' benefit.

588 See also the remarks made under Section 4.3, Sub-Section 4.3.5, above.

PART III
BENEFIT AMOUNTS, STANDARDS TO BE COMPLIED WITH BY PERIODICAL PAYMENTS AND BENEFIT REVISION

4.12 BENEFIT AMOUNTS UNDER NATIONAL SOCIAL SECURITY LEGISLATION

4.12.1 SICKNESS BENEFIT

The amount of the daily sickness benefit comes to 50% of the estimated daily income of the insurance class to which the beneficiary belongs. There are 28 insurance classes into which insured persons are classified for the purpose of calculating the amount of their social security benefits (see the Table below). The beneficiary is placed in an insurance class according to the average of his/her wage during the last 30 working days that he/she completed in the calendar year preceding that in which the sickness occurred and was made known. There is also the possibility that from these 30 working days until the provision of the sickness benefit, a change may have occurred in the estimated daily income of the insurance class to which the beneficiary belongs, because the limits of the insurance classes may have been rearranged. In such a case, the sickness benefit is calculated according to the new price of the same insurance class. Ergo, the beneficiary is placed in a specific insurance class, but the payment of the sickness benefit is made according to the estimated daily income of the same insurance class as it exists on the day that the provision of the benefit starts.[589] In sum, the estimated daily income of the insurance class to which the beneficiary belongs is taken into account for the calculation of the sickness benefit.

The amount, which is calculated using the aforementioned method, corresponds to the basic sickness benefit. The basic sickness benefit is considered to be the benefit to which insured persons are entitled when they do not have any family responsibilities.[590] This is increased by 10% for each dependent family member. However, the sickness benefit cannot exceed 70% of the estimated daily income of the insurance class according to which the level of sickness benefit is being calculated, but it also cannot be higher than the amount of the estimated daily income corresponding to the 8th insurance class.[591]

589 See Lanaras, K. (2008), pp. 397–398.
590 See also Lanaras, K. (2008), p. 398; Leontaris, M. (2007), p. 374.
591 See also General Secretariat of Social Security (2008b), p. 7; Lanaras, K. (2008), p. 398.

Nevertheless, and specifically for the first 15 days of sickness of each year, the amount of the sickness benefit is equal to 50% of the daily sickness benefit, which is increased by 10% for each dependent family member, and it cannot be higher than the amount of the estimated income of the 3rd insurance class, or 35% of the daily income of the relevant insurance class in respect of which the sickness benefit is calculated.[592]

Hospitalized persons (in-patients) insured with IKA-ETAM, have the right to receive reduced sickness benefit equals to 1/3 of the basic sickness benefit.[593]

The daily earnings and the estimated daily earnings for the 28 insurance classes for the period 01/01/2009 to 31/12/2009[594] described hereunder remained as they were in 31/12/2008[595] and are as follows:

From 01/01/2009 to 31/12/2009

Daily earnings (in €)	Insurance class	Estimated daily earnings (in €)	Percentage
0.00 – 11.75	1st	11.06	70%
11.76 – 13.97	2nd	13.30	60%
13.98 – 16.63	***3rd***	***15.99***	***55%***
16.64 – 19.54	4th	18.37	50%
19.55 – 22.35	5th	21.24	46%
22.36 – 25.23	6th	24.11	43%
25.24 – 27.93	7th	26.76	40%
27.94 – 30.38	***8th***	***29.39***	***38%***
30.39 – 33.21	9th	32.12	36%
33.22 – 35.63	10th	34.69	34%
35.64 – 39.16	11th	37.13	32%
39.17 – 42.44	12th	40.45	30%
42.45 – 46.18	13th	44.06	30%
46.19 – 49.77	**14th**	**47.82**	**30%**
49.78 – 53.16	15th	51.11	30%
53.17 – 56.55	16th	54.60	30%
56.56 – 59.74	17th	57.83	30%
59.75 – 63.03	18th	61.10	30%
63.04 – 66.44	19th	64.42	30%
66.45 – 69.48	20th	67.53	30%
69.49 – 72.44	21st	70.65	30%
72.45 – 75.68	22nd	73.60	30%
75.69 – 79.25	23rd	77.07	30%
79.26 – 82.92	24th	80.74	30%

592 See General Secretariat of Social Security (2008b), p. 7.
593 See Leontaris, M. (2007), p. 374.
594 See IKA-ETAM (2009), p. 1.
595 See IKA-ETAM (2008), p. 1. With respect to the insurance classes, the wages limits and estimated daily wages for the period from 01/01–31/12/2007; see Metallinos, A. (2008), p. 191.

From 01/01/2009 to 31/12/2009				
Daily earnings (in €)		Insurance class	Estimated daily earnings (in €)	Percentage
82.93	– 86.52	25th	84.34	30%
86.53	– 90.11	26th	87.93	30%
90.12	– 93.56	27th	91.53	30%
93.57	– 97.29	28th	94.94	30%
0.00	– 8.03	1st Special	8.03	

4.12.2 UNEMPLOYMENT BENEFIT

The main factors determining the unemployment benefit used to be the monthly wage of the white-collar worker and the daily wage of the blue-collar worker.[596] More precisely, in the past, for the calculation of the unemployment benefit, Article 21[597] of Legislative Decree 2961/1954 was applicable.

Later on, Law No. 2224/1994[598] came into force, which led to the modification of Article 21§3(a) and (b) of Legislative Degree 2961/1954 as follows: 'the basic unemployment benefit is set at forty per cent (40%) of the daily wage, or, as concerns the salaried people, at fifty per cent (50%) of the salary, with the limit that it cannot be less than two-thirds (2/3) of the unskilled worker's wage[599] and also not higher from the amount, which is defined every time by the decision of the Minister of Labour, after the receipt of a proposal from the management board of the OAED' (Article 21, Law No. 2224/1994).[600]

In 2007, a new Law was enacted: Law No. 3552/2007[601] on the establishment of a Special Social Solidarity Fund. The purpose of this fund was 'to structurally and systematically fight the threat of social exclusion among older-aged and long-term unemployed, who fulfil certain requirements, by providing income support and social protection.'[602] Among other things, this new Law brought changes to the way the amount of the unemployment benefit is calculated, and now the basis of the calculation is the unskilled worker's minimum wage.

In particular, Article 5§3[603] of Law No. 3552/2007 involved the re-adjustment of the unemployment benefit. Thus, the Article 21 of Legislative Degree 2961/1954, as it stood, was modified as follows: 'the basic unemployment benefit is set, as

596 See MISSOC (2008).
597 See Official Gazette of the Hellenic Republic (1954), p. 1598.
598 See Official Gazette of the Hellenic Republic (1994), pp. 1469–1492.
599 This refers to the daily minimum wage.
600 See Council of Europe (2001b), p. 2; General Secretariat of Social Security (2003), p. 4.
601 See Official Gazette of the Hellenic Republic (2007), pp. 1813–1816.
602 See MISSOC (2008c), p. 2.
603 See Official Gazette of the Hellenic Republic (2007), pp. 1814–1815.

from 1st January 2007, at fifty per cent (50%) of the daily wage (earnings) of the unskilled worker, and as from 1st January 2008, it is set at fifty-five (55%) of the daily wage (earnings) of the unskilled worker, irrespective of whether the unemployed person has been remunerated (paid) by monthly wage, or daily wage.'[604]

For the unemployed who did not have full employment status, and for whom the monthly wage was equal to, or less than six times, the daily wage of the unskilled worker, 50% of the basic unemployment benefit is paid, as defined in Article 5§3 of Law No. 3552/2007. For unemployed who did not have full employment status, and whose the monthly wage was more than six times the daily wage of the unskilled worker, and less, or equal to 12 times the daily wage of the unskilled worker, (75%) of the basic unemployment benefit is paid, once again, as defined in Article 5§3 of Law No. 3552/2007.

Moreover, for unemployed who did not have full employment status, and whose monthly wage was more than 12 times the daily wage of the unskilled worker, 100% of the basic unemployment benefit is paid, as defined in Article 5§3 of Law No. 3552/2007. Last, for the unemployed who had full employment status, 100% of the basic unemployment benefit is paid, as defined in Article 5§3 of Law No. 3552/2007.

The unemployment benefit is increased by 10% for each additional family member (no change occurred concerning the family supplements under the new Law).

From 01.09.2008 to 30.04.2009 the monthly unemployment benefit was set at €430.75.[605] In 2008 it was set at €418.[606]

It is also worth mentioning that the basic unemployment benefit in Greece has typically been particularly low. In general, it has been stated that the main deficiencies in the Greek system of unemployment benefits are the 'low population coverage, small duration and low value of benefits (which are not associated with income earned before)',[607] and that 'welfare support to the unemployed is dramatically low by international standards.'[608]

Moreover, according to the 19th national report submitted to the CoE on the implementation of the ESC by Greece, and in particular Article 12, for the period

604 See also Council of Europe (2009), p. 67.
605 See OAED (2008), p. 1.
606 See Papatheodorou, C. (2009), p. 236.
607 In other words, the previous earnings of the beneficiary.
608 See Papatheodorou, C. (2009), p. 232. The term international standard refers to the overall EU situation regarding the protection against unemployment.

from 01/01/2005 to 31/12/2007, the daily unemployment benefit was divided in three categories, as follows:[609]

a. Unemployed persons who were employed on full-time basis or unemployed persons whose salary was more than 12 times the unskilled worker's wage (€27,96), i.e. higher than € 335,53. In this case, from 1.1.2007 onwards, the unemployment benefit is set at 50% of the unskilled worker's wage, i.e. €13, 98 per day or €359, 50 per month.
b. Unemployed persons whose salary was higher than 6 times the unskilled worker's wage, and equal to or less than 12 times the unskilled worker's wage. In this case the unemployment benefit is set at 75% of the minimum unemployment benefit, as defined in the previous (A) category. In this category, from 1.1.2007 to 30.4.2007, for the beneficiaries without dependants whose monthly salary was between €167.76 (27.96 × 6 = 167.76) and €335.52 (27.96 × 12 = 335.52), the daily unemployment benefit is €10.48 (13.98 × 75%) and the monthly benefit is €262.00 (10.48 × 25).
c. Unemployed persons whose monthly salary was equal to or less than 6 times the unskilled worker's wage. In this case the unemployment benefit is set at 50% of the minimum unemployment benefit, as defined in category A.

Thus, from 1.1.2007 to 30.4.2007, for the beneficiaries without dependants, with monthly salary of up to €167.76, i.e. less than or equal to 6 times the unskilled worker's wage (€27.96 × 6 = 167.76), the daily unemployment benefit is €6.99 (13, 98 × 50%) and the monthly benefit is €174.75 (6.99 × 25).

A relevant readjustment was also made for all the beneficiaries without dependants of this category from 1.5.2007 to 31.12.2007, whose the daily unemployment benefit was €7.34 (14.69 × 50%) and the monthly benefit was €183.50 (7.34 × 25). Moreover, a relevant readjustment was also made for all the beneficiaries of all the above categories from 1.5.2007 to 31.12.2007, whose the unemployment benefit was configured as follows: a) the daily benefit was €14.69 (29.39 × 50%) and the monthly benefit was €367.25 (14.69 × 25); b) the daily benefit was €11.02 (14,69 × 75%) and the monthly benefit was €275.50 (11.02 × 25); and c) the daily benefit was €7.34 (14.69 × 50%) and the monthly benefit was €183.50 (7.34 × 25).

2005		**2006**		**2007**	
Persons	Amount	Persons	Amount	Persons	Amount
328,446	700,619,310.85	282,362	628,760,371.75	291,002	643,487,626.86

[609] See Council of Europe (2009), p. 67.

4.12.3 FAMILY BENEFIT

Thereafter, and for the years 2009 and 2010 (no change in rate took place during the period 2009 to 2010) the amount of the family benefit[610] – determined in each case by the number of children – was as follows:[611]

Family benefit amount (€) (according to the number of children) for the year 2009[612]

No. of children	Monthly amount	Annual amount
1	8.22	98.64
2	24.65	295.80
3	55.47	665.64
4	67.38	808.56
5	78.68	944.16
6	89.98	1,079.76
7	101.28	1,215.36
8	112.57	1,350.84
9	123.87	1,486.44
10	135.17	1,622.04
11	146.47	1,757.64
12	157.77	1,893.24
13	169.06	2,028.72
14	180.36	2,164.32

It should be also noted that salaried persons, who offer dependent work privately to any employer in Greece, are not paid family allowance by their employer higher than that granted by the DLOEM.[613]

As described below,[614] on the proposal of the Administrative Council of the OAED, which is charged with the delivery of the family benefits, the Minister of

610 The following information should be taken into account when reading the Table below: (a) for every child over the total of four children, the amount of €11.298 (monthly) has been added; (b) the child benefit for the 3rd child; (c) monthly amount €2.93 and annual amount €35.16; (d) the amount of the family benefit is increased by €3.67 (monthly) and €44.04 (annually) for every child in the cases in which it is required; (e) also, with regard to the increase of family benefit, it takes place only if: (i) the beneficiary is not receiving survivors' pension; (ii) the monthly pension is not higher than 20 times the daily wage of the unskilled labourer, which applies on the 1st of January of the year that the provision of the benefit tales place; (iii) the disabled beneficiary is not receiving a pension; (iv) the monthly pension of the beneficiary is not higher than 20 times the daily wage of the unskilled labourer, which applies on the 1st of January of the year that the provision of the benefit tales place.

611 See OAED (2009), OAED (2009), p. 7. See also General Secretariat of Social Security (2008c), p. 4. Council of Europe (2010b), p. 5.

612 The exact same amounts applied both in 2007 and in 2008.

613 See also Council of Europe (2010b), p. 4.

614 See Section 4.15, below.

Employment and Social Protection decides whether or not to adjust the family benefit rate for a particular year.[615]

From 01/01/2009, the daily wage of an unskilled worker has been €31.32. Consequently, so as for the aforementioned increase to take place for the beneficiary, his/her monthly pension should not be higher than €626.4 (31.32 x 20). The monthly pension, which is taken into account for the comparison with the amount that comes from 20 times the daily wage of the unskilled labourer, is that of the April of the year in which the provision is made, without taking into account the so-called Social Solidarity Allowance for Pensioners[616] (EKAS).[617]

Last, it is worth mentioning that 'family allowances can influence the low birthrate within a country, since they can become an important motive for the birth and the upbringing of a child; nevertheless, in Greece, family allowances have not yet become such an important motive for the increase of the birthrate.'[618] As a matter of fact, some years ago, in its conclusions on the application of the ESC by Greece, the ECSR considered family benefits to be inadequate because they failed to provide a sufficient supplement to families' incomes. The Greek government took certain measures to tackle the issue, and an increase of the benefits was introduced. However, in one of the latest country factsheets, in the Greek cases of non-compliance with the ESC, it is stated that regarding social protection, there is still non-compliance with Article 16 on *family rights* (family benefits), since: (a) family benefits are inadequate; and (b) the self-employed who represent about 32% of the active population, do not receive family benefits.[619]

4.12.4 MATERNITY

The maternity (cash) benefit[620] is equal to the amount of the basic sickness benefit, together with any increases due to family responsibilities.[621] Moreover, the benefit

615 See also MISSOC (2008).

616 In other words: Social Solidarity Benefit. 'This "targeting" measure was adopted instead of the direct increase of the minimum amount of pensions and was fiercely debated by trade unions and pensioners associations', see Amitsis, G. (ed.) (2003), p. 36. Further reference to the EKAS follows in Section 4.12, Sub-Section 4.12.6, below.

617 The level of the monthly pension, which is taken into account so as to see whether the increase in the family benefits will take place or not, is the gross amount of the pension that the beneficiary receives from the main social insurance fund and the auxiliary pension. See OAED (2009), p. 8.

618 See Kremalis, K. (2004), p. 73.

619 See Council of Europe (2008) (update of December 2008).

620 This is the most recent information available concerning the maternity benefit, provided in the national reports submitted on the application of the European Code of Social Security until end of June 2010. See also General Secretariat of Social Security (2007b), p. 4.

621 However, it should be noted that the maternity cash benefit is equal to the sickness benefit, without, however taking into account the restriction imposed by Article 38 of Law

cannot be less than 2/3 of the net earnings of the person concerned. The difference between the net earnings and the amount of the benefit is paid by the OAED.[622] The maximum amount of daily maternity benefit increased to 45.19 Euros from 1 January 2007. The childbirth grant increased to 881.70 Euros from 1 January 2007.

4.12.5 EMPLOYMENT INJURY

a. Temporary incapacity for work (or short-term incapacity for work)

As already stated above,[623] the rate of the daily sickness benefit amounts to 50% of the estimated daily income of the insurance class to which the beneficiary belongs. The beneficiary is placed in an insurance class according to the average of his/her wage during the last 30 working days that he/she completed in the calendar year preceding that in which the sickness occurred and was communicated. The possibility exists that from these 30 working days until the provision of the sickness benefit, a change in the estimated daily income of the insurance class to which the beneficiary belongs can occur, due to a rearrangement of the limits of the insurance classes. Then, the benefit is calculated according to the new price of the same insurance class. Hence, the beneficiary is placed in a specific insurance class, but the payment of the benefit is made according to the estimated daily income of that insurance class, as it exists on the day on which the provision of the benefit starts.[624] In sum, the estimated daily income of the insurance class to which the beneficiary belongs is taken into account for the calculation of the benefit.

When the temporary incapacity for work (short-term incapacity for work) is due to an employment injury or an occupational disease (without any income in the calendar year, preceding the calendar year in which the contingency occurred) the following apply regarding the calculation of the provided sickness benefit: (a) in the case of employment injury, the estimated daily income of the insurance class in which the beneficiary is classified on the day the injury happened is taken into account; (b) in the case of occupational disease, the estimated daily income of the insurance class into which the beneficiary is classified on the last working day of income is taken into account.[625]

No. 1846/1951. In other words, there is no restriction of 70% of the presumptive daily wage, which applies to the sickness benefit. In any case, though, the maternity cash benefit cannot be less than the presumptive daily wage of the 1st insurance class. See Leontaris, M. (2007), p. 384.

622 See General Secretariat of Social Security (2006), p. 15.

623 See Section 4.12, Sub-Section 4.12.1, above.

624 See Lanaras, K. (2008), pp. 397–398.

625 See General Secretariat of Social Security (2008b), p. 6. See also in: Lanaras, K. (2008), p. 398.

The amount resulting from the aforementioned method of calculation corresponds to the basic sickness benefit.[626] This is increased by 10% for each dependent family member. However, the sickness benefit, once again, cannot exceed 70% of the estimated daily income of the insurance class according to which the calculation of the sickness benefit is being made, and it also cannot be higher than the amount of the estimated daily income of the 8th insurance class.[627] Nevertheless, specifically for the first 15 days of sickness of each year, the amount of the sickness benefit is equal to 50% of the daily sickness benefit, which is increased by 10% for each dependent family member, and it cannot be higher than the amount of the estimated income of the 3rd insurance class, or 35% of the daily income of the relevant insurance class in respect of which the sickness benefit is calculated.[628] Hospitalized persons (in-patients) at the expense of the IKA-ETAM, have the right to receive reduced sickness benefit, equal to 1/3 of the basic sickness benefit.[629]

The daily earnings and the estimated daily earnings for the 28 insurance classes for the period 01/01/2009 to 31/12/2009[630] are described above.[631]

b. Invalidity (long-term incapacity for work)

When invalidity (long-term incapacity for work) is due to an employment injury or an occupational disease, a special calculation of the amount of the benefit is made.[632] In particular, in this case, the amount of the benefit for the persons insured by 31.12.1992 (together with the benefits for the wife and children) can be up to 25 times the existing presumptive daily rate of the 10th insurance class.[633]

The daily earnings and the estimated daily earnings for the 28 insurance classes for the period 01/01/2009 to 31/12/2009[634] are described above.[635]

The amount of the full benefit, resulting from the above methods of calculation, is granted when the insured person is considered by the competent health

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626 The basic sickness benefit is considered to be the benefit to which the insured persons are entitled when they do not have any family responsibilities; see also Lanaras, K. (2008), p. 398; Leontaris, M. (2007), p. 374.

627 See General Secretariat of Social Security (2008b), p. 7. See also Lanaras, K. (2008), p. 398.

628 See General Secretariat of Social Security (2008b), p. 7.

629 See Leontaris, M. (2007), p. 374.

630 See IKA-ETAM (2009), p. 1.

631 See Section 4.12, Sub-Section 4.12.1, as well as the relevant included Table, above.

632 The calculation of the benefit in the case of invalidity due to an employment injury or an occupational disease is described in further detail under the Section 4.12, Sub-Section 4.12.6, below.

633 See General Secretariat of Social Security (2006), p. 13.

634 See IKA-ETAM (2009), p. 1.

635 See Section 4.12, Sub-Section 4.12.1, as well as the relevant included Table, above.

committees to be invalid to a degree of 80% or more (total invalidity). If the insured person is considered invalid to a degree from 67% – 80% (usual invalidity), 75% of the full benefit is granted, and when the degree of invalidity is 50% – 67% (partial invalidity), the person receives 50% of the full benefit.[636]

c. Survivors' benefit

There is also the provision of benefit to the dependants if the death of the beneficiary was caused by an employment injury.[637] For those insured by 31.12.1992, the amount of benefit paid is as follows: the widow(er) is granted 70% of the amount of the deceased spouse's pension, while each child is entitled to 20% of said pension.[638] For those insured for the first time after 01.01.1993, the widow(er) is entitled to 50% of the amount of the deceased spouse's full pension, while each child is granted 25% of the deceased person's basic pension.[639]

If the result of the employment injury is death, the total amount of the benefit granted to the widow(er) and the children cannot be less than 80%, but not higher than 100% of the benefit to which the deceased was entitled. In other words, the *maximum amount* of the survivors' benefit (widow and children) cannot exceed the amount of the pension of which the deceased was in receipt.[640] The benefit granted to the widow stops being paid at the end of the month during which she remarries.

4.12.6 OLD AGE

The amount of main, full rate contributory pensions is calculated according to different methods for the *old-insured* and the *newly insured*.[641]

a. Old-insured persons

The amount of the old-age benefit consists of: (a) the *basic benefit* (the basic pension), and (b) the *supplements* for a certain number of insurance days and family burden(s).

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636 See General Secretariat of Social Security (2006), p. 13. See also Lanaras, K. (2008), pp. 466–467; Kremalis, K. (2004), pp. 90–91.

637 See also Council of Europe (2001), p. 28; General Secretariat of Social Security (2006), p. 19.

638 There is also a minimum amount of pension granted to the widow and children every year.

639 See General Secretariat of Social Security (2006), p. 19.

640 See General Secretariat of Social Security (2006), p. 20.

641 Concerning the distinction between the *old-insured* and the *newly insured,* persons see Section 4.2, above.

The calculation of the basic benefit is determined by the contribution record of the insured person (number of insured years/working days) and his/her estimated daily earnings, which is actually linked to his/her real previous earnings.

As already stated,[642] there are 28 insurance classes of real daily earnings under Greek legislation. Each of these 28 insurance classes corresponds to a fixed amount of estimated daily earnings, as well as to a specific percentage used for the calculation of the basic benefit/pension. The pension rates decrease as the pensioners move from a low earnings class to a higher one. In order to classify the daily and monthly earnings into insurance classes and estimated earnings, the IKA-ETAM takes into account the wages/salaries regulated by the Collective Employment Agreements in force for each employment category.[643]

The daily earnings and the estimated daily earnings for the 28 insurance classes for the period 01/01/2009 to 31/12/2009[644] are described above.[645]

It should be noted that the ranges of the real daily earnings and the estimated daily earnings that correspond to an insurance class are re-adjusted[646] according to the percentage increase of the IKA-ETAM pensions and from a certain fixed date (annual increase rate of pensions) (Article 13§2,[647] Law No. 1976/1991).[648] However, according to governmental income policy followed for the year 2009, no percentage increase took place and the government instead decided to simply provide an extraordinary lump sum benefit to the pensioners in place of the annual readjustment of pensions.[649]

For example, if the insured person belongs to the 10th insurance class, his/her estimated earnings are €34.69.[650] The basic benefit (pension) then corresponds to €294,865 monthly (€34.69 daily multiplied by 34% equals €11,794.6, when multiplied by 25 working days per month, equals €294,865 monthly). This amount of €294,865 monthly can be further increased, depending on: (a) the number of working days the insured person has completed and (b) the dependents he/she has (see below).

642 See Section 4.12, Sub-Section 4.12.1, above.
643 See General Secretariat of Social Security (2009), p. 3.
644 See IKA-ETAM (2009), p. 1.
645 See Section 4.12, Sub-Section 4.12.1, as well as the relevant included Table.
646 Concerning the re-adjustment of benefits, see Section 4.15, below.
647 See Official Gazette of the Hellenic Republic (1991b), p. 3154.
648 See also Lanaras, K. (2008), p. 239.
649 This issue will be further discussed in Section 4.15, below.
650 See the Table in Section 4.12, Sub-Section 4.12.1, above, referring to the daily earnings and the estimated daily earnings for the 28 insurance classes for the period from 01/01/2009 to 31/12/2009.

The percentage (pension rate) of the basic benefit (pension) is not the same for all insured persons, but it depends on the insurance class in which they belong. As already stated, the percentage of the basic benefit (pension) is higher for those who have lower earnings, and lower for those having higher earnings.

Initially, the insurance class within which the insured person belonged depended on his/her earnings (average gross earnings) in the five years before retirement (actually, the five years exactly before the date he/she submitted the application for retirement), as well as on the number of working days he/she had completed during that period. However, with Article 2§9[651] of Law No. 3029/2002, a person submitting an application after 01/01/2005 may choose as the calculation basis the five best years during the 10 years preceding retirement. If during these five best years the insured person has not completed at least 1,000 working days, these should be completed by including the earnings of working days (outside the chosen years) of the years in which the application for pension has been submitted.

Based on Article 50§1[652] of Law No. 2084/1992, for the calculation of the amount of the extra pension payments (i.e. Easter, Christmas and summer) are not taken into account. Similarly, paid leave is not taken into account for the calculation (Article 28§3[653] of Law No. 4476/1965).

With regard to the number of working days, increases are granted and are calculated for every extra 300 working days (25 working days per month, multiplied by 12 months) that the insured person has worked over 3000 working days (10) years/one 120 months). The percentage of this further increase varies according to the estimated daily earnings of the insurance class to which the insured person belongs, and the number of working days completed. These increases are calculated based on the percentages of the following table[654] on the estimated daily earnings that the basic benefit (pension) was calculated, multiplied by 25 (Article 6§1b,[655] Legislative Decree No. 4104/1960, as subsequently modified).

651 See Official Gazette of the Hellenic Republic (2002), p. 3060.

652 'Since 01/01/1993, for the pension calculation, 90% of the festival bonuses are taken into account. This amount is decreased every next year by 10 percentage credits and until it reaches zero', see Official Gazette of the Hellenic Republic (1992), p. 3030.

653 See Official Gazette of the Hellenic Republic (1965), p. 693.

654 Metallinos, A. (2008), p. 187.

655 See Official Gazette of the Hellenic Republic (1960), p. 1580.

Insurance classes	Percentage	For working days
1st, 2nd	1%	From 3,300 to 7,799
	1.5%	7,800 and above
3rd	1%	From 3,300 to 7,799
	1.8%	7,800 and above
4th	1%	From 3,300 to 7,799
	1.9%	7,800 and above
5th	1%	From 3,300 to 7,799
	2.1%	7,800 and above
6th	1%	From 3,300 to 7,799
	2.2%	7,800 and above
7th, 8th, 9th, 10th, 11th	1%	From 3,300 to 7,799
	2.3%	7,800 and above
12th, 13th, 14th, 15th and above	1%	From 3,300 to 7,799
	2.5%	7,800 and above

For example: for an insured person who belongs to the 10th insurance class – in this insurance class, as seen above,[656] the estimated daily earnings are €34.69 – and he/she has completed 6,100 working days, he/she has the right to an increase of 1% for every 300 working days over the 3,000 working days: in total, 10%. Consequently, the increase comes to: €34.69 × 10% = 3,469 × 25 = €86,725 per month. Similarly, if the insured person once again belongs to the 10th insurance class and has 4,500 working days, he/she has, once again, the right to an increase of 1% for every 300 working days over the 3,000 working days: in total, 5%. Consequently, the increase comes to: €34.69 × 5% = 1,734.5 × 25 = €43,362.5 per month.

An increase is also calculated for insured persons who paid contributions while employed in AUOs, but who do not satisfy the qualifying conditions for an old-age pension payable for this category of occupations.[657]

As regards the further increase of the amount of the basic benefit (pension) because of family burden(s), the following apply: (a) according to Article 29§4[658] of Law No. 3518/2006, the amount of the basic benefit (pension) (or the basic invalidity pension) is increased for the spouse of the insured person, by one and a half times the minimum daily wage of the unskilled worker;[659] (b) a supplement – 20% of the basic benefit (pension) – is paid for the 1st child (unmarried, dependent

656 See the Table in Section 4.12, Sub-Section 4.12.1, above, referring to the daily earnings and the estimated daily earnings for the 28 insurance classes for the period from 01/01/2009 to 31/12/2009.

657 See also ISSA (2008), p. 125.

658 See Official Gazette of the Hellenic Republic (2006c), p. 2923.

659 The amount of the daily wage of the unskilled worker is the one that applies on the date that the retirement application is submitted. However, this increase takes place only if the spouse is not working, or is not receiving a pension from any Greek social insurance fund.

child under the age of 18, or 24 if the child is in full-time education and does not work);[660] for the 2nd child the supplement is 15% and for the 3rd child, 10%.[661] The supplements given for children are calculated based on the amount of the pension. In other words, they are calculated based on the basic benefit amount, together with the increases of the working days. However, the supplements for the children cannot be calculated based on a pension that is more than 25 times the estimated income of the 10th insurance class. Thus, the supplements are calculated on the basis of the pension corresponding to the estimated daily income of the 10th insurance class.[662]

b. The newly insured

For the newly insured the amount of the old-age benefit consists, once again, of the *basic benefit* (the basic pension) and certain *supplements*.

For the calculation of the basic benefit, the contribution record of the insured person (number of insured years/working days) is taken into account, but during the five years preceding retirement (and not the five best years preceding retirement). Put differently, the level of the old-age benefit varies according to the contribution record of the insured person. Each year corresponds to 2% of the pensionable income.

No supplement for the spouse is given to the newly insured, but the provision of supplements for dependent children (unmarried dependent children below the age of 18, or 24 if the child is still in full-time education and does not work), still apply. However, the method of their calculation has changed, and involves proportions of a complicated index (this index equals to 50% of the GNP per capita, adjusted annually to the increases given to the civil servants' pensions). For the first child the supplement is 8% of the new index; for the second child, 10%; and 12% for each child thereafter.

c. Reduced pension

The reduced pension is once again composed of the basic benefit (pension) and the supplements. The basic pension is, however, reduced by 1/200 for each month of

660 If the child is unable to work due to disease or sickness, the supplement is paid without taking into account any age limit.

661 It is not provided, however, if any of the children receives a lump sum benefit due to incapacity for work.

662 See the Table in Section 4.12, Sub-Section 4.12.1, above, referring to the daily earnings and the estimated daily earnings for the 28 insurance classes for the period 01/01/2009 to 31/12/2009.

early retirement. For persons receiving a pension after 01/01/2003, the reduction rate comes to 1/267 for each month of early retirement.[663]

d. Minimum Pension Limits (MPLs)

As has been stated, the Minimum Pension Limits (MPLs) in Greece 'have been developed in a rather tortuous way.'[664] It is also worth mentioning that the relevant national legislation is particularly inconsistent and one can even find inconsistencies in the description provided in national literature.

MPLs have been applied for several decades now[665] from all the social insurance funds, including the IKA-ETAM. The amounts provided may differ, but every fund has been providing its insured persons with a minimum amount of old-age, invalidity and survivors' pensions, according to the rules covering their regulation. This fact also proves that until recently[666] no *general minimum pension* existed in Greece. 'It is estimated that over 65% of pensioners under the IKA fund receive minimum pensions.'[667]

More precisely, a farraginous social protection framework is in place in respect of the provision of pensions to low-income groups. Insured persons with a sufficient contribution record may be entitled to a *minimum pension*, plus an *income-tested supplement* (the so-called Social Solidarity Allowance for Pensioners (EKAS) (see further, below). Moreover, lower non-contributory pensions are paid to farmers and to the uninsured. No *universal minimum guarantee*[668] is available.[669]

Of particular interest here is the first category. The insured persons who have completed a sufficient contribution record (the minimum qualifying period set for old-age, invalidity and survivorship), but 'the amount of the pension – according

663 See ISSA (2008), p. 125.

664 See Stergiou, A. (2010), p. 354.

665 'This system was introduced in the early 1950s – subject to several legislative modification and amendments during the 1980s' that reinforced its role as the basic "solidarity" measure for pensioners in Greece. Solidarity elements are strong due to the funding process of minimum pensions: the State budget guarantees a fixed amount, not equivalent to the contributions paid so far by the beneficiaries. The activation of minimum pensions was beneficial for many uninsured persons without entitlements to adequate benefits through their contribution record. Minimum pensions covered therefore, gaps created by the strict implementation of the reciprocity principle to pensioners with career breaks or delayed entry into the domestic labour market', in Amitsis, G. (ed.) (2003), p. 35.

666 Concerning the changes brought by the latest Law No. 3683/2010 with respect to the structure of the current Greek pension system and the introduction of a *basic pension*, see Chapter 5, Section 5.4, Sub-Section 5.4.1.

667 See Amitsis, G. (ed.) (2003), p. 35.

668 Concerning the absence of a *minimum guaranteed income* in Greece, see also Chapter 3, Section 3.1, Sub-Section 3.1.3.

669 See Matsaganis, M. (2005), p. 51.

to the basic regulations of pension calculations – does not exceed the minimum amount defined by the legislator, receive the *minimum pension limits*.'[670] In other words, 'if the granted pension is too low, then the *minimum pension* is awarded.'[671] As far as the minimum pension limits provided by the IKA-ETAM are concerned, certain limitations also apply.[672]

'According to a legislative amendment passed in 1992, the minimum pension amount can be calculated in two ways. For those insured before 31.12.1992, the amount of minimum pension is equal to 20 times the statutory minimum wage, as determined on 30.09.1990, and adjusted respectively. For those insured after 01.01.1993, the amount of the minimum pension is equal to 70% of the statutory minimum wage, as determined in the National Collective Labour Agreement of 2002 (this favourable treatment was introduced by Law No. 3029/2002).'[673]

The minimum pension limits as of 01/10/2008 are as follows:[674]

A. With a spouse and children

Pensions	***Basic minimum limit*** *without any increases*	***Minimum limit*** *with a spouse*	***Minimum limit*** *with a spouse and one child*	***Minimum limit*** *with a spouse and two children*	***Minimum limit*** *with a spouse and three children*
Old-age	€486.84	€523.37	€547.76	€571.99	€596.31
Invalidity	€486.84	€523.37	€547.76	€571.99	€596.31
Survivors'	€438.16	–	–	–	–

B. With children but without a spouse

Pensions	***Minimum limit*** *with one child*	***Minimum limit*** *with two children*	***Minimum limit*** *with three children*
Old-age	€511.23	€535.46	€559.78
Invalidity	€511.23	€535.46	€559.78

670 See Kremalis, K. (2004), p. 145.

671 See General Secretariat of Social Security (2006), p. 11.

672 In particular, '(a) after the enforcement of the Law No. 825/1978, the IKA does not have the obligation to offer minimum pension limits to the insured, who calculated time in insurance organizations of the countries, where an international social security agreement was signed (Article 29§3 case st' of Law 1902/1990); (b) for those who receive two (2) pensions, the addition of the two pensions (from the IKA and from another organization) cannot exceed the minimum pension IKA limit augmented at a percentage of 25% (Article 29§3 case d' Law 1902/1990) though for the pensioner, who continues to offer every kind of a dependent job, the former regulations about the minimum pension limits are not applied (Article 29§3 case e' Law 1902/1990)', in Kremalis, K. (2004), p. 146.

673 See Amitsis, G. (ed.) (2003), p. 35.

674 See IKA-ETAM (2008b), p. 5.

C. Absolute invalidity

Pensions	*Minimum limit*
Old-age	€243.42
Invalidity	€243.42
Survivors'	€219.08

e. The Social Solidarity Allowance for Pensioners (EKAS)

The Social Solidarity Allowance for Pensioners[675] (EKAS) was introduced in July 1996. Its main aim is to provide further financial assistance[676] to low-income pensioners.[677] In other words, pensioners who have an insurance history, but to whom the total provision granted through the main and auxiliary pensions is under the *minimum subsistence level*,[678] receive the EKAS as a supplementary provision in order to reach the *minimum subsistence level*.[679] It is worth mentioning that this *targeting* measure 'was adopted instead of the direct increase of the minimum amount of pensions and was fiercely debated by trade unions and pensioners associations.'[680]

It is a supplementary non-contributory allowance (it could be also characterized as a means-tested social insurance benefit).[681] It is provided both to the pensioners coming from public service[682] and to persons receiving an old-age, invalidity, or survivors' pension under a social insurance scheme supervised by the Ministry of Labour and Social Security, as long as they satisfy certain conditions[683] (the persons receiving a pension from O.G.A. are excluded on the grounds that their pension is not contributory).[684] Moreover, the EKAS is equally provided to uninsured persons. These conditions are: (a) the completion of a certain age – the old-age and survivors' pensioners should be at least 60 years old, while for the

675 The following terminology has been also used in international literature: *Social Solidarity Benefit* or *Allowance of Social Solidarity to Pensioners.*

676 In other words, it supplements an amount that the insured is already qualified to receive.

677 See also Sotiropoulos, D.A. (2004), p. 276; Guillen, A.M. and Matsaganis, M. (2000), p. 123; Matsaganis, M., Ferrera, M., Capucha, L. and Moreno, L. (2003), p. 643; Katrougalos, G. (1996), p. 40. Katrougalos, G. (2009), p. 248.

678 That is also why it could be said that the EKAS also has the characteristics of a social assistance allowance.

679 See also Nektariou, M. (2009), p. 4.

680 See Amitsis, G. (ed.) (2003), p. 36.

681 Taking into account the terminology used in New Zealand or the United States (US) with respect to benefits with the characteristics of the EKAS.

682 It is also provided to other pensioners who have bee added to those coming from the public service.

683 See also Nektarios, M. (2010), p. 485.

684 See also Amitsis, G. (ed.) (2003), p. 36; Katrougalos, G. (1996), p. 40; Katrougalos, G. (2009), p. 248. Matsaganis, M. (2005), p. 51.

invalidity pensioners and the children receiving a survivors' pension, no age limit exists[685] (for the invalidity pensioners they must also be certified as at least 50% invalid);[686] (b) passing an income test for which three types of income are taken into account: (i) personal net income from retirement benefits and employment earnings; (ii) personal income from all sources; and (iii) total family income.[687] Furthermore, it is worth noting that there is no possibility of exporting the EKAS.[688]

The following income criteria have been set for 2009: (i) the total annual net taxable income including pensions, salaries, wages and other allowances must not exceed the amount of €7,750.42; (ii) the total annual individual net taxable income of the pensioner must not exceed the amount of €9,042.16; (c) the total annual family net taxable income must not exceed the amount of €14,070.73. For the year 2009,[689] the amounts of the EKAS are:

Pensioners' annual income (income classes)	**EKAS (€)**
Less than or equal to €7,058.41	€230.00
€7,058.42 - €7,335.25	€172.50
€7,335.26 - €7,519.74	€115.00
€7,519.75 - €7,750.42	€57.50

The EKAS is actually a *mixed social security benefit* mainly because of the co-existence of the social insurance element (coverage of pensioners) and social assistance principles (entitlement conditions include lack of resources).[690]

There are 14 payments per year and the benefits are indexed to changes in the civil service pension.[691] The payment of the EKAS is totally covered by the state budget, and as seen in the above table, it is calculated according to income classes.[692]

685 See General Secretariat of Social Security (2006), p. 12. When the EKAS was initially introduced, in 1996, 'it aimed at low-income recipients of old-age and survivor pensions over 65 (or of invalidity pensions irrespective of age). The limit was lowered in 1997 to cover old age pensioners and survivors aged 60–64', in Matsaganis, M. (2005), p. 51.

686 See ISSA (2008), p. 125.

687 See Matsaganis, M. (2005), p. 51.

688 However, foreigners, who reside legally in the country, and fulfil the aforementioned conditions, can also apply for the EKAS.

689 No changes took place concerning the EKAS in 2009 in relation to 2008. The rate of the EKAS as specified in the Ministerial Decision No. F.11321/5250/439/11-6-2008, for 2008 and for each category of pensioner, as well as the criteria for the grant of the EKAS, apply equally in 2009. See General Secretariat of Social Security (2008b), p. 2; General Secretariat of Social Security (2009), p. 2.

690 See Amitsis, G. (ed.) (2003), p. 36.

691 See ISSA (2008), p. 126.

692 See General Secretariat of Social Security (2006), pp. 11–12.

Last, based on the political debate on the reform of the Social Insurance System in Greece, which started once again in November 2009, it is expected that the EKAS is going to be re-defined soon. Moreover, one of the issues on which the political debate has concentrated for many years has arisen again and pertains to the establishment of a minimum pension.[693]

4.12.7 INVALIDITY

In general terms, the factors taken into account for the calculation of the amount of the invalidity benefit are as follows: (a) the degree (%) of invalidity; (b) the number of insured years (contribution record); (c) the amount of earnings (wage).[694] There are 14 payments per year of the invalidity benefit.[695] The minimum rate of the basic invalidity benefit (degree of invalidity of 80% or more (heavy invalidity) corresponds to 15 years of insurance (a contribution record of 4,500 working days) calculated on the average monthly gross national product of the year 1991, increased by 50% and readjusted by the certain rates of increases applying to pensions.[696]

Category of invalidity	Invalidity (%)	Invalidity benefit amount	Observations
Heavy	At least 80% and over	Full (100%) invalidity benefit	
Ordinary	At least 67% and up to 79.9%	3/4 (75%) of the full invalidity benefit	If the insured person has completed *6,000 working days* and the invalidity is mainly due to psychiatric problems *the insured person is then entitled to the full sum/full invalidity benefit* * This is supposed to be a kind of *recompense* for persons insured for a long time and appling for an invalidity benefit.
Partial	At least 50% and up to 66.9%	1/2 (50%) of the full invalidity benefit	If the invalidity is mainly due to psychiatric problems, *the insured persons are entitled to ¾ of the full sum/full invalidity benefit*

693 See, further on this issue, in Chapter 5, Section 5.4, Sub-Section 5.4.1.
694 See MISSOC (2009).
695 See ISSA (2008), p. 126.
696 See also General Secretariat of Social Security (2006), p. 17. Concerning the re-adjustment of benefits, see Section 4.15, below.

The basic invalidity benefit is once again further increased (as in the case of the basic old-age benefit) by specific supplements given to the dependent spouse and/or dependent children. The spouse supplement, however (exactly as in the case of the old-age benefit), is only provided to the *old-insured persons* and not to the newly insured of the IKA-ETAM. Supplements for children are once again provided both to the *old* and the *newly insured*. The amount of the supplements for children, are equal to those provided in the case of old-age benefits.[697]

The minimum levels of invalidity benefits are the same as those for old-age benefits. Moreover, the method of calculation of the amount of the invalidity benefit is the same as that for the calculation of the old-age benefit.[698]

It is obvious that the gradation of invalidity, as determined by Law No. 1902/1990, is much stricter than the previous one.[699] Formerly, 67% invalidity guaranteed entitlement to a *full invalidity benefit* (Article 28§2,[700] Law No. 1846/1951); 50% invalidity guaranteed entitlement to an invalidity benefit equal to *3/4 of the full invalidity benefit* (Article 6§2,[701] Law No. 4476/1965); 33% invalidity guaranteed entitlement to a *re-adjustment benefit* (Article 28,[702] Law No. 1846/1951). Indeed, the provision of a full invalidity benefit an insured person only if 80%+ invalidity is recognized, leaves those with several degrees of invalidity with no social security protection, or limits them to a mere benefit. This issue of limiting social security protection in the case of invalidity becomes even more problematic if one takes due note of the fact that the gaps in protection existing in the Greek social insurance system are not filled by a well developed social welfare system.[703]

The daily earnings and the estimated daily earnings for the 28 insurance classes for the period 01/01/2009 to 31/12/2009[704] are described above.[705]

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697 See Section 4.12, Sub-Section 4.12.6, above. See also General Secretariat of Social Security (2006), p. 17, as well as Amitsis, G. (2003), p. 38.
698 See also Amitsis, G. (2003), p. 38.
699 See Section 4.10, above.
700 See Official Gazette of the Hellenic Republic (1951), pp. 28–29.
701 See Official Gazette of the Hellenic Republic (1965), p. 688.
702 See Official Gazette of the Hellenic Republic (1951), pp. 28–30.
703 See, further, Stergiou, A. (1999), p. 261.
704 See IKA-ETAM (2009), p. 1.
705 See Section 4.12, Sub-Section 4.12.1, above.

4.12.8 SURVIVORSHIP

The amount of the survivorship benefit paid to the dependants of the deceased (insured) person is calculated according to different methods for the *old-insured* and the *newly insured*.[706]

a. Old-insured persons

The amount of survivors' benefit paid to the dependants is as follows: the widow(er) is granted 70% of the deceased person's pension, while each child is entitled to 20% (50% for a full orphan). The total amount of survivors' benefit paid to the widow(er) and the children cannot exceed 100% of the amount of benefit to which the deceased person would have been entitled.

b. Newly insured persons

The amount of survivors' benefit paid to the dependents is as follows: the widow(er) is entitled to 50% of the deceased person's full pension (provided that the conditions mentioned above are satisfied). Each child is granted 25% of the deceased person's basic pension (60% for a full orphan). As concerns the maximum amount of survivors' benefit (widow and children), it cannot exceed the amount of the pension that the deceased was receiving.[707] A surviving divorced spouse who is eligible for a survivors' pension is not eligible to receive the pension social solidarity grant.[708]

4.13 BENEFIT AMOUNTS ACCORDING TO THE INTERNATIONAL SOCIAL SECURITY STANDARDS

4.13.1 BASIC INFORMATION

Based on the basic principles and conditions laid down in the instruments adopted by the ILO as well as the CoE, the level of social security cash benefits provided at a national level should adhere to certain international standards. It should be also noted that the benefit should comprise a periodical payment (therefore,

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706 Concerning the distinction between the *old-insured* and the *newly insured*, persons see Section 4.2, above.

707 Concerning the *minimum amount* of the survivors' benefit, see Section 4.12, Sub-Section 4.12.6, above.

708 See ISSA (2008), p. 125.

principally, lump sum payments are precluded).[709] The level of benefit[710] should be calculated in such a manner so as to comply with specific requirements set in each international instrument. Put differently, the periodical payment should correspond to a precise rate of replacement, and, to this end, different methods of calculations apply, also taking into account the persons each country chooses to protect (personal scope of application per social contingency).[711] Hereunder, the provisions are displayed referring to the benefit rates per social contingency for each of the five international instruments studied in this PhD thesis, namely: C102, the ECSS and the Protocol to the ECSS, the Revised ECSS and C128. Thereafter, in three separate Tables, the standards to be complied with by periodical payments are presented.

4.13.2 SICKNESS BENEFIT

Article 16 of C102 states that: '1. Where classes of employees or classes of the economically active population are protected, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66; 2. Where all residents whose means during the contingency do not exceed prescribed limits are protected, the benefit shall be a periodical payment calculated in such a manner as to comply with the requirements of Article 67.'[712] Similarly, Article 16 of the ECSS stipulates that: '1. Where classes of employees or classes of the economically active population are protected, the benefit shall be a periodical payment calculated in such a manner as to comply with the requirements of Article 65 or with the requirements of Article 66; 2. Where all residents whose means during the contingency do not exceed prescribed limits are protected, the benefit shall be a periodical payment calculated in such a manner as to comply with the requirements of Article 67; provided that a prescribed benefit shall be guaranteed, without means test, to the prescribed classes of persons determined in accordance with Article 15.a

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709 See, further, Chapter 2, Section 2.5, Sub-Section 2.5.1. Under C102, 'a lump sum benefit is only allowed, under strict conditions, in the case of employment injury'; see, further, Dijkhoff, T. (2011), pp. 53, 83.

710 'The benefit should be a prescribed benefit replacing previous income to a certain extent or establishing a guaranteed minimum' in Pennings, F. and Schulte, B (2006), p. 14.

711 A detailed description and analysis of the international provisions included in C102 and C128, and referring to the nature and amount of cash benefits, as well as to the relevant methods of calculation and rates of replacements, is available Chapter 2, Section 2.5. With respect to C102, see, further, Dijkhoff, T. (2011), pp. 53–62. Concerning the following instruments of the CoE: ECSS, the Protocol to the ECSS and the Revised ECSS, a description and analysis of the standards to be complied with by periodical payments and their calculation is available in Nickless, J. (2002), pp. 63–68; See also the explanatory report to the Revised ECSS in Council of Europe (1998), pp. 91–101.

712 A detailed analysis is available in Dijkhoff, T. (2011), pp. 54–55.

or b'. The Protocol to the ECSS contains no changes on the calculation method concerning the periodic cash benefit set out in Article 16 of the ECSS.

Thus, based on the above provisions, the level of the sickness benefit should correspond to at least 45% of the reference wage (earnings)[713] of the standard beneficiary (plus any family allowances). The percentage is increased by the Protocol to 50%.

Last, according to Article 15 of the Revised ECSS the: 'Sickness cash benefit shall take the form of periodical payments calculated in accordance with the provisions either of Article 71 or of Article 72. Their amount may vary in the course of the contingency provided that their average amount complies with those provisions.' The level of the sickness benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone, or at least 65% of the reference wage (earnings) of the beneficiary with dependants.

4.13.3 UNEMPLOYMENT BENEFIT

Article 22 of C102 states that: '1. Where classes of employees are protected, the benefit shall be a periodical payment calculated in such manner as to comply either with the requirements of Article 65 or with the requirements of Article 66; 2. Where all residents whose means during the contingency do not exceed prescribed limits are protected, the benefit shall be a periodical payment calculated in such a manner as to comply with the requirements of Article 67.'[714]

Similarly, Article 22 of the ECSS stipulates that: '1. Where classes of employees are protected, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66; 2. Where all residents whose means during the contingency do not exceed prescribed limits are protected, the benefit shall be a periodical payment calculated in such a manner as to comply with the requirements of Article 67; provided that a prescribed benefit shall be guaranteed, without means test, to the prescribed classes of employees determined in accordance with Article 21.a.' The Protocol to the ECSS contains no changes to the calculation method concerning the periodic cash benefit set out in Article 22 of the ECSS.[715]

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713 For earnings-related schemes, the reference wage corresponds to the previous earnings of the beneficiary; for flat-rate schemes, to the earnings of a typical unskilled male labourer; for residence based schemes (or universal schemes), to the earnings of a typical unskilled male labourer. See Chapter 2, Section 2.5. See also Dijkhoff, T. (2011), pp. 57–58.

714 A detailed analysis is available Dijkhoff, T. (2011), pp. 67–68.

715 However, under the Protocol, the Parties have a new obligation, which refers to the facilitation of re-employment through services such as: 'labour exchanges, vocational training and assistance in moving districts in order to find work'; see Nickless, J. (2002), p. 39.

Thus, based on the above provisions the level of unemployment benefit should correspond to at least 45% of the reference wage (earnings) of the standard beneficiary (plus any family allowances). The percentage is increased by the Protocol to 50%.

Last, according to Article 21 of the Revised ECSS: '1. In the case of total unemployment, benefit shall take the form of periodical payments, calculated in accordance with the provisions of either Article 71 or Article 72; 2. In the case of unemployment other than total, benefit shall take the form under prescribed conditions, of periodical payments constituting equitable compensation for loss of earnings due to unemployment, such that the sum of the recipient's earnings and this benefit at least equals the amount of the benefit which would be paid pursuant to the foregoing paragraph in the case of total unemployment; 3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, benefit may take the form of periodical payments calculated in accordance with Article 73 where: (a) it is awarded without any qualifying period, to classes of persons referred to in paragraph 3 of Article 20; or (b) the payments are continued beyond a minimum period of thirty-nine weeks.' The amount of the unemployment benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone, or at least 65% of the reference wage (earnings) of the beneficiary with dependants.

4.13.4 MATERNITY

Article 50 of C102 states that: 'In respect of suspension of earnings resulting from pregnancy and from confinement and their consequences, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66. The amount of the periodical payment may vary in the course of the contingency, subject to the average rate thereof complying with these requirements.'[716] An identical provision is included in the ECSS. The Protocol to the ECSS contains no changes to the calculation method concerning the periodic cash benefit set out in Article 50 of the ECSS.

Hence, based on the above, the amount of the maternity (cash) benefit should correspond to at least 45% of the reference wage (earnings) of the standard beneficiary (plus any family allowances). The percentage is increased by the Protocol to 50%.

[716] A detailed analysis is available Dijkhoff, T. (2011), pp. 92–93.

Last, according to Article 54 of the Revised ECSS, the 'maternity cash benefit shall take the form of periodical payments calculated in accordance with the provisions of either Article 71 or Article 72. Their amount may vary in the course of the contingency, provided that their average amount complies with those provisions.' The rate of the maternity (cash) benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone, or at least 65% of the reference wage (earnings) of the beneficiary with dependants.

4.13.5 EMPLOYMENT INJURY

Article 36 of C102 states that: '1. In respect of incapacity for work, total loss of earning capacity likely to be permanent or corresponding loss of faculty, or the death of the breadwinner, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66; 2. In case of partial loss of earning capacity likely to be permanent, or corresponding loss of faculty, the benefit, where payable, shall be a periodical payment representing a suitable proportion of that specified for total loss of earning capacity or corresponding loss of faculty; 3. The periodical payment may be commuted for a lump sum: (a) where the degree of incapacity is slight; or (b) where the competent authority is satisfied that the lump sum will be properly utilised.'[717] An identical provision is included in the ECSS. The Protocol to the ECSS includes no changes to the calculation method concerning the periodic cash benefit set out in Article 36 of the ECSS.

Thus, the rate of benefit in the case of temporary incapacity for work (sickness) as well as invalidity (total loss of earnings capacity) should correspond to at least 50% of the reference wage (earnings) of the standard beneficiary (plus any family allowances). In the case of death of the breadwinner, the rate of benefit should correspond to at least 40%. The percentage under the Protocol remains the same in the case of temporary incapacity for work (sickness), as well as when, in the case of permanent loss of earning capacity (invalidity), there is no need for extra permanent care for the beneficiary. However, it is increased to 66.66% in the case that the beneficiary is in need of permanent care, and in the case of the death of the breadwinner, to 45%.

Last, under the Revised ECSS, three different Articles specify the calculation method concerning the amount of the benefit set out in Article 54 of the Revised ECSS.

[717] A detailed analysis is available Dijkhoff, T. (2011), pp. 84–85.

In particular, Article 37 states that '1. In the contingency referred to in sub-paragraph b of paragraph 1 of Article 32, the benefit shall take the form of periodical payments calculated in accordance with the provisions of either Article 71 or Article 72. Their amount may vary in the course of the contingency, provided that their average amount complies with those provisions. 2. In the contingency referred to in sub-paragraph b of paragraph 1 of Article 32, a Party shall be deemed to comply with the provisions of this part if its legislation grants sickness benefit for victims of work accidents and occupational diseases under a general medical care or sickness benefit scheme, under the conditions prescribed for beneficiaries under that scheme, to the exclusion of any condition concerning a qualifying period, provided the said conditions are at least as favourable as those prescribed in Part III.'

Article 38 proceeds further, by stipulating that '1. In the contingency referred to in sub-paragraph c of paragraph 1 of Article 32, the benefit shall take the form of periodical payments: (a) calculated in accordance with the provisions of either Article 71 or Article 72 in the case of total loss of earning capacity or corresponding loss of faculty; or (b) calculated as a fair proportion of the benefit resulting from the provisions of the foregoing sub-paragraph in the case of partial loss of earning capacity or corresponding loss of faculty; 2. In the case of partial loss of earning capacity of less than 25%, or a corresponding loss of faculty, the benefit may take the form of a lump-sum payment. The amount of the payment shall not be less than the total amount of periodical payments which would have been due for a period of three years, having regard to the provisions of the foregoing paragraph; 3. In other cases, at the request of the victim, all or part of the periodical payments provided for in paragraph 1 of this article may be converted into a lump sum corresponding to the actuarial equivalent thereof, where the competent authority has reason to believe that such lump sum will be utilised in a manner which is unquestionably advantageous for the victim; 4. The conditions in which the periodical payments referred to in paragraph 1 of this article shall be reviewed, suspended or cancelled in the light of changes which may have occurred in the degree of loss of earning capacity or loss of faculty shall be determined by national legislation; 5. In addition, each Party shall provide increased or special benefit, under prescribed conditions, for beneficiaries whose condition necessitates the constant attendance of another person.'

Finally, Article 39 states that '1. In the contingency referred to in sub-paragraph d of paragraph 1 of Article 32, benefit shall take the form of periodical payments to the victim's surviving spouse and children, calculated in accordance with the provisions of either Article 71 or Article 72; 2. In addition, a grant for funeral costs shall be paid, under prescribed conditions, to the victim's survivors, dependants or other persons specified by national legislation.'

Based on the above provisions, the following five different categories of percentages apply to the benefit rate. In particular: (a) in the case of temporary or initial incapacity for work (sickness), the level of cash benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone, or at least 65% of the reference wage (earnings) of the beneficiary with dependents; (b) in the case of permanent loss of earnings capacity (without the existence of need for constant care), the level of cash benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone, or at least 65% of the reference wage (earnings) of the beneficiary with dependants; (c) in the case of permanent loss of earning capacity and the existence of the need for constant care, the level of cash benefit should correspond to at least 70% of the reference wage (earnings) of the beneficiary considered alone, or at least 80% of the reference wage (earnings) of the beneficiary with dependents; (d) in the case of death of the breadwinner (surviving spouse), the level of the cash benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone, or at least 65% of the reference wage (earnings) of the beneficiary with dependents; (e) in the case of death of the breadwinner (child), the level of the cash benefit should correspond to at least 20% of the reference wage (earnings) of the beneficiary considered alone, or at 65% of the reference wage (earnings) of the beneficiary with dependants.

4.13.6 OLD AGE

Article 28 of C102 states that the benefit 'shall be a periodical payment calculated as follows: (a) where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66; (b) where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 67.'[718] An identical provision is included in the ECSS. The Protocol to the ECSS contains no changes to the calculation method concerning the periodic cash benefit set out in Article 28 of the ECSS.

Thus, based on the above provisions, the rate of old-age benefit should correspond to at least 40% of the reference wage (earnings) of the standard beneficiary (plus any family allowances). The percentage is increased by the Protocol to 45%.

[718] A detailed analysis is available in Chapter 2, Section 2.5. See also the analysis in Dijkhoff, T. (2011), pp. 73–74.

As far as C128 is concerned,[719] Article 17 states that the benefit 'shall be a periodical payment calculated as follows: (a) where employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 26 or with the requirements of Article 27; (b) where all residents or all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 28.'

Here, the level of old-age benefit should correspond to at least 45% of the reference wage (earnings) of the standard beneficiary (plus any family allowances), which is actually equal to the percentage set under the Protocol to the ECSS.

Last, under the first paragraph of Article 29 of the Revised ECSS the 'old-age benefit shall take the form of periodical payments calculated in accordance with the provisions of either Article 71 or Article 72.' Thus, the level of the benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone, or at least 65% of the reference wage (earnings) of the beneficiary with dependants.

4.13.7 INVALIDITY

Article 56 of C102 states that the benefit 'shall be a periodical payment calculated as follows: (a) where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66; (b) where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 67.'[720] An identical provision is included in the ECSS. The Protocol to the ECSS contains no changes to the calculation method concerning the periodic cash benefit set out in Article 56 of the ECSS.

Thus, based on the above provisions, the level of invalidity benefit should correspond to at least 40% of the reference wage (earnings) of the standard beneficiary (plus any family allowances). The percentage is increased by the Protocol to 50%.

As far as C128 is concerned,[721] Article 10 states that the benefit 'shall be a periodical payment calculated as follows: (a) where employees or classes of the

719 A detailed analysis is available in Chapter 2, Section 2.5.

720 A detailed analysis is available in Chapter 2, Section 2.5. See also the analysis given in Dijkhoff, T. (2011), pp. 97–98.

721 A detailed analysis is available in Chapter 2, Section 2.5.

economically active population are protected, in such a manner as to comply either with the requirements of Article 26 or with the requirements of Article 27; (b) where all residents or all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 28.'

Here, the level of the invalidity benefit should correspond to at least 50% of the reference wage (earnings) of the standard beneficiary (plus any family allowances), which is actually equal to the percentage set under the Protocol to the ECSS.

Last, under the first paragraph of Article 60 of the Revised ECSS, 'the invalidity benefit shall take the form of periodical payments calculated in accordance with the provisions of either Article 71 or Article 72.'

Thus, the amount of the benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone, or at least 65% of the reference wage (earnings) of the beneficiary with dependants.

4.13.8 SURVIVORSHIP

Article 62 of C102 states that the benefit 'shall be a periodical payment calculated as follows: (a) where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66; (b) where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 67.'[722] An identical provision is included in the ECSS. The Protocol to the ECSS contains no changes to the calculation method concerning the periodic cash benefit set out in Article 62 of the ECSS.

Thus, based on the above provisions, the level of survivor's benefit should correspond to at least 40% of the reference wage (earnings) of the standard beneficiary (plus any family allowances). The percentage is increased by the Protocol to 45%.

As far as C128 is concerned,[723] Article 23 states that the benefit 'shall be a periodical payment calculated as follows: (a) where employees or classes of the economically active population are protected, in such a manner as to comply

[722] A detailed analysis is available in Chapter 2, Section 2.5. See also the analysis given in Dijkhoff, T. (2011), pp. 102–103.

[723] A detailed analysis is available in Chapter 2, Section 2.5.

either with the requirements of Article 26 or with the requirements of Article 27; (b) where all residents or all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 28.'

Here, the amount of the benefit should correspond to at least 45% of the reference wage (earnings) of the standard beneficiary (plus any family allowances), which is actually equal to the percentage set under the Protocol to the ECSS.

Last, under the first paragraph of Article 66 of the Revised ECSS, 'the invalidity benefit shall take the form of periodical payments calculated in accordance with the provisions of either Article 71 or Article 72.' Thus, the level of the benefit should correspond to at least 50% of the reference wage (earnings) of the beneficiary considered alone (surviving spouse), or at least 65% of the reference wage (earnings) of the beneficiary with dependants; or to at least 20% of the reference wage (earnings) of the beneficiary considered alone (child), or at least 65% of the reference wage (earnings) of the beneficiary with dependants.

4.13.9 FAMILY BENEFIT

Article 44 of C102 states that the total value of the benefits (both in cash and in kind) provided to the insured persons 'shall be such as to represent: (a) 3% of the wage of an ordinary adult male labourer, as determined in accordance with the rules laid down in Article 66, multiplied by the total number of children of persons protected; or (b) 1.5% of the said wage, multiplied by the total number of children of all residents". Within similar terms the Article 44 of the ECSS states that the total value of such benefits "shall be such as to represent 1.5 per cent of the wage of an ordinary adult male labourer as determined in accordance with the rules laid down in Article 66, multiplied by the total number of children of all residents.' In the Protocol to the ECSS an increase to 2% takes place with respect to the calculation method used.

'In contrast to the provisions of all other contingencies, the level of family benefit is not related to a standard beneficiary, but has to be reached at a global level.'[724]

The minimum amount is established in three steps. First, the monthly/weekly wage of the ordinary adult male labourer needs to be calculated (based on Article 66 of the ECSS). Thereafter, this amount needs to be multiplied by the number of children of all the residents in the contracting state. Last, a calculation by 1.5% of this amount needs to take place. This is also the overall amount that needs to be

[724] See Dijkhoff, T. (2011), p. 89.

spent at a national level on all of the protected children within the territory of the country. 'No minimum level of benefit is set for each individual recipient; instead a minimum amount of expenditure is established for all entitled persons within the territory of the contracting party. This allows the contracting party to provide just in-kind benefits or a combination of cash and in-kind benefits.'[725]

As far as the Revised ECSS is concerned, and based on Article 49, it 'has made the assessment of the amount of benefit more flexible and easier to calculate. It still treats the calculation of family benefits differently from the other contingencies but it gives the contracting parties a choice between: (a) ensuring total expenditure on family benefits is at least equal to 1.5% of gross domestic product; or (b) 3% of either the minimum wage or the wage of an ordinary labourer multiplied by the total number of persons protected (this amount was roughly equal to 1.5% under the ECSS and 2% under the Protocol).'[726]

ILO Conventions Nos. 102 and 128				
Percentages applying to benefit amounts (replacement rates)				
Contingency	**Standard beneficiary under C102**	**Standard beneficiary under C128**	**Minimum percentage under C102**	**Higher percentage under C128**
Sickness	Man with wife and two children	N/A[727]	45%	N/A
Unemployment	Man with wife and two children	N/A	45%	N/A
Old age	Man with wife of pensionable age	Man with wife of pensionable age	40%	45%
Employment Injury				
Incapacity for work	Man with wife and two children	N/A	50%	N/A
Invalidity	Man with wife and two children	N/A	50%	N/A
Survivors'	Widow with two children	N/A	40%	N/A
Maternity	Woman	N/A	45%	N/A
Invalidity	Man with wife and two children	Man with wife and two children	40%	50%
Survivors'	Widow with two children	Widow with two children	40%	45%

725 See Nickless, J. (2002), p. 52; Dijkhoff, T. (2011), p. 90.
726 See Nickless, J. (2002), p. 53. See also Council of Europe (1998), p. 66.
727 Not Applicable for C128.

CoE instruments (1): ECSS and Protocol to the ECSS					
Percentages applying to benefit amounts (Replacement Rates)					
Contingency under the ECSS	**Standard beneficiary under the ECSS**	**Contingency under the Protocol to the ECSS**	**Standard beneficiary under the Protocol to the ECSS**	**Minimum percentage under the ECSS**	**Higher percentage under the Protocol to the ECSS**
Sickness	Man with wife and two children	**Sickness**	Man with wife and two children	45%	50%
Unemployment	Man with wife and two children	**Unemployment**	Man with wife and two children	45%	50%
Old age	Man with wife of pensionable age	**Old age**	Man with wife of pensionable age	40%	45%
Employment Injury		**Employment Injury**			
Incapacity for work	Man with wife and two children	*Temporary incapacity for work*	Man with wife and two children	50%	50%
Total loss of earnings capacity	Man with wife and two children	*Permanent total incapacity:* *(a) general* *(b) in need of permanent care*	Man with wife and two children	50%	(a) 50% (b) 66.66%
Survivors'	Widow with two children	Survivors'	Widow with two children	40%	45%
Maternity	Woman	**Maternity**	Woman	45%	50%
Invalidity	Man with wife and two children	**Invalidity**	Man with wife and two children	40%	50%
Survivors'	Widow with two children	**Survivors'**	Widow with two children	40%	45%

CoE instruments (2): revised ECSS[728]				
Percentages applying to benefit amounts (replacement rates)				
Contingencies	**1st category of beneficiary**	**Percentage: 1st category of beneficiary**	**2nd category of beneficiary**	**Percentage: 2nd category of beneficiary**
Sickness	Alone	50%	Person with a spouse and two children	65%
Unemployment	Alone	50%	Person with a spouse and two children	65%
Old age	Alone	50%	Person with a spouse of a prescribed age	65%

CoE instruments (2): revised ECSS (continued)				
Percentages applying to benefit amounts (replacement rates)				
Contingencies	**1st category of beneficiary**	**Percentage: 1st category of beneficiary**	**2nd category of beneficiary**	**Percentage: 2nd category of beneficiary**
Employment injuries and occupational diseases				
Temporary or initial incapacity for work	Alone	50%	Person with spouse and two children	65%
Permanent incapacity for work (total and permanent loss of earning capacity or corresponding degree of physical invalidity) – no need of constant attendance	Alone	50%	Person with spouse and two children	65%
Permanent incapacity for work (total and permanent loss of earning capacity or corresponding degree of physical invalidity) – need of constant attendance	Alone	70%	Person with spouse and two children	80%
Death of the breadwinner: surviving spouse	Alone	50%	Surviving spouse with two children	65%
Death of the breadwinner: child	Alone	20%	Surviving spouse with two children	65%
Maternity	Alone	50%	Woman with spouse and two children	65%
Invalidity	Alone	50%	Person with spouse and two children	65%
Death of the breadwinner				
Surviving spouse	Alone	50%	Surviving spouse with two children	65%
Child	Alone	20%	Surviving spouse with two children	65%

728 Based on the explanatory report (para. 531) accompanying the Revised ECSS and referring to Article 73, 'this Table differs from that appended to Part XI of the European Code of Social Security in two respects. First, it provides for two standard beneficiaries, according to whether or not there are dependants, and Parties are free to refer to either. Second, the expressions such as "man with wife" and "widow" have been rejected in favour of "persons with spouse" and "surviving spouse". The (revised) Code accordingly adopts a neutral terminology and endeavours to encourage Parties to promote sexual equality'; see Council of Europe (1998), p. 101.

4.14 NATIONAL SOCIAL SECURITY LEGISLATION AND INTERNATIONAL SOCIAL SECURITY STANDARDS TO BE COMPLIED WITH BY PERIODICAL PAYMENTS

4.14.1 PROBLEMS WITH ASSESSING THE COMPLIANCE WITH THE INTERNATIONAL SOCIAL SECURITY STANDARDS

Each country that has ratified[729] certain international social security instruments of the ILO and the CoE (or simply specific Parts of these instruments, on particular social contingencies), aside from the obligation to provide complete information on national laws and regulations,[730] by which full effect is given to the provisions of the accepted international instrument, also undertakes to provide precise statistical information (not only in numbers, but also in the form of percentages), which will contain evidence of compliance with the conditions specified in the international instruments (for example, as regards the personal scope of application,[731] the rate of the benefits, etc.).[732] To this end, relevant Report Forms have been produced by the ILO Bureau,[733] as well as by the CoE,[734] which are sent to the countries to be used as a format by them when completing their national reports. The structure of the national reports to be submitted under the ECSS concerning the accepted Parts is very similar to those required by C102. Therefore, countries can fulfil their reporting obligations under the ECSS by submitting the same report they produce for C102.[735]

Furthermore, and equally, obligations exist with respect to the international instruments that have not been ratified (have not been accepted, in other words) by the contracting parties. Based on Article 19 of the ILO Constitution, and at appropriate time intervals (as requested by the ILO GB), the parties should indicate the extent to which effect has been given, or is proposed to be given, to

729 In the Greek case, sanctioned by statute and ratified; see Chapter 3, Section 3.7.

730 The information provided should also be accompanied by copies of the appropriate national legislation.

731 See also the remarks made under Section 4.3, Sub-Section 4.3.5, above.

732 See, in particular, Article 76 of C102, in: International Labour Office (1980), pp. 35–37. See also the statements made under Articles 10, 17 and 23, as well as Articles 28 and 29; see in International Labour Office (1967c), pp. 6, 10, 23, 28–29.

733 These report forms has been also approved by the ILO GB, in accordance with Article 22 of the ILO Constitution.

734 For the ECSS, these reports are based on Article 74 of the ECSS.

735 See also Nickless, J. (2002), p. 24.

the relevant instruments;[736] a similar procedure is set out in Article 76 of the ECSS of the CoE.[737]

Should any difficulties arise, the contracting parties are always welcome to request technical support/assistance from the competent services of the ILO, as well as those of the CoE.

Be that as it may, and with particular reference to the ISSS to be complied with by the periodical payments provided under national legislation, and the relevant internationally set rates of replacement of the benefits that need to be respected (the issue of benefit re-adjustment according to the ISSS follows below[738]), the Greek reports submitted contain significant deficiencies. This actually becomes even more intriguing if one compares them, for example, to reports submitted by other countries which have ratified entirely (or certain Parts) C102 and/or the ECSS.[739]

More precisely and based on the available submitted reports[740] on the parts of the ECSS accepted and not accepted by Greece, the relevant reports do not always provide complete information or data (in numbers, and more particularly, in percentages), or sufficiently clear explanations to this end. Put differently, apart from the fact that information and required data are missing, or are incomplete,

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736 See also ILO (2006), pp. 32–33.

737 See, for example, the Form for the Biennial Report on the European Code of Social Security under Article 76 of the ECSS, in Council of Europe (*s.d.*), "Form for the Biennial Report on the European Code of Social Security", Strasbourg, pp. 1–3.

738 See Section 4.15.

739 For instance, reference could be made here to the structure and content of the Report drawn up by the government of Estonia and submitted to the CoE on the measures implementing the provisions of the ECSS for the period from 01/07/2005 to 30/06/2006, as well as subsequent periods. See Chapter 4, on the Comparison of National Social Security Legislation with International Standards – The case of Estonia, in Dijkhoff, T. (2011), pp. 235–236, 237–240, 244–246, 247–249, 258–259, 260–266, 269–270, 271–272, 275–277, 279–282, 285–286–287–289, 291–292, 293–294.

740 It should be noted here that the researcher was given access only to the submitted Greek reports on the application of the ECSS and on the reports on the parts of the ECSS not accepted. Access was not granted to the Greek reports submitted on the application of C102 and the reports on the non-acceptance of the Part on Family Benefit of C102, as well as on the reports on the other non-accepted international social security instruments of the ILO by the competent Ministerial Section; the Section for Relations with the ILO. A similar note follows in Chapter 5, Section 5.2; Sub-Section 5.2.2. The reports to which the researcher was given access to cover almost entirely the period from 1st July 1991 (the 10th detailed (annual) report submitted under Article 74 of the ECSS) to 30th of June 2010 (the 28th general (annual) report submitted under Article 74 of the ECSS), for the ratified (accepted) Parts of the ECSS, as well as the periods from 1st July 1990 to 30th of June 1992 (the 4th biennial report), from 1st July 1994 to 30th of June 1996 (the 6th biennial report), from 1st July 1998 to 30th of June 2000 (the 8th biennial report), from 1st July 2000 to 30th of June 2002 (the 9th biennial report), from 1st July 2004 to 30th of June 2006 (the 11th biennial report), from 1st July 2006 to 30th of June 2008 (the 12th biennial report) and from 1st July 2008 to 30th of June 2010 (the 13th biennial report).

or (sometimes even) confusing/abstract, the data provided over the years are scattered and diffused within the reports.

It should also be noted that the most (in a sense) comprehensive reports are usually the detailed annual reports submitted to the CoE and not the general annually submitted ones on the accepted Parts of the ECSS. Based on the procedure followed by the CoE with respect to the ECSS, the countries submit a detailed annual report every five years and a general annual report every year on the parts of the ECSS they have accepted. In the general annually submitted reports, they can simply provide information only if changes have taken place since the last detailed annual report submitted. Nevertheless, the information and data pertaining to the replacement rates (as well as population coverage) need to be presented in each report submitted, either in a detailed annual report, or a general annual report. As regards the biennial reports that need to be submitted with respect to the Parts of the ECSS not accepted by the country, the information and data provided always need to be available.

More precisely, in the Greek case, for the period covering July 1991 to June 1992 (detailed annual report), certain data were provided only for the risk of old age, but presentation of the calculation of the benefit was not included, nor was reference made to the international provision used for the basis of the calculation, (i.e. Article 65, 66, or 67 of the ECSS) etc., and there was no information on the final rate of replacement.[741] For the period covering July 1992 to June 1993 (general annual report),[742] the rate of replacement corresponding to the benefits provided to the standard beneficiary was not presented, thus no calculations took place. For the period covering July 1993 to June 1994 (general annual report),[743] certain data were provided and calculations were made for the plurality of the accepted social risks. For the period covering July 1994 to June 1995 (general annual report),[744] no calculations were made. For the period covering July 1995 to June 1996 (detailed annual report)[745] data were provided and calculations were made for the plurality of the accepted social risks. For the periods covering July 1996 to June 1997 (general annual report),[746] July 1997 to June 1998 (general annual report),[747] July 1998 to June 1999 (general annual report),[748] and July 1999 to June 2000 (general annual report),[749] no calculations were made.

741 See Council of Europe (1993), pp. 15–16.
742 See Council of Europe (1993c), pp. 1–3.
743 See Conseil de l'Europe (1994), pp. 1–31.
744 See Council of Europe (1995), pp. 1–5.
745 See Conseil de l'Europe (1996), pp. 1–8.
746 See Council of Europe (1997), pp. 1–5.
747 See Council of Europe (1998b), pp. 1–5.
748 See Council of Europe (1999), pp. 1–6.
749 See Council of Europe (2000), pp. 1–5.

Moving forward to the next decade (2000 to 2010), for the period covering July 2000 to June 2001 (detailed annual report),[750] certain data were provided for the risks of old age, invalidity and death, but no clear presentation of the calculation of the benefits was included – only the final rates of replacement for pensions were given. For the periods covering July 2001 to June 2002 (general annual report),[751] July 2002 to June 2003 (general annual report),[752] July 2003 to June 2004 (general annual report),[753] and July 2004 to June 2005 (general annual report),[754] no calculations were made.

It was only for the period July 2005 to June 2006 (detailed annual report)[755] that certain more specific information and data were provided and certain more precise calculations were made in the Greek report. This could also arguably be the most comprehensive of all the reports on the accepted Parts of the ECSS submitted by Greece since 1992. All the same, once again emphasis was placed on the accepted long-term social security risks (pensions). For the most recent periods covering July 2006 to June 2007 (general annual report),[756] July 2007 to June 2008 (general annual report),[757] July 2008 to June 2009,[758] and July 2009 to June 2010 (general annual report),[759] no calculations were made, while once again the information, as well as the data given, were disparate, abstract and rather selective.

Similarly, the biennial reports on the non-accepted parts of the ECSS submitted to the CoE by Greece[760] cannot be considered (put differently, do not actually constitute) a sound basis for evaluating whether the country could proceed with the ratification of the Parts of the ECSS not accepted, since the information and data provided were once more not sufficient or comprehensive. By way of illustration, independent international social security experts[761] have also made relevant comments to this end in the recent past (period from 2002 to 2004).[762]

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750 See Council of Europe (2001), pp. 30–32.
751 See Council of Europe (2002), pp. 1–5.
752 See Council of Europe (2003b), pp. 1–8.
753 See Council of Europe (2004b), pp. 1–6.
754 See Council of Europe (2005b), pp. 1–6.
755 See General Secretariat of Social Security (2006), pp. 21–22.
756 See General Secretariat of Social Security (2007), pp. 1–6.
757 See General Secretariat of Social Security (2008b), pp. 1–12.
758 See General Secretariat of Social Security (2009), pp. 1–5.
759 See Council of Europe (2010c), pp. 1–3.
760 As already stated, Greece has not accepted Part IV (Unemployment Benefit) and Part VII (Family Benefit) of the ECSS.
761 These experts are called upon by the CoE to examine both the submitted national reports concerning the accepted parts of the ECSS and the possibility of future ratification of the unaccepted Parts, based on the relevant provisions of the ECSS.
762 See also Section 4.5, Sub-Section, 4.5.5. See also Council of Europe (2005), p. 1.

In particular, based on the available biennial reports for the period July 1990 to June 1992,[763] for the period from July 1994 to June 1996,[764] and for the period from July 1998 to June 2000,[765] no precise information or data were provided, or specific calculations made, while ratification was being considered. Similarly, for the periods from July 2004 to June 2006,[766] July 2006 to June 2008,[767] and July 2008 to June 2010,[768] there is lack of precise information and data in the reports, and calculations are missing as well.

It is interesting to focus, in this respect, on the behaviour of the responsible international supervisory bodies with respect to the national reports submitted on the application of both the accepted and the unaccepted parts of the ECSS, as well as of C102. It proves out that over the years (particularly from 1990 to 2010), and specifically in relation to the level of benefits to be ensured according to the set ISSS (as well as the personal scope), the Committee of Ministers of the CoE and the CEACR have not always consistently insisted on the provision of the relevant necessary statistical information and data. Put differently, in a sense, there seem to be gaps in the proper functioning of the international supervisory procedure.[769]

More explicitly, during the decade from 1990 to 2000, the CEACR[770] was much more detailed in its comments given in the relevant direct requests and direct observations sent to Greece with respect to the application of both the accepted and the unaccepted ISSS set out in C102.[771] For example, for the period from 1990 to 1991, the CEACR requested that the government supply statistical data based on the ILO report forms on each of the accepted parts of C102 and particularly in respect of the level of benefits. In 1993, the relevant direct request sent from the CEACR concerning the submitted national reports for the periods from 1990 to 1991 and from 1991 to 1992 was extensive, asking for detailed information and data on the implementation of the new Law No. 1902/1990,[772] the level of long-term benefits provided in relation to the levels prescribed in C102, and in general on the provision of national amounts and statistics (it was also then that the issue pertaining to Part VI (Employment Injury Benefit)[773] was first mentioned).

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763 See Council of Europe (1993b), pp. 1–3.
764 See Council of Europe (1997b), pp. 1–7.
765 See Council of Europe (2001b), pp. 1–7.
766 See General Secretariat of Social Security (2006b), pp. 1–6.
767 See General Secretariat of Social Security (2008c), pp. 1–4.
768 See Council of Europe (2010b), pp. 1–5.
769 To this end see the analysis that follows in Chapter 5, Section 5.4, Sub-Section 5.4.2.
770 See CEACR (1990–2007), pp. 1–8.
771 No electronic record of the Social Security Resolutions on the application of the ECSS by Greece could be traced for the period from 1990 to 1996, as well as from 1996 to 2000.
772 See Official Gazette of the Hellenic Republic (1990), pp. 1167–1186.
773 See Section 4.7, above.

However, in the direct requests submitted between the years 1996 and 2006, the comments concentrated only on certain selected matters of non-compliance, as already described above,[774] and not on the fact that national calculations, as well as data, were missing, proving that the level of all social security benefits, and not only the long-term benefits, provided under the national social security legislation reached the relevant levels prescribed by C102.[775] A similar line was followed in the Resolutions adopted by the Committee of Ministers of the CoE on the application of the ECSS by Greece for the period 2003 to 2006.[776] Moreover, the country was considered to be continuing to give full effect to the parts of the ECSS that have been accepted.[777] It was in 2007 and in 2008 that the international supervisory bodies began, once again, to be concerned with the issue of application of PART XI – Standards to be complied with by periodical payments – by Greece.[778] Be that as it may, in 2009 and 2010, the supervising bodies did not focus any further attention on whether the levels of social security benefits prescribed under the accepted ISSS was delivered under national legislation, or on the fact that calculations were missing from the national reports (for the period 2007–2010).[779] Reference to this issue follows below.

From the above discussion, it would seem that at certain points in the past the international supervisory bodies were placing much more emphasis on the completeness of the nationally submitted reports, as well as on the explanations given by the countries. Thus, in a sense, more attention was paid to the full compliance with the ISSS, and in particular, to the ISSS to be complied with by periodical payments.

4.14.2 RECENT COMMENTS AND REQUESTS MADE BY THE CEACR AND THE COMMITTEE OF MINISTERS, AND THE RESPONSES OF THE COMPETENT NATIONAL AUTHORITIES

In 2007, after receiving the 24th detailed annual report from Greece on the application of the ECSS (2005–2006) (as already referred, this could be described

774 See also Section 4.7, above.

775 See CEACR (1990–2007), pp. 1–8.

776 No electronic record of the Social Security Resolutions on the application of the ECSS by Greece could be traced for the period from 1990 to 1996, as well as from 1996 to 2000.

777 See Committee of Ministers (2003a), p. 1; Committee of Ministers (2003b), p. 1; Committee of Ministers (2004), p. 1; Committee of Ministers (2005), p. 1; Committee of Ministers (2006), p. 1.

778 See CEACR (1990–2007), pp. 1–8; Committee of Ministers (2007), p. 1; Committee of Ministers (2008), p. 1; CEACR (2008b).

779 See General Secretariat of Social Security (2008b), pp. 1–12; General Secretariat of Social Security (2009), pp. 1–5; Council of Europe (2010c), pp. 1–3.

as the most comprehensive of all the reports on the accepted Parts of the ECSS submitted by Greece since 1992) and after the examination of this report by the ILO CEACR, the Committee of Ministers of the CoE made certain comments regarding PART XI – Standards to be complied with by periodical payments. In particular, it noted that it took into account the information provided by the government, and more precisely, that 'the amount of the daily sickness benefit is equal to 50% of the amount of the estimated daily income of the insurance class to which the beneficiary belongs and cannot be higher, with the increments due to family responsibilities, than the amount of the estimated daily rate of the 8th insurance class. The basic amount and the rate of the old-age and disability pension vary depending on the insurance class.'[780]

However, since this information was not clear, it asked the government 'to explain in its next report the system of insurance classes and its relation to the reference wage of the standard beneficiary selected by the government under Article 65 and 66 of the ECSS for the calculation of the replacement rate of the benefits and to make these calculations in such a way as to show that the maximum limits fixed for the rate of the benefits complies with the requirements of Article 65.3, while the minimum amount of the benefits attains the level prescribed in Article 66 of the ECSS.'[781]

It is obvious from the aforementioned request that it was, actually, not possible for the Committees to examine to what extent Greece complied with the relevant ISSS.

A year later, Greece replied that these questions had been sent to the IKA-ETAM, and as soon as answers are provided, the Committee would be informed accordingly.[782]

In 2008, similar requests were made by the Committee of Ministers and the CEACR. Emphasis was placed, once again, on making calculations in such a way as to show that the maximum limit fixed for the rate of the benefits complied with the requirements of Article 65(3), while the minimum rate of the benefits reached the level prescribed in Article 66.[783]

Still, in the report submitted by Greece, following the second round of comments made by the Committees, the information provided was not comprehensive. After the examination of the report by the CEACR, the Committee of Ministers of the CoE, in the Resolution adopted in June 2009, noted the following concerning the

780 See in: Committee of Ministers (2007), p. 1.
781 See in: Committee of Ministers (2007), p. 1.
782 See in: General Secretariat of Social Security (2007b), p. 6.
783 See in: CEACR (2008b); Committee of Ministers (2008), p. 1.

application of Part IX – Standards to be complied with by periodical payments:[784] 'The Committee of Ministers thanks the government for providing explanations and statistical tables on the estimated daily income of the 28 insurance classes into which insured persons are classified for the purpose of calculating the amount of their social security benefits. With regard more particularly to the sickness benefit, the report states that its amount is equal to 50% of the estimated daily income of the insurance class to which the beneficiary belongs, increased by 10% for each dependent family member. However, the maximum sickness benefit cannot be higher than the estimated daily income of the 8th insurance class (€29.39 in 2008) or 70% of the daily income of the insurance class in respect of which the sickness benefit is calculated. According to these rules, the amount of the sickness benefit for the standard beneficiary for this branch of the ECSS (a man with a wife and two children) would represent 70% of the daily income of the insurance class to which he belongs, but not more than the maximum amount of €29.39. According to Article 65.3 of the ECSS, this maximum limit should be fixed in such a way that it would allow the sickness benefit to attain at least 45% of the previous earnings of the beneficiary earning the reference wage (that of a skilled manual male employee). The Committee of Ministers notes that the maximum sickness benefit of €29.39 would represent 45% of the estimated daily income of the 19th insurance class (€64.42), but would fall below this level for the beneficiaries belonging to insurance classes 20 to 28. Furthermore, the report states that for the first 15 days of sickness, the maximum amount of sickness benefit is limited to the estimated daily income of the 3rd insurance class or to 35% of the daily income of the insurance class in respect of which the sickness benefit is calculated, which is lower than the 45% required by the ECSS. However, in its 25th annual report, the government stated that the difference between the maximum sickness benefit and the insured person's wage during the first 15 days of sickness is paid by the employer". To this end and concerning the Part XI (Standards to be complied with by periodical payments) the Committee asked the Government of Greece to:[785] "(a) indicate the types of employment covered by the 19th insurance class, as well as the insurance class to which a fitter or turner in the manufacture of machinery would belong, and to indicate also the amount of average earnings in the private sector in 2008; (b) to confirm that the difference between the maximum sickness benefit and the insured person's wage during the first 15 days of sickness is paid by the employer, by reference to the corresponding provisions of the legislation.'

Taking into account the previous questions posed by the Committee, the Greek government gave the following replies: '(a) the classification of the daily and monthly earnings of insured persons into insurance classes and into estimated

784 See in: Committee of Ministers (2009), p. 1.
785 See Committee of Ministers (2009), p. 1.

wages is important only for the calculation of all monetary benefits granted by IKA-ETAM to the insured persons (pensions, sickness benefits, maternity benefits etc), since there is no longer a relationship between the insurance classes and the type of employment. For the classification of the daily and monthly earnings into insurance classes and respectively into estimated wages, IKA-ETAM takes into account the amount of wages or salaries regulated by Collective Employment Agreements that are in force for each category of employment. The maximum basic wage for the year 2008 according to the Collective Employment Agreement for fitters or turners (No 69/18-7-2008) who have completed 18–35 years of work was €53.23 (16th insurance class). The minimum basic wage for the above category of workers with 0–3 years of was €40.94. According to the data of IKA-ETAM for the year 2008, the average wage for the category of those workers was €48.51 (this wage corresponds to the 14th insurance class). According to the Actuarial Department of IKA-ETAM the data concerning the average monthly earnings for June of 2008 were €1,281.54 (this salary corresponds to 15th insurance class); (b) according to Article 657 of the Civil Code: the employee claims his right to receive the salary if, after at least ten days of work, he becomes unable to work due to an important reason for which he is not responsible. The employer has the right to deduct the amount granted to the employee by the obligatory social insurance from the salary, as defined by law, due to the same obstacle; according to Article 658 of the Civil Code: the period for which the employee can claim the salary in the case of an impediment to work, cannot exceed a month, on condition that the impediment occurred at least one year after the commencement of work contract, and in any other case, half a month. The claim for the salary for the time mentioned above still exists, even if the employer denounces the work contract due to the impediment.'[786]

In 2010, both the CEACR and the Committee of Ministers,[787] on receipt of the aforementioned information from Greece, did not proceed with requesting further information concerning Part IX – Standards to be complied with by periodical payments. This, despite the fact that in the general annual reports that were subsequently submitted by Greece, in particular for the period from 2007–2010,[788] calculations were missing. In other words, the country continued not to provide precise information and not to show (based on the structure indicated within the relevant international report forms adopted by the ILO GB and the CoE) that the social security benefit levels provided at the national level reached the level set by the accepted ISSS (as well as the unaccepted ones) for each social risk.

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786 See General Secretariat of Social Security (2009), pp. 3–4.

787 See Committee of Ministers (2010), p. 1.

788 See General Secretariat of Social Security (2008b), pp. 1–12; General Secretariat of Social Security (2009), pp. 1–5; Council of Europe (2010c), pp. 1–3.

4.14.3 INDICATIVE CALCULATIONS

Hereunder, based on the information and data gathered from the overall research conducted pertaining to the benefit levels under national social security legislation,[789] and taking into account the relevant ISSS set out in C102, the ECSS, the Protocol to the ECSS, C128 and the Revised ECSS (as previously described),[790] in an attempt to better examine whether the international obligations are fulfilled, some indicative calculations are presented by the researcher for four of the traditional social security risks, namely, sickness, old age, invalidity and death (for the social risk of medical care no calculations are necessary). Due to the paucity of information and data, it has not been possible to equally present indicative calculations for the remaining four traditional social security risks (unemployment, employment injury, family and maternity). Thereafter, some tentative remarks on the indicative calculations are made.

Before proceeding with the presentation of the calculations, it should be noted that according to the information provided for the application of the ECSS by Greece for the period from 1st July 2008 to 30th June 2009,[791] (for the period from 1st July 2009 to 30th June 2010,[792] no further new information was provided by the government) the daily average wage for fitters or turners – this is the category of workers chosen by Greece for the SB according to the ISSS – was ***€48.51***. This wage has been stated as corresponding to the fourteenth insurance class.[793]

It should be noted, at this point, that based on the information provided by Greece one year previously (for the period from 1st July 2007 to 30th June 2008),[794] the estimated daily earnings for the SB in the fourteenth insurance class was ***€47.82***.[795] Despite this deviation, for all the subsequent calculations the information provided in the national report for the period from 1st July 2008 to 30th June 2009 is taken into account. The difference in the amount indicated for the estimated daily earnings for the SB between the two Greek reports[796] might be explained by the fact that the amount of ***€47.82*** corresponds to an estimation,

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789 See the Section 4.12, above.

790 See: Section 4.13, above.

791 The 27th Greek report; see General Secretariat of Social Security (2009), p. 4.

792 The 28th Greek report corresponds to this time period; see Council of Europe (2010c), pp. 1–3.

793 Regarding the 28th insurance classes into which the insured persons in Greece are classified for the purpose of calculating the amount of their social security benefits; see the description and the relevant Table in: Section 4.12, Sub-Section 4.12.1, above.

794 The 26th Greek report corresponds with this time period. See General Secretariat of Social Security (2008b), p. 8.

795 The daily earnings and the estimated daily earnings for the 28th insurance classes for the period from 01/01/2009 to 31/12/2009 remained as they were in 31/12/2008.

796 The amount of €47.82 in the 26th Greek report and the amount of €48.51 in the 27th Greek Report; see also General Secretariat of Social Security (2009), p. 4. General Secretariat of Social Security (2008b), p. 8.

while the amount of ***€48.51*** corresponds to the actual average daily wage of the category of fitters or turners based on the Collective Labour Agreement (CLA) (No. 69/18-07-2008).[797]

Moreover, and in particular with respect to the calculations made for old-age, invalidity and survivors' benefits, they have not been based on the real amounts at real levels, since this was not possible due to paucity of data, but on fixed amounts, meaning, the minimum pension limits set for old age, invalidity and survivorship provided under the IKA-ETAM as of 01/10/2008.[798] Since there is no separate scheme for employment injury in Greece,[799] the results of the indicative calculations for sickness and pensions can be taken into account.

The general formula used for the calculation of the social security benefits is as follows:

Basic calculation formula
Benefit + Family Benefits / Evaluation Basis + Family Benefits × 100

*The minimum level of each benefit is expressed as a percentage (%).

a. Sickness benefit

The Standard Beneficiary (SB), in the case of the sickness benefit, based on the international social security instruments examined in this research (C102, the ECSS, the Protocol to the ECSS and the Revised ECSS) is a man with a wife and two children (under the Revised ECSS the possibility is given to countries to consider the SB as a person with no dependants). The sickness benefit under national law should correspond to each of the international social security instruments to a specific percentage of the previous earnings of the SB.[800]

The previous earnings for the SB per month[801] are €1212.75 (***€48.51*** × 25 days per month = **€1212.75**). Any family allowances (supplements for dependants) paid to the SB while he was working need to be added to these monthly previous earnings of the SB.

Under Greek legislation, benefits for children are paid. Consequently, and based on the data gathered on family benefits[802] (the amounts are the same for the years 2008 and 2009) the monthly amount given by Greece for the first child is *€8.22*

797 See also Section 4.14, Sub-Section 4.14.2, above.
798 See the description and the relevant Table in Section 4.12, Sub-Section 4.12.6, above.
799 See Section 4.2, above.
800 See the Tables in the Section 4.13, above.
801 Under Greek legislation, 25 days per month are taken into account for the calculations.
802 See the description and the relevant Table in: Section 4.12, Sub-Section 4.12.3, above.

and for the second child is *€16.43*. In total, for the two children the monthly amount of ***€24.65*** is paid.

Thus, the previous earnings of the SB plus the family benefits for the two children come to the amount of ***€1237.40*** (€1212.75 + €24.65).

Thereafter, according to the national legislation, the amount of the daily sickness benefit comes up to 50% of the estimated daily income of the insurance class to which the beneficiary belongs. In the Greek case, the SB belongs to the fourteenth insurance class. The amount of the sickness monthly benefit is calculated accordingly, and comes up ***€606.37*** (50% × €1212.75).

To this monthly amount, the amount that corresponds to the family benefits paid to the beneficiary under Greek Legislation while they are sick is added. According to Greek legislation, the basic sickness benefit (the benefit the beneficiary when they do not have children) is increased by 10% for each dependent family member (spouse, children, etc.). Consequently it is increased by 30% (10% (spouse) + 10% (1st child) + 10% (2nd child) = 30%). This 30% of the monthly rate of the sickness benefit paid, which is (as found above) €606.37, comes to ***€181.91***. Therefore, the monthly rate of the sickness benefit comes to **€788.28** (€606.37 + €181.91 = €788.28).

However, according to Greek legislation, the sickness benefit cannot exceed 70% of the estimated daily income of the insurance class in respect of which the calculation of the sickness benefit is taking place, but also it cannot be higher than the rate of the estimated daily income of the eighth national insurance class.

Indeed, Article 65 of C102 allows states to place a ceiling. However, in order to ensure that this ceiling is not too low, so reducing the extent of social protection, it stipulates that this ceiling should be fixed in such a way that the percentage required for the SB is achieved where the previous earnings of the beneficiary are equal to, or lower than, the wage of a skilled manual male employee.

For Greece the maximum benefit paid corresponds to the eighth insurance class and it is **€734.75** per month (€29.39 per day → €29.39 × 25 = €734.75).

This is actually less than what the beneficiary gets with the 30% of the family allowance: €788.28 (normal benefit) < €734.75 (ceiling on the benefit).

Hence, the final calculation on whether the minimum standards for the sickness benefit are fulfilled will be made using the amount of this ceiling and the basic calculation formula set out above:

Benefit + Family Benefits / Evaluation Basis + Family Benefits × 100 ↔		
€734.75	/	€1237.40 × 100 = **59.37%**

We see that the sickness benefit provided under Greek legislation corresponds to 59.37% of the previous earnings of the SB. So, it satisfies C102 (45%), the ECSS (45%) and the Protocol to the ECSS (50%), but not the Revised ECSS (65%).[803]

However, it should be noted here that this compliance (with most of the ISSS) applies for the period after the first 15 days of sickness. For the period of the first 15 days of sickness, it cannot be said with alacrity whether national legislation complies, since the information is missing on whether indeed the employer undertakes payment of the benefit for this period. In other words, a clear reply to this end was not made to the responsible international supervisory bodies, and only a reference was made to certain provisions of the Greek Civil Code,[804] which do not set out, as such, the obligation of the employer in relation to the payment of the benefit for the period of the first 15 days of sickness.

If indeed, as stated in the national reports,[805] the employer pays the difference, this could be also considered as a form of (small) privatization, which is accepted by the ISSS, as long as there are enough national legal guarantees that the employer pays the difference in practice. Moreover, there should be also further legal guarantees that the sickness benefit is paid even if the employer is not in a position to pay the difference (for example, in case that the employer goes bankrupt, etc.) or simply refuses to pay the benefit. Furthermore, it is questionable whether the information given by the government that 'the employee claims his right to receive the salary if, after at least ten days working, becomes unable to work due to an important reason for which he is not responsible',[806] is a sufficient guarantee by international standards.

b. Old-age benefit

The Standard Beneficiary (SB), in the case of the old-age benefit, based on the international social security instruments examined in this research (C102, the ECSS, the Protocol to the ECSS, C128 and the Revised ECSS) is a man with a wife

803 See the Tables in the Section 4.13, above.
804 See Section 4.14, Sub-Section 4.14.2, above.
805 See in particular General Secretariat of Social Security (2009), pp. 3–4.
806 See Section 4.14, Sub-Section 4.14.2, above.

of pensionable age (under the Revised ECSS the possibility is given to countries to consider the SB as a person with no dependants). The old-age benefit under national law should correspond in each of the international social security instruments to a specific percentage of the previous earnings of the SB.[807]

Once again, the SB under Greek legislation belongs to the fourteenth insurance class and, based on the data of the IKA-ETAM, the average wage of the category of fitters or turners (Collective Labour Agreement (CLA) No. 69/18-07-2008) amounts to ***€48.51*** (according to the Article 65.6(a), the average wage of the SB is that of fitter or turner).

Consequently, the previous earnings for the SB per month amount to ***€1212.75*** (€48.51 × 25 days per month).

Since the SB for the social risk of old age is a man with a wife of pensionable age, and based on the available data, the minimum limit for pension in old age with a spouse corresponds to ***€523.37*** per month (minimum pension limits as of 01/10/2008 under IKA-ETAM).[808] Without a spouse, the amount per month comes to ***€486.84***.

Therefore, based on the model of Article 65 of C102 and of the ECSS, for earnings related benefits, the level of the national old-age benefit corresponds at least to **43.2%** of the previous earnings of the SB (€523.37 / €1212.75 × 100 = 43.16).

On the basis of the minimum pension limits, **Greece satisfies only C102 (40%) and the ECSS (40%). The percentages of the Protocol to the ECSS (45%), as well as of the Revised ECSS (65%) and of C128 (45%), are not achieved.**[809]

c. Invalidity

The Standard Beneficiary (SB), in the case of the invalidity benefit, based on the international social security instruments examined in this research (C102, the ECSS, the Protocol to the ECSS, C128 and the Revised ECSS) is a man with a wife and two children (under the Revised ECSS the possibility is given to countries to consider the SB as a person with no dependants). The invalidity benefit under national law should correspond in each of the international social security instruments to a specific percentage of the previous earnings of the SB.[810]

807 See the Tables in the Section 4.13, above.
808 See the description and the relevant Table in: Section 4.12, Sub-Section 4.12.6, above.
809 See the Tables in the Section 4.13, above.
810 See the Tables in the Section 4.13, above.

Once again here, the minimum pension limits (as of 01/10/2008 under IKA-ETAM)[811] are taken into account[812] for the calculation as in the case of the old-age benefit above.

Based on the available data, the minimum pension limit in case of invalidity for the SB comes to **€571.99**.[813]

The previous earnings of the SB in the fourteenth insurance class, amount to ***€1237.4*** (*€1212.75* (€48.51 × 25 days per month), plus *€24.65* (family benefits for the two children)).

Therefore, based on the basic calculation formula, the invalidity benefit provided by Greece corresponds approximately to **46.23%** of the previous earnings of the SB (€571.99 / €1237.4 × 100 = 46.23). On the basis of the minimum pension limits, **Greece satisfies C102 (40%) and the ECSS (40%). The percentages of the Protocol to the ECSS (50%), of C128 (50%), and of the Revised ECSS (65%) are not achieved**.[814]

d. Survivorship

The Standard Beneficiary (SB), in the case of the survivors' benefit, based on the international social security instruments examined in this research (C102, the ECSS, the Protocol to the ECSS, C128 and the Revised ECSS) is a widow with two children (under the Revised ECSS the possibility is given to countries to consider the SB as a person with no dependants). The invalidity benefit under national law should correspond in each of the international social security instruments to a specific percentage of the previous earnings of the SB.[815]

Once again, here, the minimum pension limits (as of 01/10/2008 under IKA-ETAM)[816] are taken into account,[817] as in the cases of old age and invalidity.

The SB belongs in the fourteenth insurance class, and his previous earnings amount to ***€1237.4*** (*€1212.75* (€48.51 × 25 days per month), plus *€24.65* (family benefits for the two children)).

The minimum pension limit for the spouse alone comes to ***€438.16*** per month.[818]

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811 See the description and the relevant Table in: Section 4.12, Sub-Section 4.12.6, above.
812 Due to the unavailability of data, the national benefit cannot be assessed at the real levels.
813 See the description and the relevant Table in Section 4.12, Sub-Section 4.12.6, above
814 See the Tables in the Section 4.13, above.
815 See the Tables in the Section 4.13, above.
816 See the description and the relevant Table in: Section 4.12, Sub-Section 4.12.6, above.
817 Due to the unavailability of data, the national benefit cannot be assessed at the real levels.
818 See the description and the relevant Table in: Section 4.12, Sub-Section 4.12.6, above.

For the SB the supplements given for the children are also taken into account. For each child a benefit is given, which corresponds to 20% of the minimum pension paid to the deceased pensioner – so, 20% of the amount of ***€438.16*** mentioned previously. This comes to **€613.42** (€438.16 + 1st child benefit (20% of €438.16) + 2nd child (20% of €438.16) ↔ €438.16 + €87.63 + €87.63 = €613.42).

Therefore, based on the basic calculation formula, the survivors' benefit provided by Greece corresponds approximately to **49.57%** of the previous earnings of the SB (€613.42/ €1237.4 × 100 = 49.57). On the basis of the minimum pension limits, **Greece satisfies C102 (40%) and the ECSS (40%), the Protocol to the ECSS (45%), as well as C128 (45%), but not the Revised ECSS (65%)**.[819]

e. Some tentative remarks on the indicative/approximate calculations of benefits

Taking into account the indicative calculations made above, and bearing in mind that in real terms the rate of the benefit (real pension) of the SB is higher, in general terms, the outcome shows that the percentages of the previous income are not that poor compared with the ISSS. Be that as it may, Greece does not satisfy its international obligation to provide the necessary calculations to the ILO and the CoE.

Since the entire Greek system is currently under modification, taking pensions as a starting point,[820] precise and analytical calculations of the replacement level for both long-term and short-term social security risks, and for all the international social security instruments (C102, ECSS, Protocol to the ECSS, C128 and Revised ECSS) ought to be made from the beginning, and based on the relevant forms conducted both by the ILO and the CoE, in order to assess whether the provisions under national social security legislation (and according to the introduction of any new national rules) are in accordance to the ISSS to be complied with by periodical payments.

4.15 BENEFIT REVISION

4.15.1 RE-ADJUSTMENT OF BENEFITS UNDER THE NATIONAL SOCIAL SECURITY LEGISLATION

Until the end of the 1980s, the so-called *automatic indexation method of benefit re-adjustment* (*Automati Timarithmiki Anaprosarmogi* (ATA)) was applied in Greece. This method of re-adjustment concerned all long-term social

819 See the Tables in the Section 4.13, above.
820 To this end, see the matters of concern raised in Chapter 5, Section 5.4, Sub-Section 5.4.1.

security benefits (invalidity, old-age, survivors' benefits, as well as employment injury benefits and occupational diseases). In 1990, this method of automatic re-adjustment, which was based on the developments of employment activity emoluments, was abolished. Instead, it was decided that for the largest number of social insurance funds, re-adjustment of long-term benefits would be based on the rate (%) of increase of the civil servants' pensions,[821] while for the rest of the social insurance funds on the income policy followed by the state.[822]

However, based on recent changes, and on the information provided in recent years by the Greek Ministerial Section for Relations with International Organizations,[823] the level of all old-age, invalidity and survivors' benefits provided by the IKA-ETAM, as well as the minimum rates of these benefits,[824] are to be re-adjusted every year by ministerial decision in accordance with the national income policy.[825] Similarly, for employment injury benefit, the adjustment is to be made according to the general increase in pensions following the government's income policy.

For the unemployment and family benefits, the Minister of Labour and Social Security is the one who decides whether or not an adjustment of the rate of these benefits is going to take place for the relevant year, based on a proposal submitted by the Administrative Council of the Manpower Employment Organization (OAED).[826]

Be that as it may, for the period from mid-2008 and for the year 2009 no annual re-adjustment of pensions took place and only certain ad hoc economic measures were adopted and implemented.[827]

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821 Therefore, since the adjustment of pensions has been based on the civil servants' pensions, they have not been based onto the consumer price index, as discussed also in Amitsis, G. (2003), p. 34.

822 See Greek Committee of Experts (1994), pp. 6–7; Hellenic Parliament (1990a), p. 1154.

823 Reference to this ministerial section is made Chapter 3, Section 3.2, Sub-Section 3.2.3.

824 Previously, as discussed in Greek literature, under the legislative framework of the IKA-ETAM, minimum pension limits had been established for old-age, invalidity and survivors' benefits, which were re-adjusted at a set date each year and according to the readjustment percentage of the civil servants' pensions (Article 66, Law No. 2084/2002). See Leontaris, M. (2007), p. 313. For an overview on the development of minimum pension limits for the period from 1980 to 2002, see Pan-Hellenic Federation Staff of Social Policy Organizations (POPOKP) (2010), pp. 10–19.

825 In General Secretariat of Social Security (2006), pp. 9, 17, 19. The same information is available in recent international data basis, namely: the adjustment of old-age, invalidity and survivors' benefits, as well as of employment injury benefits and occupational diseases is made according to the income policy determined annually by the government; in MISSOC (2009).

826 In MISSOC (2010). The OAED is also in charge of delivering these benefits. See, more on this issue below, Section 4.18.

827 In General Secretariat of Social Security (2009), p. 1–2.

More precisely, in its Resolution adopted in June 2009,[828] the Committee of Ministers of the CoE asked the Greek government (as well as all its other members) to provide detailed information on measures taken, or planned, with a view to maintaining the financial sustainability and reinforcing social protection for the most vulnerable population groups, in view also of the current financial and economic crisis.

Within this framework, the measures adopted by the Greek government, through the Ministry of Finance, mainly concerned relief for people with small pensions. In 2009 the competent Minister decided to grant pensioners an extraordinary lump sum benefit instead of the annual readjustment of pensions. In particular,[829] this lump sum benefit was granted to the pensioners of the social security funds falling under the competence of the General Secretariat of Social Security of the Ministry of Labour and Social Security with the monthly pension of June 2009 as presented in the table below:

Pension amount	Lump sum benefit
Less than or equal to €800.00	€500.00
€800.00 – €1,100.00	€300.00
More than €1,100.00	No Benefit

In order to grant this lump sum benefit, the level of the monthly pension of 31.12.2008 was taken into account (family benefits, benefits for absolute incapacity and paraplegic and quadriplegic benefits were excluded). The lump sum benefit was not subject to taxation and was not taken into consideration for the grant of the EKAS.[830]

Moreover, another extraordinary lump sum benefit was provided as financial aid to pensioners entitled to the EKAS and to pensioners of the OGA,[831] as well as to the long-term unemployed. This lump sum, popularly known as heating benefit, burdened the specific budget that was earmarked for financing, or subsidizing the National Fund of Social Cohesion (ETaKS). The grant of this social cohesion benefit aimed to help the citizens affected by the economic crisis. The sum of this aid oscillated, depending on the climatic conditions prevailing in the geographic regions of the country, between €100 and €200 per beneficiary.[832]

828 In Committee of Ministers (2009), p. 1.
829 Information included in General Secretariat of Social Security (2009), p. 1–2.
830 Concerning the EKAS, see Section 4.12, Sub-Section 4.12.6, above.
831 Concerning the OGA, see Chapter 3, Section 3.1, Sub-Section 3.1.1.
832 Information included in General Secretariat of Social Security (2009), p. 1–2.

4.15.2 RE-ADJUSTMENT OF BENEFITS ACCORDING TO THE INTERNATIONAL SOCIAL SECURITY STANDARDS

One of the main principles and requirements embodied in the second generation of social security standards[833] is that cash social security benefits should be paid periodically (at regular intervals) throughout the contingency; this, in principle, excludes lump sum payments.[834] However, another important principle, which is also, to a significant extent, related to the periodical payment of benefits, and has been incorporated in all the up-to-date ILO social security Conventions and international social security standard setting instruments of the CoE, is the one of periodical payment adjustment.[835]

More precisely,[836] both C102 and the ECSS, which have identical provisions (Articles 65§10 and 66§8), stipulate that at a national level, and for the states that have ratified these instruments, the rates of periodical payments for all long-term benefits (namely, invalidity, old-age, death of breadwinner and employment injury (except in case of incapacity for work)) *shall be reviewed* – put differently, re-adjusted regularly – *following substantial changes in the general level of earnings where these result from substantial changes in the cost of living*. However, this revision applies only to social security systems providing earnings-related, or flat-rate, benefits, and not to benefits that are subject to a means test. The Protocol to the ECSS contains no changes regarding the above-mentioned provisions.

Similarly, C128, Article 29, in relation to the long-term cash social security benefits (namely, invalidity, old-age and death of breadwinner) states that *the rates of cash benefits shall be reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living*. This way, it has led to a slight amendment of the corresponding texts in the previously mentioned international instruments, by introducing a reference *to substantial changes in the cost of living independently of substantial changes in the general level of earnings*. This intended to reckon the benefits' revision as decided without relation to earnings.[837] Moreover, C128 goes a step further by asking states to submit relevant statistical data (findings of such reviews) and specify actions taken in relation to the regular revision of the benefits.

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833 See Chapter 1, Sections 1.1 and 1.2.

834 See also Chapter 2, Section 2.5. Further discussion of the methods of protection under the ILO Conventions is available in Pennings, F. and Schulte, B. (2006), pp. 13–14.

835 See also Kulke, U. (2006), pp. 30–31.

836 An in-depth description and analysis of the international norms concerning the revision of long-term cash benefits' rates, both under C102 and C128, is also available in Chapter 2, Section 2.6.

837 To which the provisions of Article 28, of ILO Convention No. 128 in particular, apply, in International Labour Office (1966a), p. 75.

Last, in the Revised ECSS – Articles 71§12[838] and 72§10[839] – it is stated that the rate of current periodical payments for invalidity, old age, death of the breadwinner shall be reviewed, under prescribed conditions, following appreciable changes in the general level of earnings or in the cost of living. Similarly, such a revision shall take place in relation to the social risks of work accident and occupational disease (namely, in the following cases: for total loss of earning capacity, or partial loss thereof in excess of a prescribed degree, when such loss is likely to be permanent, or corresponding loss of faculty; in the event of the victim's death, the loss of support suffered by the surviving spouse and children). Thereafter, the Revised ECSS also contains Article 71§11 (such an equivalent provision exists neither in the ECSS, nor C102), according to which an *adjustment also of the reference earnings* taken into account when calculating the periodical payment for invalidity, old-age and death of the breadwinner must be made, while it postulates at the same time that the amount of previous earnings of claimants, or their breadwinners, which are taken into account for the calculation of the benefits, must be also reviewed following appreciable changes in the general level of earnings and/or in the cost of living.[840]

It should be noted that based on the previously described international provisions, and in relation to their application, the relevant procedure is determined under national legislation. This is explicitly stated under the Revised ECSS, while it is implied under the other international social security instruments. Be that as it may, regular re-adjustment of benefits needs to take place.

4.15.3 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

The above description of social security benefit re-adjustment under national social security legislation demonstrates that for a long time-period Greece fulfilled the relevant international social security standards. In particular, until 1990, Greece applied the automatic indexation of benefits method, which is internationally considered as the most appropriate method for long-term benefit re-adjustment, as it actually adjusts the benefit rates simultaneously both to inflation and to the cost of living.[841] In 1990, the method of re-adjustment changed. Initially, and for the largest social security funds, re-adjustment took place every year, on a set date, according to the readjustment percentage of the civil servants' pensions, while for

838 Article 71§12 is based on Article 65§10 both of the ECSS and C102.
839 Article 72§10 is based on Article 66§8 of the ECSS and of C102, as well as on the Article 29 of C128.
840 See also the explanatory report to the Revised ECSS, in Council of Europe (1998), pp. 97, 100.
841 See also Chapter 2, Section 2.6.

the rest, according to the governmental policy on income. This differentiation no longer exists, and until very recently (mid-2008), long-term benefits were re-adjusted by a ministerial decision based on income policy.

This actually reveals a decrease in the significance given by the state to social security benefit revision. Despite the fact that the decision to revise the benefits based on the income policy followed by the government every year is still fulfilling the international social security standards (the relevant provisions let states decide which method of benefit revision to apply, as long as this method guarantees the preservation of the living standards within the country (still, C128 requires the submission of the findings of such reviews and the specification of the actions taken in this respect)), the extent of the fulfilment has diminished in recent years. Moreover, re-adjusting the rates of benefits according to the income policy followed by the government leaves the government a lot of room for manoeuvre (i.e. politicians may follow the idea that inflation will decrease, however, the economic reality may be different, since inflation is affected by both the cost of living and level of earnings) and leads to insecurity amongst beneficiaries. Added to this, revision of the rates of benefits according to the re-adjustment percentage of the civil servants' pensions does not necessarily reflect the turns or changes in the economy.

Greece continued to fulfil the relevant international standards until mid-2008. Nevertheless, during the period from mid-2008 to mid-2009, the extent of this fulfilment diminished further. As described, the government decided not to follow the annual re-adjustment and to simply undertake *ad hoc* economic measures.

As the CEACR has observed, the increase in pensions should not be reviewed on an *ad hoc* basis, but should be tied directly to cost-of-living index. Opting for *ad hoc* adjustments or measures following the economic circumstances in a country does not guarantee beneficiaries the same degree of security.[842] Besides back in 1989, the CEACR published a General Observation on the proper application of C102, stressing, in particular, that the proper revision of the amount of long-term benefits should receive the utmost attention at a national level.[843]

[842] See, further, Chapter 2, Section 2.6. See also International Labour Office (1989), p. 93.
[843] See, further, CEACR (1989b); CEACR (1989c).

In this context, it should be noted that the aforementioned Committee of Ministers' invitation to indicate adopted measures, or to describe planned measures adopted at a national level in order to safeguard the financial sustainability of the social security system and reinforce social protection for the most vulnerable population groups in view of the current global economic crisis, should by no means considered as a form of permission, or recommendation given to Member States to substitute the commitment undertaken through the ratification of the ECSS to provide for regular adjustment of cash benefits with ad hoc economic policy measures.

Be that as it may, it is true that one of the general features of the 1990s concerning long-term benefits was the freezing of the inflation linked adjustment of benefits, so as to achieve immediate reductions in social security expenditure.[844]

Last, and particularly in relation to the Greek case, since 1990 and until 2007, concerns were expressed regarding the need to consider the proper revision of the long-term social security benefits. To this end, certain proposals were also made to the government(s), mainly by national social security experts, but also certain trade unions, to restore the automatic indexation method of benefit re-adjustment (*Automati Timarithmiki Anaprosarmogi* (ATA)), so as to ensure the long-term purchasing power of pensions.[845]

The annual long-term benefit re-adjustment through ministerial decision(s) and based on the government income policy may indeed be an accepted revision method. Still, most of the time, it does not provide for clarity, accuracy and safety. In order to ensure the principle of social solidarity, focus needs to be placed not only on the preservation of the purchasing power of the long-term benefits, but also (in a sense) on the transfer of part of the wealth stemming from the economy's annual production to the beneficiaries. In order for this to happen, benefit re-adjustment should be pre-determined, relying on appropriate index fingers (i.e. wages increases, GNP, unemployment and employment rates, population ageing, etc.).

844 See Gomez-Heredero, A. (2009a), p. 89.

845 See, for example, Greek Committee of Experts (2007), p. 7; Petroulas, P., Robolis, S. and Roupakiotis, C. (1992), p. 14; Ministry of Labour and Social Insurances (2001), p. 27.

PART IV
COMMON PROVISIONS

4.16 BENEFIT SUSPENSION

4.16.1 OLD-AGE BENEFIT

a. Cases of suspension under national social security legislation

According to national social security legislation, the payment of an old-age benefit may be suspended in the following cases:

- *Imprisonment*: when the pensioner serves a sentence of imprisonment, which lasts more than 6 months (and for its duration). Still, if there are persons who, in the case of death of the beneficiary, would be entitled to his/her pension, they have the right to receive the survivors' benefit (Article 29§7, Law No. 1846/1951).[846]
- *Engagement in any gainful activity*: based on the legislative framework of the IKA-ETAM, a number of restrictions exist if an old-age pensioner engages in any gainful activity:[847]
  - If the old-age pensioner fails to notify such intention to the IKA-ETAM and has not received written consent from the IKA-ETAM in advance. Engagement in any gainful activity without notification to the IKA-ETAM results in the suspension of the payment of the old-age benefit for 3 months, from the month following that in which the IKA-ETAM was informed of the employment (Article 11§3, Law No. 1976/1991).[848]
  - Persons who are entitled to an old-age benefit by the IKA-ETAM and who are engaged in a dependent employment relationship, for whom a maximum amount of earnings from work has been fixed, and when the earnings of the persons concerned exceed this prescribed amount,[849] the payment of the old-age benefit is suspended (Article 70§1, Law No. 2084/1992) (this measure, however, does not affect pensioners of low income).[850]

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846 See Official Gazette of the Hellenic Republic (1951), p. 31. See also Leontaris, M. (2007), p. 308; Lanaras, K. (2008), p. 534.

847 See General Secretariat of Social Security (2006), p. 9; Leontaris, M. (2007), pp. 308–310; Lanaras, K. (2008), pp. 534–535; Amitsis, G. (2003), p. 35; Kremalis, K. (2004), p. 132.

848 See Official Gazette of the Hellenic Republic (1991b), p. 3153.

849 The payment of the old-age benefit is suspended if the person earns more than 50 times the daily wage of an unskilled worker from dependent employment.

850 See Official Gazette of the Hellenic Republic (1992), p. 3037.

- For persons who have acquired the right to an old-age pension, or are began receiving an old-age pension after 05.01.1999,[851] who have not reached 55 years of age, and who have started working, the payment of the old-age benefit is suspended until they turn 55, and after turning 55, a reduction in the level of the old-age benefit takes place.[852] However, for persons who have acquired the right to an old-age pension, or are were in receipt of an old-age pension before 05.01.1999, irrespective of age, a reduction in the amount of the old-age benefit also takes place (Article 63§1, Law No. 1999).[853]

– The payment of old-age benefit is also suspended if *the beneficiary is a Greek liegeman, or expatriate from Egypt and Turkey* (retired according to the special provisions applied in such cases) and he/she has stayed abroad more than 6 months without any valid reason (Article 21, Law No. 997/1979).[854]

Last, it should be noted that under national social security legislation, the cases of suspension of the employment injury benefit and occupational disease benefit are the same as those described above for old-age benefit, and below for invalidity benefit.

b. Cases of suspension according to the international social security standards[855]

According to C102 (Article 69 (b)), social security benefits may be suspended to such an extent as may be prescribed 'as long as the person concerned is maintained at public expense, or at the expense of a social security institution or service,[856] subject to any portion of the benefit in excess of the value of such maintenance being granted to the dependants of the beneficiary.' Similar provisions are included in the ECSS (Article 68 (b)), C128 (Article 32§1 (b)) and the Revised ECSS (Article 74§1(g)).

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851 'Accumulation with earnings from a professional activity (earnings from work) is possible if this activity has been declared towards the competent administration. Persons retired before 5 January 1999: the pension exceeding 734 euro per month is paid with a reduction of 70% and there is no age condition. Persons retired after 5 January 1999: if they start working again being aged less than 55 (men and women), the payment of the pension is postponed until they reach 55 years of age; if they start working again and have age over 55 (men and women), the part of the pension exceeding 734 euro per month is paid with a reduction of 70%', in MISSOC (2010).

852 See also ISSA (2008), p. 124.

853 No such case of reduction is included in C128 or the Revised ECSS.

854 See Official Gazette of the Hellenic Republic (1979), pp. 2831–2832.

855 See also the description and analysis in Chapter 2, Section 2.9, Sub-Section 2.9.2.

856 For instance, in case the insured person stays in a rehabilitation centre for incapacitated employees, or in prison. See also Nickless. J. (2002), p. 69.

C102 (Article 69) and the ECSS (Article 68) enumerate the only permissible situations in which social security benefits may be suspended.[857] The suspension or the reduction of social security benefits when the protected person is engaged in gainful activity is not included within these situations. However, both C102 (Article 26§3 (Part V)) and the ECSS (Article 26§3 (Part V)) state that 'national laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if contributory, may be reduced where the earnings of the beneficiary exceed a prescribed amount and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.' Similarly, the Protocol to the ECSS (Article 26§3) states that 'national laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if he is engaged in any prescribed gainful activity, or that the benefit, if contributory, may be reduced whenever the earnings of the beneficiary exceed a prescribed amount.'

C128 states that 'the payment of invalidity, old-age or survivors' benefit may be suspended, under prescribed conditions, where the beneficiary is engaged in gainful activity' (Article 31§1). Moreover, it states that 'a contributory invalidity, old-age or survivors' benefit may be reduced where the earnings of the beneficiary exceed a prescribed amount; the reduction in benefit shall not exceed the earnings' (Article 31§2), as well as that '1. If a person protected is or would otherwise be eligible simultaneously for more than one of the benefits provided for in this Convention, these benefits may be reduced under prescribed conditions and within prescribed limits; the person protected shall receive in total at least the amount of the most favourable benefit; 2. If a person protected is or would otherwise be eligible for a benefit provided for in this Convention and is in receipt of another social security cash benefit for the same contingency, other than a family benefit, the benefit under this Convention may be reduced or suspended under prescribed conditions and within prescribed limits, subject to the part of the benefit which is reduced or suspended not exceeding the other benefit' (Article 33§1&2).[858]

Similarly, and based on the previously referred provision of C128, the Revised ECSS (Article 74(j)) stipulates that if the beneficiary engages in gainful activity at the same time as receiving invalidity, old-age or survivors' benefit, this may justify withholding, withdrawing or suspending the benefit concerned.[859] The level of economic activity needed before the benefit is withdrawn, withheld, or suspended is left to the discretion of the contracting party.[860]

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857 See also Nickless, J. (2002), p. 69.
858 See also Chapter 2, Section 2.9, Sub-Section 2.9.2.
859 See Council of Europe (1998), p. 105.
860 See Nickless, J. (2002), p. 70.

Furthermore, the Revised ECSS states that in order to prevent concurrent payment of cash social security benefits, 'where the person concerned receives another social security cash benefit other than a family benefit, or while that person receives compensation from a third party, such as for example a private insurance company, a third party responsible for the damage, employer, etc., the benefit may be suspended. However, the part of the benefit, which is suspended, must not exceed the total of the other benefits or compensation paid by a third party.' 'Concurrent drawing of two categories of benefit may justify suspension of a benefit only if both categories are paid to the same beneficiary. Similarly, the Parties are not obliged to pay family benefits for a family member who is entitled to such benefits paid by a third party.' 'A person who is not receiving any other benefit or compensation as a result of personal fault or negligence may nevertheless be deemed to be the beneficiary of this benefit or compensation.'[861]

Thereafter, both C102 (Article 69(a)) and the ECSS (Article 68(a)) allow the suspension of the benefit 'as long as the person concerned is absent from the territory of the Member.' However, as noted, the ECSS 'must be considered in the context of the other international treaties of the Council of Europe, including the instruments on co-ordination. The co-ordination mechanism established by the Council of Europe demands that certain long-term benefits, such as old-age and invalidity pensions can be exported to other states. This means that a person who has earned and is receiving an old age benefit in State A is entitled to move to State B and still receive the pension paid by the State A.'[862]

Equivalently, C128 (Article 32§1(a))[863] allows suspension of the benefit to such extent as may be prescribed 'as long as the person concerned is absent from the territory of the Member, except, under prescribed conditions, in the case of a contributory benefit', while in the Revised ECSS (Article 74(f)) 'the provision of benefit may be made conditional upon residence of the person concerned in the territory of the Party concerned; it is for this reason that the provision of benefit may be withheld, or suspended as long as the person concerned is absent from the territory in question without prejudice to contrary provisions in the various international coordination instruments by which the Party concerned is bound.'[864]

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861 See Council of Europe (1998), pp. 104–105.
862 See Nickless, J. (2002), p. 69.
863 See also Chapter 2, Section 2.9, Sub-Section 2.9.2.
864 See Council of Europe (1998), p. 104.

c. National Social Security Legislation and the International Social Security Standards

As described above, the old-age benefit is suspended when the old-age pensioner serves a sentence of imprisonment. In such a case, the person concerned is actually maintained at public expense. Hence, national legislation complies with the standards set in the international social security instruments. Similarly, with respect to the rest of the cases of suspension described under national social security legislation, contradictions do not exist and the relevant provisions are compatible with the international social security standards. Furthermore, it could be said that national legislation contains less strict requirements than the ones included under the international standards for reduction of the benefit.

4.16.2 INVALIDITY BENEFIT

a. Cases of suspension and cessation under national social security legislation

According to national social security legislation, the payment of an invalidity benefit may be suspended or ceased in the following cases:

- The invalidity benefit is suspended for as long as the pensioner does not undertake the appropriate health examinations for the assessment of invalidity (as set out in the relevant Regulation (Article 18) of the IKA-ETAM (Article 29§7, Law No. 1846/1951)).[865]
- Moreover, the payment of the invalidity benefit is suspended if the invalid has been convicted.[866] In other words, if the invalidity pensioner serves a sentence of imprisonment[867] of more than 6 months, the payment of the invalidity benefit is suspended for the duration (Article 29§7(a), Law No. 1846/1951).[868] However, if the invalidity pensioner has only been taken into custody – meaning no custodial sentence has been passed – the payment of the invalidity benefit continues.[869] Last, if there are persons depending on the invalidity pensioner, who, in case of his/her death, would be entitled to receive a survivors' benefit, they have the right to receive the invalidity benefit (the period during which the invalidity pensioner is imprisoned is taken as if he/she were dead).[870]

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865 See Official Gazette of the Hellenic Republic (1951), p. 31. See also Lanaras, K. (2008), p. 534; Stergiou, A. (1999), p. 399.

866 See Stergiou, A. (1999), p. 398.

867 As already referred previously, imprisonment consists of a case for suspension of the payment of the old-age benefit as well.

868 See Official Gazette of the Hellenic Republic (1951), p. 31.

869 See Leontaris, M. (2007), p. 308; Lanaras, K. (2008), p. 534; Stergiou, A. (1999), p. 398.

870 See Leontaris, M. (2007), p. 308; Lanaras, K. (2008), p. 534.

– In relation to the engagement of the invalid in any gainful activity,[871] according to Article 63§2 of Law No. 2676/1999,[872] the payment of invalidity benefit is suspended as soon as the person in receipt of invalidity benefit engages in any gainful activity and earns from it – depending on the degree of invalidity – more than what a healthy person engaged in such an activity would earn.[873] It should, however, be noted that the interruption of invalidity benefit payment is different from the suspension of the benefit, since if the payment is interrupted it will not be paid again automatically upon the cessation of the gainful activity, but only after a new assessment has been made by the competent social insurance organization.[874]
  Furthermore, based on Article 41 of Law No. 2084/1992,[875] the invalidity benefit used to be suspended if the invalidity pensioner engaged in any gainful activity without notifying the IKA-ETAM of this. However, based on Article 63 of Law No. 2676/1999,[876] the invalidity benefit is no longer suspended, but if they do not notify the IKA-ETAM of their employment, they are obliged to pay the whole amount of the invalidity benefit they have been receiving during their employment,[877] and a further fine is set by ministerial decision.[878]
– The payment of the invalidity benefit to the directly insured person ceases on his death, or as soon as he/she becomes able to work (the same rules apply in the case of benefit payment re-adjustment) (Article 29§6, Law No. 1846/1951 as completed by the Article 16§3, Law No. 4497/1966).[879]

b. Cases of suspension according to the international social security standards[880]

C102 (Article 69 (g)), the ECSS (Article 68 (g)), C128 (Article 32§1(f)) and the Revised ECSS (Article 74 (d)) stipulate that the provision of the social security benefits may be suspended if the protected person, without good reason, neglects to make use of the medical and rehabilitation services at his/her disposal, or fails

871 As already stated, engagement in any gainful activity consists of a case for suspension of the payment of the old-age benefit as well.
872 See Official Gazette of the Hellenic Republic (1999), p. 30.
873 See also MISSOC (2010).
874 See Lanaras, K. (2008), pp. 535–536; Stergiou, A. (1999), pp. 246–259, 396; MISSOC (2009).
875 See Official Gazette of the Hellenic Republic (1992), p. 3024.
876 See Official Gazette of the Hellenic Republic (1999), p. 30.
877 The accumulation of earnings from professional activity is permitted if the activity has been declared to the competent administration. In the case of non-declaration, the pensioner is prosecuted and asked to pay back the pension already paid; in MISSOC (2010).
878 See General Secretariat of Social Security (2006), p. 9; Leontaris, M. (2007), pp. 308–310; Lanaras, K. (2008), pp. 534–535; Stergiou, A. (1999), pp. 245–259, 398.
879 See Official Gazette of the Hellenic Republic (1951), p. 31; Official Gazette of the Hellenic Republic (1966), p. 210. See also in: Leontaris, M. (2007), p. 308.
880 See also the description and analysis in Chapter 2, Section 2.9, Sub-Section 2.9.2.

to comply with rules prescribed for verifying the occurrence or continuance of the contingency, or for the conduct of beneficiaries.

According to C102 (Article 69 (b)), social security benefits may be suspended to such an extent as may be prescribed 'as long as the person concerned is maintained at public expense, or at the expense of a social security institution or service,[881] subject to any portion of the benefit in excess of the value of such maintenance being granted to the dependants of the beneficiary.' Similar provisions are included in the ECSS (Article 68 (b)), C128 (Article 32§1 (b)) and the Revised ECSS (Article 74§1(g)).

Moreover, in C102 (Article 69 (e)), the ECSS (Article 68 (e)), C128 (Article 32§1 (d)) and the Revised ECSS (Article 74 (a)), it is stated that social security benefits may be suspended to such an extent as may be prescribed where the contingency has been caused by a criminal offence committed by the person concerned. In other words, the social security benefits may be if the contingency was caused while the recipient was committing a criminal offence.[882]

As previously mentioned, C102 (Article 69) and the ECSS (Article 68) enumerate the only permissible situations in which social security benefits may be suspended.[883] The suspension of social security benefits if the protected person is engaged in gainful activity is not included in these situations. On the contrary, C128 (Article 31§1) states that 'the payment of invalidity, old-age or survivors' benefit may be suspended, under prescribed conditions, where the beneficiary is engaged in gainful activity.' Similarly, and based on the aforementioned provision of C128, the Revised ECSS (Article 74 (j)) stipulates that if the beneficiary engages in gainful activity at the same time as receiving invalidity, old-age or survivors' benefit, this may justify withholding, withdrawing or suspending the benefit concerned.[884]

c. National social security legislation and the international social security standards

Since the invalidity benefit is suspended for as long as the pensioner does not undertake the appropriate health examinations for the assessment of invalidity, national social security legislation complies with the standards set in the pre-mentioned international legal instruments.

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881 For instance, if the insured person stays in a rehabilitation centre for incapacitated employees, or in prison. See also Nickless, J. (2002), p. 69.

882 See also Nickless, J. (2002), p. 69.

883 See also Nickless, J. (2002), p. 69.

884 See Council of Europe (1998), p. 105.

Going further, and as described above, the invalidity benefit is suspended when the invalid serves a sentence of imprisonment of more than 6 months, and for the duration. Consequently, national legislation once again complies with the standards set in the international instruments.

It is also worth recalling at this point that two different cases of benefit suspension are allowed based on the international social security standards. One refers to the case that the beneficiary is kept at public expense, which covers the suspension of the benefit in the case of imprisonment. The other relates to a criminal offence, which covers the case when the beneficiary became invalid during the commission a criminal offence. In such a case, the benefit may be also suspended. The fact that national social security legislation does not specify, in a straightforward way, that the benefit is suspended when the person became invalid while committing a criminal offence also leads to the conclusion that the legislation is in line with the international standards. Thus, in other words, national legislation also covers the case of benefit suspension when the person is already an invalid, commits a criminal offence, and is imprisoned.

However, national social security legislation does not seem to be in full compliance with the international standards set under the relevant provisions of C102 and the ECSS, since it states that the payment of the invalidity benefit may be suspended if the invalid engages in any gainful activity. However, it fulfils the social security standards set under C128 and the Revised ECSS, which allow the suspension of the invalidity benefit if the person engages in gainful activity.

4.16.3 SURVIVORS' BENEFIT

a. Cases of suspension, cessation and reduction under national social security legislation

According to national social security legislation, the following cases of survivors' benefit suspension, cessation, or reduction have been recognized:[885]

– The persons with the right to a survivors' benefit are deprived of this right if they have been condemned in a criminal court for an act which resulted to the death of the directly insured person, or pensioner (Article 28§13, Law No. 1846/1951).[886] It should be noted, however, that the baseness of one beneficiary does not affect the right of the other beneficiaries to receive the survivors' benefit.

[885] See also Lanaras, K. (2008), p. 486; Leontaris, M. (2007), pp. 534–535.
[886] See Official Gazette of the Hellenic Republic (1951), p. 30.

- For persons who have acquired the right to a survivors' pension, or who have been in receipt of a survivors' pension since 05.01.1999, and are not yet 55 years old and who have started working, the payment of the survivors' benefit is suspended until they reach 55 years of age, and after turning 55 a reduction in the level of survivors' benefit takes place. However, for persons who have acquired the right to a survivors' pension, or who were in receipt of a survivors' pension until 05.01.1999, irrespective of reaching a certain age, a reduction to the level of old-age benefit also takes place (Article 63§1, Law No. 2676/1999).[887]
- It is also stated that the payment of the survivors' benefit to a widow ceases as soon as she remarries (Article 29, Law No. 1846/1951)[888] (the right to a survivors' benefit is not re-established for the first spouse in the case of the death of the second spouse).[889]

b. Cases of suspension according to the international social security standards[890]

According to C102 (Article 69 (e)), the ECSS (Article 68 (e)), C128 (Article 32§1(d)) and the Revised ECSS (Article 74(a)), social security benefits may be suspended to such an extent as may be prescribed where the contingency has been caused by a criminal offence committed by the person concerned. In other words, the social security benefits may be suspended if the contingency was caused while the recipient was committing a criminal offence.[891]

As previously mentioned, C102 (Article 69) and the ECSS (Article 68) enumerate the only permissible situations in which social security benefits may be suspended.[892] The suspension or the reduction of social security benefits in the case that the protected person is engaged in gainful activity is not included within these situations. However, both C102 (Article 60§2 (Part X)) and the ECSS (Article 60§2 (Part X)) state that 'national laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if contributory, may be reduced where the earnings of the beneficiary exceed a prescribed amount and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.'

887 See Official Gazette of the Hellenic Republic (1999), pp. 29–30. See also in: Lanaras, K. (2008), p. 486; Leontaris, M. (2007), p. 309.
888 See Official Gazette of the Hellenic Republic (1951), p. 31.
889 See also Leontaris, M. (2007), p. 307. Lanaras, K. (2008), p. 533.
890 See also the description and analysis in Chapter 2, Section 2.9, Sub-Section 2.9.2.
891 See also Nickless, J. (2002), p. 69.
892 See also Nickless, J. (2002), p. 69.

C128 states that 'the payment of invalidity, old-age or survivors' benefit may be suspended, under prescribed conditions, where the beneficiary is engaged in gainful activity' (Article 31§1). Moreover, it states that 'a contributory invalidity, old-age or survivors' benefit may be reduced where the earnings of the beneficiary exceed a prescribed amount; the reduction in benefit shall not exceed the earnings' (Article 31§2), as well as that '1. If a person protected is or would otherwise be eligible simultaneously for more than one of the benefits provided for in this Convention, these benefits may be reduced under prescribed conditions and within prescribed limits; the person protected shall receive in total at least the amount of the most favourable benefit; 2. If a person protected is or would otherwise be eligible for a benefit provided for in this Convention and is in receipt of another social security cash benefit for the same contingency, other than a family benefit, the benefit under this Convention may be reduced or suspended under prescribed conditions and within prescribed limits, subject to the part of the benefit which is reduced or suspended not exceeding the other benefit' (Article 33§1&2).

Similarly, and based on the aforementioned provision of C128, the Revised ECSS (Article 74(j)) stipulates that if the beneficiary engages in gainful activity at the same time as receiving invalidity, old-age or survivors' benefit, this may justify withholding, withdrawing or suspending the benefit concerned.[893] The level of economic activity needed before the benefit is withdrawn, withheld, or suspended is left to the discretion of the contracting party.[894]

Furthermore, the Revised ECSS states that in order to prevent concurrent payment of cash social security benefits, 'where the person concerned receives another social security cash benefit other than a family benefit, or while that person receives compensation from a third party, such as for example a private insurance company, a third party responsible for the damage, employer, etc., the benefit may be suspended. However, the part of the benefit which is suspended must not exceed the total of the other benefits or compensation paid by a third party.' 'Concurrent drawing of two categories of benefit may justify suspension of a benefit only if both categories are paid to the same beneficiary. Similarly, the Parties are not obliged to pay family benefits for a family member who is entitled to such benefits paid by a third party'. 'A person who is not receiving any other benefit or compensation as a result of personal fault or negligence may nevertheless be deemed to be the beneficiary of this benefit or compensation.'[895]

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893 See Council of Europe (1998), p. 105.
894 See Nickless, J. (2002), p. 70.
895 See Council of Europe (1998), pp. 104–105.

Last, C102 (Article 69 (j)) and the ECSS (Article 68 (j)) state that the benefit may be suspended to such an extent as may be prescribed 'in the case of survivors' benefit, as long as the widow is living with a man as his wife.' C128 (Article 32§1 (g)) equally states that the benefit may be suspended to such extent as may be prescribed 'in the case of survivors' benefit for a widow, as long as she is living with a man as his wife.' Similarly, the Revised ECSS (Article 74§1 (i)) recognizes that the benefit may be withheld, withdrawn or suspended, to a prescribed extent 'in the case of benefit payable to a surviving spouse, for as long as the surviving spouse cohabits with another person.' The payment of the survivors' benefit must start when the surviving spouse ceases to cohabit, and the definition of 'cohabit' is determined by national law. Moreover, the survivors' benefit payable to the surviving child may not be withheld or suspended on the grounds that the surviving parent is cohabiting.[896] This equally applies for the other international social security instruments.

c. National social security legislation and the international social security standards

As described above, the survivors' benefit is suspended if the persons eligible to the survivors' benefit have been condemned in a criminal court for an act that resulted to the death of the directly insured person, or pensioner. Hence, national social security legislation is in compliance with the social security standards set in the international instruments. Similarly, national social security legislation fulfils the international social security standards described above in the case of remarriage.

Thereafter, national legislation complies with the international social security standards set in C102 and the ECSS, since it is stated that the payment of the survivors' benefit is suspended if the persons eligible start working. However, it seems not to fully comply with the standards due to the fact that while the standards allow only for a reduction where the earnings of the beneficiary exceed a prescribed amount, national legislation reduces the survivors' benefit based on age criteria.

Similarly, national legislation fulfils the international social security standards set under C128 and the Revised ECSS, to a certain extent. In particular, under C128 (Article 31§1), the payment of the survivors' benefit may be suspended under prescribed conditions (law and regulations set at a national level) if the protected person engages in gainful activity. Similarly, the Revised ECSS allows for such a suspension (Article 74 (j))). Consequently, Greek social security legislation complies with the international standards in this respect. However, C128 in the

[896] See Council of Europe (1998), p. 105.

case of a contributory old-age benefit only permits a reduction where the earnings coming from the protected person's economic activity exceed an amount set at the national level (Article 31§2), and does not permit suspension of the benefit. However, national legislation (as seen above) in such a case allows for a reduction of the contributory benefit based on age criteria.

Thus, overall it could be said that national social security legislation has simply less strict requirements than the ones set in the ISSS concerning the reduction of the benefit, and with respect to the cases of suspension, the national legislation stands at a better level in relation to the international standards.

4.16.4 UNEMPLOYMENT BENEFIT

a. Cases of suspension under national social security legislation

According to national social security legislation, the payment of an unemployment benefit may be suspended in the following cases:

- Voluntary unemployment (put differently, the situation in which the unemployment status of a person has been brought about by personal choice), voluntary termination of working status, or loss of work caused by a person's own responsibility (fault). On the occurrence of these aforementioned cases, the social risk of unemployment is not covered by national legislation.[897] Moreover, if unemployment is the immediate result of a strike, which actually led the employer to suspend his/her activities, the personnel going on strike are not entitled to any unemployment grants for the period that the employer's activities have been suspended (Article 16§3 of Legislative Decree 2961/1954).[898]
- Thereafter, the unemployment benefit is suspended when the beneficiary does not respond to 3 calls offering them a job, or an employment opportunity.[899] Suspension of the benefit also takes place when the beneficiary does not respond to 3 calls offering a vocational training opportunity (Presidential Decree 679/1982).[900]
- Furthermore, the unemployment benefit is suspended 'if the unemployed has undertaken work (dependent or not), if he/she became temporarily unable

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897 See Council of Europe (1993b), p. 2; Council of Europe (1997), p. 3; Council of Europe (2001b), p. 3. General Secretariat of Social Security (2003), p. 3. See also in: Kremalis, K. (2004), p. 111.

898 See Official Gazette of the Hellenic Republic (1954), p. 1598. See also Kremalis, K. (2004), p. 111.

899 See Council of Europe (2006), p. 351; MISSOC (2008).

900 See Council of Europe (1997), p. 3; Council of Europe (2001b), p. 3; MISSOC (2008); Official Gazette of the Hellenic Republic (1982), p. 1216; General Secretariat of Social Security (2003), p. 3.

to work, and if he/she is not available to enter the labour market (i.e. due to military service (if he is enlisted, or is retraining, etc.). The benefit is also interrupted if the unemployed dies, or becomes a pensioner, if in parallel to his subsidy works (dependent or not). In such cases, in order to become beneficiary, the insured has again to create new conditions.'[901]

– Last, the unemployment benefit is also suspended when the unemployed becomes sick, and for as long as he/she is entitled to cash sickness benefit from the relevant sickness insurance branch; if he/she retires, or a degree of invalidity is detected (in such a case and depending on the degree of invalidity giving entitlement to an invalidity benefit, the invalidity is paid instead of the unemployment benefit); or if he/she dies.[902]

b. Cases of suspension according to the international social security standards

With regard to unemployment benefit, certain cases are set out, which once recognized, the unemployment benefit may be refused, withdrawn, suspended, or reduced. These cases, in sum, relate to the deliberate cause of one's dismissal, or voluntary abandonment of one's employment without just cause.[903]

In particular, based on Article 68(h) & (i) of the ECSS (the Protocol to the ECSS introduces no changes to this part of the ECSS), Article 69(h) & (i) of C102 and Article 74§1(e) of the Revised ECSS, unemployment benefit may be suspended when the beneficiary: has stopped his/her work in order to take part in a labour dispute and the loss of his/her job is the result of such a dispute; has voluntarily left his/her job (this is the case in so-called voluntary unemployment); or has not made use of the employment services at his disposal.[904]

c. National social security legislation and the international social security standards

The provisions included in the national social security legislation concerning the cases of suspension of the unemployment benefit are compatible with the social security standards set under the international instruments.

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901 See Council of Europe (1993b), p. 2.
902 See also Leontaris, M. (2007), p. 422.
903 See also Kulke, U. (2006), p. 31.
904 See Nickless, J. (2002), pp. 69–70; Council of Europe (1998), p. 104.

4.16.5 FAMILY BENEFIT

a. Cases of suspension under national social security legislation

According to national social security legislation, the only applicable case of family benefit suspension pertains to the interruption of its provision as of the first day of the next year of subsidy if: (a) the child died, or (b) the child has moved away from Greece, or from a Member State of the European Union (EU), for a period of longer than 6 months.[905]

b. Cases of suspension according to the international social security standards

Article 68 of the ECSS, Article 69 of C102 and Article 74 of the Revised ECSS (these Articles form part of the Common Provisions included in each of the international social security instruments mentioned previously, and determine the cases in which a benefit may be suspended) are not applicable in the case of family benefits. The Protocol to the ECSS introduces no changes to this part of the ECSS.

c. National social security legislation and the international social security standards

The national social security legislation does not contradict the social security standards set under the international instruments in relation to the suspension of the family benefit.

4.16.6 SICKNESS BENEFIT – MEDICAL CARE – MATERNITY BENEFIT

a. Cases of suspension under national social security legislation

According to national social security legislation, sickness benefit is suspended only if the directly insured person is responsible for the deterioration of his health condition. No cases of benefit suspension are set out for the social risks of medical care and maternity.

[905] See General Secretariat of Social Security (2003), p. 4; Council of Europe (2001b), p. 6; Council of Europe (1997b), p. 6.

b. Cases of suspension according to the international social security standards

With regard to the suspension of sickness benefit, the following international social security standards are relevant: Article 68(g) of the ECSS (the Protocol to the ECSS introduces no changes to this part of the ECSS), Article 69(g) of C102 and Article 74§1(d) of the Revised ECSS (these Articles form part of the Common Provisions included in each international social security instrument mentioned previously, and determine the cases in which a benefit may be suspended). The bottom line in all these provisions is that when the beneficiary neglects to make use of the medical or rehabilitation services at his disposal, or fails to comply with rules prescribed under national social security legislation with the aim of verifying the occurrence or continuance of the contingency, or for the conduct of the beneficiaries, the benefit may be suspended.

c. National social security legislation and the international social security standards

The national social security legislation fulfils the standards set under the international instruments in relation to the suspension of sickness benefit. Thereafter, and in relation to medical care and maternity benefit, Article 68 of the ECSS (the Protocol introduces no changes to this part of the ECSS), Article 69 of C102 and Article 74 of the Revised ECSS are not applicable.

4.17 THE RIGHT OF APPEAL

4.17.1 THE RIGHT OF APPEAL UNDER NATIONAL SOCIAL SECURITY LEGISLATION[906]

The Directors of each branch of the IKA-ETAM have the competence to decide on any social insurance matter.[907] Such decisions may, for example, concern benefit refusal, complaints on the quality or quantity of a benefit, etc. They can do so either by virtue of position, or as soon as a relevant application has been submitted. However, the interested parties – employers and insured persons – have the right to appeal against the decision(s) taken by the Directors through the submission of a remedy application. The remedy application needs to be submitted, however, within 30 days of the day the decision was announced. Exceptionally, if the

[906] For the composition of this section the following works have been also consulted: Lanaras, K. (2008), pp. 336–345; Leontaris, M. (2007), pp. 52–59; General Secretariat of Social Security (2006), pp. 23–24; Council of Europe (2001), p. 34; Council of Europe (1993), pp. 19–20; Kremalis, K. (2004), pp. 179–185; Amitsis, G. (2003), p. 53.

[907] Article 14§8, Law No. 1846/1951, see Official Gazette of the Hellenic Republic (1951), p. 14.

decision involves pension rights, the deadline for the submission of the remedy application is extended to 3 months.[908]

It should be noted here that if a remedy application has not been submitted against a decision taken by the IKA-ETAM Director and within the set deadline, the Director's decision becomes final and the interested party (employer, or insured person) does not have the right to appeal before the administrative courts (see, further, below).[909]

It is the so-called Local Administrative Committee (LAC)[910] that deals with the remedy application. Such a Committee exists in each IKA-ETAM branch, and its composition is tripartite – representatives of the insured persons, the employers and the state. The LAC examines the case anew. The summoning of the person who has submitted the remedy application (either the insured person or the employer) is obligatory. This way, the applicant is given the opportunity to set out his/her case, either in person, or through a representative, or an attorney.

It is worth mentioning that generally the remedy applications are subject to tax stamp (stamp duty). Nevertheless, an exception exists for the remedy applications submitted by insured persons and appealing a decision(s) taken by the IKA-ETAM Director pertaining to issues such as the affiliation of the insured person to the IKA-ETAM; the recognition of social insurance time; the provision, reduction, or limitation of social security provisions, etc.[911] Such applications are free of charge.

If the LAC rejects the remedy application, the interested party has the right to appeal to the administrative courts of first instance. These courts examine the legitimacy and correctness of the judgment given by the LAC. The Director of the IKA-ETAM branch also has the right to appeal to the administrative courts of first instance, if he/she considers that the decision taken by the LAC is not in line with the law.[912] However, the right of appeal must be exercised within a specific

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908 'Internal remedies can also be assessed by the services of the Greek Ombudsman, introduced in 1996. According to the administrative organization of this legal body, disputes between the administration and the citizens in cases relating to social insurance, welfare and health care issues are examined by the social administration department', in Amitsis, G. (2003), p. 53.

909 In Lanaras, K. (2008), p. 342.

910 The exact composition of the Local Administrative Committee (LAC) is determined in Article 13§1 of the Law No. 825/1978, as replaced by Article 48 of Law No. 2676/1999. See Official Gazette of the Hellenic Republic (1999), pp. 22–23.

911 Article 19§3, Law No. 1882/1990. See Official Gazette of the Hellenic Republic (1990e), p. 342.

912 Article 7§1, 2 and 3, Law No. 702/1977, see Official Gazette of the Hellenic Republic (1977a), pp. 2496–2497. Article 2§2, Law No. 733/1977, see Official Gazette of the Hellenic Republic (1977b), p. 2868; Article 6§8, Law No. 1649/1986, see Official Gazette of the Hellenic Republic (1986), p. 3177.

deadline.[913] The deadline is 60 days for persons living within the Greek territory, and 90 days for those living abroad. Moreover, the presence of the litigating parties in the administrative court is not obligatory, but optional.[914] In any case, though, they have the right to be represented, or assisted by a person of their choice. In most of the cases, the interested parties are represented by their lawyers, and the Director, by an advisor, or consultant, etc.

Last, an appeal against a decision taken by the administrative courts of first instance[915] can be also made to the three-member administrative appellate courts,[916] as well as to the Council of the State.[917]

4.17.2 THE RIGHT OF APPEAL ACCORDING TO THE INTERNATIONAL SOCIAL SECURITY STANDARDS[918]

Both C102 (Article 70)[919] and C128 (Article 34)[920] recognize the right of appeal of every claimant in the case of refusal of a benefit, or a complaint as to its quality (for benefits in kind) or quantity (for benefits in cash) (Article 70§1 and Article 34§1

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913 It should be also noted that bringing an appeal before the administrative courts of first instance does not automatically result in a stay of execution of the decision taken by the LAC (Article 20, Law No. 2972/2001, see Official Gazette of the Hellenic Republic (2001), p. 4029. There is a separate procedure that needs to be followed so as to achieve stay of execution for a decision taken by a LAC. See Lanaras, K. (2008), p. 343; Leontaris, M. (2007), pp. 58–59.

914 Articles 11 and 12/ Presidential Decree 341/1972. See also Official Gazette of the Hellenic Republic (1978), pp. 646–647.

915 The exact procedure of appeal against a decision taken by the administrative courts of first instance is specified in the so-called Code of Administrative Adjective Law (Law No. 2717/1999). See Official Gazette of the Hellenic Republic (1999d), pp. 1747–1798.

916 Article 20, Law No. 1868/1989, see Official Gazette of the Hellenic Republic (1989b), pp. 4686–4687.

917 'The Council of the State only decides on points of law, judging exclusively upon the legality of the litigious decision', in Amitsis, G. (2003), p. 53.

918 Concerning the international social security standards set in relation to the right of appeal, see also Chapter 2, Section 2.9, Sub-Section 2.9.3. A short reference to the right of appeal is also available in Kulke, U. (2006), p. 31.

919 Article 70 states: '1. Every claimant shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity. 2. Where in the application of this Convention a Government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this Article may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority. 3. Where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented, no right of appeal shall be required.'

920 Article 34 states: '1. every claimant shall have a right of appeal in the case of refusal of benefit or complaint as to its quality or quantity. 2. Procedures shall be prescribed which permit the claimant to be represented or assisted, where appropriate, by a qualified person of his choice or by a delegate of an organisation representative of persons protected.'

respectively). As a matter of fact, all the ILO Conventions following the adoption of C102 recognize the right of appeal to every claimant.

Based on the preparatory work for the adoption of C128 it was noted that the right of appeal should be interpreted in the terms that a decision would have been final in the absence of the right of appeal. Moreover, the concept of recourse implies that the matter must be determined by an authority that is independent from the administrative authority that made the initial decision. In other words, only recognizing the right of the claimant to ask for a re-examination of the decision, by the authority that initially took the decision, does not constitute an appeal procedure.[921]

C102 further stipulates that if, within the country, a government department responsible to the legislature is entrusted with the medical care administration, the existence of the right of appeal is not necessary and the right of appeal can be replaced by the right to submit a complaint concerning the refusal of medical care, or the quality of the care received investigated by the appropriate authority (Article 70§2). Furthermore, if the claim of the beneficiary is settled by a *special tribunal*, the existence of the right of appeal is once again not required, as long as the established special tribunal is also composed of representatives of the insured persons (Article 70§3).

Similarly, C128 states – apart from the fact that the right of appeal should be recognized in any case – that the beneficiaries, when deciding to issue a claim, also have the right to be represented or assisted by a qualified person of their choice or by a delegate of an organization representing them (Article 34§2) (i.e. trade union, association of insured persons, etc.), and national legislation should explicitly detail such procedures.

It should be also noted that the obligation to recognize the right of appeal automatically involves respect for certain basic principles consisting of prerequisites for the proper realization of this right. Such principles pertain to the fact that an appeal procedure should be expeditious, free of charge, the appeal authority should be independent, and the claimant should have the right to be represented or assisted by a qualified person of his choice.[922]

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921 In International Labour Office (1965), p. 68. See also International Labour Office (1989), p. 101; Humblet, M. and Silva, R. (2002), p. 14; Kulke, U. (2006), p. 31.

922 In International Labour Office (1965), p. 68. See also International Labour Office (1989), pp. 102–103.

According to Article 69[923] of the ECSS, every claimant has the right to make an appeal 'against the refusal of a benefit or the quantity or quality (as regards benefits in-kind) of a benefit that has been allocated. If this appeal process is dealt with by an independent tribunal specially established to deal with social security issues no right of appeal need exist from this tribunal provided that representatives of the insured persons sit upon it.'[924] The Protocol to the ECSS introduces no changes concerning the right of appeal in relation to the ECSS.

Finally, the right of appeal of every claimant is once again recognized in the Revised ECSS. In particular, Article 75[925] of the Revised ECSS – based on Article 69 of the ECSS – has a general scope and applies to all social security benefits, with no distinction. It states that an appeal may be brought to the competent jurisdiction against any decision taken by a social security institution pertaining to the withholding, withdrawal, or suspension of a benefit, or even against any decision, which brings into dispute the nature or the level of the social security benefits (both in cash and in kind). Moreover, it stipulates that the right of appeal should, in principle, be free of charge, according to the conditions laid down in national legislation. However, if it is possible for the claimant to initially make a free appeal to a competent body, certain charges may be set by the national legislation.

It should be noted that Article 75 of the Revised ECSS goes one step further in relation to Article 69 of the ECSS, since it provides that national legislation has the obligation to recognize the right of the claimant of the benefit to be represented or assisted by any qualified person of his/her choice (i.e. a lawyer), or by a delegate of an organization representing the persons protected (i.e. trade union, association of insured persons, etc.).[926] As already seen above, this provision of the Revised ECSS (Article 75§2) is the same with the one incorporated into C128 (Article 34§2).

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923 Article 69 states: '1. Every claimant shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity. 2. Where in the application of this Code a government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this article may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority. 3. Where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented, no right of appeal shall be required.'

924 In Nickless, J. (2002), p. 69.

925 Article 75 states: '1. In the event of a benefit being withheld, suspended or withdrawn, or in the event of disputes as to its nature and amount, any claimant shall have the right to appeal to the competent jurisdiction. This appeal shall in principle be free of charge, subject to the conditions prescribed unless the person concerned has a prior right of appeal free of charge to a competent authority. 2. Prescribed procedures shall enable the claimant to be represented or assisted by a qualified person of his choice or by a delegate of an organisation representing the persons protected.'

926 See Council of Europe (1998), p. 106.

4.17.3 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

Greek social security legislation is compatible with the requirements set regarding the right of appeal under the instruments of international social security law described above. All the persons covered by the IKA-ETAM have the right of appeal in the case of refusal of a benefit, or a complaint regarding its quality or quantity (Article 70§1 C102, Article 34§1 C128, Article 69§1 ECSS, Article 75§1 Revised ECSS).

The decision of an IKA-ETAM Director becomes final only after a specific time period. As already stated, the interested parties – employers and insured persons – have the right to raise an objection against a decision taken by the Director through the submission of a remedy application, which has to be submitted within 30 days of the day that the decision was announced, and when the decision involves pension rights, the deadline for the submission of the remedy application is extended to 3 months. The application is examined by a special tribunal called a Local Administrative Committee (LAC), which is an independent body, and has a *tripartite* composition – representatives of the insured persons, the employers and the state. The LAC has the obligation to invite the applicant to the examination of his/her remedy application, and he/she can decide to be present in person and to state his/her case, or to be present but assisted by a lawyer or by another representative; or he/she can choose not to be present and to have a representative or a lawyer speak on his/her behalf (Article 70§2&3 C102, Article 34§2 C128, Article 69§2&3 ECSS, Article 75§2 Revised ECSS). The submission of the remedy application to the competent authority (the LAC) is free of charge (Article 75§1 Revised ECSS).

Thereafter, when the internal administrative appeal is concluded and either the interested parties or the IKA-ETAM Director want to make a further appeal against the decision taken by the LAC, they have the right to do so. As already stated, they can (within a given deadline) have recourse to administrative courts and to the Council of the State. Moreover, once again, the litigant parties have the right to decide whether they will be present during the hearing, or they will represented by a person of their choice (Article 70§3 C102, Article 34§2 C128, Article 69§3 ECSS, Article 75§2 Revised ECSS).

4.18 FINANCING AND ADMINISTRATION

4.18.1 FINANCIAL ASPECTS UNDER NATIONAL SOCIAL SECURITY LEGISLATION

As already described,[927] the Greek social security system is divided into three pillars. The 1st pillar (compulsory insurance) is typically based on the pay-as-you-go system (PAYG),[928] while the 2nd and the 3rd pillars (optional insurance) are based on the funded system. With respect to the 1st pillar social insurance funds, financing is still based on the tripartite model: employees' and employers' contributions, as well as state subsidies awarded on an annual base.[929]

The three-party financing, introduced after 01/01/1993 concerns: sickness and maternity benefits (both in cash and in kind), invalidity, old-age and survivors' benefits, as well as employment injury benefits and occupational diseases benefits. Exceptions are the unemployment and family benefits, where contributions are paid by employees and employers alone; however, an annual subsidy may still be paid by the government to cover any deficit.

However, it should be noted that even before 01/01/1993, when the 1st pillar was financed exclusively by contributions paid by the employers and the employees (in other words, the principle of tripartite financing was not part of the social security system on the basis of legal rules), if there was a reduction in the level of social protection, or a need for assurance of payments of the benefits, the state would still provide special subsidies.

With respect to the contributions paid by the insured persons and employers, the situation was as follows (until the end of 2009):[930]

a) For *sickness* and *maternity benefits in kind* (medical care benefits), the insured contributes 2.15% of covered monthly earnings, while the employer, 4.30% of covered monthly payroll (the part of these contributions also paid finance *employment injury benefits*). Both for the insured persons and employers, there are no minimum earnings used to calculate contributions. The maximum earnings used to calculate contributions for persons who were first insured after 31/12/1992 are €73,913.98 a year (or 14 monthly salaries of €5,279.57).

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927 See Chapter 3, Section 3.1, Sub-Section 3.1.1.

928 The PAYG income financing system concerns long-term benefits (old-age, invalidity, survivors', employment injuries and occupational diseases).

929 General reference on financial aspects of the Greek system can be also found in Papatheodorou, C. (2009), pp. 234–237.

930 See ISSA (2010), pp. 121, 124–127; MISSOC (2010).

b) For *sickness* and *maternity benefits in cash*, the insured contributes 0.40% of covered monthly earnings, while the employer, 0.80% of covered monthly payroll (the part of these contributions also paid finance *employment injury benefits*). Both for the insured persons and employers, there are no minimum earnings used to calculate contributions. The maximum earnings used to calculate contributions for persons who were first insured after 31/12/1992 are €73,913.98 a year (or 14 monthly salaries of €5,279.57).
c) For *employment injury*, the insured person's contribution is the same as in the case of (a) and (b) previously mentioned; the same goes for the employer's contribution – the difference being that the employer contributes plus 1% more of monthly payroll (this actually relates to, and depends on, the rate of the accident).
d) For *unemployment,* the insured contributes 1.33% of the covered, or gross earnings, while the employer, 2.67% of covered, or gross earnings for the employees; there are no minimum earnings used to calculate contributions.
Both for insured persons and employers, there are no minimum earnings used to calculate contributions. The maximum earnings used to calculate contributions are €78.41 a day (€2,058.25 a month). There are no maximum earnings used to calculate persons' contributions when they were insured after 31/12/1992.
e) For *family,* the insured person and the employer each contribute 1% of covered or gross earnings. Both for employees and employers, there are no minimum earnings used to calculate contributions. The maximum earnings used to calculate contributions are €78.41 a day (€2,058.25 a month). There are no maximum earnings used to calculate persons' contributions when they were insured after 31/12/1992.
f) For *old-age, invalidity* and *survivors,* the insured person contributes 6.67% of the covered monthly earning, however, in the case of arduous and unhealthy occupations, the insured person's contribution increases to 8.87%. The employer contributes 13.33% of covered monthly payroll; all the same, for employment in arduous and unhealthy occupations, the contribution rises to 14.73%.
Both for insured persons and employers, there are no minimum earnings used to calculate contributions. The maximum earnings used to calculate contributions for persons who were first insured are €73,913.98 a year (or 14 monthly salaries of €5,279.57).

As far as the participation of the state is concerned, and for the persons insured after 31/12/1992, there is a guaranteed annual state subsidy (supplementary financing) to the IKA-ETAM (for *sickness* and *maternity benefits both in kind* and *in cash, employment injury benefits* and *occupational diseases, old-age, invalidity* and *survivors' benefits*) equivalent to 1% of GDP between 2003 and 2032. For *old-age, invalidity* and *survivors' benefit,* apart from the guaranteed annual subsidy,

the state pays 10% of annual payroll as an employer. For *unemployment* and *family benefits,* an annual state subsidy may be provided to cover any deficit.[931]

As already stated,[932] Law No. 3655/2008 also established the Insurance Fund for Solidarity between Generations (AKAGE).[933] The main aim of AKAGE is the creation of reserves for the financing of the pension branches of the social insurance funds – starting from the 01.01.2019 – so as to ensure that future generations will receive pensions, and in general, to support the SIS. The financial resources of AKAGE will come from: 10% of the annual income coming from the privatization of public enterprises and organizations; 4% of the annual VAT revenues; and 10% of the amount collected from the resources coming from social sources *(koinonikoi poroi)* of the financially stable social insurance funds. The possibility exists of paying optional contributions for periods of military service and parental leave.[934]

4.18.2 ADMINISTRATIVE ASPECTS UNDER NATIONAL SOCIAL SECURITY LEGISLATION

a. General information on administrative organization

The Greek Ministry of Labour and Social Security, through the General Secretariat for Social Security, oversees the social insurance funds. All funds are administered by boards (management boards) in which the representatives of the insured persons, the pensioners, the employers and the state, participate.[935]

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931 In MISSOC (2010); ISSA (2010), pp. 121, 124–127.

932 See Chapter 3, Section 3.1, Sub-Section 3.1.1.

933 In international literature it is also referred as The Social Security Capital for Intergenerational Solidarity (AKAGE).

934 See also ISSA (2008b).

935 'The social security system operates through self-governed social security organizations and covers the working population throughout the country.' 'The majority of the social security institutions are under the authority and supervision of the Ministry of Labour and Social Security. A small number of social security institutions are subordinate to, and supervised by, other ministries (such as the Insurance Fund for Marine Employees (NAT), which operates under the Ministry of Economy, Competitiveness & Marine, and the General Accounting Office (GLK), insuring public servants, which functions under the Ministry of Finance). The public authorities intervene against possible fraud in order to preserve the general interest and see to the correct application of legislation and provisions by the social security organizations (Insurance Funds)', in MISSOC (2010b), p. 25. See also International Social Security Association (ISSA) (2010), pp. 123, 125,127–128; as well as the websites of the Ministry of Labour and Social Security and the General Secretariat of Social Security.

The Social Insurance Institute (IKA-ETAM)[936] (as already mentioned)[937] is the main, general, compulsory social insurance fund of all employees and workers in the private sector, providing coverage for all social risks. It is managed by a governor and a tripartite governing body. It has its own dispensaries, clinics, and hospitals, and uses other public and private facilities. Administration takes place through branches. Particularly with respect to the unemployment and family benefits, they are administered by the Manpower Employment Organization (OAED).[938] The OAED is managed by a tripartite board. It also administers the employment services through its local employment offices. It should be noted, however, that family benefits are provided by OAED through a special account/fund called the Distributive Fund for Employee Family Allowances (DLOEM), which was established under the OAED.[939] The above-mentioned Ministry oversees this, and the IKA-ETAM collects the contributions paid for OAED.

b. Participation of the insured persons – Representation

'As a rule, the social insurance institutions have their own legal personality and exercise public authority in the form of legal bodies under public law. In principle, each institution has its own administrative structure with its own administrative bodies.'[940] 'Main decisions at the administrative level are taken by the managing boards of the funds.'[941]

'As early as 1946 it was determined that the boards of management of the administrative institutions must be composed of *representatives of the State*, of the *insured population*, of *pensioners* and *of employers*.'[942] The members of the administration boards, as nominated by the representative organizations,

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936 See also the website of IKA.

937 See Section 4.2, above. See also Chapter 3, Section 3.1, Sub-Section 3.1.1.

938 See also the website of OAED.

939 Legislative Decree No. 3868/1958; see Official Gazette of the Hellenic Republic (1958), pp. 1555–1557.

940 See Pieters, D. (2002), p. 161.

941 'The managing Boards are entitled to deal with: (i) the determination of the budget of the social insurance institution; (ii) the proposal of internal administrative rules; (iii) the decision with regard to affiliation, contribution liability and benefit entitlement; (iv) they also take all sorts of other decisions. Moreover, autonomy is reduced due to the fact that there are certain powers, which have been attributed to the State. Thus the State (the competent Minister) has substantive supervisory competencies, which, for example, result in the power to withhold approval of the budgets of the social insurance institutions and to check their accounts and book-keeping. Furthermore, for each important administrative decision the social security institutions require the approval of the competent minister: the administrative bodies must first receive ministerial approval before they can introduce qualitative or quantitative improvements of social insurance benefits', in Amitsis, G. (ed.) (2003), p. 25.

942 Regarding the state representation, on the Administrative Board there is an expert in insurance matters. Additionally, there is an elected employees' representative for each organization, and the Government Commissioner, in Ministry of Employment and Social Protection – Ministry of Economy and Finance (2005), p. 6.

are appointed by the competent minister. In the past, the Council of State (*To Symboulio tis Epikrateias (StE)*) (the highest administrative court in Greece)[943] had ruled that the nominations by representative organizations are not binding to the competent minister, but merely have an advisory character. However, since 1985 this situation changed. An act of that year provides that the majority of members of the board of managers must consist of representatives of the insured population and of pensioners. As a result of the application of this new act, the competent minister is obliged to appoint the representatives, who have been chosen by the trade unions representing both the insured population and the pensioners.'[944]

Law No. 3655/2008 did not bring about any substantial changes as far as representation is concerned. Only certain practical changes took place. The 13 new social insurance funds[945] 'will have unified management with certain competence, with the participation of representatives of the integrated professional branches.'[946]

More precisely, each new fund will have its own management board. The majority of the board will me made up of representatives of the insured persons of the merged funds and branches, but usually representatives of the pensioners, the employers, the state, and certain social security experts will also participate – actually there will always be a representative of the state on the board. In Law No. 3655/2008, for each new social insurance fund, the composition of the management board is specified.[947]

Thereafter, in every new social insurance fund, central unified services will be established: administrative services, economic budget services, services for inspection and control, as well as informatics and legal services. The integrated social insurance funds and branches will consist of (partial) divisions of the new funds. Moreover, the managing board of every fund will have decisive competence regarding all matters related to the organization, administration, management, and in general, the proper functioning of the fund. However, and as already mentioned, each integrated fund, or branch, has its own economic and audit independence.[948]

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943 See also Chapter 3, Section 3.7, Sub-Section 3.7.2.

944 See Amitsis, G. (ed.) (2003), p. 26.

945 See Chapter 3, Section 3.1, Sub-Section 3.1.1.

946 In General Secretariat of Social Security (2008a), p. 2.

947 Article 5 regarding the composition of the IKA-ETAM; Article 22 for that of OAEE; Article 29 for the ETAA; Article 44 for the ETAP-MME; Article 62 for the TEAIT; Article 74 for TAYTEKO; Article 88 for TEADY; Article 98 for TEAPASA; Article 108 for TAPIT; Article 118 for TPDY; Article 6 (13(a)) of Law No. 3029/2002 for IKA-ETEAM, See Official Gazette of the Hellenic Republic (2008a), pp. 963, 974, 977–979, 992–993, 1005–1006, 1014, 1026–1027, 1031–1032, 1038–1039, 1045–1046; Official Gazette of the Hellenic Republic (2002), p. 3065.

948 Moreover, the administrators, or chairmen, of the new funds are to be appointed according to the procedure set out in Article 49A of the Hellenic Parliament's Regulation, in Ministry of

4.18.3 FINANCIAL AND ADMINISTRATIVE ASPECTS ACCORDING TO THE INTERNATIONAL SOCIAL SECURITY STANDARDS

A number of provisions exist in each international social security instrument, dealing with *financial* and *administrative* aspects of a social security system at the national level. These provisions are described, in short,[949] below.

a. Financing (Funding)

Both C102 (Article 71) and the ECSS (Article 70) lay down general principles for financial guarantees.[950] In particular, on the one hand it is stated (Article 71§1 and 2 in C102 and Article 70§1 and 2 in the ECSS (identical provisions)) that the cost of the administration of the benefits *must be borne collectively* by way of insurance contributions, or taxation, or both, *in a manner avoiding hardship*, particularly *for those of small means*, and to this end, *the total of the insurance contributions borne by the protected employees shall not exceed 50% of the total of financial resources allocated for their protection*. On the other hand, it is stated (Article 71§3 in C102 and Article 70§3 in the ECSS (identical provisions)) that the state, which has ratified these instruments, *shall accept general responsibility for the due provision of the social security benefits*, and to this end, the state shall ensure that *the necessary actuarial studies and calculations on the State's financial balance take place at regular intervals.* The Protocol to the ECSS imposes no changes concerning the financial aspects.

The Revised ECSS includes similar provisions on the general principles for financial guarantees (Article 76). However, the relevant provisions of this instrument are more flexible than the ones included in the ECSS and C102 concerning the principle of *bearing the cost collectively*. More precisely, Article 76§1, which is based on Article 70§1 and 2 of the ECSS, repeats that the administrative cost of the benefits *must be borne collectively*, nevertheless, it is confined to simply reminding states of their obligation *to ensure* that persons of modest means do not contribute too great a proportion of their income to the financing of the social security schemes. With respect to the principle of the general responsibility of the state for the due provisions of the social security benefits also embodied in Article 76§2, which is based on Article 70§3 of the ECSS, the Revised ECSS has the same emphasis, particularly on the fact that the state should pay out the

Employment and Social Protection (2008), pp. 1–2.

949 A comprehensive description and analysis of the international standards, included both in C128 and C102, referring to financial and administrative aspects is given in Chapter 2, Section 2.9, Sub-Section 2.9.4.

950 See also Gomez-Heredero, A. (2009a) p. 97; Kulke, U. (2006), p. 30.

benefits set under the relevant provisions of the Revised ECSS, irrespective of what social security fund/institution is responsible for providing these benefits.[951]

No new provisions on *the principle of collective financing* of the social security benefits have been introduced in C128. Be that as it may, in Article 35§1 of this Convention, *the principle of the general responsibility of the state for the due provision of the benefits* is once again stressed.[952]

b. Administration and the protected persons' participation

Both C102 (Article 72) and the ECSS (Article 71) lay down general principles and rules for the administration of the social security.[953] In particular, on the one hand it is stated (Article 72§1 in C102 and Article 71§1 in the ECSS (identical provisions)) that *where the administration is not entrusted to an institution regulated by the public authorities, or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the participation of representatives of employers and of the public authorities*. This provision actually aims to safeguard as well as enhance the interests of the protected persons. On the other hand, it is stated (Article 72§2 in C102 and Article 71§2 in the ECSS (identical provisions)) that the state, which has ratified these instruments, *shall accept general responsibility for the proper administration of the institutions and services entrusted with the provision of the social security benefits* – to this end once again, the state is responsible for the proper functioning of social security administration in the country. The Protocol to the ECSS contains no changes concerning the administrative aspects.

The Revised ECSS includes similar provisions on general principles and rules concerning social security administration (Article 77). More precisely, Article 77§1, which is based on Article 71§1 of the ECSS, states, with respect to the administration of social security, that the insured persons must be represented on the management boards, or be associated with them in an advisory capacity, in cases that the social security administration is not entrusted to public authorities. Likewise, it provides the possibility of extending participation to employers and public authorities. Still, the relevant procedures are to be determined under national legislation. Thereafter, the Article 77§3 of the Revised ECSS, like Article 71§2 of the ECSS, recognizes the general responsibility of the state for ensuring efficient social security administration, as well as good general and financial management,

951 See Council of Europe (1998), pp. 106–107.
952 See Chapter 2, Section 2.9, Sub-Section 2.9.4.
953 See also Gomez-Heredero, A. (2009a), p. 97; Kulke, U. (2006), p. 30.

not only of public, but also (if applicable) private, social security administrative bodies. To this end, under prescribed rules (rules determined at a national level), monitoring and supervising measures should be taken. Last, the Revised ECSS includes a new provision, Article 77§2, which reads as follows: '…where a Party, by virtue of sub-paragraph a of Article 6 makes subject to supervision by the public authorities the protection afforded by non-compulsory insurance for the persons protected, the obligation imposed by the foregoing paragraph shall not apply.' This provision actually concerns only cases in which non-compulsory insurance is supervised by the public authorities (in accordance with Article 6(a)[954]) of the state, and only in such cases is a state permitted to disregard the principles on consultation, or on participation of the insured persons in the management of the competent administrative bodies.[955]

Thereafter, C128 (as the aforementioned international standard-setting instruments), under Article 36, stipulates that insured persons must participate in the administration of the competent social security bodies when the administration is not entrusted to, or regulated by, the public authorities of the state, or a government department responsible to the legislature. Moreover, Article 36 is much stricter, as it does not refer to the possibility of representatives of insured persons being associated (simply) in a consultative capacity (like C102 and the ECSS), but participation of the insured persons is expected. It states, however, that the participation of employers' representatives and of public authorities is also possible. Moreover, Article 35 of this Convention notes, once again, that the general responsibility for the proper administration of the institutions lies with the state.[956]

4.18.4 NATIONAL SOCIAL SECURITY LEGISLATION AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS

a. Respect of the standards' principles on financing

From the description of the domestic legislative arrangements for the financing of the Greek social insurance system above, it is clear that the cost of benefits is borne collectively by way of insurance contributions, and there is also a

954 Article 6(a) of the Revised ECSS states: 'For the purpose of applying Parts II, III, IV, V, VIII (insofar as this last-mentioned part relates to medical care), IX and X of this (revised) Code, a Party may take into account protection afforded by means of insurance which, although not compulsory under its legislation for the persons protected: (a) is supervised by the public authorities or administered, in accordance with prescribed rules, by employers and employees, or, where appropriate, by self-employed or non-active persons.'

955 See Council of Europe (1998), pp. 106–107.

956 See also Chapter 2, Section 2.9, Sub-Section 2.9.4.

guaranteed annual state subsidy. Therefore, benefit financing is not left entirely to the insured person (if such a method of cost distribution existed it would be contrary to the provisions of the international social security standards), and at the same time, the employer contributes to the system at a higher rate (%)for all the benefits. So, the Greek system (at least until the end of 2009) fulfils the social security standards, which are based on the *principle of collective financing* and state that *the total of insurance contributions borne by the employees protected* (salaried employees in the Greek case) *shall not exceed 50% of the total of the financial resources allocated to protection*.

It is also worth mentioning, however, and as it has been stated, that 'the heavy deficits the main insurance funds have started to rack up since the mid-1980s, has resulted to an increase in employees' contributions, transferring the burden to the immediately interested parties', and 'there seems to be a move towards a social protection system where contributions paid by the protected people will play an increasing role in the funding of social protection.'[957]

As regards the general responsibility of the state for the due provision of social security benefits, the Greek state, for many decades now, has assumed the general responsibility as the final guarantor of social risk coverage and benefit provision.[958] All the same, and more specifically in relation to the maintenance of the reliability and the financial sustainability of the system, which is essential to the due provision of the benefits, and goes hand in hand with the fulfillment of the state's role as *final guarantor*, Greece does not seem – and has not for many years now – to pay appropriate attention. Further elaboration on this issue takes place in the following sub-section.

Moreover, presentation and analysis of certain matters of concern, which pertain to the proper applicability of the international standards after the passage of Law No. 3863/2010 in respect of issues on financing as well as the reliability and financial sustainability of the system, takes place in a subsequent Chapter of this PhD thesis.[959]

b. Reliability, financial sustainability and the conduction of actuarial studies

As far as social security is concerned, it is commonly accepted that ensuring the reliability and the financial sustainability of the system in a given country is a crucially important matter. Therefore, every state must ensure both the proper administrative and financial management of the social security system, so as to

957 See Papatheodorou, C. (2009), p. 234.
958 See also Chapter 3, Section 3.1, Sub-Section 3.1.1.
959 See Chapter 5, Section 5.4, Sub-Section 5.4.1.

be able to fulfil its obligations in guaranteeing the provision of the benefits to the eligible persons. Particularly regarding the attainment of a financial equilibrium, it is essential not only to secure the viability of the system in the short-term, but also to maintain the operational effectiveness of the system in the long run. This is also inextricably linked to ensuring benefit payment in both cases.

To this end, and as already described previously, C102 (Article 71§3) and the ECSS (Article 70§3) have both procured by introducing identical provisions. According to these provisions, since for retaining the financial balance of the system careful planning is appropriate, the state shall ensure 'that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question.' As the CEACR has expressly noted also, actuarial studies are important for the realization of two main objectives: the availability of resources to cover benefits and administrative costs, and ensuring an equitable distribution of the financial burden.[960]

C128 and the Revised ECSS, although not referring explicitly to the completion of actuarial studies by the state, postulate that since the state is recognized as the guarantor for the provision of the social security benefits, it 'shall take all measures required for this purpose',[961] or in other words, it 'shall take all the necessary steps to discharge that responsibility effectively'.[962, 963]

Thus, it would seem that actuarial studies are a significant instrument contributing to the fulfilment of this obligation imposed on the state, and they should be utilized appropriately.

All the same, in the Greek case, deviation has been observed from the rules prescribed in the relevant provisions included in C102 and the ECSS. As also stated, 'it has been stated, in several statutes of the Greek social security legislation, that regular or periodical actuarial studies should be completed; these statutes are also based on Article 71§3 of the ILO Convention No. 102',[964] and, by extension,

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960 See International Labour Office (1989), pp. 95–98. See also the explanation given in Nickless, J. (2002), p. 71.

961 See the description and analysis given concerning Article 35§1 of C128 in Chapter 2, Section 2.9, Sub-Section 2.9.4.

962 In Article 76§2 of the Revised ECSS.

963 Similar to this is also Article 77§3 of the Revised ECSS, which reads: 'Each Party shall accept general responsibility for the effectiveness and quality of the management of the institutions and services concerned with the application of this (revised) Code.' In the explanation given for this provision, it is stated that 'Each party accepts general responsibility for the efficient and good administrative and financial management of the public or private social security institutions. It is for national legislation to determine measures for monitoring and supervising the administrative bodies' in: Council of Europe (1998), p. 107.

964 See Romanias, G. (2007a), p. 60.

Article 70§3 of the ECSS.[965] 'Still, the breach of these statutes has been profound, and evidently, a breach of national statutes based on international provisions is also a breach of international law.'[966]

Indeed, this has been the case, particularly in years.[967] It has been also stated that it is a kind of Greek tradition to proceed with the modernization or reformation of the social security system without first completing the necessary actuarial studies prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question. Needless to say, periodical actuarial studies have also been lacking, and as it has been pointed out, if actuarial studies are going to take place, this will happen after the social security reforms or modifications have been introduced.[968]

By way of illustration, in 1998, the then Labour and Social Insurances Minister presented social partners with a plan on the merger of three self-employed workers' insurance funds: TEBE (Fund for Craftsmen and Small Entrepreneurs), TAE (Shopkeepers' Insurance Fund) and TSA (Motorists' Fund). In 1999, with Law No. 2676/1999, the OAEE Fund was established (now the Greek Organization for the Insurance of Liberal Professionals),[969] and the unification of the funds was complete.[970]

Nevertheless, and as also expressly noted, 'no actuarial study pertaining to the denotation of the economic parameters of the new unified fund for the upcoming 50-year period was carried out. The need to merge the funds was certainly profound, and was indeed a correct political decision. However, the failure to ensure the pre-conditions of the financial (and actuarial) sustainability of the new fund is a weakness of this political choice.'[971]

Another similar and more recent example relates to Law No. 3655/2008 on the 'Administrative and Organizational Reform of the Greek Social Insurance System' – one of the most striking in the last decades. As already described,[972] the changes mainly involved retirement ages and pension levels (affecting around two million insured people and expected to be implemented in stages from 2009

965 As already discussed (see Chapter 3, Sections 3.2.1 and 3.2.2), C102 and the ECSS have both been sanctioned (by the statutes No. 3251/1955 and No. 1136/1981) and ratified by Greece.

966 See Romanias, G. (2007a), p. 60.

967 See Mitropoulos, A. (2008); Anagnostou-Dedouli, A. and Papakostantinou, A. (2008).

968 Such comments were also made in the discussions held with academics, lawyers, independent social security experts and advisors during the research visits to Greece. The list of all the interviewees is available in Appendix A. See also Robolis, S. (2008); Pan-Hellenic Federation of Employees in Petroleum Products-Refineries and Chemical Industry (2008), p. 1.

969 See Chapter 3, Section 3.1, Sub-Section 3.1.1.

970 See also Kremalis, K. (2004), pp. 20, 26; Athens News Agency (ANA) (1998), p. 1.

971 See Romanias, G. (2007b), p. 3.

972 See Chapter 3, Section 3.1, Sub-Section 3.1.1.

onwards), as well as the re-structure of the social insurance funds (mergers of existing funds, beginning in 2008). Objections to the reform were remarkably strong, and criticisms were also expressed, both on the part of the parliamentary opposition parties and trade unions. Actually, the news of the reform came as a bombshell. There was no prior information on the intention of the government[973] to introduce such reforms, and no social dialogue took place beforehand. It is worth mentioning that 'the draft law was sent to the Greek Economic and Social Committee (OKE) on the 6th of March 2008 and the Parliamentary discussions (in Plenum) started on the 18th of March 2008, with the intension of being completed on the 20th of March 2008.'[974]

Nevertheless, and despite strikes and demonstrations, the new Law was enacted. Unfortunately though, once again the government did not procure for the necessary actuarial studies, risk-benefit assessments, in-depth financial and administrative feasibility reports to be conducted prior to the introduction of the changes, so as to examine the effects that such a reform would have both to the sustainability of the social security system and the level of social security protection.[975]

As has been correctly noted, 'the obligation of conducting prior actuarial valuations is not simply a technical one; it is an obligation, which in reality involves one very substantial matter – that of rationalizing and justifying the changes to be introduced. And despite the fact that an actuarial valuation cannot (this is also not its main purpose) indicate which exact measures should be followed, it certainly gives a hint on what kind of measures would prove effective', and at the same time, develops political accountability. Besides, although it is true that 'the national legislator has increased freedom when regulating social security rights; it should be kept in mind that this freedom should be exercised within certain limits', meaning, 'when through modifications or reformations social security is being fostered, or social capital is safeguarded, or even in the case that through alterations social security protection maybe somewhat reduced, well-grounded reasons exist for doing so; for example, if the provisions are to be increased, it should be proved that the country has the economic capacity of covering the relevant costs; contrariwise, if cut-backs in provisions are planned, this should prove necessary, since it contributes to the restoration of the economy.'[976]

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973 In that period Greece was being governed by the New Democracy (ND), the main centre-right party.

974 See in: OKE (2008), p. 3.

975 In the preamble of the draft law 'Administrative and Organizational Reform of the Greek Social Insurance System and other social insurance provisions', presented by the Ministry of Employment and Social Protection/General Secretariat for Social Security, in Athens, March 2008, no reference to actuarial assessment and relevant outcomes is included.

976 See Angelopoulou, O. (2008).

At this point, another interesting matter should also be noted. In 2002, the Greek National Actuarial Authority (NAA) was established under Law No. 3029/2002.[977] It is an institution of credibility and commanding general acceptance, and it has been described as one of the key policy initiatives introduced by the aforementioned Law. It submits annual reports and conducts special enquiries on specific issues, focusing, in particular, on matters regarding the financial standing and viability of all the social insurance organizations (primary pension funds, auxiliary pension funds, and occupational funds).[978]

None the less, since its establishment, this institution does not seem to have completed many of its own actuarial studies, at least not for the operating social security funds as a whole. Conversely, quite recently 'the Social Security Department of the ILO has been appointed by the Greek NAA to undertake actuarial valuations of the twelve (12) largest public pension schemes in Greece.' However, since the data available were not sufficient or proper for the study to be analytically correct (also, not all the social insurance funds had the required data),[979] it was limited to two of the largest funds in Greece: the Social Insurance Institute Employees' Inclusive Insurance Fund (IKA-ETAM) and the Agricultural Insurance Organization (OGA).[980]

It should be also noted that actuarial assessments had been conducted by the Labour Institute (INE) of the Greek General Confederation of Labour (GSEE), and of the Confederation of Public Servants (ADEDY) (in particular concerning IKA-ETAM).[981] However, the government (at least until the end of 2008, mid-2009) does not seem to have taken them into consideration, or to have tried to

977 See Articles 8 and 9, in Official Gazette of the Hellenic Republic (2002), pp. 3068–3070.

978 See Ministry of Economy and Finance – Ministry of Labour and Social Insurance (2002), p. 4. See also Kremalis, K. (2004), p. 13. For further detailed information, visit the website of the NAA.

979 This was also confirmed in the discussions held with independent social security experts and advisors during the research visits to Greece. The list of all the interviewees is available in Appendix A.

980 'The International Financial and Actuarial Service of the ILO Social Security Department has been mandated under the technical cooperation project between the ILO and the NAA of Greece entitled "Actuarial support to the National Actuarial Authority of Greece (GRE/06/01/GRE)" to deliver a set of outputs to assist the NAA in building up its own national capacity and tools with which to conduct a regular valuation of the Greek public pension system. Moreover, it should be noted that even regarding IKA and OGA, the ILO encountered difficulties 'due to limitations of the pension schemes database, particularly that the full set of data could not be made available'. 'Data requests were submitted by ILO to NAA, who was responsible for the collection of data from public statistical agencies and pension scheme administrators. NAA had no direct access to operational databases of the pension schemes and had to process their own requests through their statistical agency'. See analytically in: International Financial and Actuarial Service (2008), pp. 3, 68.

981 See, for instance, Robolis, S., Romanias, G., Margios, V. and Hatzivasiloglou, J. (2007), p. 1–104; Robolis, S., Romanias, G., Margios, V. and Hatzivasiloglou, J. (2005), p. 1–63. See also: Robolis, S. and Romanias, G. (2001).

collaborate with the Labour Institute – through the National Actuarial Authority – in order to conduct general actuarial studies that would deliver general results. Such an action could have brought the government and the trade unions closer, and also reforms or modifications could have gained broader support.

Indeed, in 2007, when the preliminary findings of the ILO actuarial study on the prospects of Greece's main social security and pension funds were published, it was argued that 'if the state fulfils its commitments to finance the social insurance system, this would prevent any problems of viability at least until 2025. The employers and trade unions agreed on the importance of observing the state's statutory financial obligation to the insurance system.' Moreover, it was stated that the ILO study confirmed the estimates and forecasts of an actuarial study that was completed for IKA-ETAM by the Labour Institute (INE).[982] Be that as it may, it should not be forgotten that this ILO actuarial valuation 'was a general study showing the development in the economic situation of IKA-ETAM and OGA. It was not a specialized actuarial assessment of impact of the changes introduced under the latest Law No. 3655/2008.'[983]

Bearing in mind the above discussion, Greece does not seem to have been complying with certain important provisions of international social security law. Thus, proper account of this fact should have been taken, since guaranteeing the sustainability of a social security system is crucial, and should be assessed when changes are about to be implemented.

Last, in this respect, it is also strange that comments or observations on the matter have only been made, to date, by certain Greek trade union representatives,[984] and not by the relevant supervising international Committees that are responsible for the examination of the compliance of national law with the provisions set in the international instruments, namely: the CEACR of the ILO and the Committee of Experts on Social Security (CS-SS) of the CoE. Despite the fact that particularly regarding the CEACR, it has been stated that it 'can only express its concern faced with the actuarial deficits mentioned by many countries',[985] and such a concern has not even been expressed in the Greek case. In the individual observations or individual direct requests made by the CEACR, as well as in the Resolutions

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982 See Tikos, S. (2008), p. 1.

983 See Angelopoulou, O. (2008).

984 Relevant to this is the following comment made by the CEACR regarding the actuarial deficits and the role of the social partners in controlling the state's performance: 'The State's role seems more vital in this field of social policy than in any other, because it consists essentially in long-term, or even very long-term, forecasting and ensuring that costs are equitably distributed among the generations. However, the interested parties, whether contributors or beneficiaries, must themselves be able to play a role, if necessary through the representative organizations concerned', in International Labour Office (1989), p. 98.

985 See International Labour Office (1989), pp. 95–98.

published by the Committee of Ministers of the CoE, no reference has been made to the issue to date. Therefore, closer attention should be paid to this fact also.

c. Respect of the standards' principles on representation and proper administration

Taking into account the previous description concerning the administrative organization, and since the majority of the social insurance funds' management boards consist of representatives of the insured persons and pensioners (most of the time representatives of the employers and the state participate in the management of the funds as well), Greece fulfils the international social security standards in terms of representation. Nevertheless, the researcher has reservations in respect of the fulfillment of the proper administration of the funds responsible for the provision of the social security benefits, which is, at the end of the day, once again, a state responsibility. These reservations originate from the fact that proper administration depends, to a significant extent, on proper financial management of the system, as such – an area in which, as shown earlier, Greece displays particular weaknesses. To this end, comments follow in a subsequent Chapter of this book.[986]

[986] See Chapter 5, Section 5.4, Sub-Section 5.4.1.

CHAPTER 5

PRESENTATION AND ANALYSIS OF THE RESEARCH 'FACTUAL FINDINGS'

Knowledge is justified true belief … – Plato

All men by nature desire knowledge … – Aristotle

Look and you will find it – what is unsought will go undetected … – Sophocles

5.1 INTRODUCTION

As already discussed in the introductory chapter, the primary concern of the leading research question is to detect and describe the obstacles to further promoting the ISSS in a developed social security system. Put differently, the research problem addressed touches upon the issue of an *international social security standards blockage*.[1] To this end, three research sub-questions[2] have been chosen with a view to providing a meaningful answer (solution, one could also say) to the research problem (this follows in the concluding Chapter 6). In this penultimate chapter,[3] each of the three research sub-questions is answered separately (see Sections 5.2, 5.3 and 5.4), based on the overall factual findings of the doctoral dissertation, and the obstacles to the further promotion of the ISSS, as well as the precise content characterising them, are presented and analysed.

5.2 ANSWERING THE 1st RESEARCH SUB-QUESTION

Greece has ratified several international social security standards (ISSS). What are the reasons that led to the ratification of these standards by Greece? In other words,

1 See Chapter 1, Section 1.4, Sub-Section, 1.4.1.
2 See Chapter 1, Section 1.4, Sub-Section, 1.4.3.
3 In writing this penultimate chapter, the following article has also been consulted: Bunton, D. (2005), pp. 207–224.

how did these reasons influence the ratification process, and to what extent were they factors in ratifying these standards? Are these reasons still valid today, or not?

5.2.1 THE REASONS BEHIND RATIFICATION

Throughout this research, eight main reasons have been detected, which, in the past, led Greece to ratification. These reasons are derived from the study of the Greek parliamentary record of proceedings and from the open-ended interviews that took place within the country.[4]

a. National legislation in conformity with the ISSS prior to ratification

Previous conformity of national social security legislation with the standards set in an international instrument has been stated as one of the main reasons for ratification. In other words, Greek legislation – at the time ratification was considered at the national level – fulfilled, almost entirely, the standards set in the following international instruments: the C102, the C103, as well as the ECSS.[5]

b. Prevalence of a more favourable socio-political and economic climate worldwide

The disposition of the international community at a given period in time (i.e. after the end of WWII) towards the significance of the social factor in economic affairs – actually, the acceptance at an international level that in order for *unity* and *ever lasting peace* to become a reality, aside from strong economic fundaments, equally durable social underpinnings are required[6] – seems to have influenced the country's decision to undertake the commitment to fulfil international obligations.

This concerns, particularly, the C102, which was ratified by Greece within a relatively short time after its adoption by the ILO ILC (within three years of its adoption). It has been expressly stated that prior compatibility of Greek social security legislation with this Convention, in combination with the socio-political and economic climate prevailing universally the time acceptance of this Convention was considered at the national level (meaning[7] the imperativeness

4 See Chapter 3, Section 3.3.

5 Also relevant is Article 19§5(d) of the ILO Constitution, according to which, the Government, when ratification of a Convention takes place, actually commits itself to fulfill its provisions and to take such action as may be necessary to make them effective. See more on the issue of Conventions' ratification and acceptance of obligations in ILO (2006), p. 13.

6 See, also, Chapter 1, Section 1.1 and Section 1.2.

7 See, also, Chapter 2, Section 2.1. See, also, Petmesidou, M. and Mossialos, E. (2006), p. 2.

of raising living and welfare standards after the end of the WWII, and the commitment to securing global economic and social advancement and political endeavour to a new era of peace and prosperity), led Greece to ratify the Convention so quickly.

c. National legislation is considered as providing a much higher level of protection than that set out in international legal instruments

It emerges that when the level of social security protection is considered domestically to stand at a much higher level than that set internationally, the government is in a better position to proceed with ratification. Put another way, when an international instrument foresees minimum provisions, compared to the ones covered by national legislation, the government is much more inclined to ratify it. This was stated to be the case with the ratification of the ECSS by Greece.[8] According to the government, the ECSS was drawn up in order to set the basis of social insurance institution[9] in countries, which the institution of social insurance had not yet been introduced. Since Greece, at the time ratification was put on the discussion table (February 1981), had, in general terms, a well-established system, both in terms of population and social risk coverage, the proposal for ratification of the ECSS was not a problem.[10] Still, it should be noted that the prior ratification of the C102 also affected the ratification of the ECSS.

d. The example of other countries

It occurs that politicians and, in general, political decision-makers within a country, can be influenced by the approach taken in other countries with regard to the ratification of international instruments. When an international instrument has been appraised and has been ratified (or even simply signed) by other countries, it is easier for political elites to become positively predisposed to take similar actions, and the government may also take the decision to move towards ratification more easily. Within such terms, the political decision-making process at a national level may be, in a sense, biased – *since others have done it, we cannot be the exception; we have to follow the trend, or at least try to follow it;* this actually also reveals the fear that a country *cannot to lag behind in the international arena*.

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8 See Chapter 3, Section 3.3, Sub-Section 3.3.3.

9 The term *institution* pertains to the act of starting a new social insurance system (or bringing it in, based on the ISSS).

10 As it was expressly stated, 'the Greek legislation concerning the protection of insured persons stands at a much higher level than the one set in the European Code of Social Security; consequently, we are in a position to propose the Code's ratification' (Hellenic Parliament (1981a), p. 3).

Greece seems to have been influenced by the positive example of other countries, and, apparently among other reasons, the ratification of a number of international instruments was accelerated by this international example.[11] Examples of such instruments are the C102, the ECSS, the ESC, the Protocol Amending the ESC, the Additional Protocol to the ESC, and the Additional Protocol to the ESC providing for a System of Collective Complaints. Interesting is the fact that in relation to the C102, as already mentioned above, Greece was among the first group of countries to ratify it.[12] Therefore, it appears that Greece has both influenced, and has been influenced by, other countries on ratification matters.

e. The matter of national pride and international appraisal

A country decides to ratify an international instrument because it believes that through such an act its international prestige and recognition are enhanced and its position within the European and the broader international sphere is improved. In such a manner, ratification is seen as a matter of national pride and desire for international appraisal.[13] It may be also that a country – through the ratification of a specific international instrument – *wishes to take the lead in the international arena in a given policy field*. In the Greek case, the ratification of both the ECSS and the ESC was conceived, to a significant extent, as a way of enhancing the country's European and international esteem and to show its international commitment in respecting and advancing the social protection of its people. The subsequent ratifications of the Protocol Amending the ESC, the Additional Protocol to the ESC and the Additional Protocol to the ESC providing for a System of Collective Complaints were also seen as an attempt to contribute to the effort of all the Member States of the CoE to expand social rights in Europe.[14]

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11 See Chapter 3, Section 3.3.

12 The first country to ratify the C102 was Sweden (in 1953), then the UK and Norway (both in 1954), and afterwards Greece, together with Denmark and Israel (in 1955). Other European countries followed, such as: Italy (in 1956), Germany (in 1958), Belgium (in 1959), the Netherlands (in 1962), Luxemburg (1964), France (in 1974), *etc*. The countries that ratified this Convention more recently are Brazil (in 2009), Bulgaria (in 2008) and Romania (in 2009). See also Chapter 1, Section 1.2, Sub-Section 1.2.3.

13 The Netherlands could be mentioned here as another country example within this frame. The positive attitude, over the years, of this country, with regard to the ratification of international legal instruments in the field of social security, has been significantly linked to the issue of national pride; national pride in the sense of showing, internationally, that the country ratifies conventions and respects international rules and standards. This is also a way to gain international prestige and recognition. Although this attitude was more deep-seated in the past, it still plays a role in Dutch politics.

14 See Chapter 3, Section 3.3.

f. The advantage and superiority ascribed to international instruments in relation to national legislation

Consideration of the provisions included in an international instrument as much more advanced and comprehensive in terms of social security protection in relation to the provisions included under national legislation may affect the interest of a country, as well as its decision to move towards ratification. Such an approach reflects the belief that through the ratification of a given international instrument, the country would obtain better protection. It may also be the case that a country had previously ratified an international instrument and the ratification of a new one in the given policy field is visualised as a continuation, and an effort to further improve protection, making it more complete (i.e. the extension of population coverage, benefit provision, *etc.*).

Within similar terms lies the belief that when an international instrument foresees a higher level of protection, or calls for a higher level of protection, through its ratification the level of protection at a national level can equally increase, since the country would make an extra effort to raise protection. Interesting, also, is the fact that if a government indeed considers that through the ratification of a given instrument the level of protection within the country will increase, and that the country is capable of doing so, it may proceed with ratification, irrespective of the difficulties that such a ratification would bring for the country (i.e. legislative difficulties in the implementation of the relevant international standards/norms, financial difficulties, *etc.*).

The aforementioned kind of thinking accompanied the proposal for ratification of the C103 by Greece (back in 1982), since the country would then provide complete maternity protection. Similarly, the ratification of the Additional Protocol to the ESC (in 1998) (but to a lesser extent) related to the assumption that the protection of certain social rights would be improved, and the government decided to proceed with its ratification, even if certain provisions (such as the right of elderly persons to social protection) would have significant financial consequences for the state budget.[15]

g. The influence of 'political ideology'

It seems that the ideology on which political parties are founded has influenced, at times, not only their political actions and programmes, but also decisions on the ratification of certain international legal instruments. The Greek case has shown[16] that almost all of the proposals for ratification of the (nowadays accepted)

[15] See Chapter 3, Section 3.3, Sub-Sections 3.3.2 and 3.3.6.
[16] See Chapter 3, Section 3.3.

ISSS developed by the ILO and the CoE – as well as of other international legal instruments in the general field of social protection – have been submitted to Parliament by the Greek central-left party.

The ideology of centre-left political parties has been globally associated (over the years) with the enhancement of social justice, human and social rights, as well as civil rights and liberties, while the creation of an extensive social security system counteracting the effects of poverty and insuring citizens against loss of income from the occurrence of social risk(s) has been one of the main objectives adhered to in their programmes. In contrast, the passage of time has shown that the ideology of centre-right political parties adheres more to conservatism and economic liberalism.

More specifically, at the beginning of the post-dictatorship era (July 1974) in Greece, and until 1980 (thus, for almost six years after the restoration of democracy in the country), no ratifications took place in the field of social security. At that time, the Greek central-right party (New Democracy (ND))[17] held power. The only exception was the ratification of the ECSS (in February 1981), a few months before ND lost the elections to the Greek central-left party (Pan-Hellenic Socialist Movement (PASOK))[18] in October 1981. Indeed, it was the period from the beginning of the 1980s and until the end of the 1990s that most ratifications took place (to wit, the C103, the ESC, the Protocol to the ESC, the Additional Protocol to the ESC, and the Additional Protocol to the ESC providing for a System of Collective Complaints), and it was PASOK that held power at that time.[19]

h. Political interest and political will

One could say that the existence of political interest and political will should be taken for granted as being among the main reasons that could lead a country to the ratification of an international instrument, or better, to the decision to undertake commitments in relation to internationally accepted social security standards and social rights in general. Besides, international law, whatever policy field it may involve, is closely connected to politics. Still, it is considered useful to make somewhat more explicit the context in which political interest and will have appeared in previous time periods. As far as Greece is concerned, the existence of political interest and will in ratifying international instruments developed as follows:

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17 The dominant ideology of ND was defined as radical liberalism; a term connoting the prevalence of free market rules with the decisive intervention of the state in favour of social justice.

18 The founding mottos of PASOK were national independence, popular sovereignty, social emancipation, and democratic process.

19 See further Chapter 3, Section 3.3.

Nationally oriented political interest and political will

The government is interested in assuring and promoting the well-being of its citizens and has the political will to do so, which is shown – apart from undertaking domestic legislative actions – through the ratification of international instruments that further enhance the achievement of this goal by providing comprehensive protection. The ratification, for example, of the ESC by Greece,[20] served, among others, such a political interest and will. Taken from another angle, the ratification of an international instrument similarly expresses the political interest and will in showing people that the level of protection provided at a domestic level is also internationally acceptable. This could be seen as another reason for the ratification by Greece of the ECSS.[21]

Thereafter, the delivery on promises made by a political party during the run-up to a general election also consists of political interest and will, and – at certain time intervals – has indeed proved to be an important factor in ratifying international instruments. Being more precise, the issue of either proceeding with the ratification of an international instrument, or simply considering its ratification, seems to emerge more easily, or to be facilitated during the run-up to a general election. The Greek case has shown that proposals for ratification of a number of ISSS, and, of course, their final ratification, may be made, among other things, as proof of, or as a means of delivering on, political promises: for example, promises of raising social security protection within the country, or of procuring the most complete protection of certain categories of the working population (i.e. working mothers, *etc*.). This was actually one of the reasons that led Greece to the ratification of the C103.[22] It may also be the case that a proposal for ratification, or ratification itself, takes place as a way of boosting the government's position and positively affecting the opinion of the citizens of the government, so as to retain its political leadership. This seems to have been (among others) the reason that led Greece to the ratification of the ECSS,[23] but also of other ILO Conventions in different policy fields.[24]

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20 See Chapter 3, Section 3.3, Sub-Section 3.3.4.

21 See Chapter 3, Section 3.3, Sub-Section 3.3.3.

22 See Chapter 3, Section 3.3, Sub-Section 3.3.2.

23 See Chapter 3, Section 3.3, Sub-Section 3.3.3.

24 The ECSS was brought before the Greek Parliament for ratification on the 10th of February 1981, and ratification took place on the same date. After some months (in October 1981) the governing party, which proceeded with the ratification of this international instrument, lost the national elections. Similarly, in June 1981, all pending draft statutes that were submitted to the Greek Parliament were accepted. In particular, they concerned the following ILO international legal instruments: the C138, Minimum Age (1973), the C144, Tripartite Consultation (International Labour Standards) (1976), the C106, Weekly Rest (Commerce and Offices) (1957), the C115, Radiation Protection (1960), the C77, Medical Examination of Young Persons (Industry) (1946). For these Conventions, ratification was pending for a significantly long time period. See, for analysis, Koukouli-Spiliotopoulou, S. (1985), p. 147.

Internationally oriented political interest and political will

The ratification of a given international instrument may be regarded as *moral obligation* on the part of a country. *Moral obligation* demonstrates, in some respects, the country's inclination to undertake international obligations in a certain policy field. Especially when national legislation complies with a given international instrument, or even procures a higher level of protection, moral obligation in respect of ratification is further enforced, and at the end of the day, ratification is conceived of as a confirmation that the level of protection within the country is substantial, or as a means of expressing the view that the international instrument indeed has validity. Be that as it may, *moral obligation* is closely related to the existence of political interest and political will. The *moral obligation* of a country becomes stronger when the government considers matters pertaining to the respect and promotion of human and social rights, as well as social protection standards, important, and wants to belong to a more advanced international community in respect of these matters. Through ratification, this is achieved.

As far as Greece is concerned, during the periods that ratification of certain international instruments took place, the political leadership had a particular interest and will, and felt strongly the moral obligation to proceed with ratification. Moreover, it wanted to be part of a more advanced international community, which is actually very logical for Greece, since the origins of democracy lie in ancient Greece and Greece has been one of the states that values most strongly democracy, freedom, rule of law and enhanced protection.

When the ECSS was submitted to the Hellenic Parliament for ratification,[25] it was expressly stated: 'we are going to proceed with its ratification, because we have to ratify it'; 'we have to harmonise[26] our legislation with the international legislation and to integrate into the countries which have already ratified the European Code of Social Security.'[27] This way, Greece would also prove that corresponds to the social protection levels prevailing to a more advanced international community. Besides, as already mentioned, Greece was among the first countries that proceeded with the ratification of the C102 (much earlier though, back in 1955).

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25 See, also, Chapter 3, Section 3.3, Sub-Section 3.3.3.

26 It should be specified here that the term 'harmonise' refers to harmonisation in terms of attaining certain common aims and elements between the (legal) social security systems of the countries, so as to be in line with each other, having a sort of compatibility. It refers neither to standard harmonisation, 'according to which the Member States do not have the liberty of guaranteeing better social protection' (see Pieters, D. (1993), pp. 122–123), nor to absolute harmonisation, 'such as e.g. a universal minimum benefit of a given level' (see Schoukens, P. (2008), p. 34).

27 See Hellenic Parliament (1981a), pp. 4–5.

In terms of international politics, the participation of Greece in an international framework concerning the protection of social rights – such as the one set by the ESC[28] and its subsequent protocols – constituted actual proof of the country's political interest and will to push forward and to give real substance to social rights at a European level. Therefore, the government could not be absent from such international initiatives. Moreover, the ratification of an instrument such as the ESC (as well as the protocols subsequently amending it) was seen as an action which actually enhanced the effort being made by all the European Member States to expand social rights in Europe and to create a substantial framework for the safeguarding of human rights and fundamental freedoms at a European level.[29]

Moreover, political interest and will can be reinforced by the status and importance awarded to an international instrument, or to the status and importance awarded to an international organisation as a whole. Such a standpoint is obvious from the statements regarding the ratification of the ECSS and the ESC by Greece.[30] Several other statements made during the Greek parliamentary discussions are also interesting, since apart from showing the commitment of the country to the targets of an international organisation, they also accompanied, among others, the ratification of the Additional Protocol to the ESC and the Additional Protocol to the ESC providing for a System of Collective Complaints.[31]

Of course, the fact that in the period when the two previously mentioned protocols were ratified Greece was preparing to undertake the Presidency of the CoE, in combination with the fact that back in 1968 the CoE *had pointed the finger at Greece* because of the military dictatorship within the country (as a result, Greece was excluded back then from the CoE),[32] Greek politicians were much more inclined to ratify international instruments in the field of human rights in general, and social rights in particular, so as to show that the country can, and is willing, to boost the role of this international organisation towards the protection on the European continent.[33]

5.2.2 RESULTS STEMMING FROM THE LEGAL COMPARISON

As presented above, the country's compatibility with the accepted ISSS, as well as the endorsement (at a national level) of social rights included in the international

28 See Chapter 3, Section 3.3, Sub-Section 3.3.4.
29 See, also, Chapter 1, Section 1.1, Sub-Section 1.1.2.
30 See Chapter 3, Section 3.3, Sub-Sections 3.3.3 and 3.3.4.
31 See Chapter 3, Section 3.3, Sub-Section 3.3.6.
32 See, also, Benelhocine, C. (2012), p. 8.
33 See, also, Hellenic Parliament (1998), pp. 2570, 2574.

legal instruments (among them the right to social security),[34] seem to have further facilitated Greece's decision to proceed with ratification during the years that ratification took place.[35]

Based on the vertical legal comparison (bottom-up approach)[36] that took place between the Greek social security legislation and the ISSS set in the C102 and the ECSS,[37] it appears that for quite some time and until mid-2008,[38] in respect of the parts that have been ratified by Greece (the parts on unemployment and family benefits of the ECSS have not been accepted as well as the part on family benefits of the C102), compatibility between national and international law existed to a significant extent (although exceptions and problematic areas have been detected during the conduction of the comparative content analysis; similarly, some remarks need to be made in relation to the radical legislative modifications that took place in 2010 (these will be described and discussed in Section 5.4). More precisely:

a. Personal scope of application

With regard to the personal scope of application[39] and in relation to the eight out of the nine parts on the social security risks accepted under the C102, namely, medical care, sickness, unemployment, employment injury, maternity, old-age, invalidity and death, Greece fulfils the ISSS set, since it protects more than 50 per cent of all employees within the country. Similarly, for the ECSS and for the seven out of the nine accepted parts on the social security risks, namely, medical care, sickness, employment injury, maternity, old-age, invalidity and death, Greece fulfils the ISSS set, since it protects, once again, more than 50 per cent of all employees within the country. This way, compliance with the Article 12§2 of the

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34 Article 12 of the ESC protects the right to social security. In order to ensure the effective exercise of this right, under Article 12§2 it is stated that the contracting parties undertake: 'to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) Concerning Minimum Standards of Social Security.' Greece has accepted Article 12 of the ESC in its entirety. See, also, Chapter 1, Section 1.1, Sub-Section 1.1.2.

35 See Chapter 3, Section 3.2, Sub-Section 3.2.1 and Sub-Section 3.2.2.

36 See Chapter 1, Section 1.4, Section 1.4.3.

37 See Chapter 4, Parts II, III, and IV.

38 As already discussed in Chapter 1, Section 1.4, and in particular Sub-Section 1.4.5, the legal comparison conducted between the national and the international social security legislation involves the period from 1990–2010. In June 2010 a new law on the reformation of the Greek social security system was enacted (Law No. 3863/2010 'New Insurance System and relevant provisions – arrangements on labor relations'). Remarks with regard to specific provisions of the new Law are made in this penultimate chapter of the doctoral dissertation (Section 5.4, Sub-Section 5.4.1), to the extent that they relate to the accepted by Greece ISSS.

39 See Chapter 4, Section 4.3, Sub-Section 4.3.5, Section 4.4, Sub-Section 4.4.6, Section 4.5, Sub-Section 4.5.6, Section 4.7, Sub-Section 4.7.6, Section 4.8, Sub-Section 4.8.6, Section 4.9, Sub-Section 4.9.5, Section 4.10, Sub-Section 4.10.7, and Section 4.11, Sub-Section 4.11.5.

ESC is also ensured. Still, what should be (once again) noted is that the exact percentage of coverage is not indicated both within the annual general Greek and the detailed reports submitted to the competent international supervisory bodies. In other words, there is lack of proper statistical data[40] on the exact percentage of coverage. Instead, the following wording is always included in these reports: 'in Greece, almost all the salaried employees of the private sector within the country are covered…' against the social risks previously mentioned (the issue of the lack of statistical data is further discussed in the Section 5.3, below). Furthermore, what is interesting is the following information included in recent parliamentary documentation, according to which, the Greek Minister revealed that 25 per cent of the working population (this also refers to other categories of employees, not only salaried employees of the private sector) in Greece are uninsured.[41] This actually implies that Greece would encounter difficulties in accepting higher ISSS in terms of population coverage.

b. Material scope of application

With regard to the material scope of application, national legislation fulfils the ISSS set out in the C102 and the ECSS as follows. *Medical care*: conformity exists concerning both benefits in kind that should be provided in the case of a morbid condition and cost-sharing[42] (for quite some time, though, non-compliance existed regarding the provision of nursing care at home in the case of employment injury; Greece finally brought its legislation in line with the standards, however, full compliance took place more than nine years after the competent supervisory bodies made first their observation of non-compliance);[43] *sickness*:[44] the provision of benefits in cash is foreseen; *unemployment*:[45] benefits in cash are provided to the beneficiaries (comments on the issues of suitable employment and the initial period where jobseekers may refuse a job offer if regarded as unsuitable will be mentioned in Section 5.3); *employment injury*: in general, there is conformity concerning the provision of the relevant benefits in cash and in kind (however, a long-lasting non-compliance still exists in relation to the benefit that should be provided in the case of partial loss of earning capacity; in addition, despite the fact that Greek legislation foresees protection against both employment injuries and occupational diseases, there is non-conformity of the national list

40 Reference to the 'major issue of statistical data that signatory parties have to submit in order to prove that they are in line with the minimum standards' can be also found in Schoukens, P. (2007), p. 88; see, also, Dijkhoff, T. and Pennings, F. (2007), p. 159; Pennings, F. (2007), p. 26. Moreover, Greece is characterised, in general, by a 'lack of substantial social research and of reliable body of statistical social policy information' (see Venieris, D. (2003b), p. 133).

41 See Hellenic Parliament (2010d).

42 See Chapter 4, Section 4.3, Sub-Sections 4.3.2 and 4.3.5.

43 See Chapter 4, Section 4.7, Sub-Section 4.7.6.

44 See Chapter 4, Section 4.4, Sub-Sections 4.4.2, and 4.4.6.

45 See Chapter 4, Section 4.5, Sub-Sections 4.5.2, and 4.5.6.

of occupational diseases with the Schedule (referred under Article 2) established by the C42 (Greek Statute No. 2080/1952);[46] reference to this issue is made in the Section 5.3); *maternity*:[47] conformity currently exists in respect of the provision of both benefits in cash and in kind; *old-age*, *invalidity* and *death*:[48] here exists conformity with the ISSS (although the legislative modification introduced in 2010 is a cause for concern with respect to the future compatibility of the system with the accepted ISSS; in this regard, remarks are given in Section 5.3).

c. Qualifying conditions

In relation to the qualifying conditions, nd as far as *medical care* and *sickness benefit* are concerned, Greece, at first glance, fulfils the standards set out in the C102 and the ECSS (there remains an issue of incompatibility[49] that has been detected in relation to the length of the qualifying period imposed recently (in 2008) for access to medical care and the provision of the sickness benefit, which will be further discussed in Section 5.3). With regard to the provision of *unemployment benefit*, Greece fulfils the standards set.[50] In the case of an *employment injury* and, by extension, of an occupational disease, once again Greece fulfils the standards; since no minimum qualifying period is required under national law (eligibility for the receipt of the benefit is not subject to the length of employment).[51] For the provision of *maternity benefit in cash and in kind* (medical care), national legislation, in general terms, complies with the ISSS (nevertheless, as in the case of medical care (mentioned previously), there is an issue of possible non-conformity[52] in relation to the length of the qualifying period imposed (in 2008) for access to medical care, which will be discussed in Section 5.3. It is also worth mentioning that Greece has been found to fail to comply with Article 8 of the ESC, since for the provision of maternity leave, periods of unemployment are not taken into account when calculating the employment period needed for access to maternity leave). Last, for *old-age, invalidity* and *survivors' benefits*, Greece has long been quite generous in relation to the qualifying conditions (pensionable age and length of employment period) required for the provision of the benefits (no incompatibility with the ISSS has been detected) and has also displayed one of the highest rates of early retirement in Europe (be that as it may, due to the fact that a recent reform of the pension system in Greece was introduced, and several modification have taken place, certain issues are discussed under Section 5.4).

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46 See Chapter 4, Section 4.7, Sub-Section 4.7.6.
47 See Chapter 4, Section 4.8, Sub-Sections 4.8.2, and 4.8.6.
48 See Chapter 4, Section 4.9, Section 4.10, Section 4.11, and Sub-Sections 4.9.2, 4.9.5, 4.10.2, 4.10.7, and 4.11.2.
49 See Chapter 4, Sections 4.3, Section 4.4, Sub-Sections 4.3.5 and 4.4.6.
50 See Chapter 4, Section 4.5, Sub-Section 4.5.6.
51 See Chapter 4, Section 4.7, Sub-Sections 4.7.3 and 4.7.6.
52 See Chapter 4, Section 4.8, Sub-Sections 4.8.3 and 4.8.6.

d. Duration

In respect of benefit duration, no limits are fixed regarding the provision of *medical care* to outpatients, and in the event of hospitalisation. Moreover, medical care is not suspended while a sickness benefit is paid.[53] Both directly and indirectly insured women are entitled, before and after confinement, to the *maternity medical care* foreseen under the ISSS. The beneficiary is not obliged to share the cost of medical care during pregnancy, or the cost of the necessary pharmaceutical supplies.

The *maternity medical benefit* is granted throughout the contingency and the *maternity cash benefit* is provided for a longer duration than that set out in the ISSS.[54] Thus, national legislation is currently compliant. Further, with regard to the provision of sickness *benefit*,[55] the waiting period of three days foreseen under national law is in line with the ISSS (nevertheless, there seems to be an issue in relation to the time-limitation allowed under the standards for the provision of the sickness benefit (for the same sickness or for different illnesses).

Next, the duration of *unemployment benefit*[56] provision (it is paid for a minimum period of five months and a maximum period of one year (12 months)), as well as the waiting period applied (the benefit is paid as of the 7th day, so there is a waiting period of 6 days), fulfil, at a national level, the standards set (as far as seasonal workers are concerned, according to the ISSS the duration of unemployment benefit and the waiting period may be adapted to their conditions of employment; certain remarks (based on the situation of the current economic crisis) on this issue follow in Section 5.3).

In the case of an *employment injury*,[57] medical care is granted throughout the contingency, and no waiting period is provided for in the case of incapacity to work. When the employment injury causes short-term (temporary) incapacity to work, this situation is regarded as a sickness situation. There is no waiting period for the provision of the sickness benefit; however, the duration of payment is up to 720 days. Within similar terms, when the employment injury benefit causes invalidity of 33.33 per cent (1/3 invalidity), no reduced long-term benefit is provided as foreseen under the ISSS, and in turn a short-term benefit is provided again for up to 720 days (since under international law the benefit shall be granted throughout the contingency, there seems to be an issue of non-conformity; there

53 See Chapter 4, Section 4.3, Sub-Sections 4.3.4 and 4.3.5.
54 See Chapter 4, Section 4.8, Sub-Sections 4.8.4 and 4.8.6.
55 See Chapter 4, Section 4.4, Sub-Section 4.4.6.
56 See Chapter 4, Section 4.5, Sub-Sections 4.5.4 and 4.5.6.
57 See Chapter 4, Section 4.7, Sub-Sections 4.7.4 and 4.7.6.

is also an issue of non-compliance regarding the replacement of the reduced long-term benefit with a short-term benefit. These issues are discussed in Section 5.3).

Finally, *old-age benefit*[58] is paid throughout the contingency: in other words, the payment of the benefit ceases upon the death of the recipient. *Invalidity benefit*[59] is also granted throughout the contingency; it may be also paid after the right to a sickness benefit has expired, and it can also turn into an old-age benefit, provided that the insured person satisfies the age limit and qualifying period required for the provision of an old-age benefit. *Survivors' benefit*[60] is granted throughout the contingency as well, subject to certain cases of suspension or the withholding of the benefit. Therefore, national legislation conforms with the ISSS.

e. Amount of benefits, standards to be complied with by periodical payments and the readjustment of benefits

The provisions of the C102 and the ECSS – which concern the amount of benefits[61] to be paid to the beneficiaries at a national level, as well as the provisions on the ISSS to be complied with by periodical payments (periodical payments to standard beneficiaries (application of Schedule to Part XI))[62] – are among the most important provisions included in both these international social security legal instruments.[63] The *calculation of the replacement rate of the benefits* is a crucial one, since *it actually shows whether the benefits paid by the country satisfy the international standards*. What is more, the calculations should be made in a proper way within the reports submitted by the country to the competent international supervisory bodies, and should be based on the instructions given in the relevant report forms, so that the conformity of national with international law can be easily checked.

Within the submitted Greek reports, proper calculations have not taken place. Even when calculations did take place, they were not for all the benefits, but only for pensions (old-age, invalidity and death). All the same, based on my calculations, which are indicative due to the paucity of data,[64] it seems that Greece has been satisfying, for quite some time, the relevant standards for the

58 See Chapter 4, Section 4.9, Sub-Sections 4.9.4 and 4.9.5.
59 See Chapter 4, Section 4.10, Sub-Sections 4.10.5 and 4.10.7.
60 See Chapter 4, Section 4.11, Sub-Sections 4.11.4 and 4.11.5.
61 See Chapter 4, Section 4.12.
62 See Chapter 4, Section 4.13.
63 A commentary and explanatory information on the nature, amount and standards to be complied with by periodical payments under international social security law are provided in Chapter 2, Section 2.5.
64 For the sake of completeness of this doctoral dissertation, I made an effort to make indicative calculations, so as to show whether the relevant ISSS are kept under national law, based on the availability of data within the submitted (over the years) Greek reports on the application of the ECSS (as already mentioned, the Greek reports on the application of the C102 were

covered social risks,[65] albeit not at a much higher level than the one indicated in the international instruments[66] (analytical reference to this issue and relevant comments are included in Section 5.3).

In relation to the *revision of long-term benefits*,[67] Greece, until 1990, showed particular interest in this matter and fulfilled the ISSS through the method of automatic indexation. However, during the period from 1990 until mid-2008, a significant drop in government interest in re-adjusting benefit rates has been observed, and the relevant standards were not fulfilled in their entirety. The 2009 annual re-adjustment was replaced by ad hoc economic policy measures (this issue will be further elaborated in Section 5.3).

f. Benefit suspension and the right to appeal[68]

As far as *benefit suspension*[69] is concerned, national social security legislation does not present any contradictions with the cases of suspension recognised under the ISSS ratified by Greece for the following social risks: *unemployment*, *family* and *sickness*. No cases of suspension are foreseen under national social security legislation for *medical care* and *maternity*. Similarly, no major contradictions have been detected in respect of *old-age*, *invalidity* and *death*. Greek legislation recognizes *the right to appeal*, and relevant legislative measures have been taken towards its realisation.[70] Moreover, compatibility exists with the requirements set out for the proper exercise of this right under the relevant provisions of the C102 and the ECSS.

g. Financial and administrative aspects/safeguards

Last, with respect to the *financial* and *administrative safeguards*,[71] the Greek system fulfils the ratified ISSS pertaining to *the principle of collective financing*, as well as *representation* (involvement and participation of the protected persons).

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not provided by the competent Greek ministry) and certain other data found after individual research. See Chapter 4, Section 4.14, Sub-Section 4.14.3.

65 The social risks for which indicative calculations were possible to be made included: sickness, old-age, invalidity and survivorship.

66 See Chapter 4, Section 4.14, Sub-Section 4.14.3.

67 See Chapter 4, Section 4.15. See, also, the comments and analytical information on the revision of the rates of long-term cash benefits under international social security law provided in Chapter 2, Section 2.6.

68 For a description and commentary of the international provisions included both in the C128 and the C102, and referring to the cases of benefit suspension and the right to appeal, see Chapter 2, Section 2.9.

69 See Chapter 4, Section 4.16.

70 See Chapter 4, Section 4.17.

71 See Chapter 4, Section 4.18. A description and commentary of the international provisions referring to the financial and administrative aspects of the standards included both in the C128 and the C102 is given in Chapter 2, Section 2.9.

Nevertheless, in terms of maintaining the *reliability and financial sustainability of the system*, and in this way also procuring the due provision of benefits as the *final guarantor* and the *proper administration* of the competent funds, Greece has not, for quite a long time, performed satisfactorily (relevant comments on this issue are made in Section 5.3).

5.2.3 REFLECTING ON THE REASONS BEHIND RATIFICATION

It emerges that the majority of the previously mentioned reasons for ratification, namely, the prevalence of a more favourable socio-political and economic climate worldwide, the example of other countries, the matter of pride and international appraisal, the advantage and superiority ascribed to an international instrument in relation to national legislation, the materialisation of political promises, the influence of political ideology and the existence of strong political interest and will, relate to Greek politics and societal values, as well as to the evolution of international politics in the general field of social security protection.

For many decades, at a national level, and especially after troublesome periods, Greek political leadership procured a satisfactory level of protection within the country, and at the same time concerned itself with how social security protection is perceived at an international level. The tenet, foundation and organisation of the Greek social security system reflected acceptance of fundamental principles, rights and standards set within adopted international instruments in the field of social security protection and respect of human and social rights. Despite the fact that in the Greek case ISSS were not taken clearly as a benchmark[72] (with the exception of the C103; its ratification was seen by the government as a way of improving the level of maternity protection and reassuring voters of the comprehensiveness of risk coverage – a goal to be reached, in other words), the country embraced the international political effort to achieve unity through the promotion of social progress and security, and it considered it vital to participate and follow the example of other countries, especially at the European level.

Thus, it was not compatibility or conformity of national legislation with international law (national law and practice, in other words) alone that led Greece to ratification.[73] Neither was it the economic prosperity of the country,

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[72] In other countries, for example, Estonia and Czech Republic, the standards set in the ECSS clearly served as benchmarks during the process of reformation and the development of their social security systems. See Dijkhoff, T. (2011), pp. 302–303, 309–311.

[73] This factual finding also correlates with other findings based on the practical experiences of social security experts within other countries. To wit, that 'the European Code of Social

or its sufficient financial resources and administrative capacity, which played the leading role in the progression towards ratification.[74]

By way of illustration, the ratification of the C102 took place in 1955 (the form of government then was a constitutional monarchy), almost a decade after the end of WWII (1939–1945), and a few years after the end of the Greek Civil War (1946–1949). Obviously, back then the economic situation within the country could by no means be characterised as thriving; on the contrary, it was rather weak. Still, ratification of the C102 took place, and it was not only because Greece fulfilled the ISSS, but mainly because the political leadership of the time wanted to move steadily onwards, to be part of the transpiring international developments in the social security field, and also to join the *Western world*.[75]

Similarly, it was after the fall of the last dictatorship (the Greek military junta of 1967–1974, known as the *Colonels' regime*) that the ECSS, the C103 and the ESC were ratified (in 1981, 1982 and 1984, respectively). Greece had then started to gradually prosper again. In the same way (as already noted), Greece in the 1990s ratified further CoE international instruments, despite the financial burden this would bring to bear on the country. Therefore, it could be said that even if economic development is not well advanced, through proper economic handling, management of available resources, restructuring, international guidance, and, indisputably, a country's good faith, ratifications may be promoted. Undoubtedly, political interest and political will play an important role in this respect.[76]

Moreover, it is apparent that the *transition factor* also had a crucial impact on the process of ratification.[77] In the Greek case, the transition factor related to the evolution from a dictatorial regime to a democracy. Most of the political decisions on the ratification of international instruments in the field of social security in particular, and human and social rights in general, took place in that period. This can be regarded as an expression of the country's wish to belong to a larger and more advanced international democratic community – that of Western Europe – also in terms of protection levels. Put differently, these ratifications can be considered to attest to the fact the country's social security system were brought

Security and the European Social Charter have a political meaning, which is even growing, rather than a strict legal meaning' (Schoukens, P. (2007), p. 90).

74 Besides, there are examples, worldwide, of countries, which are economically advanced, but still, even today, have not ratified any minimum or higher social security standards. See, also, Chapter 1, Section 1.4, Sub-Section 1.4.1.

75 As a further example, in 1952 Greece also became a member of NATO.

76 See, for a similar line of thought, Schoukens, P. (2007), p. 90.

77 This has been also very recently re-affirmed by the ILO CEACR. See International Labour Office (2011), p. 73.

into line – harmonised[78] – with the Western European ones. Recent research has shown that the *transition factor*, albeit within a somewhat different context (i.e. efforts made by countries formerly governed by centrally planned socialist regimes to create wealth and raise living standards (also avoiding the existence of arbitrarily predetermined wages) by embracing free market oriented policies),[79] had considerable impact on ratification decisions[80] in other countries.[81]

Finally, it is also interesting to note that the C103 and the ESC were ratified in the first years immediately following the accession of Greece to EC (nowadays, the EU), while the year the ECSS was ratified was the same that Greece accessed the EC (1981). At that time, the social chapter of EU legislation did not yet exist.[82] Thus, (ex-) Article 136 TEC[83] also did not exist. Consequently, it could be said that the ratification of the ESC by Greece did not relate to the references made within

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78 For an in-depth elaboration on the ISSS' harmonising function, see Dijkhoff, T. (2011), pp. 308–309, 310–311.

79 See, relatively, Schimmelfennig, F. (2001), pp. 47–80; Lemke, C. (2001), pp. 1–18; Dijkhoff, T. (2009), pp. 6, 11.

80 It is though also interesting to note that opinions had been expressed in relation to the real utility that the ratification of ISSS would bring for those countries. For instance, 'economists responsible for macro-economic equilibrium, often argue that under the rapidly changing economic and social circumstances compliance with rigid standards may hinder more flexible and efficient action. This argument was especially common in Central-Eastern European countries undergoing the transition from planned economy to market economy in the latest years. It was frequently claimed that transition could be much quicker and more efficient without the costs of the disproportionately great social burdens inherited from the past. Similar objections may also be made against international standards in a period of economic recession', (see Czucz, O. (1999), p. 61).

81 Czech Republic and Estonia, for example, have been among such countries. They have been researched in detail by Tineke Dijkhoff in the same part of the *Europe and Social Security* research programme, of which this doctoral dissertation is also part. See Dijkhoff, T. (2011). Reference to the impact of transition on ratification decisions in other Central-Eastern European countries can be found in ILO (2008), pp. 1–92.

82 The Treaty of Amsterdam (1997) incorporated the provisions of the Agreement on Social Policy directly into the main body of the Treaty on the European Union. See, also, Chapter 1, Section 1.2, Sub-Section 1.2.3. It should be recalled that a Protocol on Social Policy was appended to the Treaty on the European Union (1991). Annexed to the Protocol was an Agreement on Social Policy.

83 The ex Article 136 TEC (Article 151 in the Lisbon Treaty) is the major provision on social objectives. It clearly refers to *European social objectives*, among which are the promotion of proper social protection, improved living and working conditions, as well as the combating of social exclusion. Furthermore, of great interest is the fact that this specific clause states that the Community and the Member States should respect fundamental social rights, such as those included in the Community Charter of the Fundamental Social Rights of Workers, as well as in the European Social Charter of the Council of Europe; such a reference at least implies that at a European level, policy decisions and their implementation should not contradict these two social charters. Finally, this provision sets social objectives for their own merit and not just in correlation with economic objectives; see Vansteenkiste, S. and Schoukens, P. (2003), pp. 56–57. However, it does not grant any powers to the Community legislature to realise these objectives, and these Community competences can be found in other provisions of the Treaty. See, also, Korda, M. and Schoukens, P. (2006), pp. 7–33, as well as Pennings, F. and Schulte, B. (2006), pp. 24–26. See Article 151 [136] [Article III-209 (ex Article 136 TEC)] in Cowgill, A. and Cowgill, A. (2008), p. 67.

this provision of the ESC to the CoE, but purely to the international reputation, political weight and validity this charter had, as well as the political will and interest of the government in its ratification, following the example of other countries. The same counts for the ECSS. This actually differs from the reasons of certain new EU Member States in the 1990s for the ratification of the ECSS and the ESC, namely, the clear intention to join the EU.[84]

Ergo, it could be stated that the Greek case shows, in all, three vital reasons for ratification in the period between the beginning of 1950s and end of 1990s: (a) *the existence of strong political interest and political will*, which, apart from the above given description, in a sense encompasses, or is substantially affected by, other reasons for ratification (such as: (i) the example of other countries, (ii) the matter of national pride and international appraisal, and (iii) the materialisation of political promises); (b) *the existence of a different international socio-political and economic climate*, which placed equal emphasis on the achievement of social and economic prosperity at a national level;[85] and (c) *the existence of the belief that the commitment to internationally developed and adopted social security standards and social rights served a twofold purpose – safeguarding existing protection levels and serving as a strong incentive for their further advancement*.[86]

These reasons do not however, appear to be totally in accordance with the reasons that have been cited by the ILO for the ratification (mainly) of the C102, after 1990, by other European countries.[87] To wit:[88] (a) the provision of ILO technical assistance, (b) economic development, (c) the positive effects of the transition in Central and Eastern Europe from centrally planned to market economies, and (d) strong EU and ILO support in bringing national law and practice into line with European social standards and requirements laid down in the C102.

It is only the *transition factor* that corresponds, still, not literally, since in the Greek case emphasis has been placed more on the influence of democratic values and the enhancement of social rights at a national level, rather than marketisation of the economy. Moreover, the recent ILO remark[89] that the C102 indeed received most of its ratifications prior to 1980 endorses, to a significant extent, the three

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84 See, also, Korda, M. and Pennings, F. (2008), p. 135; Dijkhoff, T. (2011), pp. 202–204; Schoukens, P. (2007), pp. 74–75.

85 See also Chapter 1, Section 1.1, Sub-Section 1.1.2 and Section 1.2, Sub-Section 1.2.1.

86 See also Chapter 1, Section 1.2, Sub-Section 1.2.1.

87 The countries which ratified the C102 after 1990 were: Croatia (in 1991), Cyprus (in 1991), The former Yugoslav Republic of Macedonia (in 1991), Slovenia (in 1992), Bosnia and Herzegovina (in 1993), Czech Republic (in 1993), Slovakia (in 1993), Portugal (in 1994), Serbia (in 2000), Poland (in 2003), Albania (in 2006), Montenegro (in 2006), Bulgaria (in 2008), Poland (in 2003), and Romania (in 2009). Estonia ratified the ECSS in 2004.

88 See Chapter 1, Section 1.4, Section 1.4.3. See, also, ILO (2008), pp. 35, 37.

89 See ILO (2008), pp. 35, 37.

main reasons for ratification by Greece identified and described previously for the period between the beginning of 1950s and the end of 1990s.

5.2.4 EMERGING OBSTACLES TO FURTHER PROMOTING THE ISSS

Taking all of the above into account, it would be logical for one to pose the rather critical question of whether these reasons for ratification still exist today. As explained in the introductory chapter,[90] the evanescence of the reasons, which, in the past, led to ratification, is considered a rather serious fault affecting the further promotion of the ISSS and, by expansion, that of social rights.

This research has shown that *the existence of strong political interest and political will* on the part of a country, and particularly that of Greece, was present during all proposals for ratification. All the same, *such strong political interest and will no longer seems to exist today.*[91] As shown analytically in the subsequent sections of this chapter (see Sections 5.3 and 5.4), this old political interest and will has rather been replaced by political inactivity and passivity, if not indifference. The absence of political interest and will is an important obstacle, not only for upcoming ratifications, but it also hinders the advancement of ISSS, as well as their proper applicability, both nationally and internationally.

Next, the lack of further action in respect of ratification has been exacerbated by *the eclipse, universally, of a socio-economic and political climate that would foster social security protection.* And that is, indeed, another serious impediment to any effort to further promote both the ISSS and social rights, since it affects not only future ratifications, but also the proper applicability of already accepted ISSS (again, see, for further detail, Sections 5.3 and 5.4). Several decades ago – especially after the end of the WWII – both social and economic prosperity were recognised as preconditions to global progress and peace. Today, 'social' and 'economic', stand as the two main rivals in the global arena.

Finally, in the past, *ratifications were also seen as a way to both reassure and to boost social security protection within a country.* At least that was the political belief for several decades in Greece. The implementation of several ISSS and social rights reflected the advantage ascribed to international instruments and their relevant provisions. It also reflected the wish of the country to gain international praise and recognition for the level of social security protection attained at the

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90 See Chapter 1, Section 1.4, Sections 1.4.1 and 1.4.3.

91 A similar standpoint has been also expressed in Schoukens, P. (2007), p. 90, as well as Korda, M. (2009), pp. 519–522.

national level. *Recently this perception has gradually faded, if not vanished, and has been replaced by aspirations of a national law and policy making variety, which are simply aimed at cost-containment in the field of social security* (see, further, Sections 5.3 and 5.4).

5.3 ANSWERING THE 2nd RESEARCH SUB-QUESTION

Greece did not ratify certain international social security standards (ISSS). Do the mentioned obstacles fully describe the country's disinclination with regard to ratification? Are there any other obstacles preventing ratification?

5.3.1 THE NATIONALLY STATED OBSTACLES TO NON-RATIFICATION

From the research conducted in this doctoral dissertation, and based on the data obtained from the questions posed during the open-ended interviews within the country, as well as from the study of the available and accessible internal ministerial documentation and other information given by the Greek government in official documents to the ILO and the CoE, a variety of factors were stated as having impeded, during the last two decades, new ratifications by Greece. The reasons, in sum, and with reference in brackets to the instruments they touch upon, pertain to:[92]

- *economic difficulties* faced by the country (C128 (1967));
- *obscurity of provisions* included in the text of the instruments and *interpretation problems* (C128 (1967));
- *non-conformity* (incompatibility) *of national legislation* with the ISSS (Part IV (Unemployment Benefit) of the ECSS (1964), Part VII (Family Benefit), both in the C102 (1952) and the ECSS (1964), and the C121 (1964));
- *inability to reach the higher standards/inability to correspond with the higher standards set* in the instruments (Protocol to the ECSS (1964) and Revised ECSS (1990));
- *ratification still under consideration* (Revised ESC (1996), Part IV (Unemployment Benefit) of the ECSS, Part VII (Family Benefit), both in the ECSS (1964) and the C102 (1952);
- *need for prior completion of national legislative reforms* (C128 (1967), C121 (1964), C157 (1982), C118 (1962), C130 (1969), and C168 (1988));

[92] See, for in-depth discussion of these reasons, Chapter 3, Section 3.4; Chapter 4, Section 4.5, Sub-Section 4.5.5; Section 4.6, Sub-Section 4.6.5; Section 4.7, Sub-Section 4.7.6.

- *the content of the provisions of the international legal instruments is more than covered by EU legislation*, *unwillingness to extend personal coverage,* and *existence of bilateral social security agreements* (C157 (1982), and the European Convention on Social Security (1972)).
- other *undefined/unspecified reasons* (C183 (2000));
- *the international social security standard-setting instruments* both of the ILO and the CoE, on certain occasions, *do not refer to current circumstances*. Put differently, they *are somewhat out-dated* (C128 (1967), C121 (1964), C118 (1962), C130 (1969), C168 (1988), ECSS (1964) and the Protocol to the ECSS (1964));
- *the international social security standard-setting instruments* both of the ILO and the CoE *are too technical* (C128 (1967), C121 (1964), C118 (1962), C130 (1969), C168 (1988), C183 (2000), ECSS (1964), Protocol to the ECSS (1964), and Revised ECSS (1990));
- *ratification of the rest of the up-to-date international standard-setting instruments* of the ILO *would not be of value for the country* (C128 (1967), C121 (1964), C118 (1962), C130 (1969), C168 (1988) and C183 (2000)).

5.3.2 RESULTS STEMMING FROM THE LEGAL COMPARISON

Hereunder, taking into account the above stated national reasons for non-ratification, I elaborate on their validity – based on the vertical legal comparison (bottom-up approach)[93] conducted and other obtained research data – and make remarks concerning their non-ratification.

a. The non-ratified Parts of the CoE, European Code of Social Security (ECSS), 1964 (No. 048) and of the ILO, Social Security (Minimum Standards) Convention (C102), 1952 (No. 102)

The main nationally stated reason for the non-ratification of both Part VII (Family Benefit) and Part IV (Unemployment Benefit) of the ECSS is as follows: ratification of these Parts 'would absolutely create no problems to our Service, *provided that the Code would forecast a 'clause of reciprocity', relative to that of*

[93] That is one of the research methods employed. See Chapter 1, Section 1.4, Section 1.4.3.

Article 68[94] *of the ILO Convention No. 102*.'[95] Concerning the non-ratification of Part VII (Family Benefits) of the C102, no official written or oral information has been provided.[96] Therefore, it is assumed that the reason stated for the non-ratification of the same Part VII of the ECSS applies equally here.

At first glance, such reasoning could be said to relate with the reason *of non-conformity* (incompatibility) *of national legislation* with the relevant standards. Nevertheless, it entails certain other elements of reluctance to ratify, which are not consistent with the aforementioned nationally stated reason for non-ratification.

In particular, based on the results stemming from the legal comparison, Greek legislation does not conform with the ECSS concerning the qualifying period set for family benefits, as it imposes stricter requirements than the ones set in the ECSS. However, it fulfils the qualifying period set for family benefits in the C102, since it imposes less strict requirements.[97] The strange thing is that the C102 includes the above-stated clause of reciprocity. Still, Greece has not ratified Part VII (Family Benefits), neither in the C102, nor in the ECSS.

Moreover, problematic aspects have been noticed concerning the amount of the family benefit and the rate of replacement in relation both to the ECSS, and to the C102 (this issue will be further elaborated in Section 5.4). No accurate statistical data are available (within the Greek reports) in order for proper calculations to take place. This problem has been also encountered by international experts working for the CoE, who have, in the past, checked the compatibility of Greek law with the set ISSS.[98] The problem of statistics also affects the accuracy of fulfilling the personal scope of application. More specifically, considering the current structure of the insurance system, Greece seems to comply with the standards set both in the ECSS and the ILO. All the same, exact figures for the satisfaction of the 50 per cent coverage required in both instruments are not provided; instead the following phrasing is always used: 'almost the total number of salaried people

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94 Article 68 refers to Part XII of the C102 – Equality of Treatment of Non-National Residents – and states: '1. Non-national residents shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes. 2. Under contributory social security schemes which protect employees, the persons protected who are nationals of another Member which has accepted the obligations of the relevant Part of the Convention shall have, under that Part, the same rights as nationals of the Member concerned: Provided that the application of this paragraph may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity.'

95 See, further, Chapter 4, Section 4.5, Sub-Section 4.5.5 and Section 4.6, Sub-Section 4.6.5.

96 As already mentioned (see Chapter 1, Section 1.4, Sub-Section 1.4.5), access to Greek reports on the non-ratified Part VII (Family Benefit) of the C102, and, in general, on the non-ratified up-to-date ILO Conventions, was denied by the competent Greek ministry.

97 See Chapter 4, Section 4.6, Sub-Section 4.6.6.

98 See, also, Council of Europe (2003a), p. 1.

offering dependent work privately within the country is covered' (the issue of lack of statistical data is also further discussed in Section 5.4). Finally, it is not clear whether, indeed, Greek legislation fulfils the requirement set in the material scope of application of both the ECSS and the C102 that: 'the contingency covered shall be responsibility for the maintenance of children as prescribed.' This is due to the fact that proper calculations have not been made concerning the level of the family benefit.[99] It is worth mentioning that the recent cases of non-compliance for Greece with respect to the ESC pertain to Article 16 (the right of the family to social, legal and economic protection)[100] and Article 12, paragraph 4 (the right to equal treatment with respect to social security).[101] The standards concerning the duration of family benefits, however, are both fulfilled under the ECSS and the C102.[102]

In relation to the non-ratified Part IV (Unemployment Benefit) of the ECSS, and despite the fact that the Committee of Ministers has expressed the view that Greece should have no difficulties accepting it, since this part contains similar standards to the ones set in Part IV on Unemployment Benefit of the C102, which has been already ratified by Greece,[103] from the legal comparison it appears that Greece cannot, with certainty, proceed to ratification. As it was also reaffirmed a few years ago by an independent international expert, due to the vagueness of the Greek reports, the failure to supply detailed information, and the lack of necessary data (this is still the case today), no meaningful opinion can be given on whether ratification is possible.[104]

In particular, there is no statistical data in percentages. Thus, as in the case of the family benefit, Greece may comply with the standards set in the ECSS with respect to the personal scope of application, but all the same, exact figures for the satisfaction of the 50 per cent coverage are not given. Instead, once again the following phrase is always used: *almost the total number of salaried people offering dependent work privately within the country is covered* (the issue of the

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99 See Chapter 4, Section 4.14.

100 It has been commented that in Greece: '1. Family benefits are inadequate; the self-employed, who represent about 32 per cent of the active population, do not receive family benefits. 2. Roma families have inadequate legal protection since many Roma people have no legal status; there are insufficient permanent homes and camping sites for Roma families; the criteria for and practice of forced evictions of Roma families are incompatible with families' right to housing (Conclusions XVIII-1)' (Council of Europe (2010c). See, also, Council of Europe (2010d), p. 5.

101 It has been commented that in Greece: '1. Aggregation of periods of insurance or employment completed by a non-EU and non-EEA national is not guaranteed. 2. Payment of family benefits to non-EU and non-EEA nationals is conditional on the children being resident in Greece. 3. There is no provision for the export of social security benefits accrued under Greek legislation by non-EU and non-EEA nationals' (Council of Europe (2008).

102 See Chapter 4, Section 4.6, Sub-Section 4.6.6.

103 A similar opinion has been expressed in Gomez-Heredero, A. (2009a), p. 50.

104 See Chapter 4, Section 4.5, Sub-Section 4.5.5.

lack of statistical data is also further discussed in Section 5.4). Added to this, unemployment coverage does not extend to certain categories of the working population, such as agricultural workers and self-employed persons. Moreover, there are no calculations within the reports, showing, in figures, that the country fulfils the amount and the benefit's rate of replacement of the standards; while appropriate data for making such calculations are missing[105] (this issue will be further elaborated in Section 5.4). Pertinent, to a certain extent, to this matter is that the ECSR – responsible for the application of the ESC – quite recently asked Greece, in its conclusions on the application of Article 12 of the ESC, to provide, in its report,[106] figures, in percentages, with respect to the active population insured as regards certain categories of benefits, among them that of the unemployment benefit,[107] while concerning Article 12, paragraph 1 of the ESC (the right to social security and the existence of a social security system), the same Committee observed for Greece that 'the minimum unemployment benefit for beneficiaries without dependants is manifestly inadequate.'[108]

Problematic aspects also exist in relation to the material scope of application for unemployment. The issues 'of someone being available for work' and 'of suitable employment' are not, in practice, taken into account[109] (see, further, Sub-Section 5.4.1). Additionally, and concerning the qualifying conditions (despite the fact that these are to be determined at a national level, and, therefore, Greece seems to fulfil them), better attention should be paid to the issue of precluding abuse. However, Greece fulfils the ISSS set in the ECSS with respect to the duration of the unemployment benefit and the *waiting period* for its provision.

All the above-mentioned comments should be thoroughly considered in assessing whether Greece indeed still fully satisfies the ISSS set in the C102 in relation to unemployment benefit.

In conclusion, Greece, for a very long time, considered, in particular, the ratification of Part IV on Unemployment Benefit of the ECSS; the same cannot be said for Part VII on Family Benefit. When a positive answer was given to the

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105 See Chapter 4, Section 4.14.

106 The next report was the 19th Greek report on the application of the ESC.

107 See, also, Council of Europe (2006b), p. 8.

108 See Council of Europe (2010), p. 21.

109 In this respect, it is worth mentioning that in a recent guide adopted by the CS-SS of the CoE on the concept of suitable employment concerning unemployment benefit, no data were present for Greece as were for other countries – to wit, information on the criteria for the right to the provision of unemployment benefit to the jobseeker: physical and mental fitness, age, duration of employment, vocational qualification/work experience, length of service in previous occupation, family responsibilities, place of work/travel, place of work requires change of residence, comparison with minimum wage, comparison with previous remuneration, comparison with unemployment benefit, working hours (see Council of Europe (2009b), pp. 47–51).

CoE that Greece would begin this process (in 2006), immediately afterwards (in 2008) the aforementioned reason of the absence of the reciprocity clause relative to that of Article 68 of C102 was put forward,[110] however, without a precise explanation being given in this respect. Such contradictions in official replies given by the government to the CoE (and, by extension, to the ILO) certainly bear thinking about. In a nutshell, and based on the factual findings of this research, points of *non-conformity* (incompatibility) *of national legislation* exist. They do not, though, actually and solely relate to the above nationally stated reason for non-ratification, but basically relate to other aspects – some of them relating to insufficient examination of the option of ratification, or efforts to solve non-conformity, others relating to economic matters. What is more, this nationally stated reason for the non-ratification of both the unemployment and family benefit parts of the ECSS is not well-grounded. This clause pertains to acquired rights or rights in the course of acquisition, and is related to the unwillingness of the country to recognise same rights of non-nationals, and most probably to count, in respect of the payment of the benefits, their periods of insurance. Given the fact that the ECSS only requires 50 per cent coverage, this nationally stated reason for non-ratification could be easily overcome (i.e. non coverage of non-nationals).

Last, the more general reasons that have been stated as affecting the process of ratification of the above-mentioned standards on unemployment and family benefits (namely,[111] that *the international social security standard-setting instruments*, of the ILO and the CoE *do not*, in certain instances, *refer to current circumstances,* or, put differently, *they are somewhat out-dated* and *the international social security standard-setting instruments* of the ILO and the CoE *are too technical*) are not valid, and are also not confirmed by the research results of this doctoral dissertation. Clear issues of non-compliance have been described above, and, added to this, in Greece we have not yet seen any dramatic change in societal values,[112] towards the ones set out in these standards. Moreover, it is quite logical for persons who are not familiar with the ISSS, and who have not examined them in-depth, to consider them as much too technical. All the same, this does not mean that this is the ultimate truth.

b. The non-ratified ILO Convention on Invalidity, Old-Age and Survivors' Benefits (C128), 1967 (No. 128)

The most important nationally stated reasons for the non-ratification of the C128 have been the following:[113] the *economic difficulties* faced by the country;

110 See, further, Chapter 4, Section 4.5, Sub-Section 4.5.5.
111 See also Chapter 3, Section 3.4, Sub-Section 3.4.6.
112 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
113 See Chapter 3, Section 3.4, Sub-Section 3.4.1.

the *obscurity of provisions* included in the text of the instrument[114] and other *interpretation problems*; and the *need for prior completion of national legislative reforms*. The first two reasons were stated back in 1987, while the third was given in 2001. There were also, most recently, certain other more general factors that have been described as obstacles to ratification, such as:[115] *the international social security standard-setting instruments do not*, in certain instances, *refer to current circumstances*, or, put differently, they *are somewhat out-dated; the international social security standard-setting instruments are too technical; ratification of the rest of the up-to-date international standard-setting instruments* of the ILO *would not be of an added value for the country.*

Based on the results stemming from the legal comparison, and first, in relation to the personal scope of application, at a national level it has been stated that IKA-ETAM, for the risk of old-age, provides coverage to all salaried employees of the private sector within the country; for the risk of invalidity all affiliated persons are covered, as long as the degree of invalidity is at least 50 per cent or more; for death the widows and children of employees are covered. However, no data in exact percentages have been presented[116] (the issue of lack of statistical data is further discussed in Section 5.4). Thus, it cannot be said with certainty that Greece fulfils the standards set under C128 in terms of employees, unless proper examination takes place, since C128 provides for several other alternatives and flexibility clauses so as to facilitate ratification.[117] However, it should be noted that Greece has (so far) not based personal coverage on the economically active population, or residence criteria.

Second, with regard to the material scope of application, which in the case of old-age involves the *attainment of a specific pensionable age* and certain *qualifying conditions,* Greek legislation complies with the standards set (Articles 15 and 18, respectively). Similarly, for invalidity, national legislation does not appear to contradict the relevant standards on the definition of the contingency and the qualifying conditions (Articles 8 and 11, respectively). In case of survivorship (death) also, the relevant standards on the definition of the contingency (Article 21) and the qualifying conditions (Article 24) seem to be fulfilled.[118]

Third, with respect to the duration of benefit provision, the standards are fulfilled for all three risks (old-age (Article 19), invalidity (Article 12), and survivorship

114 See Chapter 3, Section 3.4, Sub-Section 3.4.1.
115 See Chapter 3, Section 3.4.
116 See Chapter 4, Sections 4.9, 4.10 and 4.11.
117 See a description and analysis of the relevant provisions on the personal scope of application in Chapter 2, Section 2.2.
118 See Chapter 4, Sections 4.9, 4.10 and 4.11.

(death) (Article 25)).[119] Moreover, with respect to rehabilitation and placement services for the infirm, and despite the fact that unfortunately Greece still has not developed an appropriate network for the creation and functioning of such services at a national level, the C128 (Article 13) allows for derogation of this standard.[120]

Fourth, with regard to the amount of old-age (Article 17), invalidity (Article 10) and survivorship (death) (Article 23) benefit, as well as with the rates of replacement[121] of C128, things are a bit more complex – at least all three benefits are provided in the form of periodical payments.

To be more precise, for pensions certain calculations concerning the standards to be complied with by periodical payments were provided by the Ministry.[122] The most recent ones date back to 2006 (the reports from 2007 to 2010 do not provide any calculations or information on what exactly the replacement rates of the benefits are), and were as follows:[123] for the risk of old-age, the rate of replacement was stated to be 87.96 per cent; for the risk of invalidity, the rate of replacement was stated to be 57.45 per cent; for the risk of death, the rate of replacement was stated to be 42.90 per cent.

In the calculations I made (end of 2009) based on certain available and other gathered data, it emerges:[124] for the risk of old-age benefit, a rate of replacement of 43.2 per cent of the previous earnings of the SB; for the risk of invalidity, a rate of replacement of 46.23 per cent of the previous earnings of the SB; for the risk of death, a rate of replacement of 49.57 per cent of the previous earnings of the SB.

Taking into account that the C128 for the risk of old-age benefit sets the rate of replacement at 45 per cent of the previous earnings of the SB, Greece, in 2006, more than fulfilled the standard, while in 2009 it failed to meet the standards, falling short of the required rate (but also showing a great difference in the percentage in comparison to 2006). For the risk of invalidity, the C128 sets the rate of replacement at 50 per cent of the previous earnings of the SB, and for the risk of death, at 45 per cent of the previous earnings of the SB. Greece fulfilled the standard set for the risk of invalidity in 2006; the same does not count for 2009. Moreover, in 2006 the rate of replacement was much higher. With regard to the standard set for the risk of death, Greece failed to meet the standard in 2006, but fulfilled the standard in 2009.

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119 See Chapter 4, Sections 4.9, 4.10 and 4.11.
120 See Chapter 4, Section 4.10, Sub-Section 4.10.7, as well as Chapter 2, Section 2.7.
121 See, for analysis, Chapter 2, Section 2.5.
122 See Chapter 4, Section 4.14.
123 See General Secretariat of Social Security (2006), pp. 21–22.
124 See Chapter 4, Section 4.14, Sub-Section 4.14.3.

From the above, it appears that Greece, especially in 2006 (and even in 2009), complied with certain ISSS (if not all). However, attention should be paid to the fact that it is not quite clear what the exact process followed for making the calculations was in the national reports back in 2006 (this issue will be further elaborated in Section 5.4).

Last, with regard to the issue of long-term benefit readjustment, and as already mentioned (see Section 5.2), Greece, for quite a long time, paid significant attention to it.[125] Nevertheless, a lack of government interest has been observed in this respect in the last decade (this issue will be further elaborated in Section 5.4). Moreover, Greece would most probably encounter difficulties with the requirement set out in the C128 to provide findings of long-term benefit reviews and specification of actions taken in terms of proper readjustment, especially in most recent years.[126]

Taking these research results into account, it seems that since 1987 when the first two main reasons for the non-ratification of the C128 were given (*economic difficulties and the obscurity of provisions/interpretation problems*), Greece has gone through a lot of changes as a country, and has had a lot of chances to reconsider the ratification of at least one part, if not all parts, of the C128. Moreover, since 1987 the economic situation within the country had somewhat improved, especially in the period up to 2006, while the ILO Bureau has always been there to provide help and guidance. It also has to be noted that the expressed *need for prior completion of national legislative reforms* does not count as a valid reason for non-ratification, because several legislative reforms have taken place within the country since 2001 and to the pension system in particular. As the legal comparison has revealed, if Greece had asked for some international support, ratification of at least one part of the C128 could have been possible. What is more, the other articulated reasons for non-ratification mentioned above are not that convincing, and are also not in accordance with the expressed *need for prior completion of national legislative reforms*, because it has once again been shown that insufficient attention has been paid by the government and the country to the possibility of ratification since the creation of its SIS, and extensive protection and priority has been provided and given with regard to the risks of old-age, invalidity and death, compared to other social risks.

125 See, also, Chapter 4, Section 4.15.
126 See, for analysis, Chapter 2, Section 2.6.

c. The non-ratified CoE Protocol to the European Code of Social Security (ECSS) and Revised European Code of Social Security (ECSS)

The *inability to reach the higher standards*, or, in other words, the *inability to correspond to the higher standards* set within the Protocol to the ECSS and the Revised ECSS, as well as the *excessively technical nature* of these international instruments, have been the main nationally stated reasons for non-ratification.

Indeed, the above-mentioned reasons for non-ratification hold ground for certain parts of these international instruments and more so regarding the Revised ECSS. Throughout the legal comparison, certain areas have been highlighted where Greek legislation faces difficulties in fulfilling the higher ISSS or, put differently, it is not clear whether fulfilment of these ISSS could be achieved.[127] In any case, proper assessment at a national level is required, involving collaboration of all the relevant ministerial departments and certainly technical support by international experts of the CoE and the ILO, which, to date, has not been undertaken (notwithstanding that several national legislative reforms have taken place the last two decades).

For instance, with regard to the personal scope of application, and due to the lack of relevant statistics, it is impossible to assess whether the standards set in the Protocol to the ECSS and the Revised ECSS could be met, especially if one bears in mind that Greece has so far opted for the option of employees' coverage (and not of the economically active population or residents within the country). In this case, both instruments ask for a significant extension of personal coverage (the Protocol to the ECSS, for all social risks, sets coverage at least 80 per cent of all employees and their wives and children (with the exception of unemployment: 55 per cent); the Revised ECSS speaks of (almost) overall coverage of employees) in relation to the ECSS. Moreover, the fact that very recently (in 2010) it was stated that: '25% of the working people in Greece is uninsured'[128] (this also refers to other categories of employees, not only salaried employees of the private sector), puts a spanner in the works in terms of fulfilling the higher ISSS.

In respect of the amounts and replacement rates of long-term benefits, in 2006[129] the rate of replacement for the risk of old-age was stated to be 87.96 per cent; for the risk of invalidity, 57.45 per cent; for the risk of death, 42.9 per cent.

In the calculations I made (at the end of 2009),[130] and based on certain available and other gathered data, it emerges the rate of replacement for the risk of old-age

127 See Chapter 4, Part II.
128 See Hellenic Parliament (2010d).
129 See General Secretariat of Social Security (2006), pp. 21–22.
130 See Chapter 4, Section 4.14, Sub-Section 4.14.3.

benefit as 43.2 per cent; for the risk of invalidity, 46.23 per cent; for the risk of death, 49.57 per cent.

Consequently, in respect of old-age, Greece, in 2006, is found to have more than fulfilled the ISSS set in the Protocol to the ECSS (45 per cent) and the Revised ECSS (65 per cent), while in 2009, it failed to meet the standards, with a significant difference between the two. For invalidity, in 2006 the standard set in the Protocol to the ECSS (50 per cent) was met, but that of the Revised ECSS (65 per cent) was not, while in 2009, Greece failed to meet the standards. For death, in 2006 Greece failed to meet the standards set both in the Protocol to the ECSS (45 per cent) and the Revised ECSS (65 per cent), while in 2009 the standard set in the Protocol to the ECSS was met, but that of the Revised ECSS was not.

For the other social risks, calculations from the Greek Ministry have not been produced. The researcher made indicative calculations (at the end of 2009),[131] but only for the risk of sickness.[132] As a result, the rate of replacement for the risk of sickness is 59.37 per cent. So, the standard set in the Protocol to the ECSS (50 per cent) is satisfied, but that of the Revised ECSS (65 per cent) is not. In addition, the issue of long-term benefit readjustment should be looked at, which directly affects the rates of replacement. Greece may have paid attention to it for quite a long time, but in recent years the national interest has declined[133] (the issues of calculation and readjustment will be further elaborated in Section 5.4).

Some other hazy areas in relation to the higher ISSS have been observed. By way of illustration: for medical care and maternity is not that clear whether Greece fulfils the material scope of application under the Protocol to the ECSS and the Revised ECSS; for sickness, the period of entitlement (duration of payment) is further increased in relation to the ECSS, both in the Protocol to the ECSS and the Revised ECSS; for unemployment, the issues of being available for work, suitable employment, total unemployment *vs*. partial unemployment, particularly under the Revised ECSS, and issues of duration of the benefit under the Protocol to the ECSS; for family, the issue of responsibility for the maintenance of children under the Protocol to the ECSS and under the Revised ECSS and that of not making the entitlement to a family benefit conditional on the completion of a qualifying period; for invalidity, the requirement (without the possibility of derogating) under both the Protocol to the ECSS and the Revised ECSS to provide rehabilitation and placement services; *etc*.

131 See Chapter 4, Section 4.14, Sub-Section 4.14.3.

132 For the risks of unemployment, family, employment injury and maternity, calculations were not possible. See Chapter 4, Section 4.14, Sub-Section 4.14.3.

133 See, also, Chapter 4, Section 4.15.

5.3.3 RESULTS STEMMING FROM THE ELABORATION OF FURTHER AVAILABLE DATA OBTAINED

Despite the fact that the below-mentioned international instruments have not been the subject of the vertical legal comparison (bottom-up approach),[134] based on the elaboration of further data obtained throughout the general descriptive qualitative research, opinion is given here on the possibility of ratification or non-ratification of certain other international instruments not ratified by Greece, and comments concerning their non-ratification are made.

a. The non-ratified ILO Employment Injury Benefits Convention, 1964 (No. 121)

With respect to the *non-conformity* (incompatibility) *of national legislation* with the higher ISSS set in the C121, which was the main nationally stated reason for the non-ratification of this instrument (to wit, the absence of a specific catalogue for occupational diseases and other problematic aspects concerning the categories of arduous and unhealthy occupations (AUOs)),[135] this research shows that ratification would have been possible and could have taken place (or at least could have been thoroughly considered many years ago), especially if the Greek government had, from an early stage, recourse to the ILO technical assistance and had looked seriously into the matter from a legislative perspective.

More precisely, Article 8 of the C121, which has been acknowledged as the basic provision hindering ratification, provides three alternatives[136] to Member States so as to facilitate ratification. It actually serves as a flexibility clause. Therefore, Greece could have opted for the second alternative, including a more general definition of occupational diseases in its national legislation, though broad enough to at least cover the diseases enumerated in Schedule I to the Convention.[137] Furthermore, it should not be forgotten that today Greece still is not in conformity, on the issue of the list of occupational diseases, with the schedule established by the C42 (1934), ratified by Greece back in 1952[138] (reference to this issue follows in Section 5.4).

What is more, as the most recent Committee noted in early 2010, in relation to the occupational diseases there is an urgent need to incorporate into national social insurance legislation the EU list of occupational diseases, taking into account the European Commission Recommendation 2003/670/EU and the ILO

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134 See Chapter 1, Section 1.4, Sub-Section 1.4.3.
135 See Chapter 3, Section 3.4, Sub-Section 3.4.2.
136 See Chapter 3, Section 3.4, Sub-Section 3.4.2.
137 Such a legislative approach was, for example, followed by the Netherlands when proceeding with the ratification of the C121, back in 1966.
138 See Chapter 4, Section 4.7, Sub-Section 4.7.6.

R194 (2002) on the list of occupational diseases.[139] Of course, this is not an issue that has occurred recently, but a matter of concern that is supposed to have been under proper legal examination by special Greek committees for many years now. Obviously, it has not, or, put differently, it seems it has not. Similarly, the issue of the Greek categories of AUOs has been under discussion and examination for at least 18 years now.[140]

The R194 (2002) is directly linked to the legislative provisions of C121[141] and has been significantly based on it, as well as on R121 (1964), which accompanies it, for many years now. The European Commission Recommendation (2003) concerning the European schedule of occupational diseases shares a lot of similarities both with the R194 (2002) and C121. Consequently, it could be said that if Greece had ensured both the correction of non-compliance with the accepted C42 and the ratification of C121, it would have avoided the current urgent need to incorporate into its national legislation the EU list of occupational diseases. This fact also sees off another nationally claimed reason for non-ratification: that *the international social security standard-setting instruments do not*, in certain instances, *refer to current circumstances*, or, put differently, they *are somewhat out-dated*.[142] In addition, it is interesting that the Committee referred, for the first time in 2010, to ILO instruments (even Rs and not Cs), and that after mentioning first the above-mentioned EU Recommendation.

Further, and as already mentioned, with regard to the other nationally stated (back in 2001) reason for non-ratification, namely, the *need for prior completion of national legislative reforms*, it does not stand as a valid reason for non-ratification, and an effort could had been made in respect of ratification, because several legislative modifications have taken place in Greece during the last two decades, and the issue of ratification, or non-ratification, has not been brought up. In addition, the absence of a proper re-examination of the possibility of ratification sees off the other nationally expressed reason for non-ratification, namely, that *the international social security standard-setting instruments are too technical*.[143] An instrument cannot be characterised as excessively technical when no proper examination of the possibility of ratifying it has taken place. Last, and in relation to the *need for prior completion of national legislative reforms*, such reasoning for non-ratification could be characterised as a rather too transparent political equivocation, especially on the part of the Greek government, if not on the part of the rest of the 'players' within the Greek political scene.

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139 See, further, Chapter 4, Section 4.7, Sub-Section 4.7.6.
140 See, further, Chapter 4, Section 4.9, Sub-Section 4.9.2. See, also, Venieris, D. (2003b), p. 140.
141 The first cross-reference to adopted ILO Conventions in the R194 is the C121.
142 See Chapter 3, Section 3.4, Sub-Section 3.4.6.
143 See Chapter 3, Section 3.4, Sub-Sections 3.4.2 and 3.4.6.

b. The non-ratified ILO Maternity Protection Convention (revised), 2000 (No. 183)

In respect of C183, the picture is rather vague. As already described,[144] Greek social insurance legislation has been examined and has been found to comply with its provisions. This fact also contradicts the nationally expressed reason for non-ratification that *the international social security standard-setting instruments are too technical*.[145] Be that as it may, the issue of submitting a draft statute of this instrument for ratification to the Greek Parliament was blocked in 2001, due to other unspecified reasons, coming from the *Equal Working Terms Section* of the Department of Working Terms of the (then) Ministry of Employment and Social Protection. Further discussion of the issue of ratification has not taken place since.

This is an interesting factual finding, especially if one considers that when C103 was ratified by Greece in 1982, the main reason that led the government to its ratification was the wish to safeguard complete maternity protection for working women.[146] This becomes even more interesting, bearing in mind that C183 revises C103, providing even more complete maternity protection, since it not only touches upon social security matters, but also on the hot issue of balancing work and family life – an issue that has concerned national social security systems, as well as the proper exercise of social policy, since the 1960s, when the influx of women into the labour market began. Moreover, it has broadened the protection period in the case of maternity and extended maternity rights to all employed women (also to those performing atypical forms of dependent work). These characteristics of the C183 reject other reasons given for non-ratification, such as that *ratification of the rest of the up-to-date international standard-setting instruments* of the ILO *would not be of further benefit to the country*.[147]

c. The non-ratified CoE Revised European Social Charter (ESC) (1996)

As far as the nationally stated reason for non-ratification of the Revised ESC (1996) is concerned (namely, that *ratification was still under consideration*), and bearing in mind that Greece: (a) ratified the ESC (1961) in 1984; (b) eagerly proceeded to the ratification of the Protocol Amending the ESC (1991), the Additional Protocol to the ESC (1988) and the Additional Protocol to the ESC providing for a System of Collective Complaints (1995) (in 1996 and 1998, respectively) over a decade

144 See Chapter 3, Section 3.4, Sub-Section 3.4.3.
145 See Chapter 3, Section 3.4, Sub-Section 3.4.6.
146 See Chapter 3, Section 3.4, Sub-Section 3.3.2.
147 See Chapter 3, Section 3.4, Sub-Section 3.4.6.

ago;[148] and (c) signed the Revised ESC[149] (1996) in 1996 (meaning that the country appraised its content), the validity of this nationally stated obstacle to ratification is weak, especially if one takes into account that a specialised committee, composed many years ago, is still examining the possibility of ratification. As a logical consequence then, one may wonder how much more time it would take for such a specialised committee to come to a conclusion in respect of ratification or non-ratification.

Next, and if not for the rest of the rights included in the Revised ESC,[150] in relation to the acceptance by Greece of Article 12,[151] referring to the right to social security, no particular legislative shortcomings seem to have been present, or to have significantly hindered its acceptance (at least for the period this specialised committee carried out its work). Besides, as already previously described (see Sub-Section 5.2.2), Greece has established, and retained for a significantly long time period, a social security system which is 'at least equal to that necessary for the ratification of the European Code of Social Security' – requirements set in the above-mentioned Article 12, paragraphs 1 and 2.

Besides the requirement of Article 12§3 'to endeavour to raise progressively the system of social security to a higher level', this has also been included in other ratified instruments. Nevertheless, with regard to Article12§4 on the social security of persons moving between states, it has been commented – with reference to Article 12§4 of the ESC accepted by Greece – that the 'accumulation of insurance, or employment periods completed by nationals of State Parties not covered by Community regulations or by bilateral agreements is not guaranteed.'[152]

148 See, also, Chapter 3, Section 3.3, Sub-Sections 3.3.4, 3.3.5 and 3.3.6.

149 See, also, Chapter 3, Section 3.2, Sub-Section 3.2.2.

150 See, for a description and analysis of the content of the Revised ESC, Gomez-Heredero, A. (2009a), pp. 16–20; Venieris, D. (2002), pp. 70–81; Venieris, D. (2009), pp. 374–380.

151 Article 12 of the Revised ESC stipulates that: 'With a view to ensuring the effective exercise of the right to social security, the Parties undertake: 1. to establish or maintain a system of social security; 2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security; 3. to endeavour to raise progressively the system of social security to a higher level; 4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure: a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties; b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.'

152 See Council of Europe (2010), p. 25.

d. The other non-ratified International Social Security Standard-Setting Instruments

With reference to the ILO Conventions C118 (1962), C130 (1969) and C168 (1988), once again the following reason for non-ratification has been stated at a national level: the *need for prior completion of national legislative reforms*. As has been stated,[153] the government will be in a position to consider and examine the possibility of ratification as soon as legislative reforms of the social security system – under way, or in preparation – are completed (the same also counts for the Convention on Maintenance of Social Security Rights (1982)).[154] Such statements are not trustworthy and cannot be considered valid, for the exact same reasons already expressed with reference to the non-ratification of the C121 (1964) (above). Moreover, the other nationally stated reasons for non-ratification, such as: that *the international social security standard-setting instruments* of the ILO *do not*, in certain instances, *refer to current circumstances*, or, put differently, they *are somewhat out-dated;* that *the international social security standard-setting instruments are too technical*; that the *ratification of the rest of the up-to-date international standard-setting instruments* of the ILO *would not be of further benefit to the country*,[155] do not coincide with the above-claimed reason that there is a *need for prior completion of national legislative reforms*, because it shows that proper examination of the possibility of ratification of these instruments has not taken place.

e. The non-ratified International Instruments in the field of social security coordination

Last, and despite the fact that the international instruments in the field of social security coordination fall outside the scope of this doctoral dissertation, I would like to briefly comment on the nationally stated reasons concerning their non-ratification, solely as a way to enrich the research factual findings on the nationally stated obstacles for ratification and to see parallels or dissimilarities between the instruments on the harmonisation (in a sense) and coordination of social security.

From the open-ended interviews within the country, it emerged that for the Convention on Social Security (1972) of the CoE and the ILO C157 (1982) signed by Greece,[156] non-ratification was due to the following reasons: *the content of the international provisions included in these legal instruments is more than covered*

153 See Chapter 3, Section 3.4, Sub-Section 3.4.4.
154 See Chapter 3, Section 3.4, Sub-Section 3.4.4.
155 See Chapter 3, Section 3.4, Sub-Section 3.4.6.
156 As already referred in Chapter 3, Section 3.4, for the CoE Supplementary Agreement for the Application of the European Convention on Social Security (1972) no information on why

by the current EU legislation; an *unwillingness to extend personal coverage to certain professional categories; the existence of several bilateral social security agreements which guarantee similar rights*.[157] Based on such reasoning, it can be commented that there is a clear preference towards EU legislation in the field of social security coordination, as well as that the multilateral instruments of the international (regional, or universal) organisations are not required, since there is a plurality of bilateral agreements. On this point, though, it is interesting to note that the conclusion of bilateral agreements is somewhat selective in nature (and this not only with respect to the countries with which they are concluded, but also on personal coverage, and other matters). Of course, the stated obstacle of *unwillingness to extend personal coverage* rather automatically relegates the matter to the other nationally stated obstacle of *economic difficulties*.

5.3.4 THE ISSUE OF RATIFICATION AND OTHER OCCURRING PROBLEMS

So far, I have presented the nationally stated reasons explaining the non-ratification of certain ISSS by Greece (Sub-Section 5.3.1.) and I have elaborated on their validity, based on the overall factual research findings (Sub-Sections 5.3.2. and 5.3.3.). Be that as it may, throughout this research some other matters have been detected, which seem to also obstruct, in certain ways, the ratification of the ISSS at the national level. The first relates to the mandate set by each of the international organisations – ILO and CoE – with respect to Member States' international obligations as regards the ratification procedure. The second pertains to the extent that Member States fulfil their international obligations apropos the ratification procedure. After first describing these two matters hereunder, I illustrate how they can give rise to deficiencies *vis-à-vis* the ratification procedure, and how they may negatively affect a possible ratification of the ISSS.

a. ILO, CoE and their different approaches concerning ISSS ratification procedure at the national level

According to the ILO Constitution, and, in particular, Article 19§5,[158] referring to the obligations of ILO Member States in respect of Conventions, each country

ratification was hindered were communicated during the open-ended interviews, or was found within the available qualitative research data elaborated.

157 See Chapter 3, Section 3.4, Sub-Section 3.4.6.

158 'In the case of a Convention: (a) the Convention will be communicated to all Members for ratification; (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for

that has become a member of the ILO (has ratified its Constitution) undertakes (has the obligation in other words) to bring (submit) before the competent authority of its country (the Parliament, in the Greek case) a Convention adopted by the ILO ILC. This actually means[159] that it is not in the discretion of the competent national Minister whether he/she will submit an adopted Convention to the competent authorities for ratification, but that he/she has to do so.[160] Then, the competent authority within the country will decide on the ratification or non-ratification of the relevant Convention. Moreover, as soon as the decision is taken, the Member State has, once again, the obligation to inform the ILO Director General that indeed the Convention adopted by the ILO ILC has been submitted to the competent authority and to state what the exact action taken by the competent authority was, meaning whether the competent authority decided to ratify the Convention, or not. However, only if the competent authority decides to ratify the Convention must its ratification be sent in formal form to the ILO Director-General.

As far as the CoE is concerned, things are quite different. As a general rule, Member States are not obliged to bring an adopted Convention before the national competent authority for ratification (although they can do so, if they so wish) or to inform the Secretary General of the CoE that indeed an adopted Convention has been submitted to the competent authority. Furthermore, in the case that they have submitted a Convention to the competent authority, they are equally not obliged to inform the Secretary General on the decision of the non-ratification of this Convention.

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the enactment of legislation or other action; (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them; (d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention; (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention' (ILO (2010a), p. 14).

159 I repeatedly sent emails to the ILO for written confirmation and further explanations on certain points of the ILO Member States' obligations in respect of Conventions, but I received no reply. Moreover, with particular reference to the Greek case, I asked questions regarding whether the ILO has indeed received the information that the adopted ILO Conventions not ratified by Greece have been submitted to the Greek Parliament, but have not been finally ratified. Once again, no reply was received (the relevant emails were sent on the following dates: 11/08/2010, 11/10/2010).

160 See, also, Johnson, A. (2005), p. 149, as well as Rodriguez-Pinero, M. (2008), pp. 205–209.

In particular, the Resolution adopted by the Committee of Ministers in 1951[161] states under Article 15, that: 'Each member undertakes that (…) the question of ratification of the convention or agreement shall be brought before the competent authority or authorities in its country';[162] still, the provisions of this Resolution have never been applied.

Based on the information given by the CoE Treaty Office and the Legal Advice Department,[163] CoE Conventions are international treaties, governed by the principles embodied in the Vienna Convention on the Law of Treaties. Therefore, states decide freely to which Conventions they agree to be legally bound and which Conventions will be submitted to the competent authority of their country for ratification. This also stands for social security Conventions. Moreover, there is no obligation on the part of Member States to notify the Secretary General of the CoE of the reasons why they have not signed or ratified CoE Conventions. However, for social security Conventions, it has been noted that, in practice, countries can give information on such matters (if they so wish) in the framework of the intergovernmental committees.[164]

The only exception to this is that since 1994, states having acceded to the CoE as members have committed themselves to sign and ratify a number of CoE Conventions. Notably, human rights conventions (i.e. the ECHR and Conventions on co-operation in the criminal field). Compliance with this (political, actually) commitment is monitored by the Parliamentary Assembly of the CoE,[165] and amounts to a strong political pressure on states to accept such Conventions.

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161 See Council of Europe (1949), as well as Council of Europe (1951).

162 Powers of the Committee of Ministers (Article 15 of the Statute): 'The conclusions of the Committee may, where appropriate, take the form of a convention or agreement. In that event the following provisions shall be applied: (i) The convention or agreement shall be submitted by the Secretary General to all members for ratification; (ii) Each member undertakes that, within one year of such submission or, where this is impossible owing to exceptional circumstances, within eighteen months, the question of ratification of the convention or agreement shall be brought before the competent authority or authorities in its country; (iii) The instruments of ratification shall be deposited with the Secretary General; (iv) The convention or agreement shall be binding only on such members as have ratified it' (Council of Europe (1951)).

163 I contacted the persons working for these Departments through emails on the following dates: 27/11/2009, 12–13/08/2010.

164 As an example, and in order to achieve the objectives of the Action Plan adopted at the Third Council of Europe Summit in 2005, as regards the proposals for improving the procedure for monitoring the implementation of the ECSS, the CS-SS holds an annual exchange of views on the state of ratification of the ECSS, notably on the basis of reports from Member States that have either not ratified it, or not ratified it fully, or that have not ratified the Protocol to the ECSS and the Revised ECSS. This information has been given by Mrs. Ana Gómez Heredero, Administrator/ Secretary to the CS-SS, Social Policy Department, Directorate General of Social Cohesion, Council of Europe.

165 For more information, visit the website of the Parliamentary Assembly.

Consequently, apart from the above-mentioned exception, there is no other obligation on any Member State of the CoE either to sign or to ratify any Convention. Whether Member States decide to sign a Convention and how they will go about with ratification is entirely a matter for Member States to decide, and will depend on their own procedures for ratifying treaties. Moreover, Member States are not obliged to inform the CoE of non-signature or non-ratification. The only obligation placed on Member States is to notify the competent authority that a Convention exists and that it is open for signature and ratification.

Given all this information and the clarifications on Member States' obligations, the following question still intrigues the researcher. It may be indeed that the competent Minister does not have any obligation for ratification. Therefore, there is also no obligation to submit an international instrument for ratification to the Parliament. What happens though, if the Minister has signed, on the part of the country (in other words, has given his/her appraisal and political approval at the international forum), a given international instrument? Is there not, then, at least a *moral obligation* to submit this instrument to the competent authority (i.e. national Parliament) for ratification, or non-ratification – for discussion, at the end of day? The answer to this question is yes. The *moral obligation* does exist. There is a *political commitment* on the part of the country to do whatever is necessary to ratify signed Treaties or Conventions,[166] but once again, as thoroughly elaborated above there is no formal legal binding obligation.

In sum, Member States in the CoE enjoy greater discretion on how to proceed with the issue of ratification in relation to the ILO, since apart from the moral obligation to pose the question of ratification to the competent authority within the country, no other written obligation has been imposed on them on how to proceed with the process of ratification or non-ratification.

b. The non-fulfilment of international obligations with respect to the ratification procedure from the national side

From the research conducted, it has emerged that the issue of ratification of certain adopted ILO social security Conventions or CoE social security instruments referring to up-to-date minimum or higher ISSS adopted and signed, by Greece, does not seem to have ended up for discussion in front of the competent national authorities – in the Greek case, the national Parliament. Contrariwise, the issue of ratification of ILO Conventions in policy fields other than social security[167] has, in the past, reached the Greek Parliament.

166 A similar line of thought is shared by Mrs. Ana Gómez Heredero, Administrator/Secretary to the CS-SS, Social Policy Department, Directorate General of Social Cohesion, CoE.

167 These Convention were: the C138, Minimum Age (1973); the C144, Tripartite Consultation (International Labour Standards) (1976); the C106, Weekly Rest (Commerce and Offices)

More specifically, based on the information given by the General Department of the Hellenic Parliamentary Committees,[168] for the period starting from the so-called *Metapolitefsi*[169] onwards, certain adopted ILO Conventions, which have not been ratified by Greece, namely, Conventions Nos.: C118 (1962), C121 (1964), C128 (1967), C130 (1969), C157 (1982), C168 (1988), C183 (2000), and some other CoE instruments, which have been equally not ratified, but have been signed by the Greek Government, namely, the Revised ESC (1996), the Protocol to the ECSS (1964), the Revised ECSS (1990), the European Convention on Social Security (1972), the Supplementary Agreement for the Application of the European Convention on Social Security (1972), the Protocol to the European Convention on Social Security (1994), cannot be traced in the catalogue of the national draft statutes submitted to the competent parliamentary committees for discussion with respect to ratification by the Greek political leaderships (several over the years). They cannot be found either in the submitted, the non-voted, the withdrawn, or in the pending draft statutes of the Greek parliamentary records.

This actually shows that for the ILO Cs and CoE instruments adopted after 1973, namely, C157 (1982), C168 (1988), C183 (2000) as well as the Revised ESC (1996), the Revised ECSS (1990) and the Protocol to the European Convention on Social Security (1994), the issue of ratification was never brought up before the Parliament, while for those adopted before 1973, namely, C118 (1962), C121 (1964), C128 (1967), C130 (1969), as well as the Protocol to the ECSS (1964), the European Convention on Social Security (1972) and the Supplementary Agreement for the Application of the European Convention on Social Security (1972), even in the case that the issue of ratification was brought up before the Parliament and was rejected,[170] it was never again brought up.

Consequently, from the above, it is argued that Greece does not seem to fulfil its international obligations with respect to ratification in the field of social security, at least as far as the ILO is concerned, since (as already described above) this international organisation – unlike the CoE – does not simply regard the issue of

(1957); the C115, Radiation Protection (1960); the C77, Medical Examination of Young Persons (Industry) (1946). Still, even for these Conventions, ratification took place after a significantly long time period. See, for analysis, Koukouli-Spiliotopoulou, S. (1985), pp. 146–147.

168 An examination of the relevant archives of the Hellenic Parliamentary Committee's General Department took place to this end.

169 The *Metapolitefsi* (which can be translated as *polity* or *regime change*) was a period in Greek history, which followed the fall of the military junta (1967–1974). It included the transitional period from the fall of the dictatorship to the Greek elections of 1974, and the democratic period immediately after these elections. Dictatorship was established in Greece in April 1967 and democracy was restored in July 1974.

170 As already noted, for all draft laws (statutes) or even proposals for a statute that may had been submitted to the competent parliamentary committees for the enactment of legislation during the time-period before the so-called *Metapolitefsi*, no records of Greek parliamentary proceedings are available.

ratification as a moral obligation that should be respected by its Member States, but actually requires its Member States to bring the issue of ratification before the national Parliament and to report on the relevant actions taken.

c. Deficiencies with respect to the issue of ratification caused both at the national and the international levels

From the description of the above-mentioned matters, the following deficiencies are apparent with respect to the issue of ratification: on the one hand, even when the country's international obligations concerning standard(s) ratification are clear-cut at the international level (ILO), the issue of ratification of newly adopted ISSS does not seem to end up for discussion in front of the competent national authority (authorities) (i.e. the Greek Parliament). Thus, the international obligations with respect to ratification are not fulfilled. This way, the ISSS miss the opportunity of becoming known to a wider public through deliberation and substantial dialogue between the leading political party and the political opposition, and, at the same time, their potential contribution to future law and policy making remains unexplored.

On the other hand, the international organisations themselves – ILO and CoE – allow Member States to leave the issue of ratification – of older or newly adopted ISSS – untouched (and usually for quite a long time), either by relying on the good will of Member States (the existence of moral obligation, in other words) that the issue of ratification will eventually be brought up before the competent national authority (authorities) (i.e. the Greek Parliament) (CoE), or by not fully following up on whether the Member States' international obligations on ratification are respected (ILO). Along these lines, the international organisations do not fully accomplish their task in realising and advancing the ISSS, since they indeed safeguard the right to social security on paper, but, operatively speaking, the intensity of efforts to promote both their ratification and implementation seems to have abated. Hence, the ISSS remain (simply) international proclaimed principles.

5.3.5 REFLECTING ON THE OBSTACLES FOUND TO RATIFICATION

In this section, bearing in mind the 'frame of reference'[171] concerning the obstacles to ratification, and taking into account the results stemming from the legal comparison and the elaboration of further data obtained, as well as the other

[171] See Chapter 1, Section 1.4, Sub-Section 1.4.1.

occurring problems with respect to the issue of ratification, I present the overall obstacles found to ratification and reflect on them.

a. Non-conformity of national legislation

The lack of consistency between national legislation and certain international standards has indeed been shown in the Greek case. On certain points non-conformity is clear (this may involve both minimum and higher ISSS), in others, due to the lack of necessary data, statistics and calculations, non-conformity is presumed (the same goes though for conformity). However, from the overall factual findings it can be argued that non-conformity of national legislation can sometimes be used as an elegant excuse in avoiding carrying out a proper, in-depth examination, at the national level, of the possibility of ratification. What is more, inconformity may indeed have been found at a certain period in time, and thereafter no further efforts to re-examine the situation, or efforts to achieve conformity and then re-examine the possibility of ratification, were made. In this last case, at least for Greece, the following, often stated reason for non-ratification has been used: *there is need for prior completion of national legislative reforms*, as well as other more ambiguous reasons, such as: *the social security standards do not refer to current circumstances; they are too technical; etc*. It is also the case that non-conformity sometimes does not relate to a clearly recognised inability to fulfil certain standards, but rather as a way of avoiding an additional financial burden for the country (for example, provisions on: equality of treatment between nationals and non-nationals; higher benefit replacement rates;[172] personal coverage extension, *etc*.). Last and as already expressed in international literature, the obstacle of non-conformity is boosted, to a significant extent, by the so-called 'all or nothing approach' which is followed,[173] concerning the fulfilment of the international standards, which has actually, so far, caused quite some rigidity.

b. Wish for flexibility and the legally binding character of the standards

The previously recorded results show also that the wish for flexibility – in other words, the wish to avoid having legally binding international obligations – is present in the Greek case. The Greek non-ratification of the part of the ECSS on unemployment benefits, but also the parts, both of the ECSS and the C102, on family benefit, is a clear example. The country's avoidance to accept the famous 'clause of reciprocity' on the equality of treatment of non-national residents,

[172] For example, the level of benefits has been considered both as a reason for non-conformity of national legislation and non-ratification of further international standard-setting instruments by Czech Republic and Estonia, since the amounts of old-age pensions in both countries, and that of the unemployment benefit in Estonia, are narrowly sufficient to permit the countries ratify higher standards. See Dijkhoff, T. (2011), p. 313.

[173] See Schoukens, P. (2007), pp. 88–89.

in terms of social security, is a kind of wish for flexibility, even if it is, at the same time, a nice way of avoiding admitting the existence of non-compliance with the relevant international provisions. Besides, the fear that the country would be internationally exposed and criticised in the case of non-compliance, in combination with the fact that *denunciation*[174] is not at all a simple matter[175] (through *denunciation* the country would be free to proceed with different domestic arrangements, or apply already passed arrangements, which are contradictory to the ISSS), are essential component parts in obstructing ratification.

In addition, in the Greek case the more general reasons given for non-ratification – such as: *the ILO international social security standard-setting instruments are somewhat out-dated, they are too technical, ratification of the rest of the ILO up-to-date standard-setting instruments would not be of further benefit for the country, there is a need for prior completion of national legislative reforms,* and so on and so forth – do not actually hold their own against cases in point and examples of the government (or the competent ministries), and similarly reveal the country's wish for flexibility.[176]

c. Lack of knowledge about the standards

As seen, the obscurity of provisions and interpretation issues, have also been stated as having hindered ratification. All the same, this is one kind of lack of knowledge about the standards, and not the only one. In the Greek case, at least, it has been revealed that there is a general lack of knowledge and unfamiliarity with the ISSS on the part of several actors (including acting politicians, coming either from the governing or opposition parties, academics, lawyers, civil society, NGOs, trade unions (even), national independent experts, civil servants, *etc.*) which could exert positive pressure, if not towards their ratification, but at least towards a proper examination of the possibility of ratification and of the added benefit ratification could bring to the country, not to mention the launch of relevant discussions in Parliament, which could also make the standards known

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174 The Greek government was very close to denouncing Part VI of the ECSS on Employment Injury Benefit. The main reasons that prevented it from doing so were the negative image that would be automatically created concerning the country's impotence and incompetence to respect and fulfil international obligations on minimum protection, as well as the fact that newer EU Member States accepted and fully complied with such provisions. See, for in-depth discussion, Chapter 4, Section 4.7, Sub-Section 4.7.6.

175 It has been also proven elsewhere that 'states do not easily withdraw from international obligations in view of the loss of face involved' (see, further Dijkhoff, T. (2011), p. 347).

176 This is even more obvious with respect to the non-ratification of international instruments in the field of social security coordination, which has been accompanied by other reasons (such as: the content of the international provisions included in these legal instruments is more than covered by current EU legislation; an unwillingness to extend personal coverage to certain professional categories; the existence of several bilateral social security agreements, that guarantee similar rights, *etc.*).

to the wider public.[177] One could also remark that the lack of knowledge about the standards, equally accounts for a lack of interest to learn about the standards (remarks to this end follow below).

A case in point is that during Greek discussion on reform, or changes in the existing social insurance legislative framework, the ISSS (ratified or non-ratified, or the standard recommendations) in most, if not in all, cases, have not been taken into account (i.e. discussions in the standing parliamentary committees, public discussions and social dialogue prior to a reform or changes to be introduced, explanatory/introductory reports to new draft laws (bills) submitted to the Parliament, *etc*.). Actual reference to the ISSS has rarely been seen. A notable exception was the last Committee, composed in 2009, prior to the passing of the Law No. 3863/2010.[178] Unlike in Greek law and policy-making processes, EU legislation and examples from European countries, as well as OECD data, were taken into account.[179]

d. Lack of statistical and administrative capacity

Undoubtedly there is shortage of statistical capacity in Greece.[180] This fact can hamper not only efforts (if made) towards ratification, but also the examination of the proper applicability of standards already ratified (see, further, Section 5.3: *Answering the 3rd Research Sub-Question*). The competent ministerial departments do not have the proper figures ready, or the figures given do not allow for proper assessments. Actually, this phenomenon is not only characteristic of Greece.[181] Another interesting issue, which (once more) not only relates to Greece, and which is food for thought, is 'whether the data provided reflect reality and whether the data has not been "prepared"'.[182] Next, with regard to the lack of administrative capacity – and considering also that Greece has had, until recently, a tremendously extensive public service – it could be said that the pursuit of more efficient horizontal communication between the relevant ministries and ministerial sections, as well as other services, could have a positive affect on issues of ratification.

177 See, for in-depth discussion, Chapter 3, Section 3.5.
178 See, for in-depth discussion, Chapter 3, Section 3.5.
179 See, for in-depth discussion, Chapter 3, Section 3.5.
180 To put it another way, Greece suffers from both lack of substantial social research, and a lack of reliable body of statistical social policy information (see Venieris, D. (2003b), p. 133).
181 See Dijkhoff, T. and Pennings, F. (2007), p. 159; Pennings, F. (2007), p. 26; Pennings, F. (2006c), p. 109; Pennings (2006d), p. 173.
182 See Schoukens, P. (2007), p. 88.

e. Lack of financial resources

In the Greek case, economic difficulty has also been stated as one of the obstacles to ratification. It has related mainly to the financial burden that the extension of personal coverage would bring for the country, the higher amounts of benefits and the higher replacement rates (mainly concerning higher ISSS), but it has also related to matters on equality of treatment of non-national residents. Moreover, taking into account the severe fiscal crisis the country has been facing since the end of 2008 – beginning of 2009, in conjunction with the present global financial crisis, such reasoning, at a country level, is now further enforced.

However, it is questionable whether, indeed, economic difficulties or lack of economic development really affected decisions on non-ratification (especially in earlier periods, when the economic situation in the country was somewhat different). As already mentioned, Greece proceeded with the ratification of C102 in a period when it was not well-advanced; the same counts for the period the ECSS was ratified; while certain other instruments were ratified back at the end of the 1990s, despite the financial burden this would bring to the country (see, for analysis, Section 5.2.1). Moreover, nowhere – in discussions or official Greek documents – has it been stated that economic prosperity (as such) facilitated or allowed ratification (i.e. of the C102, the ECSS and the ESC). Economic prosperity undeniably plays a positive role with regard to ratification, but when there is political will and interest on the part of a government, other ways can also be found for a country to consider and proceed to ratification.

Moreover, as it has been stated in General Comment No. 19 – The Right to Social Security (Art. 9) of the ICESCR, paragraph 41: 'The Committee acknowledges that the realization of the right to social security carries significant financial implications for States parties, but notes that the fundamental importance of social security for human dignity and the legal recognition of this right by States parties mean that the right should be given appropriate priority in law and policy. States parties should develop a national strategy for the full implementation of the right to social security, and should allocate adequate fiscal and other resources at the national level. If necessary, they should avail themselves of international cooperation and technical assistance in line with article 2, paragraph 1, of the Covenant'; at paragraph 42: 'There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant…'.[183] Added to this, Article 2§1 of the ICESCR reads: 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively

[183] See Committee on Economic, Social and Cultural Rights (2008), pp. 12–13.

the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'[184] Consequently, even an international loan is permitted for the full realisation of the right to social security.

f. Lack of political interest and will

From the overall research conducted, it is clear that a lack of political interest and will constitutes one of – if not the most – the most determinant obstacles to ratification. The nationally stated reasons for non-ratification, such as: *ratification is still under consideration*, or *there is a prior need for the completion of national legislative reforms*, were communicated by Greece to the international organisations many years ago. Yet nothing substantial has happened at the national level with respect to ratification. Several national committees are supposed to have been appointed with the aim of assessing the possibility of ratification (or of how to overcome problematic issues to ratification), but no exact results or conclusions have been presented in this respect, even after the passing of a significant period of time.

Actually, the issue of ratification was never brought up anew by the Greek government(s), and to date no initiative has taken place to provide recourse to international technical assistance in order to examine the possibility to ratification (reference to the issue of technical assistance follows below). Moreover, it should not be forgotten that the issue of ratification in the Greek case has been further hindered by the fact that political leadership up to now has never brought the international social security instruments before the Parliament for discussion of ratification. If the various governments did not intend, from the beginning, to accept them, they disrespected, in this way, their international obligations with regard to ratification, in particular, with respect to the ILO (reference to this issue has already been made above, Section 5.3.4).

However, this lack of political interest and will has not only come from the governing (each time) party. Political opposition within the country has remained equally passive with respect to issues of ratification. Over the years it has failed to exert any pressure on the various governments to accept, or to consider accepting, higher international norms (or, at least, unaccepted minimum standards) in order to improve the protection level within the country, not to mention to restore pending issues of non-compliance (see, also, section 5.4).

For instance, even when an international instrument was brought before the competent parliamentary committees for ratification with an extreme time

[184] See United Nations (UN) (1966), pp. 1–2.

delay (in the sense that it may have been adopted by the ILC or the Council of Ministers many years previously), the opposition parties simply commented on the fact that the submission of the proposal for ratification before Parliament was considerably delayed. This was, for example, the case with both the C103 and the ECSS.[185] Especially with regard to the ratification of the ECSS, the governing party did not provide exact reasons as to why it did not want to accept the parts on unemployment and family benefits. Be that as it may, the political opposition did not ask for proper explanations either. It simply stated that these two parts of the ECSS should be accepted as well, but again, did not give any particular reason as to why the government should do so (or that this was possible from a legal point of view). Nor did the political opposition ask for a special working committee to look at the possibility of ratification before the draft law (bill) was finally passed (without, of course, the parts on unemployment and family benefits). Along the same lines, the political opposition has, to date, taken no action to tackle the fact that political leaderships do not fulfil their international obligations on ratification with respect to the ILO.[186]

It is obvious that the objectives set out in the preamble to the ECSS ratified by Greece, encouraging 'all members to develop further their systems of social security', as well as in Article 4, encouraging each Contracting Party to accept the obligations in respect of any part of the ECSS not included in its ratification, have been forgotten over the years by both the political leadership and the opposition. Moreover, Greece has not only accepted Article 12§2 of the ESC, which obliges the country 'to maintain the social security system at a satisfactory level at least equal to that required for the ratification of the International Labour Convention (No. 102) Concerning Minimum Standards of Social Security', but also Article 12§3, which states that the country must persistently try 'to raise progressively the system of social security to a higher level'. Still, no substantial effort to this end has been made.

g. Lack of interest and will of social partners

Social partners and trade unions in particular, over the last two decades, have not been so much involved with the ISSS. They have not taken any tangible actions or tried to persuade government(s) to accept (or at least to try to accept) international norms of a higher standard, by making necessary legislative modifications and introducing new elements to the social insurance system, which could facilitate ratification.[187] They have not conducted their own reports or given their opinion on whether certain international social security instruments could be ratified,

185 See Chapter 3, Section 3.3, Sub-Sections 3.3.2, as well as 3.3.3.
186 See overall Chapter 3, Section 3.3.
187 See, for in-depth discussion, Chapter 3, Section 3.6.

or are worth being ratified by the government(s). If one looks at when (back in 1987) the main Greek trade union confederation, GSEE, despite the objections expressed by the government due to the negative feedback of the public services consulted at the time, had consented to the ratification of the C128, and the fact that afterwards, and for numerous years, inaction prevailed and the issue of the reconsideration of ratification was never again brought up, there is clear proof of this lack of interest and will. Besides, GSEE has proven, over the years, to be much more active in matters pertaining to international labour standards.

Similarly, trade unions have not exerted any substantial pressure to government(s) to submit to the Parliament adopted ILO Conventions or signed CoE instruments, and this way, to open discussion on the content and purpose of these instruments, as well as the added benefit that their ratification would bring to the country. Especially with respect to this last matter, it is not clear whether indeed trade unions have noticed that several adopted ILO social security Conventions have not been submitted to the competent national authorities for discussion regarding possible ratification. Put differently, it seems that trade unions have not kept *au fait* with whether the government indeed abides by its international obligations on ratification towards the ILO (further reference to the lack of interest and will of social partners follows in Section 5.4).

h. Lack of interest and will of other actors

The absence of a really organised academic lobbying concerning law and policy-making in the field of social security in general and in international social security law in particular, is apparent in the Greek case.[188] As far as the ISSS is concerned, as well as the overall field of international social law, this absence of academic lobbying may also be due to the lack of knowledge about the content, utility, or even existence, of the relevant international instruments. Added to this, even acting lawyers may lack knowledge about the ISSS, or may merely be not interested or willing to learn, not regarding such knowledge to be of an added or practical value.[189] Moreover, Greece lacks an organised/active civil society, or NGOs focusing on the various aspects of international social law and policy, especially the ISSS. Thus, the lack of interest and will on the part of these other actors does not have a positive influence on the internationally developed social security standards, in terms of their role in law and policy-making at a national level, and their ratification and future promotion.

188 See Chapter 3, Section 3.4, Sub-Section 3.4.6.
189 See, also, Chapter 3, Section 3.7, Sub-Section 3.7.3.

i. Lack of international technical assistance

Another significant obstacle to ratification, which is present in the case of Greece, is the lack of international technical assistance. Or, put another way, the failure to request (one could also say unwillingness, indifference or negligence) on the part of the country (governmental and other actors), the provision of technical support by the ILO and the CoE. This is quite interesting if one reconsiders the aforementioned nationally expressed reasons for non-ratification (that *the international social security standard-setting instruments* both of the ILO and the CoE *are too technical*, and that *there is a need for prior completion of national reforms*). The following answer, given (to the researcher) during the open-ended interviews within the country, in response to the question 'why did the country not, over the years, have recourse to international technical assistance', is also intriguing. The answer was very straightforward and rather diplomatic, but also not quite valid: 'because they did not ask us; if they had asked, we would have considered accepting it.'

j. Different societal values and political obstacles

Opinions that the ISSS are no more up-to-date and do not necessarily correspond to the current socio-economic situation have also been expressed in Greece. However, in the Greek case, no exact examples are provided or elements in national legislation highlighted, which would justify such views. Moreover, until very recently (end of 2009), different societal values within the Greek SIS, as such, could not be discerned as in other countries, for example, clear-cut privatisation trends, employers' liability, *etc*. (although some remarks in this respect follow in Section 5.4, *Answering the 3rd Research Sub-Question*). Moreover, in the Greek case, political obstacles have, so far, related mostly– if not solely – to the lack of political interest and will (as already explained above).

k. (Inter)national political pressure, opportunism, trends and interests

The perception that the state has actually nothing to gain from the ratification of ISSS (or new ISSS, in the case that some have already been ratified) is also present in the Greek case. As seen, the non-ratification of further up-to-date ILO standard-setting instruments in the field of social security has also been based on the argument that *this would not be of further benefit to the country*. Furthermore, it has been asserted that the ratification of the C102, the ESC and the ECSS is more than sufficient for a country.[190] Notwithstanding that previously, elements were highlighted which make such reasoning for non-ratification not entirely persuasive, it remains a fact that such a belief exists. Apparently, in the past

[190] See Chapter 3, Section 3.4, Sub-Section 3.4.6.

the ratification of ISSS was indeed considered as a way of gaining international recognition and was further enforced by the presence of a strong moral obligation and political commitment. Such thinking, though, in Greece, has long since died out.

l. Absence of substantial promotion of the standards and exertion of appropriate 'pressure' with regard to their ratification from the international side

Despite the fact that this is a rather sensitive subject to touch upon, the Greek case reveals that in recent years, international organisations have not satisfactorily ensured the promotion of the utility and added benefits of the higher ISSS at the national level. Moreover, no substantial pressure has been exerted on government(s) to bring the issue of ratification of non-accepted standards back to the discussion table. On the contrary, in most cases, international organisations simply take as a given the nationally stated reasons on non-ratification, even if they date quite some time, and they do not investigate their validity from the beginning. Such behaviour on the part of the international organisations amounts to another determinant obstacle to ratification, and to the further promotion of the ISSS in general (either minimum or higher).

For instance, so far, neither the ILO nor the CoE have undertaken to compare the information given in official documents on non-ratification with the reality prevailing within the country; they do not ask for sociological surveys or other relevant qualitative and quantitative studies to be conducted (including specific data) as proof of the country's inability to proceed to ratification; they do not hold individual meetings on a sufficiently frequent basis so as to discuss changes in national laws and to reflect upon their impact on the existing ISSS. Last, and particularly concerning the ILO social security Conventions, it has been illustrated that the follow up of Member States' international obligations with respect to ratification has not proven to be particularly effective, since in Greece a number of social security Conventions have never been submitted to the competent national authorities for discussion of ratification, and the ILO does not seem to have cross-checked the information given by the government on the submission of these adopted Conventions to the competent national authorities.

5.4 ANSWERING THE 3rd RESEARCH SUB-QUESTION

Greece fails to comply with a few of the ratified international social security standards (ISSS). Can this failure also be explained by the existence of the mentioned obstacles? Put differently, is it possible that the mentioned obstacles can also cause improper applicability of the ratified standards? Are there any other obstacles that

may cause or affect the improper applicability of the ratified standards, as well as their further promotion?

5.4.1 RESULTS STEMMING FROM THE LEGAL COMPARISON AND THE ELABORATION OF THE FURTHER RESEARCH DATA OBTAINED

Throughout this research, certain issues of non-compliance and other matters of concern have been detected, which directly relate to the ISSS ratified by Greece, and cause or affect their improper applicability at the national level, as well as their further promotion, in general. These are analytically described hereunder:

a. Long-standing issues of non-compliance causing improper applicability of the standards

Greek legislation has not complied with Articles 36§2 and 38 of the C102 (Part VI-Employment Injury Benefit) (identical provisions are included in the ECSS), as well as Article 5 of the C17, for almost 20 years now. Both the ILO and the CoE, through their competent international bodies, the CEACR and the Council of Ministers, respectively, have noted, over the years, *the need to re-establish under Greek social security legislation the right to long-term benefits, at a reduced rate, which should be provided throughout the contingency, for victims of employment injury who have an incapacity to work of less than 50 per cent.* Be that as it may, Greek governments have not, so far, effectively remedied this non-compliance, stating as the main reason the extreme economic burden this would bring at a national level. In addition, the denunciation of Part VI on Employment Injury Benefit was also considered. The effectuation of such a political action, though, was abandoned, due to the negative implications it would have on the image of the country at an international level regarding the guarantee of minimum social security protection and the respect of social rights in general.[191]

Similarly, for more than 18 years now the Greek national list of occupational diseases has not complied with the international standards set out in the C42 (Schedule under Article 2)[192] (see, also, Section 5.3.3). The ILO CEACR tried to draw the governmental attention to this issue, without achieving any substantial results in respect of a resolution of the situation. In particular, in a recent individual observation addressed to Greece on this matter, in 2008,[193] was not favourable.[194]

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191 See, for analysis of this matter, Chapter 4, Section 4.7, Sub-Section 4.7.6. See, also, concerning the issue of denunciation, Korda, M. and Pennings, F. (2008), p. 141.

192 See, for analysis of this matter, Chapter 4, Section 4.7, Sub-Section 4.7.6.

193 See CEACR (2008c), p. 1.

194 See, for analysis of this matter, Chapter 4, Section 4.7, Sub-Section 4.7.6.

It is interesting to note, in this respect, that earlier, in 2002, the ILO adopted a new list of occupational diseases, included in R194, which could have been consulted by the competent ministerial departments in a possible effort to resolve the issue. On the contrary, at the beginning of 2007 an effort was undertaken at a national level, through the composition of a specialised committee, to incorporate into Greek legislation the so-called European schedule of occupational diseases, included in the European Commission Recommendation of 19th September 2003.[195]

Last, and in relation to the previously mentioned issues of long-standing non-compliance, it should be mentioned that Greek national legislation was, quite recently, brought into full compliance with the standards set under the ECSS (Article 34) provision on nursing care at home for victims of employment injury or occupational disease, only after a the competent international bodies drawing government attention to the anomaly for a nine-year period.[196]

b. Recent issues of non-compliance causing improper applicability of the standards

In 2008, through the enactment of Law No. 3655/2008,[197] a considerable increase in the minimum qualifying conditions required for acquiring access to medical care, maternity benefits in kind and sickness benefit was introduced.[198] This kind of law-making goes against the relevant standards set in both the C102 and the ECSS, since according to their identical provisions (Articles 11, 17 and 51), these benefits 'shall be secured at least to a person protected who has completed, or whose breadwinner has completed, such qualifying period as may be considered necessary to preclude abuse'. This last sentence – 'to preclude abuse' – actually means that the state should make sure that the benefits are indeed received by the beneficiaries, and the qualifying conditions imposed, for acquiring the right to these benefits is by no means an overburden, creating hardship for the beneficiaries. What is more, the fact that the qualifying conditions, under Greek legislation, need to be completed every single year also goes against the principles and spirit of the ISSS.[199] Besides, the reassurance of protection against the social risks of medical care, maternity and sickness is particularly vital, as it directly pertains to the actual preservation of human life (being).

The government did not introduce these legislative modifications for the proper reasons. The rationalisation behind the governmental decisions was based on

195 See The Commission of the European Communities (2003), p. 1.
196 See, for analysis of this matter, Chapter 4, Section 4.7, Sub-Section 4.7.6.
197 See Official Gazette of the Hellenic Republic (2008a), pp. 961–1068.
198 See, for analysis of this matter, Chapter 4, Section 4.3, Sub-Section 4.3.5; Section 4.4, Sub-Section 4.4.6; Section 4.8, Sub-Section 4.8.3.
199 See, also, Dijkhoff, T. (2011), p. 63.

economic criteria and parameters – to minimise social security expenses – without examining, in practice, what the social consequences of the changes would be (i.e. to carry out, prior to the reform, extensive sociological study and in-depth economic surveys on the impact of the reforms to the population). As it has been thoroughly elaborated, these increases bring negative consequences to several different categories of the population within the country;[200] while at the same time go against fundamental principles of the Greek Constitution in terms of social security protection.[201]

Thereafter, in recent years – and more specifically, since mid-2008 – regular readjustment (revision) of long-term social security benefits has not taken place in Greece. Instead, certain ad hoc economic measures have been introduced, which mostly target *low*-income retirees.[202] Furthermore, since 2010 and for – at least – a three-year period, a total freeze of the readjustment of long-term benefits has been decided[203] and, in general, there will be no increases in benefits. This is actually one of the changes made to the whole functioning of the Greek social security system after the enactment of the recent Law No. 3863/2010.[204] This law is also the outcome of the recently adopted Law No. 3845/2010.[205] The Appendix to the Law No. 3845/2010 contains two Memorandums of Understanding. They concern 'economic and financial policies and specific economic conditionality concluded between the Greek Ministry of Finance and the Governor of the Bank of Greece on one side and the President of the Eurogroup, the European Commission, the European Central Bank and the International Monetary Fund on the other side, which list a series of time-bound commitments to be undertaken by the Government, including efforts to moderate pensions'[206] (further reference to Law No. 3863/2010 and certain matters of concern in relation to the ISSS ratified by Greece follows in the text below).

The replacement of the annual readjustment (revision) policy of long-term social security benefits by *ad hoc* economic policy measures, as well as the complete freezing of their readjustment (revision) to the inflation and/or cost of living, constitute serious issues of non-compliance with the ratified ISSS set both in the C102, and the ECSS (Articles 65§10 and 66§8 in both instruments). Similar standards are also set in other international social security instruments (i.e. the C128 and the Revised ECSS).[207]

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200 See, further Chapter 4, Section 4.3, Sub-Section 4.3.5.
201 See, also, Katrougalos, G. (2009b), pp. 53–54.
202 See further Chapter 4, Section 4.15, Sub-Section 4.15.3.
203 See, also, Angelaki, M. (2010), p. 8.
204 See Official Gazette of the Hellenic Republic (2010c), pp. 2771–2818.
205 See Official Gazette of the Hellenic Republic (2010e), pp. 1321–1384.
206 See ILO (2011c), p. 738.
207 See, for analysis, Chapter 4, Section 4.15.

Especially in times of severe economic downturn, such as the current global one, the relevant standards should be respected in order to safeguard the level of the benefits, to retain their purchasing power, and to provide security to the beneficiaries. At the end of the day, this issue directly involves the guarantee of acquired social security rights, since it contributes, to a significant extent, to the reassurance that the appropriate level of benefits – corresponding to the set ISSS – is paid to the beneficiaries. Be that as it may, the fulfilment of these ISSS is not currently respected. And actually, this is a phenomenon of non-compliance, which is not only characteristic of Greece, but of several other countries who have ratified either minimum or higher ISSS.[208]

With particular reference to the Greek case, though, it should be noted that this recent freezing of the annual readjustment, and of any general increase in social security benefits, has not been decided by the government based on reasons of *public interest*[209] in other words, as a way of supporting social change), but, rather, as a way of gratifying the whims of the country's international loaners (to wit: the EU and the IMF).[210] Moreover, there has been no prior in-depth study of the implications that such a freezing may bring to the country's population. The fact that in parallel to the freezing of the annual readjustment of pensions and of any further increases in benefits, there has been a considerable increase in the value added tax from 21 to 23 per cent is also interesting (Article 4, Act No. 3845/2010). It is also interesting to note in this respect that so far, there have been several judgements of European countries and other countries Courts which have been "… issued after judicial scrutiny of austerity measures taken following orders of the International Monetary Fund (IMF), in the framework of stabilization programs funded by the later … invalidating (adopted) legislation restricting social security rights …".[211]

Next, two more issues of non-compliance are apparent. The first is also relevant to the improper readjustment (revision) of benefits. It is the one of improper calculations, and even the (total) absence of calculations, concerning the rates of replacement of social security benefits (Schedule to Part XI Standards to be complied with by periodical payments contained in both the C102 and the ECSS. Similar standards are also set out in the C128, the Protocol to the ECSS and the Revised ECSS. A first reference to this issue was made in Section 5.2.2).

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208 See, also, Chapter 2, Section 2.6. See, as well, the cases of Czech Republic and Estonia in Dijkhoff, T. (2011), pp. 129, 146, 157, 161, 163, 184, 190, 197, 260, 295, 303–304, 367. See, further Gomez-Heredero, A. (2009a), p. 89.

209 The term here refers to the well-being of the general public, the commonweal or general welfare.

210 See, also, recent analytical reflections on the issue of social security as public interest in Vonk, G. (2010), pp. 70–86. See, further, in Katrougalos, G. (2010b), pp. 15–16.

211 See, analytically, Vonk. G. and Katrougalos, G. (2010), pp. 22, 23–34.

This research has shown that the Greek government does not (in most of the cases, if not in all), in its reports, provide exact calculations, or make the calculations in such a way as to show that the rates of replacement at a national level comply with the requirements set by the ISSS. Furthermore, no precise information (data) is given in the reports so as for the international supervisory bodies (the experts actually working for the ILO and CoE) to proceed to their own calculations for the examination of the compliance of national law with the ISSS – although this is actually a task to be performed (in principle) by the country itself, and not by the international organisations.[212]

Especially under the new legislative modifications brought about by the latest social security Law No. 3863/2010, which introduced a radical reform to the Greek pension system (further reference to this matter follows), the need to provide exact calculations concerning the replacement level of pensions has become imperative.[213]

This should not be considered just as a technical incompatibility, but as a material one which undermines the general utility of the ISSS in retaining the minimum level of protection within the country, as well as their future role and further promotion. The point of calculation is a crucial one, since the country is not proving that the level of social security protection within the country is indeed attained. Once again though, this is an issue of non-compliance, which is characteristic not only of Greece,[214] but of other countries as well.[215] What is more, in the absence of proper calculations, an assessment of whether the country can proceed with the ratification of higher ISSS cannot be carried out.

The second issue of non-compliance pertains to the lack of required national statistics. Within the Greek governmental reports, no record of proper statistics can be found in terms of the population coverage. The international report forms, which need to be fully completed and submitted by the countries, according to the supervisory procedures of the ILO and the CoE, postulate that the governments must demonstrate, in percentages, the protected population at the national level per social security risk. The need to provide proper statistics has been similarly stressed by the ECSR.[216] This issue of non-compliance is also relevant to the aforementioned absence of proper calculations at a national level, since there is also an absence of statistical data necessary to accurately complete and present

212 See, also, Chapter 4, Section 4.14.

213 Similar observations have been made recently by the CEACR. See ILO (2011c), p. 738.

214 See, also, Chapter 4, Section 4.14, Sub-Section 4.14.3.

215 See, also, Chapter 2, Section 2.5, as well as Section 2.6. See, also, the cases of Czech Republic and Estonia, Dijkhoff, T. (2011), pp. 129, 146, 157, 161, 163, 184, 190, 197, 260, 295, 303–304, 367. See further Gomez-Heredero, A. (2009a), p. 89.

216 See, also, Chapter 4, Section, 4.3, Sub-Section 4.3.5.

the calculations on the social security benefit replacement rates (a first reference to this issue of incompliance was made in Section 5.2.2).[217]

Going further, safeguarding the financial sustainability of the social security system as a whole is a crucial responsibility of each state.[218] To this end, relevant provisions have been included both in the C102 (Article 71§3) and the ECSS (70§3).[219] Until very recently (the end of 2009), Greece was introducing reforms to the social security system without the regular prior conduction of actuarial assessments, which would examine their necessity and potential effectiveness.[220] What is more, even when certain actuarial assessments took place, they were often conducted after the passage of the relevant reforming laws, they were not that accurate (such a tactic sounds even more problematic, bearing in mind that the country has, in the last decade, showed a steadily increasing public/fiscal deficit),[221] and they were not usually completed by the country itself (meaning the assessment was delegated to other international bodies, for example, the International Financial and Actuarial Service of the ILO Social Security Department,[222] the British Government Actuary's Department (GAD),[223] the IMF,[224] in the form of technical cooperation projects).

It was only in 2010, after the integral burst – at the height of, in other words – of the financial crisis in the country and the intervention of the EU, the ECB and the IMF to provide economic support that the matter of conducting systematic actuarial assessments came to the fore. In the new Law No. 3863/2010, a special provision (Article 11§2) was incorporated – although in older statutes relevant provisions for regular actuarial reporting were also present – according to which, every two years[225] the Greek NAA will conduct actuarial studies, which will be validated by the Economic Policy Committee of the EU, with the aim of following-up the developments in pension expenditure.

Strangely enough, the ILO has not been included in this provision, despite the fact that the International Financial and Actuarial Service of the ILO Social Security Department has been carrying out most of the Greek actuarial assessments in

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217 See, also, Chapter 4, Section 4.14.

218 In relation to the issue of state responsibility, see further Vonk, G. (2010), pp. 71–74; Vonk, G. and Katrougalos, G. (2010), pp. 14–18.

219 See, for description and analysis, Chapter 4, Section 4.18.

220 See, also, Paparrigopoulou, P. (2010a), p. 897.

221 See, also, Matsaganis, M. (2010a), p. 859–861; Paparrigopoulou, P. (2010a), p. 897.

222 See, for example, International Financial and Actuarial Service (2008), pp. 1–69.

223 See, for example, Government Actuary's Department (GAD) (2001), pp. 1–62.

224 See, for example, IMF (2006), pp. 1–80.

225 The most recent Greek Committee of Social Security Experts had suggested the conduction of actuarial studies on an annual basis, as well as the need to provide further support to the Greek National Actuarial Authority so as to be able to conduct such studies independently (see Greek Committee of Experts (2010), pp. 27–28).

recent years. Even the actuarial assessment, which started a few months before the enactment of Law No. 3863/2010 and involved an earlier draft of the Law, was done in collaboration with the ILO,[226] while the completed actuarial assessment, which once more followed the enactment of Law No. 3863/2010, was validated by the ILO Bureau.[227]

Maintaining and constantly ensuring the financial sustainability of the social security system is an essential prerequisite for the guarantee of the payment of the benefits as well. The government, when ratifying the ISSS, undertakes to pay to its citizens what it has promised under both national and international law. That is why the actuarial studies and follow-up on the performance of the social security system, in combination with the reassurance of the proper functioning of the economy as a whole, is cardinal. One may consider that the conduction of actuarial studies before each and every reform is not necessary, but actually constitutes an excess cost (both in terms of time and money), since a government cannot possibly know, or predict, how the legislative modifications and reforms followed within the country will turn out – ultimately, what matters is the payment of the benefits. All the same, this may be applicable to countries that have a healthy financial sector and a social security system fully aligned with their economic planning and policies – which is not quite the case for most of the European states, especially in the light of the current global financial crisis and for the years to come.

At least in the Greek case, the failure to ensure the financial sustainability of the social security system, put together with the previously discussed issues of improper readjustment (revision) of the benefits and the lack of proper calculations concerning the rates of replacement of the social security benefits, constitute considerable infringements of the accepted ISSS. Additionally, these issues are directly related to the very important issue of the role of the state as the final guarantor for the due provision of the social security benefits, one of the fundamental principles and requirements set under the ISSS.[228]

To this end, and apart from the reasons illustrated above, the fact that Greek governments, over the last two decades allowed – under Laws Nos. 2076/1992 and 2676/1999 – the assets of the Greek social security funds – among them also of the IKA-ETAM – to be invested in the stock exchange (in other words, be part of the so-called *card-playing*), and also let the banks actually manage these assets, constitutes another serious offence against the role of the state as the final guarantor set out in the ISSS accepted by Greece . The assets of the social

226 See ILO (2010c), pp. 1–34.
227 See National Actuarial Authority (2010), pp. 1–26.
228 See, also, Korda, M. and Pennings, F. (2008), p. 135.

security funds were never used in the financing of social protection measures, but to reinforce big businesses within the country under the guise of supporting national development. As also the CEACR recently pointed out: "The Committee has interpreted the State's supervisory powers as not allowing it to use the assets of its social security system for purposes other than financing protection matters, which would inevitable lead insured persons to lose confidence in the institutions responsible for their protection".[229]

c. Other matters of concern affecting the proper applicability of the standards

The latest Law No. 3863/2010

As already previously discussed, at the end of the first semester of 2010, a new social security Law was adopted by the Hellenic Parliament, which introduced several radical changes, especially to the pension system. A general reformation of the social security system was, undeniably, a must. Discussions in this direction had already started towards the end of 2009.[230] Serious discrepancies, which had accumulated over the last two decades, had to be tackled finally, since the sustainability of the system was already at stake.[231] Nonetheless, reforms were once again rushed through without structured planning or credit rating.[232] It is interesting that this time they were actually imposed through the intervention of the EU, the ECB and the IMF as lending bodies, which aimed at the purification of the country's public finances,[233] and their instructions were followed so as also to preclude any potential threat to the Euro-zone. In May 2010 in particular, the IMF published an analytical report pinpointing the structural fiscal reforms which ought to be followed by Greece, among them the reform of the pension system. The adoption of the latest social security Law No. 3863/2010 was the implementing instrument in this respect.[234]

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229 See International Labour Office (2011a), p. 27.

230 Numerous reforms of the system have taken place since the beginning of the 1990s. None of them, though, has proved to be successful. Reforms were rather moderate, and were introduced in order to retain the interests of certain groups within the system. For a description of the politics behind the pension reform processes in Greece, see Carrera, L., Angelaki, M. and Carolo, D. (2009), pp. 30–36.

231 See, also, Milton, N. (2009), pp. 1–2.

232 The conclusions drawn by the latest Greek Committee of Experts, composed in 2009 with the purpose of marking out the road for a sound, but gradual reformation of the system, were not given proper attention and did not become subject of meaningful discussions in political debates or public circles (see Greek Committee of Experts (2010), pp. 1–115).

233 The social insurance deficit (the difference between revenues from contributions and expenses from the payment of social security benefits), comprising part of the country's public deficit, had grown in recent years (see Matsaganis, M. (2010a), pp. 860, 864–865).

234 See the instructions of the IMF concerning the Greek pension reform in IMF (2010), pp. 95–96.

The aforementioned Law has brought several changes, while it has left a number of issues open for future clarification and regulation through the enactment of further legislation. Discussions are currently taking place for the passage of new rules (from 2011 onwards). The IMF recently published its third review under the stand-by arrangement for Greece, in which the next phase of social security reforms to be undertaken by the Greek Government is described.[235]

Hereunder, the most important changes[236] of Law No. 3863/2010 are described, which are expected to include, and significantly affect in future, the proper application of the ISSS at a national level.

A new structure of the pension system[237] is to be put into place (as of 01/01/2015).[238] Pensions will consist of two parts. The *basic* (flat-rate) part (Article 2),[239] which actually reflects the *social* part of the benefit, is to be financed through direct taxation and the state budget. Still, there are certain social security organisations that will have to fund this part from their own budget (Article 37). The *proportional* part (Article 3) will be linked to the insurance period (the period for which the beneficiary has paid contributions into the system), and its amount will still be pre-defined by national legislation; there is no move towards a defined contributions scheme yet, despite the fact that proposals to this end were submitted during the preparatory phase of the Law.[240] Each social insurance organisation will fund the proportional part of the pension for each person affiliated to its scheme, according to its own budget. State financing will not be abandoned as such, in the sense that the government *has declared* that it will guarantee a dignified level of protection through the preservation of the system's financial sustainability (Article 1§1). Therefore, the state – although not expressly stated – is expected to contribute to the budget of the social security organisations, however, only in

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235 See IMF (2011), pp. 40, 42, 69, 81, 88–89, 93, 112, 117, 121.

236 A further detailed description and appraisal of the modifications brought under the Law No. 3863/2010 can be found in: Stergiou, A. and Sakellaropoullos Th.(ed.) (2010); Tinios, P. (2010a).

237 See, also, Stergiou, A. (2010b), pp. 887–891.

238 The new system actually divides beneficiaries into three categories: those who are already receiving a pension, those who are about to establish their right to a pension, and those who will become retired according to the new pension rules.

239 'The basic pension, fixed at €360 per month in 2010 prices, paid 12 times a year, will be available with no means test to all recipients of a proportional pension with a contributory record of at least 15 years. The full rate will be payable at age 65, reduced *pro rata* (by one thirty-fifth a year) for those who have been resident in the country for less than 35 years between the ages of 15 and 65. In cases of early retirement, the basic pension will be paid at a lower rate, reduced by 6% per each year short of age 65. Those with a shorter contributory record will still be eligible for the basic pension, but only if they pass a means test: personal income must be below €5,400 per year, family income below €10,800 per year (in 2010 prices). Neither the means-tested version of the basic pension nor the proportional pension for those with less than 15 years of contributions are payable before age 65' (Matsaganis, M. and Leventi, C. (2010), pp. 8–9).

240 For instance see Paparrigopoulou, P. (2010b), pp. 1–13, as well as Tsakloglou, P. (2010), pp. 1–12.

cases of urgency (need) and not at a fixed percentage (as it was in the past (based on the Law No. 2084/1992)).[241] The pay-as-you-go principle of the system is said to be retained.

In addition, with regard to the basic part of the pension (in other words, the basic flat-rate amount), it is interesting to note that for the risk of invalidity, it depends on the degree (in percentages) of incapacity to work; consequently, it diminishes accordingly. More specifically, the complete flat-rate amount will be provided when incapacity to work is absolute (at least 80 per cent and above); 50 per cent of the flat-rate amount will be given in the case of partial invalidity (at least 50 per cent, and not above 66.66 per cent); 75 per cent of the flat-rate amount will be given in the case of usual invalidity (at least 66.66 per cent, and not over 79.99 per cent).

As far as *pension readjustment* is concerned (Article 11§1), and after the passage of the three-year freeze (as already previously mentioned) (thus as of 01/01/2014), it will take place annually, subject, though, to a joint ministerial decision.[242] Moreover, it will depend half (50 per cent) on the change of the gross domestic product (GDP) (considered an indicator of the country's standard of living[243]), and half (50 per cent) on the consumer price index (CPI) during the preceding year, and it cannot, however, exceed the annual percentage change of the CPI (the annual percentage change in the CPI is used as a measure of inflation).

The new *pension replacement rates*, which concern the proportional part of the pension, follow the instructions of the Memorandum, and are set in such a way so as to safeguard the financial sustainability of the system. The way pensions are calculated is to change, and will be done based on the entire working career. 'Accrual rates will vary by length of insurance period. The return on contributions will range from 0.8 per cent per year for a contributor with less than 15 insurance years, to 1.5 per cent per year for one with 40 insurance years or more.'[244]

Within the new system the MPLs[245] are declared to be preserved. Nevertheless, they will now take the form of a *guaranteed minimum pension* (serving as a protection shield), which corresponds to the sum total of the basic and the proportional parts of the pension, and pertaining only to people aged 65 years and over. This sum total must not be less than the amount of fifteen (15) daily wages

241 See, also, Tinios, P. (2010b), p. 875.
242 This decision will be taken by the Ministry of Finance and the Ministry of Labour and Social Security.
243 *Standard of living* is generally measured by standards such as real income per person (after its inflation adjustment) and the poverty rate within the country.
244 See Matsaganis, M. and Leventi, C. (2010), p. 8.
245 See Chapter 4, Section 4.12, Section 4.12.6.

of an unskilled employee (set under the National Collective Labour Agreement for the year 2015 – almost €496 monthly), while in the case of the death of the breadwinner the amount should be equal to 80 per cent of the guaranteed minimum pension. For the risk of old-age, an insurance record of at least fifteen (15) years will be required; for invalidity the incapacity to work, this should be above 80 per cent (no requirements exist in the case of employment injury) (Article 3§3).[246] Readjustment follows the percentage of the (overall) pension increase. Yet it remains unclear what will happen to the EKAS (Article 39).[247]

The main aim of the pension's basic part is to guarantee a decent minimum standard of living. Notwithstanding, it is dubious whether it will indeed manage to cover the basic needs of the beneficiaries. The fact that it is supposed to undertake the function of the (current) MPLs, while at the same time these limits remain intact (by simply taking the form of a *guaranteed minimum pension*), certainly bears thinking about. Thus, it also seems that even the national legislature harbours certain doubts regarding the effectiveness of the basic part of the pension. Additionally, it is still unclear what source of funding is to be used for the *guaranteed minimum pension,* since it has not been recognised as a welfare (assistance) provision. Thereafter, a matter causing further concern pertains to what will happen with the payment of the *proportional* part of the pension in the case that the revenue from contributions falls short in relation to the expenses for payments, especially if the basic part of the pension is going to absorb most of the state's funding sources (taking, of course, into account that the country will endure a public deficit for a long time).[248]

Even in this worst case scenario, it should be borne in mind that the state is obliged – both under national and international law – to ensure the provision of the proportional part of the pension, since only the state occupies the role of the final guarantor in the due provision of social security benefits, and not each social insurance fund alone. It is already somewhat worrying that the proportional part of the pension follows, in a sense, the principle of individual compensation (applied in private insurance), by rewarding each beneficiary according to the contributions (they) paid into the system. It appears that the new system takes a first step away from the principle of collective compensation, which constitutes fundamental component of the social insurance technique, as well as of financial solidarity.

Next, with respect to pension readjustment, at first glance it appears that the pensionable income will be negatively affected, since the method employed leaves

246 See, also, Stergiou, A. (2010b), pp. 890–891; Matsaganis, M. and Leventi, C. (2010), p. 9.
247 See Chapter 4, Section 4.12, Sub-Section 4.12.6.
248 Similar line of thought has been expressed in Stergiou, A. (2010b), pp. 885, 887, 891; Tinios, P. (2010b), pp. 875–878; Paparrigopoulou, P. (2010a), p. 902.

a lot to be desired in relation to the real value of the pension amount. In other words, the level of pensions is connected to the economic situation of the country. If, in the long run, GDP does not increase and no general progress is made in terms of the sustainability of the social security system as a whole (which is the most likely scenario), pensions will endure a downturn as readjustment spirals. Besides, the CPI may be used as a measure of inflation, yet it does not provide for an exact adjustment to the changes in inflation – it is not a pure revision method. The implications of the three-year freeze in the readjustment of pensions should also not be forgotten.

Thereafter, persons affiliated to any social insurance organisation after 01/01/1993 (the so-called newly insured in the current system)[249] will now establish their right to a full old-age pension as soon as they will have competed 40 years of insurance and have reached the age of 60 (Article 10§10).

This way though, an indirect increase in the pensionable age limit takes place. If a person needs to complete 40 years of insurance in order to receive a full pension and does not start working at the age of 20, but at a much later age (i.e. at the age of 26 or 30, due to educational obligations),[250] and not on a full-time basis (i.e. working part-time or being a seasonal worker), and without having a contract of an indefinite term, that person will be 66 or 70 before they are able to apply for a full-pension. And if the possibility exists for the insured person to redeem contributions for a certain time period, this will create a significant economic burden.

A readjustment of the pensionable age limits is also planned (as of 01/01/2021). It will take place automatically according to changes in the life expectancy of the population within the country, and having as a reference point the age of 65 (Article 11§3). Such a measure will render system unequal – it has become common knowledge that life expectancy is related to income levels.[251]

The new Law does not touch upon the regulatory framework of the *supplementary* (auxiliary) *pensions*,[252] which has been part of the 1st pillar (compulsory insurance) for decades now.[253] It has been only stated that until the end of 2011, the Greek NAA will conduct studies in order to examine the sustainability of the relevant schemes. Afterwards, the replacement rates will be put into perspective, taking

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249 See Chapter 4, Section 4.2.

250 Over last decade more and more people have chosen to stay longer in education.

251 Concerning the relationship between income and life expectancy, see Judge, K. (1995), pp. 1282–1285.

252 The new framework will be ready in 2012, however, and it will most likely involve cuts to the amount of supplementary pensions.

253 See Chapter 3, Section 3.1, Sub-Section 3.1.1.

into account the measures contained in the mechanism to support the Greek economy by the EU, the ECB and the IMF.[254] Moreover, it is not yet clear whether the state will continue to guarantee payment of these pensions. Any future step taken in this direction will automatically comprise a violation of a constitutional nature, since supplementary (auxiliary) pensions consist of state compulsory insurance.

The framework covering invalidity pensions will be subject to a general reform. A centre for certifying invalidity will be established. The main aim is to have a more objective judgement on the degree of incapacity to work. Doctors working for the relevant health committees will participate on a rotatory basis, and they will undergo special training (Article 6). A single regulation for the identification of the degree of incapacity to work is also to be introduced (Article 7), while stricter rules will follow decisions on the recognition of permanent invalidity (Article 8).

A revision of the list AUOs is underway (Article 17). Nevertheless, it is still not clear which professional categories will form part of this list, which will be excluded, and based on which exact criteria.[255] Based on the latest information and on the instructions given by the IMF, the list will be reduced to less than 10 per cent of all employees (current and future).[256] This is actually an issue that has occupied the (different) political leaderships in Greece for many years now, and no specific results to this end have been achieved to date.[257]

There will also be an extension of the personal scope of application for the IKA-ETAM. The main pension branch of the NAT will be integrated into the main pension branch of IKA-ETAM (as of 01/01/2013). Civil servants (engaged as of 01/01/2011) will also be affiliated to the main pension branch of IKA-ETAM (Article 27), and changes to the rules governing pensioners' employment are to be introduced (Article 16).

Taking all the above into account, it becomes clear that the Greek government has to report analytically on the newly adopted measures and has to show to what extent full effect is given to the ratified ISSS at a national level. As a matter of fact, due to the substantial changes this last Law is bringing to the domestic social security legislation, the government should had already, on its own initiative, sent a detailed report on the application of the ISSS as soon as the Law was voted passed Parliament – at least to the ILO in relation to the C102.[258] It will have to do so shortly, though, since the ILO CEACR explicitly asked the Greek government

254 See, also, Tinios, P. (2010b), p. 875.
255 See, also, Tinios, P. (2010b), p. 875.
256 See IMF (2011), p. 69.
257 See, also, Chapter 4, Section 4.9, Sub-Section 4.9.2.
258 See ILO (2006), p. 21.

'to provide detailed information in its next report on the application of each Article of the Convention in accordance with the report form adopted by the Governing Body.'[259]

To this end, particular attention should be paid to the provisions referring to the basic principles and requirements laid down by the ISSS,[260] especially those pertaining to: the standards to be complied with by periodical payments and the revision of the rates of periodical payments for long-term benefits (C102, Articles 65, 66 and 67); the general responsibility of the state for the due provision of the benefits and the proper functioning of the social security administration (C102, Articles 71§3 and 72§2); the form of social security benefits as prescribed benefits replacing previous income up to a certain level, or establishing a guaranteed minimum, and the benefits' duration. Similar provisions are included in the ECSS of the CoE.

Last, it is worth mentioning that the Greek Supreme Public Finance Court[261] has already noted a number of significant constitutional irregularities concerning the new Law.

The issues of suitable employment and initial period of unemployment

According to the ISSS (Article 20 both in the C102 and the ECSS), the social risk to be covered by an unemployment scheme pertains to the 'suspension of earnings, as defined by national laws or regulations, due to inability to obtain suitable employment in the case of a person protected who is capable of and available for work'.[262] Therefore, *suitable employment* is one of the key aspects in the definition of the social risk of unemployment. Put differently, the unemployed person certainly needs to be available for work, albeit, the work found should be suitable for the person. Its concept has engrossed thinking and received particular attention in discussions, both at a national and at an international level in recent years.[263]

At an early interpretation of the concept of *suitable employment* included in the preparatory work of the C102, it was mentioned that during the first thirteen weeks of unemployment, jobs should be offered with due regard to the skills, qualifications, acquired experience and length of service of the job-seeker, while

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259 See ILO (2011c), p. 738.
260 See Korda, M. and Pennings, F. (2008), pp. 134–135.
261 See Rompolis, S. (2010), p. 1.
262 See Chapter 4, Section 4.5, Sub-Section 4.5.6.
263 This is also why the CS-SS of the CoE recently composed and adopted a guide to this concept in order to facilitate the application of the ECSS and its Protocol (see Council of Europe (2009b), pp. 1–107; see, also, Gomez-Heredero, A. (2009a), pp. 138–139).

the 'claimant's training and personal aptitude should be taken into account'.[264] Moreover, the following phrase: 'a person protected who is … available for work', should be conceived as describing a person who is both *disposable* – actually waiting and prepared to accept an offer of employment – and 'willing to accept suitable work'.[265] 'Further specifications regarding the meaning of '*suitable employment*' were left to be determined by national laws, or regulations, in the light of the particular conditions of the countries' economies and employment markets.'[266]

If one takes into account Greek national legislation,[267] it is not clear whether the job proposal, or employment opportunity, is indeed *suitable*, since the unemployed person should be prepared to accept an offer of employment *within a fairly broad definition of his/her occupational sphere* – so not absolutely suitable. Similarly, it is stated that the unemployed person should *generally take advantage of every employment opportunity* – once again, not necessarily suitable.

In addition, there is no *initial period* where the jobseeker may refuse to take up employment on the grounds that it does not meet his/her occupational requirements, skills or experience. As soon as the unemployed person rejects a job offer more than three times, the unemployment benefit is suspended, and it is irrelevant whether or not the rejected job offer or employment opportunity was suitable for the person.

In a recent reply given by the Greek government to the ECSS of the CoE,[268] it is stated that: 'Article 15 of the Legislative Decree 2961/1954, in conjunction with paragraph 1 of Article 3 of Law 1545/1985, stipulates that among the basic eligibility criteria for the unemployment benefit are: (a) the unemployment status, (b) this status to have occurred due to ending of the working relation, (c) the person's capability to work and (d) the unemployed must be available to work and unable to find employment against their will. From the above it becomes

264 See Dijkhoff, T. (2011), 65.

265 See Dijkhoff, T. (2011), 65.

266 See Dijkhoff, T. (2011), 65. Moreover, and based on the information obtain from the discussions held during the research visit that took place in the ILO Social Security Department in Geneva (17–18/01/2008), there is actually no concrete explanation of the term *suitable employment* in the C102. Contrary, there was a list in the C44 through which an interpretation of the term *suitable employment* could be given. In principle, this list could be also used for the interpretation of the term *suitable employment* in the C102, as the CEACR does not want previous provisions of older ILO Conventions to contradict with later Conventions. Thence, it could be said that the list included in the C44 could be equally applied to the relevant provisions of the C102.

267 See Chapter 4, Section, 4.5, Sub-Section 4.5.2.

268 The ECSR asked for a clarification on 'whether there is an initial period where jobseekers may refuse to take up an offer of a job on the grounds that it does not meet his/her occupational requirements, or experience without risking losing his/her unemployment benefits' (see, analytically, Council of Europe (2006b), pp. 1–19).

explicit that the unemployed lose their right to unemployment subsidy in case they reject an *appropriate* job offer. *A job is deemed appropriate when it is offered by the competent OAED Services, and corresponds to the physical and intellectual capabilities as well as to the previous employment of the unemployed*. There is *no initial period* during which the unemployed can reject a job offer. It should be noted that if the person looking for a job considers the job offer unsuitable, he/she can make an appeal to the competent collective bodies of OAED, in order to be decided whether the unemployment benefit should be suspended or not.'[269]

The aforementioned eligibility criteria by no means refer to the rejection of an *appropriate* job offer, as stated by the government. The law only refers to the person being both able and available for work, being unemployed against his/her will (put differently, not being out of work through personal choice), and to the termination of the employment (or even dismissal). It seems that for the Greek government, when a person is fit and ready to work all job offers are appropriate (besides, the person retains the right to make a complaint if she/he so wishes). Indeed, following such a train of thought, there is no need for someone to reject a job offer, since he/she is ingenious (talented) and there is no need to have unemployment protection within the country as well (maybe that is the reason why the level of the unemployment benefits in Greece is so low).[270]

To cut a long story short, it is logical that a person, at the end of the day, will have to accept a job offer or an employment opportunity, even if it is not suitable, and this is indeed directly related to the social, economic and political circumstances prevailing within the country, but is also a matter of personal choice. All the same, it is profound that the person is given the chance, at least for an initial period (even of a short duration), and as specified by the accepted ISSS, to be able to choose between suitable job offers or opportunities without risking losing his/her protection against the social risk of unemployment. Greece does not provide such an opportunity to its citizens, and this way, does not ensure the proper applicability of this internationally set standard at the national level.

Moreover, it is true that the country is currently facing extreme financial difficulties, that the sustainability of the social security system as a whole is at stake, and that the labour market situation, as well as of levels of productivity, is disappointing. Thus, it may be logical for one to think that from an economic perspective, and under such circumstances, the motto *any job is better than none* (the 'Work First' model)[271] should be followed. Still, it should be borne in mind that this legislation was drafted in Greece decades ago, when the national

269 See Council of Europe (2009c), pp. 68–69.

270 See, also, Council of Europe (2010d), (pp. 1–7). Regarding the inadequacy of unemployment protection in Greece, see, also, Matsaganis, M. (2010b), pp. 10–11.

271 See, also, Dijkhoff, T. (2011), p. 340.

situation was somewhat different, and the proper application of this international norm has still not been realised.

The limited role of ISSS in Greek case law and its contribution to the further weakening of their legal (binding) framework

Notwithstanding that according to the Hellenic Constitution (Article 28§1), international conventional law – after being sanctioned by formal statute and ratified – enjoys, in the domestic Greek legal order, *supra-legislative force and value*, in this research[272] it has been proven out that in practice, things are not quite like that.

Despite the fact that the *supremacy of international conventional law over domestic law* remains, the ISSS are not recognised as *self-executing* by domestic courts, and this, even when certain provisions are clear and precise enough to be directly applied by the national judge. Consequently, their *supra-legislative force and value* remains inert and is *de facto* undermined. Similarly, the ISSS are not recognised as autonomous from a regulatory perspective, and unless the national legislature has intervened, they are not legally binding (they explicitly demand the existence of enacted national rules, either before or after the entry into force of an international convention) and they simply serve as guidelines (a kind of recommendations) for the national legislature; thus, they are once again not considered as legally binding. This situation is actually not only characteristic of Greece, but other countries as well.[273]

Such an approach of the domestic courts in respect of the ratified ISSS significantly weakens their overall legal (binding) framework. The fact that national judges do not, themselves, recognise the direct applicability of ISSS, even in cases where this would be possible (through the existence of concrete provisions which do not require further international legislative analysis or interpretation and create a subjective unconditional entitlement for a person (i.e. the right to a social security benefit, *etc.*)), contributes further to the improper applicability of the ISSS at a national level. Thus, another window of opportunity is opened for the national legislature to introduce new legislative arrangements or modifications, without having any fear that they may contradict the international norms accepted by the

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272 See, for analysis, Chapter 3, Section 3.7. See, also, Appendix B.

273 For example, recent research has shown that both in Czech Republic and Estonia, despite the fact that the international legal instruments referring to the ISSS are binding and prevail over national law they have not been subject of attention in actual cases before the national courts. Similarly, national judges generally stick to domestic legal order in the decision-making, and the substantiation of their judgements is mostly (if not always) based on the country's constitution and relevant national legislation. Moreover, the ISSS have never been invoked before national courts (see, for in-depth discussion, Dijkhoff, T. (2011), pp.345–351; see, also, Korda, M. and Pennings, F. (2008), pp. 143–144).

country. In other words, the lack of developed national case law on ISSS and the absence, this way, of substantive judicial control in relation to the ISSS, allows governments to have great scope to intervene at the national level, without paying attention to whether or not the country's international obligations are fulfilled. This way the ISSS are lacking in advantage, opportunity and experience.[274]

5.4.2 ADDITIONAL OBSTACLES TO THE PROMOTION OF THE ISSS

Hereunder, taking into account the above-described issues of non-compliance and other matters of concern in relation to the ratified ISSS, and considering the 'frame of reference'[275] on the obstacles to ratification, I identify and present the obstacles to ratification, which simultaneously form obstacles to the proper applicability of the ratified ISSS at the national level, as well as the further arising of obstacles to the proper applicability and future promotion of the ISSS.

a. Non-conformity of national legislation

From the preceding section (5.4.1), it follows that non-conformity of national legislation does not solely comprise an obstacle to ratification, but also causes improper applicability of the ratified ISSS at a national level. In certain cases, it can persist for long time periods (in the Greek case, decades), despite the fact that a remedy of the situation may has been requested from the international side. In such cases an eternal back and forth communication usually transpires[276] between the government(s) and the competent international supervisory bodies, in the hope (mainly from the international side) that a solution will be (finally) found.[277]

Such long-lasting issues of non-compliance are perpetuated by the reluctance (caused by a conflict of interest between new social security arrangements introduced at a national level and requirements set under international law) or simple indifference on the part of the state to bring its national legislation into conformity, combined with the (in a sense) soft character of the ISSS, referring to

274 See, also, Vonk, G. and Katrougalos, G. (2010), pp. 5–6, 7–11.
275 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
276 Concerning this *diplomatic tactic* pursued, see also Chapter 1, Section 1.1, Sub-Section 1.1.1.
277 On this point it is also interesting to note that 'already for 20 years now, Belgium has been invited by the Committee of Ministers to reduce its too high cost sharing levels; apparently, the supervisory bodies show the necessary patience in case of contravention' (Schoukens, P. (2008), p. 39).

the absence of hard legal sanctions in case of non-compliance.[278] In other cases, it may have occurred relatively recently, without though any reference, either in the form of direct observations (or requests) or of general comments to appear during the international supervisory procedures (see further comments on this issue below).

Moreover, the actors in the domestic arena (i.e. government, trade unions, etc.) have the tendency to forget that non-conformity of national social security legislation with the minimum ratified ISSS, included both in the C102 and the ECSS, also consists a form of non-compliance with the Article 12§2[279] of the ESC.[280]

b. Lack of political interest and will

Throughout this doctoral dissertation, it has been apparent that political disinterest and unwillingness have been determinant components in protracting inconsistencies between Greek national law and certain ratified ISSS. The long-standing issues of non-compliance described earlier (Section 5.4.1), and registered almost two decades ago, still remain. Numerous legislative modifications have taken place within the country since the beginning of the 1990s, but none of them have addressed the requests of the international supervisory bodies for (re) settlement of the long-standing issues of non-compliance.

This is indeed a clear lack of political interest and will, and not simply lack of interest and will, since on several occasions (in the past) civil servants working for the competent ministerial departments pinpointed the need for the government to finally resolve the international issues at stake. They stressed the negative international image projected by the country through the continuation of non-compliance on certain issues.[281] Be that as it may, the government, in official replies sent to the international organisations, insisted on the difficulty it faced in bringing national law into compliance due to the extreme financial burden this would bring to the country. Such reasoning for non-compliance, though, has persisted for more than two decades now, and even during periods when the

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278 See, also, Nußberger,, A. and Baron von Maydell, B. (1996), pp. 15–16; Wolfrum, R. (1996), pp. 88–90; Nußberger, A. (2006), pp. 110–111, 113–114; Korda, M. and Pennings, F. (2008), pp. 136–137; Dijkhoff, T. (2011), 346–349; Hofman, B. (2007), pp.140, 143; Schoukens, P. (2008), p. 41.

279 According to Article 12§2 of the ESC (1961): 'with a view of respecting and safeguarding the effective exercise of the right to social security, Contracting Parties undertake to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) concerning Minimum Standards of Social Security' (Council of Europe (1961)).

280 Such a viewpoint is shared by other authors (see, for instance, Gomez-Heredero, A. (2009a), p. 19).

281 See, also, Chapter 4, Section 4.7, Sub-Section 4.7.6.

economic situation within the country was not as severe as it has been in recent years (from 2008 onwards). Moreover, it should be noted that more recent issues of non-compliance and other matters of concern in relation to the consistency of national legislative arrangements with the principles, content and meaning of ratified ISSS have also been left untouched by both political leadership and opposition.[282] Actually, since 2008 it seems that legislative modifications have been passed without any prior examination of their compatibility with the ISSS. This is evidence that the lack of interest and will on the part of the political elites in settling issues of non-compliance remains the same, no matter if the period of economic crisis is severe or mild.

Equally intriguing is the fact that during discussions in the competent parliamentary committees preceding the enactment of legislation, neither the political leadership nor the political opposition referred to existing issues of non-compliance or potential contradictions with the ratified ISSS.[283] Such a practice, for example, is not followed in other countries[284] (and this does not relate to whether a country adopts the monist or the dualist system in relation to international (public) law).

The passage of the latest Greek Law No. 3863/2010 on the new reform of the social security system and further arrangements in labour relations, which came as a consequence of the structural fiscal measures agreed in the 'memorandum' on the economic support mechanism between the country and its international donors – the EU, the ECB and the IMF – is another up-to-date example for the lack of political interest and will in relation to the ISSS. Once again, for this law – when still in draft form – no proper examination took place regarding the consistency of its provisions with the international ones, or the impact it would have on the application of the accepted ISSS.[285]

Even though it was stated, in a relevant actuarial study,[286] that the reform satisfied the minimum requirements set in the ratified C102, no exact calculations were presented, showing replacement rates in detail. At the same time, in the same actuarial study it was mistakenly stated that Greece has also ratified the C128, but the reform most likely does not fulfil the requirements set therein. This fact is also

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282 See, for analysis, Chapter 4, Section 4.3, Sub-Section 4.3.5; Section 4.4, Sub-Section 4.4.6; Section 4.5, Sub-Section 4.5.6; Section 4.14; Section 4.15, Sub-Section 4.15.3; Section 4.18, Sub-Section 4.18.4.

283 See, for in-depth discussion, Chapter 3, Section 3.5.

284 In the Netherlands, for example, numerous discussions have taken place over the years on possible inconsistencies between proposed legislative modifications and ratified (minimum or higher) ISSS (see Korda, M. and Pennings, F. (2008), pp. 141–143).

285 See, for in-depth discussion, Chapter 3, Section 3.5.

286 This actuarial study was even put up on the Greek parliamentary website (see ILO (2010c), pp. 9–10).

an (slight) indication of the desultoriness characteristic of the legislature's work in Greece. The latest Committee – for the first time in decades – had particularly emphasised the importance of respecting and cross-checking the compatibility of the reform with the ratified ISSS.[287] Yet, the government – driven by the pressure to launch structural fiscal reforms and reassure the international lenders of the coverage of the public deficit – did not even ask for an informal opinion from the ILO Bureau or the CoE on the reform under way. This time within the Greek Parliament reference to potential contradictions of the reform with ratified international labour standards took place; however, the ISSS were once again left out of the discussion.[288] All this also shows that in the Greek case, the preserving function[289] of the ISSS has still a lot to offer.

Last, it should be borne in mind, that the economic 'memorandum' – taking the form of Law No. 3845/2010 – was not ratified based on the procedure indicated in the Greek Constitution with regard to international agreements (it is not an international convention/treaty).[290] Still, it prevailed over other international legal instruments, which were promptly incorporated into national legislation (i.e. the C102, the ECSS, the ESC and several other ILO labour Conventions).

c. Lack of interest and will of social partners (trade unions, in particular)

The lack of interest and will of social partners – trade unions, in particular – is not confined to the avoidance of exerting substantial pressure on the government to accept higher ISSS (see Section 5.3.4). It extends to the negligence of urging the government to restore existing non-compliances, or to avoid potential inconsistencies in national social security law with accepted ISSS, and of regularly reminding the government of its international obligations when discussing the reform of the system.[291] With respect to the described issues of long-standing non-compliance, as well as the more recent issues of non-compliance (see Section 5.4.1), for almost two decades now no written annotations or commentaries have been sent to the different political parties in power so as to remedy the situation. Similarly, no written complaints have been sent to the ILO Bureau for international consideration.[292]

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287 See, for analysis, Chapter 3, Section, 3.5, Sub-Section 3.5.2.

288 See, for analysis, Chapter 3, Section, 3.5, Sub-Section 3.5.2.

289 This function of the ISSS pertains to the preservation of a 'fixed minimum level of social protection … especially in times of economic downturn, when governments have to cut down public expenses' (Dijkhoff, T. (2011), pp. 304–305, 310–311).

290 Concerning the legal nature of this memorandum, its incompatibility with Greek constitutional rules, as well as contrarieties of recognised rules of international law, see for analysis, Katrougalos, G. (2010b), pp. 9–23.

291 As also recently stated the trade union movement is "suffering a declining base in the face of globalisation and expanding services sector (…)", see Langford, M. (2007), p. 31.

292 See, for in-depth discussion, Chapter 3, Section 3.6.

Especially with respect to the long-standing issues of non-compliance, which also affect the correct application of Article 12§2 of the ESC, and which have stood for almost 20 years now, use of the so-called *Collective Complaints System* of the ESC[293] could have been made. More specifically, Greece ratified the *Additional Protocol to the ESC providing for a System of Collective Complaints* (1995)[294] as early as 1998. Under this Protocol, the state recognises the right of the representative national organisations of trade unions (and employers) within the country to lodge a written complaint in the case that non-compliance with an accepted provision of the ESC has been observed. Thus, trade unions could have addressed a complaint to the Committee of Independent Experts,[295] since Article 12§2 directly refers to the minimum ISSS by explicitly stipulating that social security protection within the country should correspond to a level at least equal to that required for ratification of the C102 (and through this also to the ECSS). Besides, in 2006 the ECSR – the body responsible for monitoring compliance with the ESC – had explicitly requested that the Greek government resolve remaining issues of non-compliance in relation to the accepted ISSS contained both in the C102 and the ECSS.[296] Unfortunately, over all these years, Greek trade unions did not make any steps to this end.[297]

It was only in the beginning of 2011 that a collective complaint was lodged against Greece by Greek trade unions.[298] According to it, the new Law No. 3863/2010, through the legal treatment it forces upon young apprentices (young persons, newly entering the labour market), violates the provisions 1§1, 7§2, 7§7, 7§9, 10§2 and 12§2 of the ESC, as well as article 4§1 in relation to Article 1§2. Especially in relation to the provision 12§2, the new Law, by limiting insurance coverage to medical care, excluding the provision of sickness benefit and refunding the purchase of medicines, and at the same time providing, in the case of accidents, insurance coverage of only up to 1 per cent, is found to contradict the requirements set under the C102, which recognises no such limitations.[299] Actually, the use of the *Collective Complaints System* of the ESC by trade unions within Europe is, in

293 See, also, Benelhocine, C. (2012), pp. 16, 50–58.

294 According to its Preamble, the overall aim of this system is to improve the effective enforcement of the social rights guaranteed by the Charter at the national level. For the full text of the Additional Protocol, see Council of Europe (1995a).

295 See paragraph 11 of the explanatory report to the *Additional Protocol to the European Social Charter providing for a System of Collective Complaints* (Council of Europe (1995b).

296 See Council of Europe (2006b).

297 From 1998 to 2010, under the system of collective collectives of the ESC, complaints against Greece have been lodged by several international non-governmental organisations who have consultative status with the CoE (and have been put on a relevant list by the Governmental Committee), and not by Greek representative organisations of employers and trade unions. The cases of non-compliance did not, however, concern the right to social security as such (see Council of Europe (2011c), pp. 1–22).

298 Not, though, the GSEE, but GENOP-DEI and ADEDY.

299 See Council of Europe (2011d), pp. 1–7.

general, quite limited,[300] and from the different complaints lodged it would seem that so far no particular reference to a violation of ISSS has been made, while Article 12 – and more precisely, provision 12§2 – is always invoked in conjunction with other Articles of the ESC or the Revised ESC.[301]

Similarly, it was only towards the end of 2010 that Greek trade unions, represented by GSEE, sent observations to the ILO after a really long time. Supported also by the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC), they referred, in general, to the changes brought about by the Law No. 3845/2010, 'Measures to implement a mechanism to support the Greek economy by the Member States of the Euro area and the International Monetary Fund', and, more specifically, expressed their concern regarding the effect that the new reform of the social security system, introduced by Law No. 3863/2010, will have on the application of the C102.[302] Be that as it may, with respect to the latest developments in Greece stemming from the intervention of the international actors, it was the first time in Greek social security legislative history that such a retreat in social insurance protection has taken place and was accompanied by a such a bisque on the part of both trade unions and governmental actors.

But this should not actually come as a surprise, since during the last two decades trade unions do not seem to have been proactive in fulfilling the purpose of their creation and existence. Representation of citizens' rights has not always been present or achieved on an equal basis, and there has been a tendency to preserve the general national status quo and the interests of specific categories of funds (for example, the difference in the pressure exerted regarding the preservation of rights between old and newly insured employees in the private sector). To this end, radical social security reforms have been blocked within the country on numerous occasions. Similarly, at a European and international level the presentation of problematic issues is done on a selective basis in order to minimise any potential political cost, while recently it has been a kind of tradition for trade unions to exit even early social dialogue, if not to avoid participating from the very beginning. It becomes, thence, obvious that trade unions share their own responsibility for the stagnation and divergence, which has been characteristic of the Greek social security system for quite some time.[303]

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300 As correctly remarked '… trade unions have not taken advantage of the feasibilities offered to them under the system of collective complaints' (Venieris, D. (2009), pp. 378–379, 412). See, also, Aliprantis, N. (2008), pp. 30–31. The limited use of the *Collective Complaints System* of the ESC has been a matter of concern in recent years (see Churchill, R.R. and Khaliq, U. (2004), pp. 417–456).

301 See Council of Europe (2011c), pp. 1–22.

302 See ILO (2011c), p. 738.

303 See, further, Venieris, D. (2003b), pp. 143–144; Carrera, L.N., Angelaki, M. & Carolo, D. (2011), p. 9; Carrera, L., Angelaki, M. & Carolo, D. (2009), pp. 30–36; Angelaki, M. (2010), p. 3. See,

In older times it was a big achievement – a moral victory, in other words – for workers to be able to express their views and defend their rights through the tripartite structure of the ILO. Nowadays, this is taken for granted, and trade unions get easily trapped between several kinds of interests. A different weight is definitely placed on the representation of workers in the ILO now than in the past.[304]

d. Lack of statistical and administrative capacity

The lack of statistical and administrative capacity emerges as an obstacle both towards the ratification of new (higher) ISSS (see Section 5.3.4), and the proper implementation of the ratified ISSS. It is a fact that the Greek reports submitted on the implementation of the ISSS do not have such a good structure and are not that explanatory. In most cases, they do not include proper statistical data, explicit calculations showing the benefit replacement rates in relation to the set ISSS, and other necessary information as required under the report forms composed by the competent bodies of the ILO and the CoE so as to facilitate and enable the completion of the supervisory procedures. Moreover, the majority of them do not make explicit the exact legal provisions through which effect is given to the ISSS at a national level. Indeed, if someone compares them in terms of structure, accuracy and information to the submitted reports of the new EU Member States (and for the same reporting periods) who are also members of the ILO and the CoE (i.e. Czech Republic and Estonia) and who have ratified (more or less) the same ISSS, Greek reports appear to be poor.

It also seems that in general terms efficient horizontal communication and coordination between the different administrative departments for the dissemination or cross-checking of information is lacking. Especially with regard to the issue of lack of statistical data, it does not involve the reporting on ratified ISSS alone, but is a general phenomenon within the country.[305]

However, Greece is not the only country dealing with problems concerning the supply of required statistics under specific provisions – in particular, those referring to the benefit replacement rates – of the C102 as well as the ECSS. Articles 65, 66 and 67 of C102 (similar provisions are included in the ECSS), as well as Articles 26, 27 and 28 of C128 have been the focus of attention of numerous

also, Chapter 3, Section 3.6.

304 See, also, Bartolomei de la Cruz, H.G. (1996b), pp. 25–26.

305 It is interesting to note, in this respect, that until very recently it was not possible to provide the exact number (or figures) of the civil servants within the country. Furthermore, Greece has received negative criticism concerning the reliability of the statistics provided at a European level. See, for instance, European Commission (2010), pp. 1–30 (especially p. 24 on the social security funds), Angelaki, M. (2010), pp. 1–2, Venieris, D. (2003b), p. 133.

individual direct requests and individual observations addressed by the CEACR to Member States, since they pertain to the assessment of the level of benefits covered.[306] Several countries have encountered difficulties concerning the proper application of these provisions, despite the fact that clarifications and information have been provided by the CEACR as well as by the ILO Bureau.[307]

e. Lack of financial resources

Through the Greek case it emerges that the lack of financial resources may, simultaneously, amount to an obstacle both to ratification and to the proper implementation of accepted ISSS at a national level. In particular, lack of financial resources has been one of the main national reasons accompanying political decisions of non-ratification of new ISSS (not only recently, but also in the past) (see Section 5.3.4). Equally, it has been the most commonly cited reason for the failure to redress of long-standing issues of non-compliance and the introduction of other more recent reforms that do not fully comply with the accepted standards.

In reality however, it seems that the lack of financial resources – although indeed present to a significant extent – has ended up, over the years, as the main reason used to cover Greek governmental inertia in respect of any effort to rectify non-compliance or the reconsideration of ratification. What has always been stated is that the cost for the remedy of non-compliance (or of new ratifications) would result in an extreme financial burden for the Greek social security system as a whole.[308] The cost of the remedy of non-compliance could by no means exceed the cost created by the system's own chronic problems (namely, poor administration, inadequate monitoring, mismanagement/misallocation of available resources, and organisational deficiencies),[309] which were exacerbated (instead of ameliorated) by the constant reforms of the last two decades. Besides, and as a way of illustration, at the beginning of the 1990s the problem of the lack of financial resources was not so extreme[310] – as it became in the mid-2000s – as to cut the minima, still governmental decisions came to this conclusion without alternative options even being considered. Moreover, it is rather strange how

306 See, also, Chapter 2, Section 2.5, Sub-Section 2.5.2.

307 See, as examples, the individual direct requests submitted by the CEACR on the proper application of Articles 26, 27 and 28 of the C128 to the following countries: Germany (in 1990, 1991, 1993, 1994, 1997, 2006, 2007), The Netherlands (in 1989, 2003, 2008), Slovakia (in 2003), Czech Republic (in 2003), Sweden (in 1998, 2003, 2005), Barbados (in 1989, 1994, 1997, 1998, 2002, 2004, 2008, 2009), Venezuela (in 1990, 1992, 1993, 1994, 1996, 1997, 2001, 2006, 2009), Ecuador (in 1994, 1996, 1998, 2006), Uruguay (in 1989, 1994, 2006, 2009), Bolivia (in 1990, 1991, 1992, 1994, 1997, 2002), through the ILOLEX Advanced Query Form.

308 See, also, Chapter 4, Part II, Section 4.7, Sub-Section 4.7.6.

309 See, also, Milton, N. (2009), pp. 4–5, 8, 10.

310 It is though true that in Greece the first signs of financial instability were already visible at the beginning of the 1980s, when demographic changes had not yet had a major impact. See, also, Milton, N. (2009), pp. 4–5, 8, 10.

most of the implemented Greek social security reforms, which aimed to reduce expenses (cost-containment policy), eventually affected, in one way or another, the rights of citizens to minimum protection. Current or even anticipated problems of inconsistency between national law and the ISSS are based on this practice as well.

It becomes, once again, obvious that political elites have the tendency to forget that even if economic difficulties do exist and expand due to problems of growing public deficits and debts, the state's obligation to ensure the due provision of the minimum benefits remains, despite any growing demand for budget financing. That is first and foremost why political elites should avoid placing the economic salvation of the system on cuts to benefits corresponding to minimum protection levels.

f. Lack of technical (international) assistance

Recourse to the ILO technical assistance contributed significantly to the increase in the number of ratifications, especially during the 1990s (see Section 5.2.3). All the same, Greek authorities have not been very active in seeking technical assistance so as to overcome issues of non-compliance or to proceed with the ratification of new ISSS (see, also, Section 5.3.4). It was only after recent suggestions by the Committee of Ministers and the CEACR (and indeed after the passage of a considerably long time period) that Greece accepted to do so. A notable exception being the collaboration between the Greek NAA and the International Financial and Actuarial Service of the ILO Social Security Department for the conduction of actuarial studies and the transfer of know-how in this respect, due to the fact that Greece has, in the last decade, been having serious problems with the financial sustainability of its system.[311] What is more, trade unions have not been active either in pushing the government in this direction or asking for the proper training of ministerial personnel so as to improve the quality of reporting and performance in relation to the implementation of the ISSS at a national level.

Technical assistance could have proved valuable especially since – apart from the long-standing issues of incompliance – the international supervisory bodies have been facing several problems in the last years with regard to the assessment of the scope of coverage and the level of the benefits provided under the national legislation in relation to the ISSS.

311 See, for analysis of this matter, Chapter 4, Section 4.18, Sub-Section 4.18.4.

g. Different societal values and political obstacles

For decades, social security in Greece has been based on a defined benefit programme, where emphasis was placed on shared risk and income redistribution. The main principles and requirements, as laid down in the internationally accepted social security standards, were enshrined in the system (see, also, Section 5.2.3), while throughout this research, and regardless of certain obscure arguments that the ISSS no longer refer to current circumstances (see Section 5.3.1) no specific references to out-dated concepts or terms,[312] in relation to the content of the set ISSS, have been found.

Still, in recent years certain changes have taken place, which illustrate an alteration in the way that social security has been traditionally conceived of at the national level, and which are likely, in the near future, to bring further problems of compatibility between the current system and the accepted international norms in the field of social security than those presently at issue. Most of these changes have resulted from financial pressures, which led to extreme cuts to social security expenditure and inept handling of the situation through the adoption of abrupt measures. A clear trend has been observed in the shift of (most of the) risks and their costs from the government to the individual (and his/her family), as well as targeting spending. By way of illustration: constant stricter conditions for entitlement to benefits (tighter definition of contingencies and longer contribution/employment records), a lack of protection against the effects of inflation and the (lately dramatic) shifts in financial markets on short and long-term benefits, since annual readjustment has been replaced by the adoption of *ad hoc* economic measures (or abandoned in certain periods), constant new pension calculation methods, *etc*. The latest reform of 2010 (see, further, Section 5.4.1), which followed the activation of the economic support mechanism for Greece, will especially lead to a profound modification of the structure of the pension system.

For example, pensions are to be based on the insured person's whole working career and there is a much stricter link between contributions and benefits, financing is to be based on employers and employees and there is drop in the direct involvement of the state in the financing of the schemes (this last point also relates to the viability of pensions), benefit adjustment will be frozen, *etc*. In short, a significant retreat from the principles of social and financial solidarity can be observed, which were also important for the preservation of social cohesion and social harmony at a national level, and it is possible, over the course of time, that current societal values and the political disposition against national social security protection can be altered.

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312 See Chapter 1, Section 1.4, Sub-Section 1.4.1.

h. (Inter)national political pressure, opportunism, trends and interests

As previously discussed (see Section 5.2.1), several decades ago, national pride and international appraisal, the example of other countries, as well as the prevalence of a more favourable socio-political and economic climate, were among the main reasons for the ratification of minimum (and higher) ISSS by different countries around the globe. Nowadays, things are quite different, and the ratification of new ISSS is no longer regarded as a *win-win* situation, and countries may proceed more easily to reform, without thoroughly taking into account their international obligations.

In the last two decades especially, several legislative modifications have been introduced by many European (as well as non-European) countries mainly as a way of protecting the financial sustainability of their social security systems against the economic pressures felt domestically by the rapid changes in the financial and labour markets worldwide.[313] This way, opportunism and interests no longer relate to national pride and international appraisal, but rather to finding ways of how to reduce social (security) expenditure, without, at the same time, promptly considering the effects on minimum protection levels (for instance, risk individualisation is increasingly presented as a principle of justice and effort compensation). Similarly, lately the example of other countries has been broadly used by governments as a means of further justifying reforms – also a kind of *negative fashion effect*.

Greece also pursued a similar route. However, the effect of social security reforms on the ratified ISSS followed different paths. *From the beginning to the end of the 1980s*, reforms did not affect negatively the application of the ISSS. It was also during that period that social security protection in Greece started to spread somewhat.[314] *In the 1990s and until the beginning of the 2000s,* the first issues of non-compliance appeared, some of them lasting to the present day. It was then that the first cost-containment measures were applied, since the first problems of the system's viability became apparent and the influence of the EU was becoming stronger,[315] however due to the fear of losing political power – and not of violating international norms – the subsequent political leaderships were cautious with respect to more radical reforms.[316] *From 2000 to 2009*, discrepancies in the application of the ISSS came to the fore – not though addressed by the competent international supervisory committees – pertaining mainly to the reliability and the financial sustainability of the system, benefit revision, replacement rates, and of course the long-standing issues of non-compliance, which were yet not resolved.

313 See, also, Gomez-Heredero, A. (2009a), pp. 89–90.
314 See, also, Petmesidou, M. (2006), pp. 31, 39.
315 See, for in-depth discussion, Gravaris, D.N. (2006), pp. 64–68.
316 See, also, Carrera, L.N., Angelaki, M. & Carolo, D. (2011), pp. 9–12.

Finally, *the year 2010* was rather decisive for the application of the minimum ISSS at a national level, due to the package of abrupt social security reforms introduced in return for the economic rescue offered to the country by the EU and the IMF in the form of loans (see, also, Section 5.4.1).

Some years ago, it had been stated that 'the financial viability of the social insurance system is now directly dependent on national economic progress.'[317] Nowadays, the situation has been reversed, and the viability of the Greek system is rather dependent on the external international financial support.

Striking indeed is the automatic incorporation – without any delay – of the numerous fiscal structural reforms into the system; the strong effect, in other words, of these supranational (EU) and international (IMF) institutions in national law, decision and policy-making. For example, the competent international supervisory bodies of the ILO and the CoE, as well as the ECSS of the ESC, have been requesting the resolution of long-lasting issues of non-compliance with certain minimum ISSS; still, political leadership has been constantly prolonging action to this end. Along similar lines, certain requests had been sent for the consideration of ratifying higher ISSS, but no action was taken to this end as well. Moreover, the fiscal structural reforms were incorporated into the system without any prior consultation with the ILO and the CoE regarding an evaluation of the possible implications of the application of the accepted ISSS (at least an exchange of views could have taken place).

i. Gaps in the proper functioning of the international supervisory procedure

As illustrated earlier, the non-conformity of national legislation, the lack of political interest and will, the lack of statistical and administrative capacity, the lack of financial resources, and the lack of technical (international) assistance comprise obstacles to the proper application of the ratified ISSS at the national level. Be that as it may, throughout the research conducted in this doctoral dissertation it has been proven that these obstacles have a *twofold character* in the sense that they are also directly linked to the existence of gaps in the proper functioning of the international supervisory procedure – another important obstacle, which equally adversely influences the compliance of national legislation with the ISSS and their proper applicability at a national level.[318]

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317 See Venieris, D. (2003b), p. 142.

318 What has been also recently noted by Malcolm Langford, which also relates to the preservation of the essence and substance of the right to social security, is 'the difficult issues faced by the ILO in applying the current framework'; one of the main challenges he identifies is 'the general lack of effective national and international systems of accountability for both individual and collective violations of international social security rights', see Langford, M. (2007), p. 30.

More specifically, in the Greek case and for many years now, the governmental reports submitted on the application of the ISSS have not been precise enough so as to allow for a clear evaluation of the extent to which the country gives full effect to the provisions of the international conventions,[319] and they have not followed fully the instructions on completion given in the relevant international report forms. The observations and resolutions sent by the competent supervisory bodies to the government have not included profound criticisms to this end. Moreover, it may be the case that the supervisory bodies concentrated their concern on specific issues of non-compliance, leaving other problematic matters untouched, or even when independent experts working for the international organisations stated, in their reports, that a precise evaluation could not take place due to a paucity of data, no particular reference to this matter was made by the international supervisory bodies.

For instance, and as already mentioned, with respect to unemployment benefit (one of the parts that Greece has not accepted in relation to the ECSS, but has accepted under the C102) an independent social security expert, when examining the possibility of its ratification, stated that it was impossible to formulate a well-grounded opinion on the possibility of ratification due to the vagueness of the submitted government report.[320] All the same, in the relevant resolutions sent by the Committee of Ministers pertaining to the same period that the independent expert had referred to in his comments, no remarks were made on the need to provide accurate data and sufficient information so as to facilitate the proper examination of the possibility of ratification on the international side. The Committee of Ministers simply noted that Greece was invited to consider accepting the obligations under the ECSS in respect of the parts on unemployment and family benefits not yet ratified.[321]

Going further, Greece, in recent years, has neither provided nor shown precise calculations on the replacement rates of social security benefits (only for pensions have certain percentages been indicated, and not in all annual reports). Still, no particular reference to this issue has been seen. It was only for the risk of sickness that, at a certain point, requests for further clarifications were made from the international side, and despite the fact that in the answers provided by the Greek side, the replacement rates were once again not presented (only certain further information was given in the annual reports), the issue was left aside and Greek law and practice was found to continue to give full effect to the accepted ISSS. The same applied to cases where requests for detailed information on newly passed

319 For example, accurate statistics on personal coverage, calculations proving that the level of social security protection within the country corresponds to the international standards, *etc*.

320 See, also, Chapter 4, Section 4.5, Sub-Section 4.5.5.

321 See Committee of Ministers (2004), p. 1; Committee of Ministers (2005), p. 1.

national reforms were sent – meaning, even if the requested information was not analytical or precise enough, no further clarification was considered necessary.[322]

Added to this, for quite some time now (mid-2008 and 2009) Greece has not provided for the regular readjustment of benefits, while more recently (in 2010), a total freeze of benefits has taken place. International committees have declared that the issue of readjustment is of critical importance, yet no country-specific remarks have been made to Greece (at least pinpointing that attention to this issue is vital).[323] By way of illustration, and concerning the C128, individual observations have been sent to certain countries regarding the preservation and respect of Article 29.[324] No further particular pressure, though, has been exerted. Reference to the importance of the issue of readjustment is seen only in general observations of the ILO on C102 and C128, while the CoE has simply requested, in recent resolutions, information on what measures are taken by its Member States to this end. The same goes with the problems in relation to the Greek financial equilibrium in social security. The international committees have not, so far, referred explicitly to this matter, although they are aware that Greece, in recent years, has been enduring a general economic crisis. Furthermore, even when emphasis is placed on issues of non-compliance, the influence of the supervision is weak, meaning that the competent bodies constantly repeat the need for remedy and believe in the good faith of countries to resolve the situation. Even when the country gets into technical consultations with the international organisations, the result may remain, for a long time, unknown.[325]

Last, and especially with regard to the ILO, the CEACR could try to increase the influence of the supervisory procedure by reminding trade unions of the power given to them under the ILO Constitution, and could request that they exert pressure on governments to resolve cases of incompliance. Such an effort has not taken place.

From all the above, it can be argued that proper supervision does not seem to take place, and the preserving function of the ISSS is also at stake.[326] Besides, since hard legal sanctioning is not applied in relation to the ISSS, the last resort for bringing national law into compliance would be for the ILO to make use of the so-called sanctioning 'by naming and shaming' more often, and for the CoE to use much stricter political language in the resolutions adopted by the Committee of Ministers; whatever, further steps in this direction need to be taken.

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322 See, for instance, Committee of Ministers (2007), p. 1; Committee of Ministers (2008), p. 1; Committee of Ministers (2009), p. 1; Committee of Ministers (2010), p. 1.

323 See the website of ILO-ILOLEX.

324 See, for analysis, Chapter 2, Section 2.6.

325 See also, for example, Chapter 4, Section, 4.7, Sub-Section 4.7.6.

326 Concerning the preserving function of the ISSS, see Dijkhoff, T. (2011), pp. 304–305, 310–311.

j. The international displacement of social security standards and its impact at the national level

Throughout the research conducted, it has become apparent that a factor, which, in recent years, has proved to affect more and more negatively the proper application of ratified ISSS at the national level, is the new position given to them in the standard-setting system of the ILO. In particular, based on the data obtained during the open-ended interviews within the country, the fact that the ILO itself has placed more emphasis, in the last decade, on standards other than those related to social security – mainly standards pertaining to labour issues – is an example to be followed at the national level as well. The embracement of such a standpoint by different domestic actors has been profound (political leadership and opposition, trade unions, academia, *etc.*),[327] and has had as a consequence, both the devaluation and marginalisation of the ratified ISSS.

As recently also pointed out, the Declaration on Fundamental Principles and Rights at Work (1998)[328] brought significant changes to the normative context for ILO action in the social security field. It asserted and further reinforced the nature of certain rights and principles (namely, freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation), while it thrusted others aside.[329] Social security was excluded from the fundamental principles and rights listed in this Declaration.[330] And indeed this contrasts with the recent acknowledgement by the ILO that an intensification of efforts in promoting both the ratification and the implementation of the main social security Conventions is necessary in the forthcoming years.[331]

k. Lack of knowledge about the ISSS

Taking into account the above analysis concerning the limited role of the ISSS in Greek case law and its contribution to the further weakening of their legally (binding) framework, another form of lack of knowledge regarding the ISSS has become apparent. It relates to the unfamiliarity of national judges – but acting

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327 See, also, Chapter 3, Section 3.4, Sub-Section 3.4.6; Section 3.6.

328 See also Langford, M. (2007), p. 30. See also Alston, P. and Heenan, J. (2004), pp. 221–264, cited in Langford, M. (2007), p. 30.

329 'Social security conventions are not deemed to be fundamental conventions in the sense of the Declaration on Fundamental Principles and Rights at Work, which ought to be ratified by all member states', see also Pennings, F. (2007), p. 5.

330 See Supiot, A. (2006), pp. 114–115. See also Alston, P. (2004), pp. 457–521; Moran, T.H. (2005), pp. 147–153.

331 See Chapter 1, Section 1.4, Sub-Section 1.4.1. See, also, Governing Body of the ILO (2009), p. 6.

lawyers as well – with the ISSS and their overall incomprehension of them.[332] In particular, the fact that the standards' provisions – contained in international legal instruments that have been sanctioned through formal Greek statutes – are considered in court decisions as simple guidelines – as a source of inspiration in other words – for the national legislature, clearly shows the unawareness both concerning their utility and potential, not to mention the lack of recognition of their legally binding character (since actually this way they undertake the role of the ILO recommendations). Furthermore, very few acting lawyers know and make use of them by basing, where appropriate, their claims on the relevant international provisions (this may also be due to the lack of interest in obtaining knowledge about the ISSS and the relevant instruments). Such a position also implies that direct effect should be seen as a privilege of monist systems, which actually could be reversed, if national judges took the initiative, themselves, to recognise the direct applicability of a provision, even before the national legislature intervenes.[333]

l. Lack of interest and will of other actors

Once more, the lack of interest and will on the part of other actors – as in the case of ISSS non-ratification (see, for analysis, Section 5.3.4) – appears to be another obstacle to the further promotion of the ratified ISSS and their proper applicability at a national level.

332 See Chapter 3, Sub-Section 3.7.3; De Vries, T. (2007), pp. 91–100.

333 Up to now, Greek judges have only acted in two cases: (a) when the national legislature has intervened, but the national judge has decided to introduce another more favourable regulation than the ones included in the international conventions (i.e. retirement without the obligation to have reached a certain pensionable age); and (b) when a matter has been regulated domestically, there is no contrary regulatory settlement, and the national judge simply confirms. See, also, Layton, R. (2006), pp. 1–21.

CHAPTER 6
CONCLUSIONS, DISCUSSION AND RECOMMENDATIONS

War is the father of all things … – Heraclitus

One of the penalties for refusing to participate in politics is that you end up being governed by your inferiors … – Plato

The important thing is not to stop questioning … – Albert Einstein

PART I
THE RESEACH PROBLEM: OUTCOME AND DISPOSITION

6.1 INTRODUCTION

In this doctoral thesis, I followed closely the recent deliberations on international social security standard-setting,[1] and grasped both the international disposition, as well as the national inclination towards the up-to-date – *minimum* and *higher* – international social security standards (ISSS). By reckoning that *there is a use in the existent international social security standard-setting framework; however, it is imperative to illuminate present weaknesses so as to give it full substance, advance further its impact at a national level and by extension its contribution to any impending international social security standard-setting approach,* I took up the subject matter of *international social security standards' blockage.* And I began by displaying the research problem through the leading research question 'what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system?'[2]

1 See Chapter 1, Section 1.3.
2 See Chapter 1, Section 1.4, Sub-Section 1.4.1.

Exploration of this research problem required the identification and description of the obstacles. In this respect, I composed an *initial frame of reference*[3] towards the obstacles, based on the findings of the ILO on the non-ratification of the up-to-date ISSS and certain other possible general obstacles to the their further promotion.[4] The research focused on the developed social security system[5] of one country – Greece – and the identification and description of the obstacles involved the comprehensive study of a broad number of dimensions directly linked to the ISSS.[6] Three research sub-questions were chosen[7] and through the compilation of methods and data sources[8] – pertinent to the disciplines[9] of law and social policy – new research factual findings were produced, presented and analyzed.[10]

Immediately below, first the leading research question is answered (see Part I, Section 6.2). It is shown, which obstacles to the further promotion of the ISSS have overall proved the greatest, constituting this way a *new frame of reference*, and each of them is subsequently elucidated. Second, the *new frame of reference* is placed into a broader systematic context through the clustering of the obstacles into two distinct categories – ideological and pragmatic (practical) – taking into account their main characteristics (distinguishing qualities). On the basis of this categorization, and of what has been learned so far, their interrelation is demonstrated, as well as which of them are the most significant and why (see Part I, Section 6.3). Third, considering also further developments in the field, discussion and recommendations follow on how these obstacles could be overcome (see Part II, Sections 6.4 and 6.5). Last, the added value of this in-depth single country study is illustrated, followed by an epilogue (see Part III, Sections 6.6. and 6.7).

3 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
4 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
5 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
6 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
7 See Chapter 1, Section 1.4, Sub-Section 1.4.3.
8 See Chapter 1, Section 1.4, Sub-Section 1.4.3.
9 See Chapter 1, Section 1.4, Sub-Section 1.4.2.
10 See Chapter 5.

6.2 ANSWERING THE LEADING RESEARCH QUESTION (RESEARCH PROBLEM)

'What are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system?'

From the preceding presentation and analysis of the research factual findings,[11] it has been confirmed that almost all of the obstacles included in the *initial frame of reference,*[12] apply in the Greek case-study and have still relevance today.

In particular, those stated by the ILO[13] – *different societal values* and *political obstacles*, *lack of financial resources*, *lack of statistical* and *administrative capacity*, *lack of knowledge about the Conventions* and *non-conformity of national legislation* – have been demonstrated. However, their content has somewhat altered, since they do not just provoke non-ratification; they also hamper the further promotion[14] of the up-to-date – *minimum* and *higher* – ISSS in general.

As far as the other proclaimed obstacles[15] are concerned, the existence of *(inter) national political pressure-opportunism-trends* and *interest* has been indeed found to negatively affect ratification and the proper application of ratified standards, while (national) *wish for flexibility* and *the legally binding character of the ISSS* mainly block prospects for future ratification(s). Both of them though, lead to the general obstruction of the further promotion of the ISSS, and have obtained a broader content. *The dynamism of the ISSS* is not evident in the Greek case study. Despite the fact that the ISSS have come under criticism for being outdated and not corresponding to current circumstances,[16] they have not (so far) been clearly considered an impedance to more innovative or progressive domestic social security law and policy-making. Still, it should not be implied that the *dynamism of the ISSS* may not consist of an obstacle in other countries (in different situations). This still remains to be seen.

Thereafter, certain new intriguing obstacles emanated from the in-depth exploration of the Greek case-study. Obstacles, which have not, so far, been explicitly detected, mentioned, and/or defined, in national, or international academic research studies, but certainly provoke the *international social security*

11 See Chapter 5.
12 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
13 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
14 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
15 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
16 See Chapter 5, Section 5.3, Sub-Section 5.3.1.

standards' blockage.[17] They were as follows:[18] *lack of political interest and will*, *universal decline of a socio-economic and political setting fostering social security protection*, *global aspirations for cost-containment law and policy-making in the field of social security*, *lack of interest and will of social partners, lack of interest and will of other actors*, *lack of international technical assistance*, *absence of substantial promotion of the ISSS and exertion of appropriate 'pressure' with regard to their ratification from the international side*, *gaps in the proper functioning of the international supervisory procedure*, *the international displacement of the ISSS* and *its impact at the national level*.

These last mentioned obstacles enrich the combined *initial frame of reference* utilised, in this doctoral dissertation.[19] In such a manner, a *new frame of reference* concerning the overall obstacles has been produced. Its content is presented (in Table No. 2, below) and, since, as already mentioned, the essence of the obstacles included in the *initial frame of reference* has expanded and the new obstacles ought to be precisely defined as well, each of them is elucidated anew (following the order of their appearance during the conduct of this research).

The New Frame of Reference
Lack of political interest and will
Universal decline of a socio-economic and political setting fostering social security protection
Global aspirations for cost-containment law and policy-making in the field of social security
Non-conformity of national legislation
Wish for flexibility and the legal binding character of the ISSS
Lack of knowledge about the Conventions (standards)
Lack of statistical and administrative capacity
Lack of financial resources
Lack of interest and will of social partners
Lack of interest and will of other actors
Lack of international technical assistance
Different societal values and political obstacles
(Inter)national political pressure, opportunism, trends and interests
Absence of substantial promotion of the ISSS and exert of appropriate 'pressure' with regard to their ratification from the international side
Gaps in the proper functioning of the international supervisory procedure
The international displacement of the ISSS and its impact at the national level

17 See Chapter 1, Section 1.4, Sub-Section 1.4.1.

18 See Chapter 5, Section 5.2, Sub-Section 5.2.4, Section 5.3, Sub-Section 5.3.5 and Section 5.4, Sub-Section 5.4.2.

19 See Chapter 1, Section 1.4, Sub-Section 1.4.1.

a. Lack of political interest and will

This obstacle primarily pertains to the lack of *governmental* political[20] interest and will, and by extension to that characterizing the political *opposition* within the country: that is, the main opposition political party, and the other parties represented in the national Parliament.

It encompasses on the part of the Government(s): avoiding to consider examining, or re-examining the possibility to ratify new – minimum or higher – ISSS (there is even a tendency to turn away from such matters); non-fulfillment of international obligations with respect to the process of ratification; protracted issues of non-conformity of enacted national legislation with ratified ISSS; communication to the international organizations of non-plausible explanations for non-ratification, as well as non-conformity with ratified ISSS; enactment of national legislative modifications, or innovations without proper, , or without any prior consultation on the ratified ISSS; entering into international agreements and adoption of relevant laws, which contain measures and structural reforms contradicting principles and basic requirements set by the ratified ISSS.[21]

On the part of the other actors: inertia with respect to bringing up political and public discussions on the relevant international instruments, their purpose and the utility of ratification; paucity in exerting strong parliamentary control, or submitting proposals for statutes, or assuring the fulfillment of international obligations with respect to the process of ratification by the ruling party; non-reference to existing issues of non-conformity with respect to ratified ISSS, absence of criticism of reforms, which may hamper the proper application of the ISSS.[22]

Reference should, however, be made to this lack of political interest and will as an outflow of international dispositions. More specifically, and taken from a universal perspective, this lack of political interest and political will entails elements of international law *versus* international politics. Domestic political decisions on modifications and reforms which – triggered and provoked by global aspirations on law and policy-making in the field of social security, or interventions of other international organizations and foundations on how social security should be

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20 The word politic(s) is actually the latinisation of the Greek word politikos, which means, amongst others, *of, for,* or *relating to citizens*, in turn from polites (citizen) and from polis (city).

21 See, for analysis, Chapter 5, Section 5.2, Sub-Section 5.2.4; Section 5.3, Sub-Sections 5.3.2, 5.3.3, 5.3.4 and 5.3.5; Section 5.4, Sub-Sections 5.4.1 and 5.4.2. Concerning the prior existence of political interest and will, see Section 5.2, Sub-Section 5.2.1 and 5.2.3.

22 See, for analysis, Chapter 5, Section 5.3, Sub-Section 5.3.3, 5.3.4 and 5.3.5; Section 5.4, Sub-Section 5.4.2.

organized at a national level – (may) result in non-conformity with the ISSS and traditional principles.[23]

b. Universal decline of a socio-economic and political settings fostering social security protection

Opting for higher levels of social security protection and undertaking legally binding international obligations – through ratifications to this end – is hardly present as an item on recent political, economic and social agendas (either in Greece, or also worldwide). At the same time, preservation of the attained *social minima* – the achievement of international consensus regarding equilibrium between social and economic prosperity,[24] especially, in the aftermath of the WWII – has started to be threatened by the pursuit of mere anti-financial crisis solutions (i.e. cuts in levels of benefits; stricter entitlement requirements; *etc.*).[25]

c. Global aspirations for cost-containment law and policy-making in the field of social security

Over the last two decades social security has been under constant transition. Global political debates have shifted to issues of cost-containment and policy restraints. Ratification and domestic application of the ISSS, which was seen as a public legal guarantee of promised rights and benefits, is conceived as a barrier to potential political attempts striving for more *innovation* in law and policy-making, since social security nowadays turns out to be much more essential for financing, rather than population coverage and benefits' provision.[26]

d. Non-conformity of national legislation

National legislation is not (or is not considered) consistent – prior to ratification – with the up-to-date – *minimum* or *higher* – ISSS, or with certain specific provisions of the ISSS (i.e. provisions pertaining to the personal scope of application; qualifying conditions; amounts (level of benefits) and rates of replacement; waiting periods for the provision of a social security benefit; financing and administration of the system; equality of treatment between national and non-nationals; *etc.*). National legislation is also not consistent with the ISSS after ratification, or non-conformity may appear after some years of applicability of

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23 See, for analysis, Chapter 5, Section 5.4, Sub-Sections 5.4.1 and 5.4.2.

24 See also Chapter 1, Section 1, Sub-Sections 1.1.1 and 1.1.2; Section 1.2, Sub-Sections 1.2.1, 1.2.2 and 1.2.3, as well as Chapter 2, Section 2.1, Sub-Section 2.1.1.

25 See, for analysis, Chapter 5, Section 5.2, Sub-Section 5.2.4. Concerning the prior international commitment in securing both economic and social advancement and fostering social security protection, see Sub-Section 5.2.1 and 5.2.3.

26 See Chapter 5, Section 5.2, Sub-Section 5.2.4, as well as Section 5.4, Sub-Section 5.4.1.

the ISSS (i.e. social security reforms, financial cuts, *etc.*) and persist for quite long time-intervals.[27]

e. Wish for flexibility and the legal binding character of the ISSS

States (governments) are reluctant to accept (and in this way have to add to these) legally binding international obligations. Besides, this way a possible introduction of different domestic arrangements to the ISSS is simplified. The apprehension of international exposure in case of future non-conformity (non-compliance) is another deterring factor. Within such terms, they simply prefer not to proceed to ratification, or to give precedence to other soft-law mechanisms (i.e. at EU level the OMC; at international level the adoption of Resolutions, or Recommendations, *etc.*).[28]

f. Lack of knowledge about the Conventions (standards)

Lack of knowledge involves unawareness, misconception and/or misinterpretation mainly on the part of the government – the national social security administration (i.e. civil servants dealing with the ISSS in the competent ministries and their experts) – of the meaning and content of the Conventions' provisions. This may lead, in certain cases, to false assumptions that national legislation does not conform, or cannot conform to the ISSS. It also appertains to unfamiliarity with the ISSS and incomprehension on the part of several other actors (apart from the Government and its administration), such as politicians both from the ruling party and the political opposition within the country, trade unions, domestic judges and lawyers, national independent social security experts, academia, civil society, NGOs, *etc.*[29] There is also a *thin line* between a real lack of knowledge and a rather selective one.

g. Lack of statistical and administrative capacity

This is inability to cope with the complicated mechanism of regular reporting with regard to the ISSS (in certain countries regular reporting is regarded as an extra administrative burden; in others the ISSS are characterized as too technical, *etc.*); the need to mobilize a diversity of national institutions for the purpose of supervising the proper application of the ISSS; inability to provide proper and

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27 See, for analysis, Chapter 5, Section 5.3, Sub-Sections 5.3.1, 5.3.2, 5.3.3 and 5.3.5; Section 5.4, Sub-Section 5.4.1 and 5.4.2. See also Chapter 1, Section 1.4, Sub-Section 1.4.1. See also Dijkhoff (2011), pp. 313, 315–316.

28 See further Chapter 5, Section 5.3, Sub-Section 5.3.2 and 5.3.5. See also Dijkhoff, T. (2011), pp. 313–314, 315–316.

29 See, for analysis, Chapter 5, Section 5.3, Sub-Sections 5.3.1 and 5.3.5; Section 5.4, Sub-Sections 5.4.1 and 5.4.2. See also Chapter 1, Section 1.4, Sub-Section 1.4.1. See also Dijkhoff, T. (2011), pp. 312–313, 315–316. See as well Chapter 3, Section 3.5 and Section 3.7, Sub-Section 3.7.3.

justified assessments of conformity or non-conformity with ISSS; composition of non-comprehensive, non-explanatory and in certain cases unstructured national reports on the application of the ISSS; absence of information and data; difficulties in collecting the required statistics; absence of reliable statistics; defects in the existing infrastructure for delivering periodical statistics; failure in making proper and accurate calculations showing the exact social security benefits' replacement rates, *etc*.[30]

h. Lack of financial resources

It refers to inability of a country, on the one hand, to ratify a convention due to its medium-low level of economic development and, on the other hand, if ratified, to remain compliant with the ISSS due to loss of economic capacity. It has also been invoked as a reason for introducing reforms, through which conformity with the ISSS is not guaranteed. Moreover, the economic crisis and constantly rising inflation have been proclaimed as factors impeding the application of the ISSS, and worsening the lack of financial resources within a country. Low levels of social security benefits lead to non-conformity with higher ISSS and an eventual non-maintenance of the levels of the minimum ones.[31]

i. Lack of interest and will of social partners

Trade unions appear to follow patterns of immobility and passivity as far as the ISSS are concerned, which mainly comprise forms of non-exertion of (substantial) pressure upon Government(s) to ratify new *minimum* or *higher* ISSS, or to (at least) submit to the national Parliament the adopted and/or signed international legal instruments for discussion about ratification; negligence in urging ruling parties to restore existing issues of non-conformity; deficiency in fulfilling their role in following the consistency of future, or adopted social security reforms regarding the ratified ISSS; informing citizens within the country about governmental decisions and actions retrograding their recognized rights under international social security law. Employers' representatives could be simply characterized as comprising a *vapid* group in relation to the ISSS.[32]

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30 See, for analysis, Chapter 5, Section 5.3, Sub-Sections 5.3.2 and 5.3.5; Section 5.4, Sub-Sections 5.4.1 and 5.4.2. See also Chapter 1, Section 1.4, Sub-Section 1.4.1. See also Dijkhoff, T. (2011), p. 314, 315, 316.

31 See, for analysis, Chapter 5, Section 5.3, Sub-Sections 5.3.1 and 5.3.5; Section 5.4, Sub-Sections 5.4.1 and 5.4.2. See also Chapter 1, Section 1.4, Sub-Section 1.4.1. See also Dijkhoff, T. (2011), pp. 314, 315, 316.

32 See further Chapter 5, Section 5.3, Sub-Section 5.3.5; Section 5.4, Sub-Section 5.4.2. See also Chapter 3, Section 3.6.

j. Lack of interest and will of other actors

There are no profound organized academic lobbies, civil society network (i.e. national and/or international NGOs, *etc*.) occupied with international standard-setting in the field of social security; while domestic judges and lawyers have left unexplored the possible utility of the ISSS in national case law.[33]

k. Lack of international technical assistance

This refers to the non-request, unwillingness, or indifference on the part of countries to have recourse to international technical assistance so as to proceed with the ratification of new *minimum* or *higher* ISSS or make good identified non-conformities. Trade unions behaviour, keeping a distance from pressing the government towards the opposite direction, further deteriorates the situation.[34]

l. Different societal values and political obstacles

The ISSS are considered to be outdated – no longer referring to current circumstances – and reflect an old-fashioned concept of social security, which does not correspond to present socio-economic reality, to the way society has turned out to be organized, nor to how social security has come to be conceived from a governmental (national, as well as international) point of view in recent years.[35]

m. (Inter)national political pressure, opportunism, trends and interests

There is a weakening of earlier (inter)national political beliefs – the *old positive fashion impact* – that legal commitment (through ratification) to the ISSS is of an added value for states and their people: opportunity to attest the conquest of social progress in parallel to economic advancement, and gain, at the same time, international recognition (even when states did not actually intend (in the long run) to apply the ISSS, or were not sure that fulfillment of the ISSS could be ultimately achieved). Such (inter)national positive political pressure – direct (i.e. moral obligation and commitment), or indirect (i.e. to show that the level of protection within the country is attained and retained at international/European standards) – has considerably declined. If anything, the ISSS tend to be looked at as a *legacy*. Internal, as well as external global commands on structural changes

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33 See further Chapter 5, Section 5.3, Sub-Section 5.3.5; Section 5.4, Sub-Section 5.4.1 and 5.4.2. See also Chapter 3, Section 3.7, Sub-Section 3.7.3. See also Dijkhoff, T. (2011), pp. 348–351.

34 See also Chapter 5, Section 5.3, Sub-Section 5.3.2, 5.3.3 and 5.3.5; Section 5.4, Sub-Section 5.4.2.

35 See further in Chapter 5, Section 5.3, Sub-Section 5.3.1 and 5.3.5; Section 5.4, Sub-Section 5.4.2. See also Chapter 1, Section 1.4, Sub-Section 1.4.1. See also Dijkhoff, T. (2011), pp. 314–316.

– (inter)national negative political pressure – caused by feeble fiscal growth and high national budget deficits, which may even lead to national requests for external economic support, or *ad hoc* domestic intervention by international donor foundations and organizations, steer reforms without taking account of the effects on the accepted ISSS, or infringements. Numerous countries have followed this route – *negative fashion impact* – concentrating more on *what serves best, than what has been promised*.[36]

n. Absence of substantial promotion of the ISSS or exertion of appropriate 'pressure' with regard to their ratification from the international side

Over the last two decades, and especially since 2001, international organizations do collect reasons, mainly through governmental replies to questionnaires, for the non-ratification of certain up-to-date – *minimum* or *higher* – ISSS. However, they easily settle for the national given reasons (or conventional/disputable reasons, or absence from reasoning) – even if these reasons could be characterized as out of date – and rely on the *good will* of government(s) for future decisions on ratification(s) and re-opening of the relevant discourse. In such a manner, they actually allow the issue of re-examining the possibility for ratification to *hang loose* for long time-periods, even when awareness lies around social security changes, which have been, or are meant to be, introduced at a national level. In addition, and with particular reference to the adopted ILO social security Conventions, the follow-up of member states' international obligations encounters deficiencies.[37]

o. Gaps in the proper functioning of the international supervisory procedure

This obstacle appears mainly in the following forms: considerable indulgence with respect both to in-proper (national) reporting on the ISSS and the in-proper application of the ISSS. By way of illustration: negligence, or total absence of remarks regarding the vagueness of nationally submitted reports (e.g. non-respect of the instructions given for filling in the reports based on the internationally adopted and communicated templates; non-inclusion of legal information and statistical data necessary for the proper assessment of the application of the ISSS – especially those on personal coverage, calculations of the levels of the benefits and their required replacement rates); selective detection of cases of non-compliance and of requests for submission of supplementary supporting documentation; more diplomatic way in formulating observations/requests; finding national

[36] See further Chapter 5, Section 5.2, Sub-Section 5.2.4; Section 5.3, Sub-Section 5.3.5; Section 5.4, Sub-Section 5.4.1 and 5.4.2. Concerning the prior international commitment in securing both economic and social advancement and fostering social security protection, see Section 5.2, Sub-Sections 5.2.1 and 5.2.3.

[37] See Chapter 5, Section 5.3, Sub-Sections 5.3.4 and 5.3.5.

legislation to give full effect to the accepted ISSS, even when this is not actually the case, *etc*.[38]

p. The international displacement of the ISSS and its impact at the national level

The changes brought, in particular since 1998, to the normative context for ILO action in the field of social security – disqualifying, in a sense, social security from the list of fundamental international principles and rights (i.e. through the categorization of certain Conventions as core and/or fundamental; the existence of different (additional) supervisory procedures for certain labour standards; *etc*.) – and the constant repetition by *world leaders* that the ILO needs to work on its core business, which is the constant promotion and faithful implementation of its fundamental Conventions,[39] has had as a consequence the turn of interest at the national level as well, following the paradigm given from the international side. Furthermore, and within similar terms, under the general framework of the CoE, and since 1994, a strong political pressure is placed on acceding States to accept certain Conventions – notably on human rights and co-operation in the criminal field – but not those on social security.[40]

6.3 PLACING THE 'NEW FRAME OF REFERENCE' INTO A BROADER SYSTEMATIC CONTEXT

If one has a closer look at the content of the *new frame of reference* (see Section 6.2, above) concerning the obstacles to the further promotion of the ISSS – as derived from the overall research conducted in this doctoral thesis – one can notice certain characteristics, through which the obstacles may be clustered into two distinct categories: *ideological* and *pragmatic* (practical) (see table below).

38 See Chapter 5, Section 5.4, Sub-Section 5.4.2.

39 See as a further example a recent statement of the President of Indonesia at the 100th ILC, "Many countries have ratified ILO conventions, but what is urgent now is the faithful implementation of these conventions. We must see to it, that the eight ILO Fundamental Conventions are fully carried out, to ensure that workers enjoy social justice", ILO (2011d).

40 See Chapter 5, Section 5.4, Sub-Section 5.4.2.

IDEOLOGICAL OBSTACLES	PRAGMATIC (PRACTICAL) OBSTACLES
GLOBAL LEVEL	GLOBAL LEVEL
Changing role of social security	***Lack of human and financial resources***
Universal decline of a socio-economic and political setting fostering social security protection	Gaps in the proper functioning of the international supervisory procedure(s)
Global aspirations for cost-containment law and policy-making in the field of social security	
Changing view on the role of the ISSS	
(Inter)national political pressure, Opportunism, trends and interests	
The international displacement of the isss and its impact at the national level	
Absence of substantial promotion of the isss or exertion of appropriate 'pressure' with regard to their ratification from the international side	
NATIONAL LEVEL	NATIONAL LEVEL
Political views (ruling parties)	***Legal – technical difficulties***
Wish for flexibility and the legally binding character of the ISSS	Non-conformity of national legislation
Different societal values and political obstacles	Lack of international technical assistance
Lack of political interest and will	
Other Political and Non-Political Views	***Lack of Other Resources***
Lack of interest and will of social partners	Lack of financial means
Lack of interest and will of other actors	Lack of knowledge about the conventions (standards)
	Lack of statistical and administrative capacity

In order to shed light on this categorization, i the following paragraphs explain what exactly is meant by ideological and pragmatic (practical) obstacles, what their origins are, how they turn out to be, in a sense, interrelated, but also why the ideological obstacles override the pragmatic (practical) ones.

6.3.1 IDEOLOGICAL AND PRAGMATIC (PRACTICAL) OBSTACLES: CAUSALITY AND SUPREMACY

Beginning at the global level, one main characteristic is the tendency to confine social security protection provided by the state[41] (and by extension public

[41] See also International Labour Office (2011a), pp. 52, 55.

(sector) social policy and public services in general)[42] to that of the *essentials* (i.e. regulating basic protection packages; targeting provisions' coverage, *etc*.) and to simplify, as much as possible, its legal basis and legislative structures, as well as its legal enforceability as a social right. Social security tends to be seen as a burden to the general functioning of the economy and as a factor impeding economic prosperity, which can only be achieved through the ultimate emancipation of the market,[43] limited (selected) state intervention and enhancement of individual responsibility.[44] Despite the fact that within the so-called European *social model*, social, labour and economic policies have been conceived as supplementary to each other, their interrelation has altered. The globalization of the world economy reflect the conviction that social provisions' increase and/or increments hold back advancement, which could emanate from further employment, and cause inflexibility and/or rigidity to economic competitiveness.[45]

To this end, the ideological obstacles relate and reflect the development internationally of new social security perceptions – *new mind-sets* – held by different stakeholders. Put differently, *a change of beliefs and principles on the role of social security.* Over the last decades (1970s – 2000s), this has become gradually obvious in several ways, such as:[46] emphasis of the State on workers' participation as a substitute for grand of further provisions; introduction of numerous reform policies as an antidote to the first elements of an evolving economic crisis;

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42 As recently stated 'The Washington consensus did not necessarily reject the use of social policy, but its focus on efficiency and fiscal discipline often led to cuts in social spending', see Birdsall, N. and Fukuyama, F. (2011), p. 48.

43 It has been explicitly stated that 'International social security law has witnessed a movement in recent decades from a rights-based approach to a more market-oriented approach', see International Labour Office (2011a), p. 3.

44 As, characteristically, stated, 'Free markets have many virtues. Arguably, the most recognized is the expansion of individual choice – and thus freedom … they create a future promoting integrity and trust …'; 'Freedom of expression is not possible when the means of production are under government control and individuals lack the economic means to sustain themselves and their points of view (Milton Freedman)', see Zupan, M.K. (2011), p. 171. See also Ferge, Z. (1997), pp. 20–44. See the explicit reference of the CEACR to 'a new distribution of risks and responsibilities', International Labour Office (2011a), pp. 60–61.

45 See by way of comparison the elucidation given under Section 6.2 above, on the following obstacles: universal decline of a socio-economic and political setting fostering social security protection; global aspirations for cost-containment law and policy-making in the field of social security. See also Oorschot, W.J.H. van (2010), p. 19, as well as Augusztinovics, M. (1998), pp. 10–11.

46 The following references and literature has been thoroughly consulted: Seeleib-Kaiser, M. (2007), pp. 1–18; Fox, L. and Palmer, pp. 1–40; Taylor-Gooby, P. (2003), pp. 539–554(16); Gilbert, N. (2004); Katrougalos, G. (2007), pp. 79–95; Katrougalos, G. (2010c), pp. 39–52; Sakellaropoulos, Th. (ed.) (1999), pp. 556; Sakellaropoulos, Th. and Angelaki, M. (2010), pp. 390–412; Esping-Andersen, G. (ed.) (1996); Sol, E. (2009), pp. 1–23; Van Ginneken, W. (2007), pp. 53–54; Plantinga, M. and Tollenaar, A. (2007), pp. 1–19; Becker, U., Pieters, D., Ross, F. and Schoukens, P. (ed.) (2010); Gomez-Heredero, A. (2009a), pp. 1–241. Johnson, A. (2005); International Labour Office (2011a), pp. 51–52, 55, 227–228; Ståhlberg, A.C. (2006), p. 4.

reductions in social security expenditure; transfer of responsibility from the state to the private sector; public-private partnerships; drastic structural fiscal (monetary) changes for cost-effectiveness; austerity measures and privatization trends (models) as ultimate means for economic recovery, as well as enhancement of individual responsibility, and so forth.

In turn, this *change of beliefs and principles on the role of social security*, triggered and gave rise to *a changing view on the role of the ISSS*, which have been considered by numerous countries, for several decades, to be one of the most compact and solid mechanisms for the establishment and mainly the realization of the – human – right to social security and the concretization of it legal essence. The positive approximation of the ISSS, as an opportunity to show legal-political commitment to social viably economic growth, and gain international appraise by building, at the same time, stronger foundations for the development of sound social protection systems, lessened.[47] Especially within an EU level, the *fashionable trend* towards soft-law mechanisms – which has been construed as a new *political ideology*[48] – is pronounced. It is true that the motives, which led to the establishment of the ILO, were, from the very beginning, apart from humanitarian, also political and economic.[49] Equally, the CoE as commonly cited, "is the oldest political organization of the old Continent".[50] Only member states' representatives have direct participation in its work.[51] Apparently, certain of these political and economic motives converted and pressed towards a "transformation of the international labour rights regime (…) so as to provide the necessary flexibility in the face of forces of globalization".[52] Thereby, a re-prioritization in the ILO standards-setting system was evoked. Certain standards – but not those on social security[53] – were placed at the centre of governments' and social partners'

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47 As also stated 'it was in the 1950s and 1960s that governments were willing to internationalise labour and social security issues, at the time when all these conventions were made. At present there is much more political reluctance to internationalise social security', in: Hofman, B. (2007), p. 145.

48 This relates particularly to the OMC introduced along with the Lisbon Strategy at the European Council Summit in March 2000. By certain scholars the Lisbon Strategy has been conceptualized as 'paradoxically "self-reflexive" political ideology', see Tucker, C.M. (2003), p. 1. For a specific reference to the OMC, and its relation to the EU (legal) competences in the field of social security, see Korda, M. and Schoukens, P. (2006), pp. 7–15, 22–24.

49 See also Johnson, A. (2005), p. 147. See also the preamble to the ILO Constitution, International Labour Office (2010), p. 5.

50 See also Czucz, O. (1999), pp. 49–50; Benelhocine, C. (2012), pp. 9, 15.

51 See also Chapter 1, Section 1.1, Sub-Section 1.1.2.

52 See Alston, P. (2004), pp. 457–458.

53 Particularly interesting in this respect is the following statement made by a member of the ILO CEACR concerning the Declaration on Fundamental Principles and Rights at Work (1998), according to which 'Social security was not included in this declaration. This was not accidentally omitted, but the reason was that in the area of social security there was no common basis for developing and developed countries. That is why they did not even include social security in the hard core of standards'. See Hofman, B. (2007), pp. 140–141. See also Chapter 5, Section 5.4, Sub-Section 5.4.2. It is also worth pointing out in this respect that also

attention.[54] Special monitoring procedures were introduced as well, while their proper application – and regardless of whether or not they have been ratified at a national level (ILO membership has been set as the key requirement to this end) – is under constant observance.[55] All these, proved out to have an adverse impact on both how domestically the ISSS turned to be seen over the years and how their further promotion is enhanced from the international side.[56]

At the end of the day though, and regardless of the fact that it may be criticised as a *truism*, the presence of ideological obstacles to the further promotion of the ISSS is mainly attributed to the upset of a balanced relation between state and market, which was (supposed) to have been achieved in the post-war period, where state intervention in social affairs was not expected to constrain the operation of market forces, but rather to contribute to sustainable growth.

Thereafter, looking at the national level, and in particular at the attitude of governments (ruling parties), as well as other political and non-political actors, towards the ISSS, ideological obstacles are similarly present and actually *mirror* to a significant extent the relevant *patterns* at the global level.

A familiar characteristic is the inclination to think – *political views* – that what has been achieved so far in terms of legally binding international obligations in the field of social security is more than sufficient – this usually pertains to *social minima* – proving that the level of protection within the country has been internationally acceptable – so the target has been achieved – and followed the *old fashion-trend* prevailing at the time of ratification. Since times have changed, and universally socio-economic reality differs, an *open window of opportunity* is a vital component so as to allow *flexibility* in terms of adjusting domestic systems to current circumstances and international dispositions, which may not necessarily coincide with the (international) political consensus[57] on social security standards-setting dating from more than half a century ago. Besides, leading social security principles may well be respected through other soft-law mechanisms, which entail less detailed (or even rigorous (rigid)) requirements than those set by the ISSS and better match domestic needs.[58]

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at an EU level, in recent years a further restriction of the competencies in the field of social (security) protection has emerged. See also Korda, M. and Schoukens, P. (2006), pp. 7–33.

54 See also Hofman, B. (2007), p. 145.

55 See also Rodriguez-Pinero, M. (2008), p. 193.

56 See for comparison the elucidation given under Section 6.2 above, on the following obstacles: (inter)national political pressure, opportunism, fashion and interests; the international displacement of the ISSS and its impact at the national level; absence of substantial promotion of the ISSS and exertion of 'pressure' from the international side.

57 Put another way, 'the political commitments with which Europe emerged after World War II', see Sen, A. (2012), p. A23.

58 See relatively the elucidation given under Section 6.2 above, on the following obstacles: the legally binding character of the ISSS and the wish for flexibility; different societal values and

Another characteristic is the detachment – *lack of interest* – of other political and non-political actors[59] from confronting these *political views* and/or questioning, or arguing their legitimacy. With respect to social partners, and trade unions in particular, this could also be said to entail elements of *absenteeism* from substantial social dialogue.[60] On the one hand, the representatives (trade unions) of the working population's interest(s) – for which, both nationally and internationally, forums have been established aiming towards a regulated interaction between them, the employers and the State – tends to be concentrated on their, as also internationally proclaimed, *core business*. This shows selectivity of interference, or, as another could say, alignment with the prevailing *political views* on the ISSS and of national handling of social affairs in general.[61] On the other hand, academia, not to mention civil society networks, are not keen on negotiating international social security norms in debates, and the national judiciary – as well as practicing lawyers – are not pro-active to explore matters of international conventional law supremacy, or anti-constitutionality when political decisions on law-making have been taken.[62]

The prominence of an ideology, however, is never hemmed in abstraction – despite the fact that its *cultivation* requires temporal length to become strong and the necessary *ground for fertility*. Its semantics have denotations, which can hardly be hidden away. Put differently, the ideological obstacles to the further promotion of the ISSS, both nationally and internationally, maximize their substance through pragmatic (practical) ones, since political beliefs and principles are based on actions, situations and events, as well as eventual behaviour.

More specifically, looking at the global level, deficiencies have come up to the surface in relation to the control system of the ratified ISSS, which is actually their *guardian*. Ascribing this situation to *lack of human* and *financial resources* is one side of the coin (the one with the tail (reverse)). From the other side though (the one with the head (obverse)) certain other elements derive, such as *lack of*

political obstacles; lack of political interest and will.

59 See relatively the elucidation given under Section 6.2 above, on the following obstacles: lack of social partners interest and will; lack of other actors interest and will.

60 It is interesting to note in this respect that recent data show a considerable decline in trade union membership in many countries. This trend is attributed to multiple changes in public policies and employment arrangements. See further International Labour Office (2011b), pp. 29–31. See also Carley, M. (2009), pp. 1–37; Ebbinghaus, B. (2002), pp. 1–32.

61 Concerning the attitude of trade unions in relation to the ISSS, see also Korda, M. (2009), pp. 522–524; Hofman, B. (2007), p. 146; Cunniah, D. (2001), pp. 65–74.

62 Concerning issues on the selection of core social security principles, the potentiality of the application of concrete legal standards by the national judiciary and lawyers, as well as the exercise of judicial controls on the constitutionality of national social legislation, see for analysis Vonk, G. and Katrougalos, G. (2010), pp. 7, 22; Vonk, G. (2010), pp. 71, 83–84.

power, in the sense that real sanctions cannot be imposed,[63] or better to say *lack of determination*, or presence of *considerable tolerance*, in regulating the remedy of events of non-compliance – besides the ISSS (once ratified) are not only legally binding, but also politically featured; longer periods for national reporting – this concerns the ILO supervisory procedure for the ISSS, which has been changed (since 2003)[64] from once a year to every five years in the field of social security; etc.[65] The non-proper follow up of the states' obligations with respect to the ratification procedure foreseen by the ILO Constitution,[66] with reference to its adopted standards, is pertinent as well.

At the national level, pragmatic obstacles are shaped around situations of *legal-technical difficulties* and *lack of* (other) *resources*. The non-ratification of new ISSS and the improper application of ratified ones are – with ease – attributed to non-conformity of national social security legislation with the ISSS, as well as to the shortage and scarcity of financial means. Moreover, and in relation to this, as it has been also correctly pointed out, "the question of priorities of public expenditure is strictly associated to a number of political decisions, related to the establishment of social rights".[67] Moreover, international technical assistance is elegantly avoided, despite the fact that technicalities stemming from the nature of the ISSS, as well as low administrative and statistical capacity, have numerous times been stated as obstructions to the further promotion of the ISSS.[68]

Taking all the above into account, the obstacles to the further promotion of the ISSS in a developed social security system, stand on a line drawn between two points: causes and effects. This line, in a sense, also defines the existing distance between them. And when covering their distance is worth it, the query arises to what extent this is feasible and how it could be done.

This distance can be covered through the mutual approach of the two points towards the middle of the line. If one of the two points covers more distance than

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63 In other words, the ISSS suffer inadequate enforcement mechanisms, see Petersmann, E.U. (2001), p. 4. See also Schoukens, P. (2008), pp. 17–48.

64 See in: ILO (2006), pp. 20–21. For the CoE instruments in the field of social security annual national reporting takes place every year and detailed reporting every five years.

65 Compare the elucidation given under Section 6.2 above, on the following obstacle: non-proper functioning of the international supervisory procedure.

66 Compare the elucidation given under Section 6.2 on the following obstacle: absence of substantial promotion of the ISSS and exertion of 'pressure' from the international side.

67 In addition, 'there will be always a broader perimeter of discretion left to the public power as regards the extent of the realization of social rights. This margin depends not only on the potential of the national economy, but also on the general political options and orientation of the government', see Vonk, G. and Katrougalos, G. (2010), pp. 5–6.

68 Compare the elucidation given under Section 6.2 above, on the following obstacles: non-conformity of national legislation; lack of technical (international) assistance; lack of financial means; lack of knowledge about the Conventions; lack of administrative and statistical capacity.

the other this does not really matter as such; what matters is for each point to make an elemental movement towards the middle. Where this does not happen, elasticity impinges and pulls backwards. The easiest solution, of course, where no mutual interaction is viewed as feasible is simply to delete them. However, this way distance is never covered.

In this doctoral thesis the easiest solution is rejected. Below, after considering first and commenting on certain observed changes and occurrence of events (Section 6.4), discussion takes place, presenting in parallel a series of recommendations (Section 6.5), in an effort to *eliminate the distance*.

PART II
PROBLEM-SOLVING: DISCUSSION AND RECOMMENDATIONS

6.4 KEEPING ABREAST OF RECENT DEVELOPMENTS AND AFFAIRS: A 'COMMENTARY'

As already seen in the introductory chapter,[69] social security and, in particular, the issue of fostering the international standard-setting activity in this field – by putting forward both the *vertical* and the *horizontal* coverage extension[70] – was added for further discussion within the Recurrent Review at the 100th Session of the ILO ILC (2011).

The overall prevailing climate reflected fidelity to the potentiality and future role of the up-to-date – *minimum* and *higher* – ISSS, but the adoption of a *global social security floor* carried firm conviction. Actually, it could be said that such a conviction correlates to the tendency (shown) of political ruling parties (at a national level) to settle for basic protection packages.[71]

However, these actions undertaken by the ILO coincided with a series of other international and national events, which – inevitably – also had an effect upon its intended (2011) deliberations. At least they did so, in relation to the present research, and my final brainstorming.

The start, in 2008, of the, still ongoing, global financial crisis – this crisis was apparently based on a combination of different factors which accumulated over

69 See Chapter 1, Section 1.3.
70 This position has been also broadly supported by the ISSA. See ISSA (2011), p. 9.
71 See, above, Section 6.3, Sub-Section 6.3.1.

decades[72] – further boosted the predominant ideological obstacles, previously illustrated,[73] in relation to social security matters and the ISSS. The upheaval of the *socio-economic equilibrium* spread and the inconsistencies between (the remaining) resources allocation and social (security) principles and objectives peaked. The prevailing political stances contributed to this end as well.

Within Europe, and the EU in particular, the ascent of deficits in conjunction with the failures of numerous financial institutions – regardless of the still pertinent (for some) belief[74] that expansion of economic deregulation and the autonomy of the market will provide profits – led in request of *external aid* (back up).[75] Towards the end of 2008, Greece proved the most vulnerable country – *the weak link* – of the latest crisis. Other European and EU countries were deeply affected as well, either before, or after Greece (i.e. Iceland,[76] Ireland, Portugal, Spain, Italy, *etc*.).

With respect to this research work, the origin of the deficits and debt burdens is not relevant.[77] Particularly influential though is the fact that the country entered into appropriations with international economic organisations – better to say inter-governmental organizations overseeing the financial system on a worldwide scale through application of macro-economic policies domestically – and this time *under the auspices* of the EU.[78] The ILO (but also the CoE) retained (at first stage) *an observer status* in relation to this development.

Actually, the official economic cooperation between the EU, the IMF and the ECB can be characterized as a *new phenomenon*,[79] and in relation to social security protection matters, it is intriguing to recall older statements such as: '"*the fundamentalist liberal*" societal model advocated by influential international donors, such as the World Bank and the International Monetary Fund (IMF)… is

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72 See for example Helleiner, E. (2011), pp. 67–87; Nanto, D.K. (2009), pp. 1–151.

73 See, Section 6.3, Sub-Section 6.3.1, above.

74 See Dorn, A.J. (1993), pp. 156, 158, 161–162.

75 Compare the elucidation given also under Section 6.2 above, on the following obstacle: (inter) national political pressure, opportunism, trends and interests.

76 Iceland is a non-EU European country, but is a member of EFTA and is integrated into the EEA of the EU and the Schengen area. It is worth mentioning that in the case of Iceland, its economy being dependent to a large degree on the financial sector, economic problems hit hard. When the banking system collapsed, the Government had to borrow from the IMF, as well as other neighbours, so as to try to rescue the economy. Public dissatisfaction on the way the government was handling the crisis led the Government to fall.

77 It has been said that 'the origin of the crisis in Greece and in Portugal was the trend in government budgetary policy, where structural deficits led to debt burdens; whereas the origin of the crisis in Ireland and Spain was primarily the private banking sector and subsequent government bailouts', see Stein, J.L. (2011), pp. 201, 214–215.

78 See also Chapter 5, Section 5.4, Sub-Section 5.4.1.

79 In a very recent publication of the IMF a model suggesting *front-loading of adjustment* and its examination in certain EU countries is described; namely: Italy, the Netherlands, the United Kingdom, Germany, Ireland, and France. See Kanda, D. (2011), pp. 14- 22.

diametrically opposed to the European solidarity-based societal model (Deacon *et all.,* 1997)'.[80] Equally interesting in this respect are statements that "proposals for reform generally involve increasing the powers of the European Union to monitor fiscal policies of the national governments and increasing banking regulation".[81]

This, in a sense, reminds us that the EU is, and has always been, first and foremost an economic and then political union, which at specific points in time decided to opt also for certain social underpinnings.[82]

It is not the first time the IMF has got into consultations with countries[83] in terms of economic donation, and/or instructs (for some), or guides (for others) austerity measures (general fiscal structural reforms) in the framework of stabilization programmes (or other arrangement models). It is not the first time the IMF's economic way of manoeuvre, at a national level, has brought about turbulence, or contradictions with respect to core principles, set legal (national and international) requirements and levels of social security protection, and causing at the same time social unrest.[84]

The Greek case has proved not to be an exception. Be that as it may, it distinguishes on its merits, since Greece was the first EU member state, on the grounds of which official economic cooperation, through mutual recognition of measures and financing, was held between the EU and the IMF on how to tackle national matters in various policy fields.

From the factual findings of this research work,[85] it can be seen that the cold waves in the form of austerity measures, which came in with the passage first of the general Law No. 3845[86] and next the Law No. 3863,[87] both in mid-2010, and still continue to the present time, captured national social security reforms from the very beginning, and with main emphasis on the structure and reformation of the pension system, as well as additional cuts (in wages, other social security benefits,

80 See De La Porte, C. (2001), p. 248.
81 See Stein, J.L. (2011), pp. 201, 214–215.
82 See, also, Chapter 1, Section 1.2, Sub-Section 1.2.3.
83 By way of illustration: EU countries – Estonia, Ireland, Hungary, Latvia, Portugal, Romania, Spain; Current candidate countries: Iceland, Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey; Potential candidate countries: Albania, Bosnia and Herzegovina and Kosovo. See for a detailed overview, the Website of the IMF on country information.
84 See further Vonk, G. and Katrougalos, G. (2010), pp. 22–24; Weisbrot, M., Ray, R., Johnston, J., Cordero, J.A. and Montecino, J.A. (2009), pp. 1–97; Deacon, B., Hulse, M. and Stubbs, P. (1997), pp. 91–95, 104–111; Anastasi, A. (2008), pp. 406, 415–418. Dijkhoff, T. (2009), pp. 6–7; Bartlett, W. and Xhumari, M. (2007), pp. 1–31; Borbely, S. (2001), pp. 169–171; Offe, C. (1996), pp. 225–253; Standing, G. (1996), pp. 236–238, 241–242, 248–249.
85 See, for analysis, Chapter 5, Section 5.4, Sub-Sections 5.4.1 and 5.4.2.
86 See Official Gazette of the Hellenic Republic (2010e), pp. 1321–1384.
87 See Official Gazette of the Hellenic Republic (2010c), pp. 2771–2818.

etc.).[88] They further deteriorated existing problems with the ISSS (some of which dating back two decades (beginning of the 1990s); others, which came up to the surface in 2008 (together with the crisis)) which the country has been legally committed to at international (ILO) and regional level (CoE) for decades now, and they have created concerns about the future respect and proper applicability of the ISSS, their further promotion,[89] and the development of social security protection domestically for the years to come. This is so especially in relation to the legally guaranteed and politically credited *social minima*. At variance with the pre-mentioned research factual findings are the outcomes from the examination of the submitted Greek report to the CoE on the application of the ECSS (for the period July 2008 – June 2009) both by the ILO CEACR and the CS-SS of the CoE, which found law and practice in Greece to continue to give full effect[90] to its accepted parts.[91]

Within this framework, in September 2010, and actually within three months after the adoption of the pre-mentioned Greek Laws – this indeed consists of an interesting development – the ILO and the IMF held their first Joint Conference in Oslo on the *Challenges of Growth, Employment and Social Cohesion*.[92] The (at the time) Greek Prime Minister participated, together with those of Spain and Liberia (countries severely hit by the crisis).

A discussion paper was prepared. It concentrated mainly on productivity, growth and advancement of overall economic performance, unemployment rates (youth and long-term unemployment) and its human costs, with emphasis on advanced economies. The intended policy responses centred upon monetary-fiscal actions, short-term work programmes, provision of unemployment insurance based on extensive active unemployment policies, jobs recovery through provision of subsidies (of various kinds), macroeconomic management and minimum-wage-setting mechanisms. It is worth mentioning that a number of these policies were part of the Group of Twenty (G20) deliberations,[93] to which both the IMF and the ILO contributed.

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88 In July 2010, it was stated that 'it is quite likely that the reform of the social security system, which is underway in Greece and in France will evolve in a trend that will be followed by the majority of the EU member countries in the coming years', see Foundation for Economic and Industrial Research (IOBE) (2010), p. 30.

89 For the exact definition of the further promotion of the ISSS, see Chapter 1, Section 1.4, Sub-Section 1.4.1.

90 Except for: Part VI (Employment injury benefit). See Chapter 5, Section 5.4, Sub-Section 5.4.1.

91 See Committee of Ministers (2010), p. 1.

92 The Conference was organized in collaboration also with the Office of the Prime Minister of Norway.

93 See for analysis Dilon, J. (2010), pp. 1–38.

No particular mention of the up-to-date ISSS (developed by the ILO) and their potential role and effect, can be tracked in this paper, or on the construction of a regulatory policy set for higher social protection. Only statements such as: "social protection policies, including unemployment benefits, health care, childcare and income security for the elderly and persons with disabilities, play a major role in cushioning populations from economic shocks and in improving social cohesion"; "social protection helps to build human capital and labour productivity, contributing to the sustainability of economic growth"; "narrowing income inequalities through more inclusive markets and stronger social protection systems". Meanwhile, the negative effects of globalization revealed by "the vulnerability of workers through increased intensity of work, a shift towards more flexible contracts, diminishing social protections and a decline in workers' bargaining power and voice" were stressed.[94]

From the above it is quite clear that social protection policies were once again conceived as a *means to an end* and not *as an end* in themselves.

Therefore, the outcome of the *historic conference,* as this international-intergovernmental event was characterized in several press releases,[95] was the agreement between the ILO and the IMF to work together on policy development in two specific areas: (a) the exploration of *the concept of* a *social protection floor* and (b) the promotion of policies on employment[96] creating growth.[97] The Director-

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94 See in-depth ILO-IMF (2010), pp. 2, 4, 6–7, 9–10.

95 See ILO (2010d), p. 1; ILO (2010e), p. 1; IMF (2010b), p. 1.

96 Amartya Sen has written on the employment problem in Europe. 'He has long been concerned with employment. Unemployment and distinguished unemployment were central to *Choice of Techniques* [1960a] and in such articles as "Peasants and Dualism with or without surplus Labour" [X, 1966]. Much of this is highly relevant to debates about unemployment more generally. In his *Employment, Technology and Development* [1975], he uses the situation of Machealth in Brecht's *The Threepenny Opera* to illustrate the complexity of employment as a concept, distinguishing between the income aspect, the production aspect and the recognition aspect. Unpicking the role of employment in this way is important in thinking about the contemporary unemployment in Europe, and Sen has recently challenged Europeans for being too complacent". According to Atkinson, 'we certainly need to pay more attention to the role of social norms and group behaviour, and how far increased European unemployment represents a shift in social norms', see Atkinson, A.B. (1999), pp. 187–188.

97 In association with this, the following statement is worth mentioning, 'while growth may be necessary for development, it is not always sufficient. In broad terms it is possible to distinguish between 'growth mediated' and 'support led' development (Dreze and Sen, 1989; Sen, 1999, Ch. 2). The former operates through rapid and broad based economic growth, which facilitates the expansion of basic capabilities through higher employment, improved prosperity and better social services. The latter works primarily through sufficient welfare programmes that support health, education and social security. Public action also plays an important role in supporting capabilities directly and providing political pressure for state intervention in times of crisis and hardship', see Clark, D.A. (2005), p. 10. Moreover, as noted almost four decades ago 'growth is not the same thing as development and the difference between the two has been brought out by a number of recent contributions to development economics'. 'But it can scarcely be denied that economic growth is one aspect of economic development.

General of the ILO also invited the Managing-Director of the IMF to address the ILO ILC in 2011. The 100th ILO ILC indeed took place in June 2011, and it ended up with a decision of elaborating an *autonomous ILO Recommendation on the Social Protection Floor.*

In particular, it was stated that "the recurrent discussion under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization at the 100th Session of the International Labour Conference in June 2011 *dealt with the strategic objective of social protection (social security).* The conclusions adopted by the Conference in the context of the recurrent discussion stressed *the need for the adoption of a Recommendation complementing the existing standards which would provide flexible, but meaningful guidance to member States in building national social protection floors*. The resolution adopting the conclusions invited the ILO Governing Body to place a standard-setting item entitled *"Elaboration of an autonomous Recommendation on the Social Protection Floor"* on the agenda of the 101st Session of the International Labour Conference in 2012, for a single discussion. The Governing Body may wish to complete the agenda of the 101st Session (2012) of the Conference with a standard-setting item (single-discussion procedure) *for the elaboration of a Recommendation on the Social Protection Floor and to authorize a programme of reduced intervals for the preparation of the necessary summary and final reports*". "Given the timing of the decision, which leaves only one year before the discussion of the item at the Conference, the Governing Body is requested to approve a programme of reduced intervals for the preparatory phase of standard-setting discussions, in accordance with article 38 of the Standing Orders of the Conference. This phase involves *preparation of a summary report, questionnaire and final report on the basis of replies received.* In view of the factual and policy knowledge of law and practice exchanged thus far, the Office *is in a position to service an accelerated standard-setting procedure*".[98]

What present realities teach us is that the cooperation between the ILO and the IMF is now taken for granted.[99] The ILO and the IMF have not so cooperated in the past. So from the beginning no approach towards new legally-binding international standards,[100] was visible, even with respect to the establishment

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And it happens that to be the aspect on which traditional development economics – rightly or wrongly – has concentrated', see Sen, A. (1983), p. 748.

98 See International Labour Office (2011c), p. 3–4.

99 They 'will work together *to explore the concept of a social protection floor for people living in poverty and in vulnerable situations*, within the context of a medium to long-term framework of sustainable macroeconomic policies … and of ensuring that the social consequences of the crisis and its aftermath are taken fully into account', see ILO (2010f), p. 2.

100 Pertinent to this end is a statement made a few years ago by a member of the ILO CEACR, 'The resolution of 2001 shows that it is not possible at the moment to elaborate a new hard law instrument, since the resolution was the utmost the ILO could achieve and it is not even a Recommendation. It is important that not even a recommendation could be adopted. So, I absolutely agree that there is a tendency to adopt soft law. The reason will be that the

of a *basic social security package*; merely a political commitment towards it and *exploration of the concept of a social protection floor Recommendation for people in need*. Thence, the international discussion on how to force social security standards ended up as the last option from those initially suggested a few years ago[101] – that of developing *an overarching Recommendation setting out core social security principles and defining the elements of a global social security floor.*

The Recommendation was indeed adopted in 2012.[102] Nevertheless, this result of cooperation between the ILO and the IMF – and regardless of the fact that it could be conceived by many as a kind of progress, since the IMF presents for the first time an interest in the ISSS and, in a sense, assigns to them a specific role – is not convincing.

In my view, it attests a *wish for flexibility* and recourse to *soft-law mechanisms* and *instruments* – the *new political ideology* in social security protection.[103] As already stated, the up-to-date existing *minimum* and *higher* ISSS are still relevant in that they will provide for a "flexible, but meaningful guidance to member states in building social protection floors, within comprehensive social security systems, tailored to national circumstances and the level of development".[104]

In the following section, understanding the – in a sense – *path dependency of the emergent strategy* in relation to the ISSS and social security, which is unveiled and validated from the interdisciplinary in-depth exploration of the Greek case-study, I discuss further and in parallel suggest, a course of actions on how it could be possible to tackle the identified obstacles to the further promotion of the existing up-to-date ISSS.

6.5 MAKING RECOMMENDATIONS: AN ATTEMPT TO 'BRIDGE' THE IDEOLOGICAL AND PRAGMATIC DISTANCE

By now, it has become clear that the answer to the research problem – to recall: 'what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system?' – is a dual one. The

variation in objectives or standards is so large that it is impossible to find a compromise. For a compromise certain common basic ideas are necessary', see Hofman, B. (2007), p. 140.

101 These options have already been set down in the introductory chapter of this doctoral thesis. See Chapter 1, Section 1.3.

102 See International Labour Conference (2012), pp. 1–15. See further reference in Section 6.5, Sub-Section 6.5.3.

103 Compare the elucidation given under Section 6.2 above, on the following obstacle: wish for flexibility and the legal binding character of the ISSS.

104 See Giroud-Castiella, V. (2011), p. 1.

research problem actually touched upon and revealed the complex reality in relation to the ISSS. The obstacles, regardless of their number,[105] belong to two main perceivable categories: one related to *ideology*; another to *pragmatism*.[106]

Such a categorization, at the end of the day, sets forth, and even reinforces, the fact that the ISSS, by existence, apart from having a legal-normative morphology (and once ratified consisting legally binding rules and creating obligations), hold a strong political value and background, which has become much more evident and determinative during the course of time, and especially the last two decades; something, which certainly entails multiple implications (i.e. situations of conflict between law *vs*. politics; state *vs*. market; society *vs*. economy; *etc*.).

So, any attempt towards problem-solving, also requires a twofold approach, both with respect to matters of ideology and pragmatism, so as (at least) to try to move the ISSS from a *blockage* state,[107] to a *constructive* state; to move them from simply being in the world's *social armament*, towards being efficiently utilized and promoted in the world's current *socio-economic arena*.

Speaking solely about technical solutions to a research problem which is closely involved with politics and political creeds would be neither sufficient, nor efficacious. Therefore, such solutions, and regardless that they are certainly required, should be accompanied by resolving attempts of a more penetrating nature. Such attempts could contribute commence discussion and stimulate (if possible) change of standing views[108] on the role of the ISSS and practices followed, both at the international and national levels, and, by extension, on the role and practice in relation to social security in general.

In what follows, based on the research's factual findings,[109] as well as taking into account previous commentary,[110] I continue the discussion and propose certain recommendations. Still, it should be borne in mind that not all obstacles can be overcome (or at once), and especially those touching upon matters of *ideology*. This is simply due to the fact that no one can predict how *pressure*, both political and non-political, will evolve from both international and national sides, and which exact direction it will follow or why. There may be limitations in solving the obstacles caused by chronic or time-specific, or incidental factors, *etc*. For instance, in the past,[111] the existence of political interest and will was profound in

105 See Section 6.2, above.
106 See Section 6.3, Sub-Section 6.3.1, above.
107 See Chapter 1, Section 1.4, Sub-Section 1.4.1.
108 See, for analysis, Section 6.3, Sub-Section 6.3.1.
109 See the presentation and analysis in Chapter 5.
110 See Section 6.4, above.
111 See also Chapter 3, Section 3.3, as well as Chapter 5, Section. 5.2, Sub-Sections 5.2.1, 5.2.3 and 5.2.4.

signing and/or ratifying ISSS, and in general the ideological climate was different – the desire to move from dictatorship to democracy; from a communist regime to a market one, *etc*. This is certainly a matter not feasible to be addressed by a single researcher. The task of a researcher is to provide certain substantiate indications – *food for thought* – on what can be done (see Table 4, below), based on what has been learnt so far in terms of the research work completed on the existing *state of affairs*.

TOWARDS BRIDGING THE IDEOLOGICAL AND PRAGMATIC DISTANCE . . .		
GLOBAL LEVEL	↓	NATIONAL LEVEL
RECOMMENDATIONS UPON MATTERS OF IDEOLOGY . . .		
Reconciliation between 'social commitments' and 'economic freedoms' in the international arena: A need for action		***A shift in the 'paradigm': Changing the focus of national strategies***
Incorporating social conditionality into the economic regime: Reasons, utility and prospects Towards a more socially balanced European integration	⇨ ⇦	From an ideology based on clientelism to the respect and acceptance of objective and impersonal criteria (standards) Altering the mentality of key actors
RECOMMENDATIONS UPON PRACTICAL MATTERS . . .		
Further intervention and mobilisation from the international side		***Efforts to overcome the emerged national practical difficulties***
Filling in existing gaps: A series of activities	⇨	More rational utilisation of available means
The international standards-setting activity and social security: Which way now?	⇦ ↑	Corrective action via beneficent practices

6.5.1 RECONCILIATION BETWEEN 'SOCIAL COMMITMENTS' AND 'ECONOMIC FREEDOMS' IN THE INTERNATIONAL ARENA: A NEED FOR ACTION

a. Incorporating social conditionality into the economic regime: Reasons, utility and prospects

Following WWII, and according to the (back then) international division of competences and responsibilities,[112] the IMF (1944) was entrusted to oversee the world's monetary and exchange-rate systems, so as to ensure economic stability. It involved imperative international pressure to be imposed on states, which would then follow developmental economic policies, such as increasing public spending,

[112] See Petersmann, E.U. (2001), p. 2.

taxation or interest rates reduction, *etc*., in order to boost in this way the overall economy. Apart from exerting pressure, the IMF also had, from the beginning, the task (when considered necessary) to provide *cash flow* in the form of loans to states, which encountered financial difficulties, with the aim of helping to bolster global demand.[113]

Human rights never – less still social rights – received a place in the order of this Bretton Woods establishment. Put differently, the completion of *financial and policy requirements* to obtain a loan were set, remained and got strengthened over time, but *social conditions* were, and still are, absent.

On the contrary, human and social rights were integrated into the law of other international organizations.[114] Among them was the ILO, which undertook the obligation to promote labour, as well as social law and policy, through the international adoption of standards.[115] The ISSS have been accepted by several countries around the globe, and for decades the ILO recognized that 'the concept of economic development necessarily had to include a social dimension'[116] and proclaimed that 'economic development is also, and in particular, based on human and social factors, irrespective of the level of development of countries, or their systems of social organization'.[117] Hence, it is obvious that the IMF and the ILO had from the very beginning different mandates and different constituencies, albeit amongst more or less the same member States: their approaches and analyses also differed.[118]

Through the passage of time, the role of the IMF altered significantly and radical promotion of capital liberalization emerged.[119] Gradually the applied *economic conditionality* – the fund's *monetarist approach* – started to receive severe criticism, especially with respect to its negative social consequences.[120] As has been stated, the IMF currently faces a 'crisis of legitimacy'.[121] For example, the former chief economist and senior vice president at the WB, Mr. Joseph, E. Stiglitz, has criticised the policies followed by the IMF – austerity programmes, cutting public spending and increasing taxes even when the economy of a given country is week

113 See for analysis Anastasi, A. (2008), pp. 415–418.
114 See Petersmann, E.U. (2001), p. 2.
115 See also Chapter 1, Section 1.1, Sub-Section 1.1.1 and Section 1.2, Sub-Section 1.2.1.
116 In relation to this, Amartya Sen has noted that 'the fact that social development may not work on its own to generate economic growth is fully consistent with the possibility, for which there is now a great deal of evidence, that it does strongly facilitate fast and participatory economic growth, when combined with market-friendly policies that encourage economic expansion ', see Sen, A. (1996), pp. 12–13.
117 See International Labour Office (2011e), p. 146.
118 See ILO-IMF (2010), p. 2.
119 See Abdelal, R. and Ruggie, J.G. (2009), p. 158.
120 See, also, Section 6.4, above.
121 See for analysis Muchhala, B. (2011), pp. 1–24; Khor, M. (2001).

– and has argued that 'by converting to a more monetarist approach, the purpose of the fund is no longer valid, as it was designed to provide funds for countries to carry out Keynesian reflations', and that the IMF 'was not participating in a conspiracy, but it was reflecting the interests and ideology of the Western financial community'.[122]

Nevertheless, the fund's *lending activity* has continued to grow,[123] and in recent years within the European continent in particular.[124] As already stated,[125] in the Greek case, the EU itself has been actively supportive of the decision of the government to take out loans.[126] Within similar terms, the EU not only agreed on, but participated in the application of *economic conditionality*,[127] irrespective of the social implications for the country, as well as of the implications on the ratified legally binding, international (ILO) and regional (CoE) social security standards.

The IMF's *lack of social conditionality* in general terms could be described as too little, or even as an absence of attention to social and human costs, caused by the requested implementation, at a national level, of corrective policies, structural reforms, austerity measures, *etc*.,[128] in order to fix the financial system(s) of countries in economic deadlock; either because they were hit by the economic crisis, or have entered into transitions periods (i.e. towards market-oriented policies, *etc*.).

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122 See for analysis Friedman, B.M. (2002), pp. 1–4.

123 'Smith called the promoters of excessive risk in search of profits "prodigals and projectors" – which is quite a good description of issuers of subprime mortgages over the past few years. Discussing laws against usury, for example, Smith wanted state regulation to protect citizens from the "prodigals and projectors" who promoted unsound loans (par. 3)', see Sen, A. (2009), par. 3.

124 See also Birdsall, N. and Fukuyama, F. (2011), p. 53.

125 See Section 6.4, above.

126 Recalling initial statements of the leaders and governments of the euro zone (in 2010) 'all members of the euro zone need … to be aware of their common responsibility for economic and fiscal stability of the euro zone …'; 'Euro area Member States are ready to provide financing via bilateral loans centrally pooled by the European Commission as part of a package including International Monetary Fund financing'; 'the bilateral loans will include the substantial financing from the International Monetary Fund, and by majority European financing, when market financing is not adequate', see Official Gazette of the Hellenic Republic (2010e), pp. 1321–1384.

127 See also Chapter 5, Section 5.4, and Sections: 5.4.1 and 5.4.2.

128 Reflecting on the writings of Amartya Sen, this IMF *strategy* actually leans against the rhetoric of BLAST, which is the one of '"needed sacrifice" for a better future', see for analysis Sen, A. (1996), pp. 5–11.

Over the last decade, the IMF has been considering changes in its economic conditionality.[129] Be that as it may, still in its so-called *prior actions*[130] no conditions referring explicitly to the maintenance, or safeguard of the system's legal, political and structural components in relation to the population's social rights protection can be traced or of setting the requirements for introducing such components into the system in case of non-existence. Only in the *structural benchmarks*,[131] may it be the case that corrective measures are requested by the IMF with regard to social dimensions; but only at a later stage; after the measures to be applied have been set, and the approval of financial support has been given. However, they mainly take the form of building up domestic *social safety nets*, or strengthening *public management financing.* The defence of the IMF (so far) lies in the argument that the government taking out a loan has freedom to select the way to make a success of the IMF-supporting program. However, this is simply an elegant way for the IMF to draw attention from the possible failure of its supporting-programme(s).

The fact that the IMF and the ILO agreed to cooperate (end of 2010) towards the *exploration of the concept of a social protection floor,* as well as that the whole international (economic) community embraced such an initiative, and that the Recommendation was adopted,[132] is certainly intriguing.

Especially for a believer in good (political) intentions, this is a real step forward, marking a change in the perceptions of the role of social security and that of the ISSS in particular,[133] since the ISSS shall assist and show member states the way to construct social protection floors within encompassing social security systems, and could contribute to the resetting of the global *socio-economic equilibrium*, which is so much needed. Besides, among the latest recommendations concluded at the G20 meeting of labour and employment ministers (September 2011), strengthening social protection by establishing social protection floors adopted by each country, is a *political priority*, together with the promotion of the effective application of social and labour rights, as well as coherence of economic and social policies.[134]

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129 For a definition of conditionality according to the IMF see IMF (2011b), p. 1. Conditionalities are implemented with the sole purpose that the money lent are going to be spend in accordance with the overall goals of the loan.

130 These are the measures a country agrees to take before the fund's final approval for financing, or completion of the fund's relevant review for loaning.

131 These are reform measures, which are often non-quantifiable.

132 See International Labour Conference (2012), pp. 1–15. See further reference in Section 6.5, Sub-Section 6.5.3.

133 See Section 6.3, Sub-Section 6.3.1, above.

134 See for analysis ILO (2011e), p. 1; Levitte, J.D. (2011), pp. 1–10.

Toa bit more critical thinker, or even a sceptic, the – over the last decade – concentrated interest for settlements aiming at the creation of global floors, or basic social security packages, or horizontal coverage extension, or national social protection floors, or social safety nets, *etc*.[135] entails equivocal connotations. For instance, the conviction that the *social state* is nowadays needed only for the poor and the deprived – for the rest only work and no benefits are required, or that social security protection through contribution-based schemes has reached its stagnation and a new formula will bring new profits, or the shift of the political interest and will towards protection floors is simply a way to legitimize negative globalisation effects.

Interesting in this respect is the remark that 'a fundamental shift has occurred regarding the primary objective of social security: it has moved away from being an income replacement measure towards becoming an indispensable tool for poverty alleviation. If indeed this is correct, we need to reflect upon the future role of social security. It is beyond doubt that a continuing shift towards poverty alleviation – a focus underpinned and reinforced by a rights-based approach to social security[136] – will have profound implications for current normative social security practices'.[137] If so, it should indeed be seriously considered how to proceed – and not simply *deal* – with the strategic objective of social security, especially at the European level where the systems are considered to be rather developed ones.

In my opinion, is now the right moment for this, since international deliberations have started and the ILO-IMF collaboration has been launched and is assisting the ILO, as well as the CoE, to strengthen the position of the already adopted and broadly internationally accepted, not only *minimum*, but also *higher*, social security standards.

The Greek case-study has shown[138] (and apart from the country's own responsibilities – this matter will be discussed later on (Section 6.5.2, below)) that the mobilization of the international (ILO) and regional (CoE) organizations (as well as of their respective supervisory bodies) and their corrective action with respect to the proper applicability of the ratified ISSS was depleted. Already by 2008, the economic situation within the country was deteriorating and the first reforms to be undertaken touched upon the social security system. Problems with financial sustainability and good governance (management/administrative structure), which already existed for decades, grew, and by the end of 2009 –

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135 These are the most commonly used terms in international bibliography.

136 Someone could describe social security as being actually *high-jacked* by the human rights scene.

137 See Van Ginneken, W. (2007b), p. 2. See also Van Ginneken, W. and McKinnon, R. (2007), pp. 5–16.

138 See also Chapter 5, Section 5.4, Sub-Sections 5.4.1 and 5.4.2.

beginning of 2010 a new reform of the system was being discussed within the country. Finally, in mid-2010 pressure from the EU, the IMF and the ECB for structural fiscal reforms to be launched and austerity measures to be introduced, created, apart from tremendous social unrest, misgivings about whether the minimum social security standards (and other ratified international labour standards) were not only to be retained, but respected (in terms of provisions coverage, benefits' adequacy, *etc*.). Still, even back at that time the ILO –like the CoE – did not get so much involved into requesting the country, and before the passage of the relevant legal and policy modifications, or the IMF and the EU to take into account that Greece has ratified certain legally binding social security (and labour) standards, which must be attained and applied at the national level.[139] Requests for detailed reporting came much later and only after the passage of the relevant national laws.

The CEACR recently (2011) pinpointed that a *proactive role* is considered necessary. 'In a rapidly changing world, the importance of preventive action is vital in order to create maximum efficiency. The supervisory process can assist in providing such preventive services, in particular through encouraging the initiative of some governments in seeking a preliminary assessment of the compatibility of the planned reforms of the social security schemes with the provision of ILO Conventions (…). The Committee considers that the practice of systematically gauging social security reforms at an early stage by the international standards provides an important guarantee of the progressive development of the national social security systems in full respect of international standards'.[140]

Indeed, the *proactive role* is imperative. Especially in relation to the Greek case, it might have *pulled the strings* towards another direction than the one the country is facing at present. Nevertheless although imperative, it is not sufficient and more drastic action should be taken; this time from the ILO (and by extension the CoE) as an international organization.

At an EU level most (if not all) of the member states have ratified parts (or even as a whole) either the C102 or the ECSS (so have other countries). It was the EU

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139 Within this context, it is quite captivating to refer to the speech made by a French member of the European Parliament – Dr. Daniel Cohn-Bendit (Groups of the Greens-European Free Alliance) about Greece's financial woes and the monitoring of the country's situation during the period of mid-2010, and in particular before the Greek Laws No. 3845/2010 and No. 3863/2010 on the reform of the system were adopted by the Hellenic Parliament. He had explicitly asked that the European Commission must associate the Directorate General (DG) for Employment, Social Affairs and Social Inclusion to this monitoring, so that it could measure what is happening at the national level. He particularly stressed that the Council of the EU should request the International Monetary Fund (IMF) to associate the International Labour Organization (ILO) in monitoring actions in Greece (European Parliament – May 5th 2010).

140 See International Labour Office (2011a), pp. 33–34.

itself, in the 1990s, which encouraged the ratification of these instruments by countries, and especially by those, which had applied for EU membership, or had already a candidate status.[141] Within similar terms the CEACR noted that 'during the last decade of the twentieth century, the Code/Convention No. 102 remained a stronghold against excesses of certain neo-liberal economic policies, putting in danger social cohesion and solidarity in the European nations; gave necessary guidance to Central and Eastern European countries transforming their social security systems to provide protection in the emerging market economy'.[142] The ILO has also invoked as one of the main reasons, which led countries, after 1990, to the ratification of the C102, the strong support provided by the EU.[143] Nevertheless, in the Greek case, it was the EU (in 2010), which gave its consent and supported, in line with the IMF economic policy, the implementation of measures and the introduction of regulatory changes without making any reference or even allusion to compliance with the ISSS ratified by the country, both of the ILO and the CoE, which had supported with such alacrity in the recent past for other European countries.

Hence, it is recommended, in an effort to find a *new socio-economic equilibrium*[144] and re-balance the upset relation between *state* and *market*,[145] to work on an *elemental move* from the prevailing *economic rationality* towards a *social rationality*, so as to re-establish peace and prosperity in Europe, and beyond, and to stop seeing the market – both internal and external – as the ultimate goal.

As already explained, the world is witnessing a steadily increasing *economic conditionality* aiming to increase demand, enhance employment and competitiveness. Since having recourse to international donation(s) seems (for the time being and in most of the cases) unavoidable– one might also speak of a *vicious cycle* in this respect – due to the constantly growing national budget deficits and debt burdens, what obviously remains is at least to incorporate a degree of prior *social conditionality* – a set of recognized basic principles and legal requirements – in the *governing economic regime*, which for the moment regulates the operation of national governments, and their relations and interactions with society, especially regarding matters pertaining to the preservation and safeguarding of *social vested rights* and *social guarantees*.

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141 See also Chapter 5, Section 5.2, Sub-Section 5.2.3.

142 See International Labour Office (2011a), p. 30.

143 See Chapter 1, Section 1.4, Sub-Section 1.4.3.

144 It is relevant to note at this point that the most *aching question* among those posed concerning the prospects of the relation between social rights and European social policy is, as correctly pointed about, which shall be the safeguard breadth, as well as the quality of performance of these rights; where exactly should the demarcation line between economic liberties (leeway) and social pledges be drawn; which is the point on which the relation between economy and society, and mainly capital and work, will eventually balance, see Venieris, D. (2009), p. 423.

145 See Section 6.3, Sub-Section 6.3.1, above.

As a comparison, or better to say variation, to this suggestion, it is interesting to mention the concept of 'harmonious society ('hexie shehui')', established in China, since 2005, which consists of another approach to socio-economic reconciliation, since 'it was introduced against the background of the social disparities and conflicts that were induced by rapid economic development in China'.[146] China has already requested ILO technical assistance for the ratification of the C102.[147]

The developed and adopted up-to-date ISSS can provide a sound *social conditionality* basis, through the incorporation of a normative framework, which would also act as a *catalyst* – in other words, a vetting factor – hedging against economic activities and/or operations. This also consents to the principal objectives of the ISSS.[148] They can act as a legal reference point. Moreover, the CEACR in one of its recent reports (2011) meticulously elaborated the role and importance of the ISSS developed both by the ILO and the CoE.[149] This analysis – which conforms in several parts to the one already completed in this research work[150] – could form a *handbook* on *building social conditionality*.

The ILO needs to become the innovator to this end, and based on the competences and responsibilities given to it after WWII, request the present principal donors, the leaderships of the countries supporting them, as well as the EU itself (the same goes for the WTO) to integrate in their mandates specific *social conditions* to be found within the ISSS (something which ought to have already been done); to make social security a goal *per se*. And this is more pertinent than ever before, taking into account the current financial and economic turbulence.[151]

The attempt of the ILO (in collaboration with other global actors) to introduce worldwide *social protection floors* can be seen as an improvement, if such an

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146 See Chan, K.N. (2009), p. 821. See for further analysis De Haan, A. (2010), pp. 82–84, 87–92. See also Choukroune, L. (2012), pp. 497–510.

147 See International Labour Office (2011f), p. 13.

148 See Chapter 1, Section 1.2, Sub-Section 1.2.1.

149 By way of illustration, safeguarding the acquired standards of protection, respecting the general responsibility of the State to establish and administer the social security system, to maintain the financial equilibrium and the system's viability, to procure sufficient budgetary allocations to cover the commitments to social security, particularly in relation to the compensation of exemptions or provision of benefits, collective financing and risk sharing, enhancement of methods of re-adjustment in order to maintain purchasing power, *etc*., see for analysis International Labour Office (2011a), pp. 1–279 (in particular: pp. 30, 67, 193–195, 197–199).

150 See to this end Chapter 2, Sections 2.6 and 2.9; Chapter 4, Sections 4.13 and 4.15, and Part IV referring to Common Provisions; Chapter 5, Section 5.4, Sub-Section 5.4.1.

151 Particularly enchanting is the following statement of the CEACR, which came though quite late 'The Committee … cannot repeat too often that taking economic and social issues together in a synergetic approach is a precondition for good governance, in which international labour standards are instrumental. The Committee hopes that out of this crisis will emerge an understanding of the need to ensure full integration of the social dimension into the emerging post-crisis financial and economic order', see International Labour Office (2011a), p. 198.

attempt succeeds, since (in principle) it requires countries to bear the *moral obligation* to support them,[152] and forasmuch it certainly involves heavy cost implications – not to mention administrative discipline. Moreover, it should not be forgotten that the introduction of *social protection floors* has received the form of a Recommendation, which is another *soft-law mechanism*; particularly beneficial, however, for countries with developed systems,[153] in view of their expressed *wish for flexibility* and *non-(legally) binding obligations,* as well as the *nationally stated inability to conform to international obligations*.[154] Besides, this supplementing Recommendation could be easily interpreted by a country as an indirect direction given by the ILO to member states to override the legal nature of the ISSS and conceptualise them as a *soft law walking crutch* – a similar situation evolved over time with the division between *core labour standards* and *the other standards*.[155]

So certain things should be distinguished. The initiative for *social protection floors* is one thing; the other thing being the necessity of introducing *social conditionality.* The incorporation of *social conditionality,* grounded on the ISSS, into the *economic regime* and its concretization, could prove beneficial. Besides, it is a significant attempt to influence *ideology* in another direction; plus, if such an attempt succeeds, it could ease the way to surpass pragmatic obstacles; a positive *osmotic process* might begin.[156]

Being more precise, countries knowing that a regulated (standardized) *social shield* is part of a *package deal* which they (may) need to agree (i.e. IMF debt solutions or WTO agreements and negotiations[157]), so as to overcome domestic irregularities and get *back on track*, would encourage them to pay proper attention to the implementation of already ratified standards (minimum or higher), as well as to proceed with new ratification(s) (this involves countries, which have so far

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152 It is not easy to foretell how strong the political determination of the international community will be in order to realize this long-term commitment to global social protection floors.

153 It has been stated that the new instrument, despite it being 'sensitive to the distinctive structural realities of less developed economies', is also 'designed so as to be accepted by virtually all ILO member states, without regard to their level of economic development', see International Labour Office (2011a), p. 259.

154 See Section 6.3, Sub-Section 6.3.1, above.

155 See also Chapter 3, Section 3.4, Sub-Section 3.4.6 and Chapter 5, Section 5.4, Sub-Section 5.4.2 (analysis on the obstacle: The displacement of social security standards and its impact at the national level).

156 See Section 6.3, Sub-Section 6.3.1, above.

157 Within this context, it would be expedient to consider the views expressed with respect to the *social clause,* 'which is one of the most hotly debated issues in multilateral trade negotiations and dates back to their inception (…) the objective is to establish a uniform set of minimum social protection to ensure fair and equitable trade, curbing potential negative social effects of trade liberalisation and granting labour its fair share of the benefits (…) the social clause merely aims at setting the "social rules of the game" in the international trading order', see Dessing, M. (2001), p. 6 (for analysis see pp. 1–14, 42–45) (pp. 1–58).

accepted none of the up-to-date ISSS). In parallel, this would also help the main global financial institutions to wander away from their *crisis of legitimacy*.

One can also see this from a different angle and interpret it as a way of motivating countries by rewarding them through the provision of easier access to donations (support) through the subscription to and/or application of the standards. However, I embrace the previous train of thought, because in that manner the ISSS gain the respect they deserve, and the right to social security is recognized; not just as an aspect of the need to reassure a loan. In addition, the ILO could further amplify this action by organizing a global campaign concentrating exclusively on the ratification of the up-to-date ISSS by key countries,[158] as well as countries with developed social security systems, and to persuade ruling parties and other actors through providing practical examples of the value they add.

Achieving a *suitable* and *functional compromise* between *economic and social conditionalities* in the beginning of the twenty-first century would be a big achievement, and not at all an easy task; , especially because the dynamic of social conditionality continues to be severely questioned and disputed as compared with the prevailing economic one.

b. Towards a more socially balanced European integration

Currently in Europe two regional supranational systems coexist; namely, the EU and the CoE. Put in another way, two regional organisations stand next to each other, producing law with *supra-legislative force* (in other words, *superior legal force*) in relation to the law of the national states. This situation ultimately generates an *un-institutional geometry of multiple variables*.

By way of illustration, in the past, the legal order seemed like a *pyramid*. At the top, the national (state) legal system was seated (holding the prevailing position), while below, all the other rules (norms) were placed (subordinate position), which were in accordance with it.[159] Nowadays though, there is no *top of the pyramid*.

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158 By way of illustration, China, Japan, Russia, the United States, *etc*. This may prove a positive step forwards in influencing the attitude of other European countries in changing their views on the ISSS and re-build *enthusiasm* which gradually faded away (actually Russia is also partly European).

159 This depiction of the law structure as a *pyramid* has been based on the *pure theory of law* developed by Hans Kelsen (Kelsen, H. (2005)). He has been often quoted as the *father of modern constitutional review*. 'According to Kelsen, most concrete applications of legal rules (that is to say where legal rules apply to specific factual situations) derive their authority from less specific and therefore more general legal rules. Theoretically, this investigative process can be extended backwards until the most fundamental, general and authoritative legal rule or standard (or "norm" as Kelsen called rules) is reached. Following from this, the logical structure of law can be likened to a pyramid with the most fundamental and authoritative norm (the "Grundnorm") at the top and the most particular norms (those which apply to

Actually, it appears that there is no more one single pyramid, but three separate; to wit, the European Community (Constitutional) Law, the ECHR and the ESC of the CoE, as well as the national constitutions.

Most of the member states of the EU, or better to say nearly all European countries, have the *social state principle* in their national constitutions[160] – this is also the case for Greece.[161]

In the EU there is not a social clause as a constitutional fundamental principle. The EU's internal market, however, guarantees the so-called *four* (basic or fundamental) *freedoms*: free movement of persons, goods, services and capital (freedom of competition could be included in this list as well).

The CoE exceeds in this respect the EU because it is the most socially-oriented system, possessing both the ESC,[162] as well as other important legal instruments of social substance, such as the ECSS and its Protocol (materializing the right to social security),[163] which also directly both internalize and integrate, and also expand the minimum social security standards of the ILO C102.[164] The EU, even in

particular concrete situations) at the base. Kelsen called the passage from general to particular "concretization". The Grundnorm is inherently stable but may change over time', see Krishnan, A. (2009), pp. 6–7. See also Van Cleynenbreugel, P. (2008), p. 399; Schutze, R. (2005), pp. 5–6 (esp. footnote No. 3); Duxbury, N. (2007), pp. 1–10.

160 For instance the UK is an exception. 'The "social state principle" imposes additional obligations on the European States. The term, initially a construct of German jurisprudence, is now widely used throughout Europe, as a fundamental normative and organisational general principle of the Constitution, on par with the Rule of Law (…).' Moreover, it should be noted that a country is *a social state* even where there is no precise or clear legal provision referring to the *social state principle* in their constitutional order. As correctly stated countries 'are social states, either comprising an explicit "Social State" clause in their Constitution, or an analytical enumeration of social rights, or both. The Social State does not only entail the constitutional protection of social rights, but a whole series of new functions for public power that are specific to it and alien to the liberal state', see Katrougalos, G. (2007b), pp. 22–23. See also Katrougalos, G. (2010d), pp. 16–40.

161 For the legal foundation and the historical evolution of the Greek social protection system, see Chapter 3, Section 3.1, Sub-Section 3.1.1.

162 As correctly pointed out the ESC comprises 'the capstone of the "supranational" political protection of the fundamental social rights in the Council of Europe', see Venieris, D. (2002), pp. 46–47.

163 See Chapter 1, Section 1.2, Sub-Sections 1.2.1 and 1.2.2.

164 The ILO CEACR has expressly stated 'To mark the 40th anniversary of the Code in 2004, the Committee observed that, together with the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Code: (1) formed the hard core of the European Social Model; (2) filled the basic human right to social security proclaimed in the European Social Charter with concrete substance and guarantees; (3) provided the benchmark to judge the effective exercise of the right to social security in the European countries; (4) established minimum standards of social security in itself and higher standards in its Protocol, the Code traced a straightforward vector for progressive development of social security systems in Europe; (5) during the last decade of the twentieth century, the Code/Convention No. 102 remained a stronghold against the excesses of certain neo-liberal economic policies, putting in danger social cohesion and solidarity in the European nations; (6) gave the necessary guidance to

the new Lisbon Treaty (2009) makes once again an indirect reference to the C102 through the new Article 151 (ex Article 136 TEC) (under Title X/Social Policy) in which the respect by the Union and the member states of those fundamental social rights as set in the ESC is mentioned.[165]

It is apparent that an *asymmetry* exists between the systems of the states, the EU and the CoE (it should not be forgotten that all the member states of the EU are equally member states of the CoE), which both causes and amplifies several frictions. Thence, this imbalance needs to be rectified, eliminated and finally normalised – as the French would say *la situation devrait être aplanie*. One of the most constructive ways to eventually establish not only *symmetry*, which is *de facto* imperative, but also to build an inclusive system, which will provide for legal commitments with respect to the preservation and safeguarding of both human and social rights, as well as of setting common guarantees at the supranational level, would be for the EU to accede to the ESC.[166] The incorporation of the ESC would also entail its conversion into EU legislation.

Such a recommendation is completely valid and defensible, bearing also in mind that political interest and will for the EU's accession to the ECHR[167] of the CoE has recently restored[168] and the European Commission has proposed

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Central and Eastern European countries transforming their social security systems to provide protection in the emerging market economy; (7) at the beginning of the twenty-first century, the Code/Convention No. 102 continued to be an important reference point in the accelerating process of reforms in social security extending throughout the continent; (8) safeguarding the acquired standards of social protection, orient the Code/Convention No. 102 the reform process towards guaranteeing better social security in Europe with a higher level of protection of the population and prevents this level from sliding backwards', see International Labour Office (2011a), p. 30.

165 See European Union (2010), p. 114. See also relevant reference to the (ex-) Article 136 in Chapter 5, Section 5.2, Sub-Section 5.2.3.

166 As correctly pointed out, 'the interaction between the *social policies* of the EU and the CoE comprehends group dynamics and particular strategic importance; see Venieris, D. (2009), p. 401.

167 By signing up to the ECHR, the interplay between the European Court of Justice (ECJ) of the EU and the European Court of Human Rights (ECoHR) of the CoE will increase, while the ECoHR will be able to examine closely EU legislation.

168 'Influential political actors have always believed that EU accession to the ECHR would fill significant gaps in the EU's system for protection of human rights by providing a minimum standard and an external check. Since the first proposals for accession of the EEC to the ECHR appeared in the late 1970s the European Commission has repeatedly sought to be allowed by the Council to negotiate an accession agreement with the Council of Europe. Asked by the Council to deliver its opinion on the question of whether the EU had the competence to seek accession on the basis of the EU Treaties as they stood at the time, the ECJ held in 1996 that EU accession to the ECHR would result in a substantial change to its system for protection of human rights, which meant that the EU lacked the power to become a party to the ECHR. In other words, the ECJ told the EU Member States that they needed to amend the EU Treaties before seeking accession. The Court's opinion obliged European institutions to rethink how to affirm the EU's commitment towards fundamental rights and clarify the arguably complex relationship between the EU, ECHR and national legal orders as well as the no less complicated

negotiation directives[169] (actually the CoE, since 2006, has been 'appealing to the European Union (EU) to accede'[170]). Besides, Article 6§2 (ex Article 6 TEU) now clearly foresees the Union's accession to the Convention.[171] At a national level, EU member states (and other European countries as well) have already ratified the ECHR; consequently, its provisions have become part of their domestic legal order and they are subject to the Strasbourg's Court jurisdiction.[172]

Therefore, the EU should take up another crucial political action and *anchor* simultaneously to the ESC, which is institutionally and practically attainable, and would reinforce the generally restricted scope and adequacy of EU law on social protection matters and that of the ECHR. Moreover, both the Community Charter of the Fundamental Rights of Workers (1989) and the Charter of Fundamental Rights of the EU (2007) – this last Charter pursuant to Article 6§1[173] of the consolidated Treaty on EU, has the same legal value as the other Treaties – provide for a level of social rights protection, which is not nearly up to the standard of protection provided by the ESC.[174]

Additionally, and within the same context, it should be noted that in parallel to the progression of negotiations for EU accession to the ECHR, the EU incorporated into the *acquis communautaire* the Maritime Labour Convention (2006) of the ILO, through Council Directive 2009/13/EC, on the 16th of February 2009.[175] This suggests that the issue of EU acceding to the existing minimum ISSS based on the ILO C102 can be placed back on the discussion table too.[176]

As a matter of fact and following this event, the European Parliament (EP) in a Resolution adopted by a large majority on the 26th of November 2009, called on the EU member states 'to consider the strong social arguments for ratifying and implementing the Conventions that have been classified by the ILO as up to

relationship between the Luxembourg and Strasbourg Courts', see Groussot, X., Lock. T. and Pech., L. (2011), pp. 1–2. The relevant ECJ Opinion was delivered on the 26th of March 1996 (Opinion 2/1994), see for analysis ECJ (1996), pp. 1–24. For more information on the developments with respect to the see the website of the CoE – Human Rights Law and Policy Division.

169 See European Union (2010b), p. 1. A relevant speech was also given by the Vice-President of the European Commission responsible for Justice, Fundamental Rights and Citizenship during the Hearing of the European Parliament's Constitutional Affairs Committee, on the 18th of March 2010; see Reding, V. (2010), pp. 1–5.

170 See for analysis Council of Europe – Parliamentary Assembly (2008), pp. 1–37.

171 See European Union (2010), p. 19.

172 A short reference to the importance adhered by the Greek Council of State (StE) to the ECHR has been made in Chapter 3, Section 3.7, Sub-Section 3.7.3.

173 See European Union (2010), p. 19.

174 See also Venieris, D. (2009), pp. 403–404, 409, 417–419.

175 See Official Journal of the European Union (2009), pp. 124–150.

176 Concerning the discussion which had taken place back in the 1950s for the EU to accept international social law obligations, see Chapter 1, Section 1.2, Sub-Section 1.2.3.

date (…)'.[177] Subsequently, on the 19th of November 2010, in a note from the EU Presidency to the Council of the European Union (Employment, Social Policy, Health and Consumer Affairs), it was stated – with a less thorough determination in comparison with the previously mention EP Resolution – that 'taking into account the discussion in the Council preparatory bodies, the Presidency considers that the Council should renew its strong commitment to the Decent Work Agenda, alongside the following actions of the Council, the Commission and/or the Member States: Promote international labour standards, notably as regards the ratification and implementation of fundamental labour rights and other ILO conventions (…)'.[178] Both these documents in essence include the ILO C102, as well as the other up-to-date social security Conventions encompassing *higher social security standards*.[179]

One could argue that the common ISSS as embodied in the C102, as well as in the ECSS, are not sufficient or are significantly low (correspond in other words, to a framework of minimum protection (level of benefits, coverage, *etc*.)) in relation to the level of development of most of the social protection systems, especially within the EU. Another argument could add that today the systems are very heterogeneous and any effort to apply the ISSS would end up being problematic. Such speculations, however, hold no ground unless first an effort is made in order to see how the ISSS could be incorporated within the EU legal system together with the ESC and what would that bring to the states. Furthermore, the EU could start formal discussions with the ILO to this end and also consider expanding the claimed minimum framework of protection by making proper use of the *higher* social security standards, included in the other up-to-date ILO Conventions. It is worth repeating at this point that certain EU and other European countries have already ratified these afore-mentioned instruments (or at least some of their parts),[180] as well as that the drafting of the Revised ECSS of the CoE has been based on these *higher* standards.[181]

In conclusion, the suggestion of *moving towards a more socially balanced European integration* and re-opening at an EU level the discussion of incorporating the ISSS, through the previously elaborated way of implementation, is consistent with the recommendation (analyzed above) of *incorporating social conditionality into the economic* regime, since both target the establishment of a *new socio-economic equilibrium*. Before judging or criticizing them, it is better to think and reflect on what possible positive benefits this could bring.

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177 See further Official Journal of the European Union (2010), pp. 67–68.
178 See Council of the European Union (2010), p. 4.
179 Concerning the revision all the international labour standards adopted by the ILO ILC since 1919, see for analysis Chapter 1, Section 1.3.
180 See Annex – Part I.
181 See Chapter 1, Section 1.2, Sub-Section 1.2.2.

6.5.2 A SHIFT IN THE 'PARADIGM': CHANGING THE FOCUS OF NATIONAL STRATEGIES

a. From an ideology based on clientelism to the respect and acceptance of objective and impersonal criteria (standards)

Earlier in this doctoral thesis, the issue of how to reach an accord – *harmony* – between the socio-economic rivalries was discussed, and recommendations were made, aiming: (a) at the alteration of convictions, coming from the global level, on the role of social security and that of the ISSS in particular,[182] and (b) at the persuasion that international actions in a different direction are needed.

The suggested efforts as regards to the change of global ideological perceptions would be certainly underpinned by a simultaneous change of established political attitudes and doctrines at the national level. Put another way, the proposal (sub-section 6.5.1, above) for reconciliation between 'social commitments' and 'economic freedoms' should be embedded and take such features as the domestic circumstances and peculiarities necessitate.

Being more precise, in the Greek case, the formulation of the social insurance system (SIS), comprising the vital element of social protection within the country,[183] has been based since the very beginning, solely on *politics* and on criteria relating to *clientelism*[184] (the *patron-client model of politics*); an informal institution dependant on reciprocal giving and receiving.[185] Its structural preparation did not ever follow specific social planning techniques or sensible political choice approaches;[186] the result being a highly fragmented system and a disjointed status.[187] The fact that through *clientelism* the state also gained its

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182 See Section 6.3, Sub-Section 6.3.1, above.

183 See also Chapter 1, Section 3.1.

184 See also Petmesidou, M. and Mossialos, E. (2006), p. 1 (and note No. 2, p. 18).

185 'As O'Donnell (1996:40) points out "formal rules about how political and [administrative] institutions are supposed to work are often poor guides to what actually happens". In many cases, informal systems of clientelism and patrimonialism are key contributors to stifling popular participation, subverting the rule of law, fostering corruption, distorting the delivery of public services, discouraging investment and undermining economic progress. Because they are deeply entrenched, seldom authorized or openly acknowledged, and take different forms depending on their context, clientelistic networks can be both difficult to detect and to remove', see Brinkerhoff, D.W. and Goldsmith, A.A. (2002), p. 1. For a recent exploration focusing on the relationships between clientelism and democracy, as well as development, and an evaluation of its connection with various political and economic outcomes, see also Hicken, A. (2011), pp. 289–310. For a detailed analysis and discussion of the key characteristics of clientelism see Wolfgang, M. (2010), pp. 4–12.

186 For the deficiency in policy uninterrupted formulation and progression, as well as planning and management, see for analysis Venieris, D. (2006), pp. 73–95.

187 See also Chapter 3, Section 3.1, and Sub-Section 3.1.1, as well as Petmesidou, M. and Mossialos, E. (2006), pp. 6–7.

political legitimacy, contributed significantly to this end as well. Moreover, it should be stressed that the existence domestically of a highly fragmented and incoherent system reinforces *influences*, which may be exerted at a given point in time by external actors and events.[188]

If one looks back to history for a moment, during the whole nineteenth century the so-called *spoils system*[189] applied in Greece rather than a *merit system*.[190] This certainly contradicted the governmental institutional approach followed in the European West with respect to the *social question of the 19*th *century*, which (back then) touched upon the matter of making the market work well, together with the parallel development of both political and social rights.[191] As pointed out 'the emergence of the mass parties has been concomitant with the transition to the welfare state and the related political and social struggle'.[192] In Greece, the political parties were not engaged into the promotion of social rights for the citizens as such. Moreover, a *fusion* of public and economic power existed, and still exists. The market did not function independently, but through constant political intervention. Intervention though, which did not regulate market forces.

The *national practice* continued causing significant social imbalances. The society was divided[193] between *winners* and *losers* – those that had access to state resources (i.e. benefits' provision, *etc*.) and the rest who had either less or even none. This dichotomy became more intense in the period after the Greek civil war (1946–1949) and it went on after the fall of the Colonels' Regime (1967–1974) (the last dictatorship) and the restoration of democracy. Consequently, this was equally reflected in the welfare structures of the country,[194] giving rise to a disparate and segmented income maintenance system.

It is also worth noting that due to *clientelism* the wealth was unevenly distributed;[195] emphasis being paid to pensions and the health care system. Provision for the rest of the risks – for example, family, unemployment – was lagging behind.[196]

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188 See also Section 6.2 above, on the elucidation of the obstacle: (inter) national political pressure, opportunism, trends and interests.

189 It refers to the appointment of persons by the win political parties in responsible public sector positions. See also Shefter, M. (1978), p. 211. For a deeper understanding of the *political commitment problem*, see Robinson, J.A. And Verdier, T. (2003), pp. 1–32.

190 The merit system having its origins in China got gradually extended both to the continental Europe, as well as to the US, see Kazin, M., Edwards, R. and Rothman, A. (2010), p. 142. For an analysis of the definition of 'merit', see McCourt, W. (2007), pp. 1–7.

191 See also Preuss, U. (1978), pp. 151–152.

192 See Katrougalos, G. (2011), pp. 5–7.

193 See also Petmesidou, M. and Mossialos, E. (2006), p. 5.

194 See also Tsoukalas, K. (1987), pp. 88–89.

195 It has also been noted that 'a deeper comprehension of the issue of political commitment can help in understanding why income distribution takes an inefficient form', p. 1, see for analysis Robinson, J.A. And Verdier, T. (2003), pp. 1–32.

196 See also Taylor-Gooby, P. (2006), p. 406.

Likewise, the administrative organization was not based on objective criteria.[197] Thus, a clear *social orientation* has not been a basic part in policy and decision-making, while the reform attempts, which took place (especially since the beginning of the 1990s), cannot be characterized as consistent, or uniform;[198] regardless of their proclaimed targets.[199] Furthermore, a contradiction, which should be kept in mind, is that in Greece, unlike Western Europe,[200] the *golden welfare state* dates from the 1980s.[201]

Ultimately, it is contended that the above-described national political ideology, as moulded, does not cater for the proper understanding of social rights in general, and of the content of the right to social security in particular, as also enshrined in the ISSS, ending up being harmful; one could equally speak of an unsophisticated method of state function. Therefore, such an ideology, which is extremely individualistic and all the more absurd, as well as problematic, should be abandoned and substituted with the establishment of a new one, which will have as its main providence the advancement of both social rights and social citizenship.[202] This alteration in ideology would be further facilitated by a division between public and economic power. In other words, there is a need to have public power based on democratic values and a rational[203] public administration.

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197 See for analysis Ferrera, M. (1999), pp. 33–65.

198 By way of illustration, an interesting description and analysis with respect to the political constraints on the Greek pension reform has been given by Kevin Featherstone and Platon Tinios. See Featherstone, K. and Tinios, P. (2006), pp. 174–193.

199 See also Chapter 3, under Section 3.1, Sub-Section 3.1.1, for description of the legal foundation and historical evolution of the system, as well as the recent developments in administrative and organisational aspects. See also Chapter 4, Section 4.1.

200 See also Petmesidou, M. and Mossialos, E. (2006), p. 2.

201 See also Chapter 5, Section 5.4, Sub-Section 5.4.2 (elucidation given on the obstacle: inter (national) political pressure, opportunism, trends and interests). See in-depth Petmesidou, M. (2006), pp. 25–54. See also Petmesidou, M. and Mossialos, E. (2006), p. 7.

202 Meaning a system based on the protection of the rights of the population in general. As also pointed out 'an explicit definition of need and/or social citizenship rights' has been absent, see Petmesidou, M. and Mossialos, E. (2006), p. 5.

203 According to Max Weber, the legitimacy of modern Western societies' political systems was 'based upon a belief in the legality of their exercise of political power. (…) It is the rationality intrinsic to the form of law itself that secures the legitimacy of power exercised in legal forms', see Habermas, J. (1986), p. 219. The traditional model of public administration, imperious for the greatest part of the twentieth century 'can be characterized as: an administration under the formal control of the political leadership, based on a strictly hierarchical model of bureaucracy, staffed by permanent, neutral and anonymous officials, motivated only by the public interest, serving any governing party equally, and not contributing to policy, but merely administering those policies decided by the politicians. Its theoretical foundations mainly derive from Woodrow Wilson and Frederick Taylor in the United States, Max Weber in Germany, and the Northcote –Trevelyan Report of 1854 in the United Kingdom', see Hughes, O.E. (2003), p. 17. This model has been criticized, and in many occasions replaced by the 'more positivistic structural-functional or economically driven New Public Management', see Samier, E. (2005) pp. 60–94; see also Hughes, O.E. (2003), pp. 1–2, 17. In spite of such perceptions and the relevant justifications provided, its basic elements still hold ground and especially with respect to the Greek case, the bureaucratic principles in the classical analysis of Weber are to be found.

It has been said that 'as countries attempt the difficult transition to democracy and open markets, numerous reforms are necessary in the realm of governance. Reformers in developing and transitioning countries have been reconfiguring their public institutions, trying to build systems that are responsive and accountable to citizens, and that effectively support economic investment and growth. Such reform efforts have tended to concentrate on formal institutions, rules and procedures. These are important because well-constructed institutions channel people toward equitable and above-board behaviour (…)'.[204] As illustrated above, Greece did not follow such route. To pursue and maintain democratic governance within a country, as well as the setting up of coherent bureaucratic systems, are the main constituents in negating the undisturbed development and function of informal institutions, which in some cases and under specific circumstances may not be easy to avoid.

Last, it should not be neglected that an effort on the part of the state (government) to work on meritocracy and equality with the aim of combating the *pathogenesis* of the system is diametrically opposite to effort which targets the eradication of *clientelism* in order for the market to be able to act unperturbed; since, if this last case scenario is applied, nothing changes and *steers back to dawn*. These are two dissimilar political approaches and need to be distinguished.

The trend that globally prevails nowadays is to free the market and let it be self-regulated; however, what is much more decisive and urgently needed, is for a part of the *profits* to be distributed downwards. Interference from the state to supplement the market is undoubtedly desirable, but inappropriate state intervention will contribute to a further deterioration of the present macroeconomic problems, which beset national economies. Therefore, both the ruling parties, as well as the political opposition, need to commit to economically efficient choices of law and (implemented) policies.[205]

As the CEACR recently stated, with respect to reform processes undertaken, it is cardinal that 'the interests of the people were protected, and especially the level of social protection, were taken fully under consideration (…). Substantial reforms should not have been undertaken hastily to respond to financial pressures and such changes should have, in any case, taken duly into account the international standards on subject'.[206] In addition, the following remark is certainly pertinent 'if a structural pension reform imposed by an international organisation means

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204 See Brinkerhoff, D.W. and Goldsmith, A.A. (2002), p. 1.

205 The, for decades, successive governments tried to found an economic development system on an *earthenware basis*. The problem in Greece is also a cross-plot of the general way that capitalism has been nowadays organised, in combination to askew developmental thinking followed by governments in the period after the fall of the colonels' regime.

206 See International Labour Office (2011a), p. 53 (par. 116).

that the provisions of the Code and indirectly those of the Social Charter, could not be upheld anymore by the country concerned, the country has a counter argument for not accepting the proposed reform. Sometimes this argument has a stronger impact than a pure policy analysis that shows that the proposed reforms will have major negative consequences for the population'.[207]

b. Altering the mentality of key actors

The above described prevailing national political ideology permeated, and proliferated, the constitution and configuration of unions (and unionization), as well as their function within the country, from an early stage. So far, the representative organisations were not undisturbed in serving the interests of their members, but were following (if not to say ultimately, in a very significant extent) the developed *state patterns*.[208] They have been principally *party dependent* and not *politically motivated*.[209] Furthermore, 'the long-term lack of unity amongst the unions (based on party, ideology and organisation) has undermined their ability to sustain stable concentration and to deliver compromise agreements'.[210] Thus, it should not come as a surprise that through the passage of time and even more profoundly in recent years, both the political system and the unions lack

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207 See Schoukens, P. (2007), p. 90.

208 'There is a long tradition of state intervention in the union movement and in labour relations, from 1914 onwards. State corporatism developed under the Metaxas authoritarian regime and the Colonels' junta had long-lasting effects, with greater trade union freedom coming only in the 1980s and 1990s', see Featherstone, K. and Tinios, P. (2006), p. 176.

209 'Until 1974 a kind of state controlled and clientelistic unionism with several variations had developed in Greece. The lack of a robust labour movement had negative effects on economic and social growth. It contributed to the perpetuation of the activities of businesses which had no entrepreneurial sense of the sort encountered in other European countries, and to an analogously inefficient civil service and public utilities. The militant labour movement that emerged in the wake of the major political changeover of 1974, and which was consolidated with the rise of the PASOK socialist party in power in 1981, has not yet managed to minimise the dependency of trade-union structures on the state and the governments in office. Although it moved towards becoming an autonomous social partner, part of the society of citizens, this move seems incomplete. The reason is that three traditional relationships have not been radically transformed, namely, the ones between the state and labour unions, between political parties and labour unions, and between trade-union officers and activists and their rank and file. The financial independence of unions from the state has not been attained and thus the links between trade-union officials and their members has remained weak. The political parties-trade unions' relationship has been organised on the basis of a traditional model, with the labour union political factions being merely the front-covers of political parties. Hence, the relation between trade-union officials and workers has remained elliptical and as a rule unidimensional, with a direction from the political party in power to the workers. Trade-union factions of opposition political parties also operate as pressure groups. Under these circumstances the active trade-unions and the militant labour force segments of the last two decades did not manage to evolve into an autonomous (in political and financial terms) national trade-union structure. The uneven development of Greek trade-unionism became a constant feature throughout this period, and has been consolidated', see Ioannou, C.A. (1999), pp. 31–32.

210 See Featherstone, K. and Tinios, P. (2006), p. 177.

legitimacy and they have been gradually disregarded by a great share of the population.

It is interesting to note at this point that 'according to the ILO World Labour Report 1997–1998, there is a group of countries in which labour unions did not manage to avoid or free themselves from the endemic afflictions of intertwining with the state, corruption, clientelistic relations, and inter-unionist conflicts; factors, that is, which lead to decay and marginalisation. Even though the unions of other southern European countries managed, following the fall of dictatorships and the return to democracy, to free themselves (to a greater or lesser extent) from such a system, Greek unions have not yet fully released themselves from state dependency. Their continuing participation, at least in part, in this group, does not indicate particularly promising prospects for the future'.[211]

As already elaborated,[212] and in relation to the ISSS accepted by Greece, trade unions, despite the fact that *power* has been attributed to them by the ILO,[213] as well as the CoE,[214] have not been actively defending the right to social security, while their stance towards state-governmental behaviour and decisions undertaken, which have hampered the further promotion of the ISSS, has been *one of* – elegantly expressed – *avoiding conflicts*. Through this research work it was found that only when the country entered into the deep political, democratic and economic crisis, did trade unions settled doubt and start to dispute law-making and policy orientation, which undermined citizens' rights, especially concerning social security; and this with a considerable delay (in juxtaposition to labour rights and international labour standards; because in this domain they have been – as is invariably the case – more involved).[215] It is clear that the unions, especially with respect to the right to social security and the ISSS, passed a long period in *stagnation* and *decline*.

For that reason, it is urgently required that a change should take place from the *turning aside from international social security obligations mentality* towards one of *abiding* them, as well as a complete disengagement from the ''path of dependency', set by inherited norms and interests'.[216] In such a manner, influence can be exerted, aiming at obtaining a *shift from lack of political interest* and *will* towards more *circumspect political behaviour*.

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211 See Ioannou, C.A. (1999), p. 31. See for analysis International Labour Office (1997).

212 See Section 6.2, as well as the analysis in Section 6.3, Sub-Section 6.3.1, above.

213 *Tripartism* is the unique characteristic of the ILO. See Chapter 1, Section 1.1, Sub-Section 1.1.1.

214 The CoE has established the Collective Complaints System of the ESC. See for analysis Chapter 5, Section 5.4, Sub-Section 5.4.2, elucidation given on the obstacle: lack of interest and will of social partners (trade unions, in particular).

215 See also Chapter 3, Section 3.6.

216 See Featherstone, K. and Tinios, P. (2006), p. 175.

A change in unions' mentality through a movement closer to their representation responsibilities, as well as an organised accelerated effort in protecting accepted ISSS and social security rights,[217] by engaging into a real and productive social dialogue,[218] would both restore the working populations' and citizens', trust in them, as well as be a means in rebuilding their density (membership levels)[219] (it is true that unions' density in real terms involves the measurement of the degree of unionisation and reveals very little about the influence they can exert;[220] still, an enlarged membership may strengthen their influence and facilitate a more organized and substantial representation). Put another way, by placing national needs and priorities up front and by investing in making claims, which are reliable, creditworthy and justifiable, regain of trust could be achieved.

Furthermore, the above discussed recommendations on incorporating social conditionality into the economic regime and having a more socially balanced European integration, involving equally the ISSS (see Sub-Section 6.5.1), could be further boosted via the support of trade unions, in the form of an alliance of trade unions at an international level and the establishment of a common ideological front (especially those of countries, which have been also experiencing the negative effects of external intervention in national social affairs).

Thereafter, with respect to civil society, which cannot be characterised as strong and influential,[221] and has played a very limited role in international social policy

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217 For an analysis on the trade unions' lack of interest and will, see Chapter 6, Section 6.2, as well as Chapter 5, Section 5.3, Sub-Section 5.3.5 and Section 5.4, Sub-Section 5.4.2.

218 With respect to trade unions' absenteeism from substantial social dialogue, see also Chapter 6, Section 6.3, Sub-Section 6.3.1. It has been also pointed out that 'the rhetoric of the importance of social dialogue only emerged gradually in the late 1980s and early 1990s (Ioannou, 2000). Since then, the process of social dialogue has been marked by 'stop-go', discrediting it as a process and creating further mistrust. Moreover, the agenda of social dialogue has been inconsistent and fragmented, resulting in *ad hoc*, partial bargaining', see Featherstone, K. and Tinios, P. (2006), pp. 176–177.

219 As already discussed there is currently a decrease in trade unions' density. This is not only a Greek characteristic, but a trend in several other countries; see also Chapter 6, Section 6.3, Sub-Section 6.3.1. However, in relation to the Greek case it has been noted that 'trade-union density has been constantly decreasing since 1985, and the trade-unions structure has remained widely fragmented. Under the present circumstances the tendency towards the reduction of union density will probably become further intensified. Three kinds of factor give rise to this estimation: structural ones (businesses of a smaller size, new forms of atypical employment, a more specialised labour force), cyclical ones (high unemployment, falling inflation rates), and institutional ones (fragmented structures weakening the ability to develop efficient services for trade-union members through social dialogue institutions and funds, the limited role of unions in the workplace, the decentralisation tendencies in private-sector collective bargaining under the umbrella of the General National Collective Labour Agreement)', see Ioannou, C.A. (1999), pp 31–32.

220 See Hayter, S. and Stoevska, V. (2011), p. 2.

221 As also pointed out 'in the south-east (that is, in Greece and other Balkan countries, including Turkey) a tradition of contractual relations, collective solidarity and an active civil society have always been weakest', see Petmesidou, M. and Mossialos, E. (2006), p. 5.

affairs, and even more to issues touching upon the ISSS[222] – this has been also caused by the fact that so far the practical impact from the acceptance and ratification of the ISSS by the country has not been visible both to the working population and the citizens. In other words, nothing seems to have changed in peoples' lives and this certainly diminishes the utility and potentiality of the ISSS. It should be noted that this situation does not solely relate to limited available resources, but is also linked to – as in the case of trade unions – the dominant role of state and political parties over civil society.[223] The customary national political ideology drilled holes in the organisation of this group of actors as well. Thence, it is vital that attention be drawn by civil society networks to the importance of enhancing the understanding and respect for social values, so as to alter the behaviour of individuals, and establish a coherent system based on principles and rules, which would serve the common good and attempt an alteration in the *status quo*.

Metaphorically, what is required is to have an *electrotherapy* in the society, which would act as brain stimulator for treating and eventually curing the spread of the current *ideological disease*, and not as a way of forgetting protected by law social rights. To this end, an aggregate and cohesive reform at multiple levels is needed.

Finally, concerning the developed, over the years, mentality of the national courts, and practicing lawyers,[224] with respect to international conventional social law, it could not be said to relate as such or to have been influenced by the national political ideology. There is no ideological issue as such against international conventional social law. What actually happens is an unjustifiable depreciation of the international social security conventions, and the standards set therein, compared to the gradually extended acceptance of the provisions included in other international conventions and treaties, such as the ECHR, the ESC and EU law. This behaviour though has to be rectified and follow another perspective. A spread of knowledge regarding the ratified ISSS and their legal context is essential to this end (see further below; Section 6.5, Sub-Section 6.5.4).

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222 See also Chapter 5, Section 5.3, Sub-Section 5.3.5 and Chapter 6, Section 6.2, as well as Section 6.3, Sub-Section 6.3.1.

223 See also see Featherstone, K. and Tinios, P. (2006), p. 175.

224 See Chapter 6, Section 6.2, and Section 6.3, Sub-Section 6.3.1, as well as Chapter 5, Section 5.3, Sub-Section 5.3.5 and Chapter 3, Section 3.7, Sub-Section 3.7.3.

6.5.3 FURTHER INTERVENTION AND MOBILISATION FROM THE INTERNATIONAL SIDE

a. Filling in existing gaps: A series of activities

It has been identified, described, and analysed that one of the new obstacles to further promoting the ISSS is the existence of *gaps in the proper functioning of the international supervisory procedure*.[225] To this end, an effort from the international side, through a series of activities, is considered necessary in order to fill in the gaps and support the further promotion of both the *minimum* and *higher* ISSS.

As a starting point, further reference[226] should be made here to the composition of the ILO CEACR. This *technical committee* consists of twenty members, who are 'high level jurists (judges of supreme courts, professors of law, legal experts, *etc.*) appointed by the Governing Body for renewable periods of three years. Appointments are made in a personal capacity of persons who are impartial and have the required technical competence and independence. (…). The experts are in no sense representatives of governments. (…). The members of the Committee are from all the regions of the world so that the Committee benefits from direct experience of the various legal, economic and social systems'.[227] Among the members of the latest CEACR (2012) only two come from Europe (namely, from France and the United Kingdom).[228]

This Committee examines the national submitted reports on the application of ratified Conventions and in general compliance with obligations, with regard to the international labour standards, among them the ISSS, specified in the ILO Constitution. Over the course of time (meaning since its set up, in 1926[229]), the amount of work has significantly increased for the CEACR, due to the increase in

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225 See Section 6.2, Section 6.3, Sub-Section 6.3.1 and Section 6.4 above, as well as Chapter 5, Section 5.4, Sub-Section 5.4.2. It also correlates with another newly emerged obstacle; in particular, *the absence of substantial promotion of the standards and exertion of appropriate 'pressure' with regard to their ratification from the international side*. See Section 6.2 and Section 6.3, Sub-Section 6.3.1, as well as Chapter 5, Section 5.3, Sub-Sections 5.3.4 and 5.3.5.

226 An initial reference has been made in Chapter 1, Section 1.1, Sub-Section 1.1.1.

227 See Gravel, E. and Charbonneau-Jobin, C. (2003), pp. 7–8; see also the website of the ILO CEACR.

228 The members of the CEACR in 2012 are the following seventeen: Mr Mario Ackerman (Argentina), Mr Denys Barrow, SC (Belize), Mr Lelio Bentes Corrêa (Brazil), Mr James J. Brudney (United States), Mr Halton Cheadle (South Africa), Ms Laura Cox, QC (United Kingdom), Ms Graciela Dixon Caton (Panama), Mr Rachid Filali Meknassi (Morocco), Mr Abdul G. Koroma (Sierra Leone), Mr Pierre Lyon-Caen (France), Ms Elena Machulskaya (Russian Federation), Mr Vitit Muntarbhorn (Thailand), Ms Rosemary Owens (Australia), Ms Ruma Pal (India), Mr Paul-Gérard POugoué (Cameroon), Mr Raymond Ranjeva (Madagascar), Mr Yozo Yokota (Japan). See the website of the ILO CEACR.

229 The relevant Resolution was adopted in 1926 by the ILC. See International Labour Office (1926), p. 429.

the number of Conventions, as well as Recommendations, adopted by the ILC, in parallel to the number of ratifications. The CEACR not only examines reports on ratified Conventions, but also national submitted reports requested by the ILO on the non-ratified ones;[230] plus it supervises the adopted Recommendations.

Consequently, on the part of the experts mental and physical energy, as well as the dedication of adequate time is required in order to properly perform their tasks. However, this is not always one hundred per cent feasible, due to the fact that – apart from being members of the CEACR – they have other (own) professional obligations and activities (if not all, most of them). In addition, it should be once again noted[231] that so far the practice followed by the CEACR is that of designating one of the experts as accountable for the examination of a specific number of Conventions associated with a given field; for example, social security. Such a practice, and bearing in mind the constant domestic social security changes, their rapid rhythm of development, especially since 1990 onwards,[232] as well as the consequences of possible financial non-sustainability and the latest economic crisis on the systems, has led – on several occasions – to more inefficient or deficient monitoring results than those, which would have been expected or would have been otherwise produced.

Pertinent to this issue, as well as interesting, is a remark made back in 2006 by a (then) member of the CEACR. 'The work of the Committee is completely different from the work of a judge. A judge has a concrete case, decides on this concrete case on the basis of arguments brought in from several sides. The Committee has none of this. A constitutional court has to decide on specific provisions that seem to be not in line with the constitution. The Committee has to consider whole new Acts of 500 or 600 paragraphs. It can be very difficult to compare such Acts with the standards of the ILO Conventions. (…). The Committee receives laws from all parts of the world, in translation, and we have to find for ourselves the relevant issues and interpret them. Another problem is that sometimes we single out interesting problems that appear to be absolutely theoretical'.[233]

Furthermore, it should not be forgotten that the ILO, in terms of the (so far) close collaboration with the CoE on the ISSS, has nominated the CEACR as the responsible body also to examine the national reports submitted on the application of the ECSS and its Protocol.[234] This has created an additional burden upon the CEACR, despite the fact that the reports on the ECSS and its Protocol

230 Concerning the obligation to report on ratified, as well as non-ratified Conventions, see for analysis ILO (2006), pp. 20–34. See also Chapter 1, Section 1.1, Sub-Section 1.1.1.
231 See also Chapter 1, Section 1.1, Sub-Section 1.1.1.
232 See also for analysis Gomez-Heredero, A. (2009a), pp. 89–96.
233 See Hofman, B. (2007), p. 142.
234 See also Chapter 1, Section 1.2, Sub-Section 1.2.2.

present significant similarities with the ones on the relevant Conventions of the ILO on the ISSS.

Thus, taking the above into account, as well as the research factual findings,[235] in my opinion there is a need to increase the number of the CEACR members, so as to be able to have, when necessary, more than one expert responsible for the execution of the Committee's tasks per group of Conventions and ameliorate supervision and control over proper application, respect of the ILO constitutional obligations[236] and possibilities for new ratifications. Of course, such an initiative is not that simple to be implemented, since not many independent experts specialised in the standards-setting activity of the ILO, at least in the field of social security,[237] exist and even if appropriate training on the content of the standards, and the relevant provisions, took place (would the experts are familiar in general terms with policy fields and not with the standards as such), this would require a reasonable amount of time until they become fully operational. Furthermore, and even more important, their appointment also depends on the available budget of the organization and its (political) priorities. The ILO GB (executive body/ *tripartite* structure) holds the last word on such kind of decisions.

Another alternative though may be equally considered, which would be particularly valuable with respect to the ISSS. Instead of increasing the number of the CEACR members as such, to establish a form of collaboration of the CEACR with independent external national experts. An electronic database could be created (portal). Being more precise, a registration system could be installed where the previously mentioned experts (per field) would be able to upload their curriculum vitae. Then, based on the workload and/or any complications, which may occur during the examination of the nationally submitted reports (on the application of accepted ISSS or on non-ratified ISSS, *etc*.) by the CEACR designated member (i.e. as noted, the national laws when submitted to the CEACR are translated and it is much easier for a native speaker and expert to provide clarifications on specific provisions of these laws and other matters (better follow-up of national

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235 See Section 6.2, Section 6.3, Sub-Section 6.3.1 and Section 6.4 above, as well as Chapter 5, Section 5.3, Sub-Sections 5.3.4 and 5.3.5 and Section 5.4, Sub-Section 5.4.2.

236 See further discussion on this issue in Chapter 5, Section 5.3., Sub-Section 5.3.4.

237 As complementary to this statement, I would like to make here a reference to a point raised during discussions that I had in one of the meetings with the responsible evaluation committee (Begeleidingscommissie (BC)) members and the UvT research team, on the completion of my doctoral thesis. In particular, opinions, which I also espouse, have been expressed that the CoE has been, so far, not particularly active in further promoting the ratification of the Revised ECSS due to the fact that a considerable amount of work is required for its supervision and there are not so many experts familiar with the much more advanced ISSS set by this international instrument. (This evaluation committee has been appointed by the Instituut Gak (website: http://www.instituutgak.nl/index.php), (which has funded my research within the framework of the *Europe and Social Security Research Programme*) in order to follow-up and ensure the proper implementation and finalisation of my work).

issues at stake)), one (or more) of these experts may be contacted and – if found competent – be recruited through an appointment letter (this way a kind of a supportive evaluation sub-committee could be composed as well) for the specific time period that the examination of the reports takes place, or in any other time-period that his/her expertise may be required, and facilitate the work of the CEACR member. All the same, in case of appointment, the national expert should confirm that he/she has no relation with the work of the government in the field.[238] Once again though, the ILO GB should give its consent for such an activity.

These suggestions may improve the current system of supervision. Besides, several of the emerged national practical difficulties[239] may be enforced via a continuation in the existence of gaps in the proper functioning of the international supervisory procedure, which apparently needs to follow a somewhat more peremptory manner. Moreover, by further staffing the CEACR – either internally (increase of its members) or externally (collaboration with external experts) or both (ideal case scenario) – other required and recognized activities could be facilitated.

In particular, and as shown from the analysis of the research's factual findings,[240] there is a need to have better cross-checking of the information provided by governments on issues of non-compliance, on the reasons for non-ratification, on data provided, on more accurate reporting, on the role of trade unions, as well as better comparison of national laws with the ISSS, awareness of the domestic (political, economic, social and legal) situation, *etc.* Hence and as also re-affirmed in a recent report of the CEACR (2011), more emphasis should be placed on targeted missions, additional contact and communication, provision of preventive comments and results-oriented supervision, conduct of feasibility studies on a regular basis, guidance not only on paper, but through direct contacts at the national level, strengthen the ISSS through technical cooperation and normative action, build up functional connections between the observations given by the CEACR and the technical assistance (this though presupposes the acceptance, as well as initiative from a national level to have recourse to technical assistance (see on this issue Sub-Section 6.5.4, below)), and so on.[241] In addition, technical cooperation with other international organizations could be also developed.[242]

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238 A declaration on no conflict of interest should accompany the appointment letter of the expert to this end.

239 See Section 6.3, Sub-Section 6.3.1.

240 See, for analysis, Chapter 5, Section 5.3, Sub-Sections 5.3.4 and 5.3.5, as well as Section 5.4, Sub-Section 5.4.1 and 5.4.2.

241 See also International Labour Office (2011a), pp. 3–4, 33–35, 86, 141, 189–190, 234, 236–237 and 251–253.

242 See, for analysis, (and in particular, the reference to the example of Turkmenistan, where the programme "Strengthening the national capacity of Turkmenistan to promote and protect human rights", implemented by the EU, the UN High Commissioner for Human Rights (OHCHR), enabled the ILO Bureau to develop contacts with the government. 'In the context of the EU, UNDP and OHCHR project, a visit was organised in 2010 for a high-level delegation

The ILO Bureau already provides a lot of support for the execution of the CEACR's tasks and even prepares its reports and other relevant documentation. Moreover, a significant number of its officials apart from working on technical cooperation programs and projects also participate in country missions, providing comments and remarks on specific issues at stake. In comparison, an increase in the number of CEACR members or external help from others may seem trivial. Still, the ILO Bureau is the ILO's administration,[243] and especially with regard to the reports of the CEACR, as well as the individual direct requests and individual direct observations addressed to the countries, the CEACR is the body which conducts the final legal scrutiny, not the ILO Bureau. Even the comments or remarks that may be given by the ILO Bureau are based on instructions given by the CEACR. Consequently, the aid of the ILO Bureau officials, cannot substitute for the international selected experts of the CEACR. Apart from the aforementioned merits, by increasing the number of the CEACR members, a stronger link between supervision and technical assistance provision will also be established.

With regard to trade unions,[244] their involvement in social security law and policy making, and in fulfilling their obligations under the ILO Constitution, should be improved. The same goes for social dialogue (see on these issues also Sub-Section 6.5.4, below). It seems that trade unions in other parts of the world, and not so much in Europe, are more active in terms of defending the ISSS;[245] maybe, at the end of the day, in Europe some things have been taken too much for granted over the last two decades. This is exactly where the CEACR should step in.

It has been said that it is very helpful to have comments of trade unions pointing directly at issues to be discussed, since the work of the CEACR becomes much easier if concrete questions are posed and in this way the examination or interpretation of whole new laws is limited.[246] Indeed, such activities – and not only on the part of the trade unions, but also from governments – would make the work of the CEACR more efficacious. Still, this does not absolve the CEACR of its own supervisory responsibilities and its work, which similarly includes the duty (function) of posing questions to states and requesting specific information and clarifications; especially, when national situations are or tend to become complex (i.e. states facing indeed serious economic difficulties, or hit by economic crisis; albeit, it is in such situations that the interference of the CEACR is vital so as to avoid a lessening of the level of protection and encroachment of basic principles

from the Office to Turkmenistan with the assistance of officials engaged in the project (p. 144)) International Labour Office (2011e), pp. 143–144.

243 It also contains a research and documentation centre; see further on the work of the ILO Bureau, in the website ILO-International Labour Office.

244 See also Chapter 5, Section 5.3, Sub-Section 5.3.5.

245 See also the data provided in International Labour Office (2011a), pp. 215–222.

246 See Hofman, B. (2007), p. 142.

and requirements). The need for the proactive role of the CEACR, was recently marked by the CEACR itself, as already referred (see Section 6.5., Sub-Section 6.5.1, above).

One more attempt, which may prove beneficial, is for the CEACR to make a first elaboration and request for an update of the report forms adopted by the GB, in terms of making them more user-friendly for national administration(s) (and trade unions), as well as to provide practical examples about how these forms should be completed before being submitted to the governments (the composition of these forms dates back decades).[247] Further, the reporting period currently set every five years, should be replaced by annual reporting (as it is for the ECSS) or at least be set every two years (as for the core labour standards). This would conduce to a better follow-up on the application of the ISSS and aid national administrations not to lose contact with the ISSS, becoming much more inured with their content.

It can be argued that through such a series of activities, the international supervisory procedure would become worryingly strict and rigorous, resulting in negative consequences for the further promotion, and overall future, of both the *minimum* and *higher* ISSS. This mainly pertains to the issue of denunciation. Countries, which have ratified ISSS, and relevant Conventions, may opt to denounce parts or all of these Conventions, as well as show disinterest and unwillingness to ratify in general.

All the same, the issue of denouncing international instruments is not uncomplicated,[248] and relates to several aspects. Apart from the fact that the act of denunciation can take place (per instrument) at a specific point in time and requires former notification on the part of the state and relevant justification (until denunciation is accepted by the international side a great deal of communication between the state and the international organisations will transpire), bears high *political cost*. Especially because it clearly shows (or testifies, in other words) that the state has no intention to deliver on the international obligations undertaken through the act of ratification. Not only does the country become internationally exposed (better to say politically exposed), but also introspective reflections may occur creating unrest. So, through such behaviour states will bring themselves to a very uncomfortable position. Besides, cases of denunciation or expressed

[247] See for example the report forms on the C102 and the C128 respectively: International Labour Office (1980), pp. 1–39 and International Labour Office (1967c), pp. 1–28. A similar suggestion was made in 2011 by the CEACR, which stated that 'the Governing Body also has the possibility of reviewing the report forms related to social security Conventions with a view to simplifying and updating the monitoring criteria and requests for statistical data related to the definition of the standard beneficiary', see International Labour Office (2011a), p. 260.

[248] See also reference to the issue of denunciation in Chapter 5, Section 5.3, Sub-Section 5.3.5.

intentions to denunciate already exist (Greece can be referred as an example),[249] even without there being such strict international supervision.

Moreover, and seeing things from a different angle, if having more responsible supervision of the ISSS will bring such effects, maybe this is better; in the sense that if states proceed one after the other denouncing ISSS, and bear this *political burden* on their shoulders, the scenery will straighten out and it will be finally revealed, what are the true *political intentions* and *plans* both for the ISSS and international social security law in general. As a *defence* to the need to work on a better international supervisory procedure, I would like to put emphasis on the issue of lack of hard legal sanctions,[250] Since, this possibility does not exist, and also because sanctioning by *naming and shaming* is usually avoided,[251] what remains is – if not a stricter – a more responsible supervision and greater effort to convince states and at the same time to have a more systematic *surveillance*.

Last, it is worth mentioning that in the recent past the CoE has begun a re-structuring process. As part of this activity, and according to a Resolution adopted by the Committee of Ministers in November 2011,[252] a new committee has been established, the so-called *Governmental Committee of the European Social Charter and the European Code of Social Security*. This decision actually end the work of the CoE CS-SS (now named the former CS-SS), which previously, and in close collaboration with the ILO CEACR (see Article 74§4 of the ECSS), was responsible for the examination of the annual national reports submitted by the states on the application of the ECSS (under Article 74 of the ECSS), as well as the examination of the reports required (as a proof of capacity) in cases where states make political decisions to proceed with the ratification of parts of the ECSS (Article 2, paragraph 2(b) and paragraph 3 and Article 78§3 of the ECSS), and transfers the relevant responsibilities to the new Governmental Committee. Consequently, from January 2012 onwards the conclusions delivered up to now by the ILO CEACR on the monitoring of compliance with the ECSS are executed by this new Committee instead.[253] Furthermore, based on the Resolution the ILO 'will be invited to send one representative to the part of the meetings of the Governmental Committee that concerns the exercise of its tasks under the Code, for whom the travelling and subsistence expenses will be at the charge of the Council of Europe budget'.[254]

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249 See how eventually, and on which grounds, the denunciation of Part VI (Employment Injury Benefit) of the ECSS, in Chapter 4, Section 4.7, Sub-Section 4.7.6.

250 See also Chapter 1, Section 1.1., Sub-Section 1.1.1.

251 See also Hofman, B. (2007), p. 143.

252 See Committee of Ministers (2011), p. 1.

253 See also the website of the CoE – Governmental Committee of the European Social Charter and the European Code of Social Security, as well as the website of the CoE – Social Security.

254 See Committee of Ministers (2011), p. 1.

Despite the fact that through this development the workload of the CEACR may decrease, since also in case that the Revised ECSS will enter into force the examination of the relevant reports will be done by a specialised Committee set up by the CoE,[255] this does not imply that the need to strengthen the ILO supervisory procedure, through the activities previously elaborated, vanishes. Besides, the advantage of the CEACR and of its enforcement lies in the fact that the examination carried out is done solely by independent and impartial experts, while the new CoE Governmental Committee is composed by representatives of the states party to the ESC and assistance will be provided as well by representatives of the European social partners with an observer status.

b. The international standards-setting activity and social security: which way now?

The elaboration of *the concept of* a *social protection floor* (see also Section 6.4, above), was completed in June 2012 through the adoption by the 101st ILC Session of a new *autonomous* non-legally binding instrument entitled *Recommendation concerning national floors of social protection*.[256]

However, within the General Survey (2011) prepared by the CEACR and discussed by the Committee on the Application of Standards at the 100th ILC Session (2011) (it was then that the decision was taken to place the adoption of the new Recommendation on the agenda of the ILC (2012)), the CEACR made – among others – certain interesting concluding remarks.

In the first place it stated that 'the surveyed instruments[257] warrant being revisited',[258] due to the fact that they correspond to labour market and societal structures dating back to the 1950s and 1960s, while more recently, and in particular with respect to the C102, it noted several complaints coming from different countries, touching mainly upon matters of *gender bias* (prejudice) reflected in several of its provisions.[259]

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255 See also Chapter 1, Section 1.2, Sub-Section 1.2.2.

256 See International Labour Conference (2012), pp. 1–15. 'The new ILO Recommendation is the first autonomous one to be voted on social security in 68 years. It comes 24 years after the last legal instrument on social protection was discussed by delegates from governments, workers and employers back in 1988'; see for further information the ILO News website.

257 These instruments were: the C102, the C168, as well as the R67 and the R69.

258 See for analysis International Labour Office (2011a), p. 260.

259 In a recent academic publication, questions have been posed, followed by discussion, on several matters related to the ones placed by the CEACR (2011) – by way of illustration, whether the ISSS keep up with new developments in social security – and certain conclusions were drawn concerning the overall effectiveness of the ISSS. See for analysis Dijkhoff (2011), pp. 326–345, 356–360.

To this end, the CEACR expressed the belief that 'these provisions of Convention No. 102 and subsequent Conventions should be adapted to the needs of modern social security administration and the ILO's more recent policy guidance on gender equality so as to strengthen the ongoing efforts to increase the level of ratification of Convention No. 102. One way of doing so would be *a limited revision of the Convention by the International Labour Conference* or *the adoption of a Protocol to the Convention to integrate gender-sensitive language and adapt the definition of the standard beneficiary to the present realities.* Another way would be for *the Committee of Experts to provide an interpretative declarative statement on the adaptation of certain provisions of the Convention.* (…). Of course, any adaptation or language change in the provisions of the Convention should not lead to any reduction in the level of benefits guaranteed by Convention No. 102'.[260] It continued by saying that '*there may also be an opportunity to consider in future whether a new instrument is required to complement Convention No. 102*, bearing in mind the need, on the one side, to extend social security guarantees provided by the Convention and, on the other, to combat increased instances of undeclared work, social security evasion and fraud'.[261] The CEACR did not take a clear position on which exact direction efforts should be focused on first, leaving this for future consideration.

It is indeed intriguing that the CEACR after quite a long time proceeded itself with a more concrete *orientation* on what could possibly be done in relation to the present status of the ISSS, touching upon different aspects of implementation; especially if one recalls previous statements such as that 'it has become clear that the time is not yet ripe for a revision of these standards'.[262] It is very likely that these proposals of the CEACR are associated partly with the ongoing process of improving the standards-related activities of the ILO, as well as the establishment and implementation of a standards review mechanism (SRM) (a new international *labour code*).[263] This actually consists of a continuation of the first revision of the

260 See International Labour Office (2011a), p. 260.

261 See International Labour Office (2011a), p. 261. Options on how to enforce social security standards – some of them presenting similarities to the ones previously expressed by the CEACR – had been equally stated, before the adoption of the new Recommendation *concerning national floors of social protection*. See Chapter 1, Section 1.3.

262 See Nußberger, A. (2007), p. 48. The issue of adaption/revision, or better to say improvement, mainly of the *minimum* ISSS included in the C102, as well as in the CoE ECSS, has been already a matter of concern for the academic community for quite some time now, and several discussions have taken place to this end, as well as to the issue of their interpretation. See also Chapter 1, Section 1.3. See, for analysis also the following articles and contributions: Pennings, F. (2006d), pp. 165–181; Schoukens, P. (2007), pp. 71–90; Vonk, G. (2008), pp. 1–6. Dijkhoff, T. and Pennings, F. (2007), pp. 149–174.

263 For the overall matters for decision – including those on social protection (social security) see for analysis Governing Body (2011a), pp. 1–26. See all the relevant documentation composed so far by the Committee on Legal Issues and International Labour Standards (LILS) in the website of the ILO on International Labour Standards Policy.

ILO labour standards by the *Cartier Working Party*.[264] As far as social security is concerned the final structure for revision, as well as the actual timing, is meant to be defined.[265]

In my view, before seeing which of the above alternatives best fits the adaptation of the ISSS to the progression of social security and the development of different arrangements in the field, it is much wiser to have a thorough look at the existing obstacles to further promoting the ISSS and especially the one of *lack of political interest and will*. It should be first reassured that at national level a real political interest and will on these ISSS exists or whether the complaints and/or the evidential proof (if given) on claims regarding difficulties with applying or ratifying these standards act as a *cloak* concealing the belief that their time has expired. Because only if a sincere political decision is taken – and this should primarily come from the more wealthy states – in favour of these standards, indeed actions for their improvement can indeed have fruitful results. And here comes once again the *hot potato* issue of *reconciling the 'social commitments' and 'economic freedoms' in the international arena* (see Section 6.5, Sub-Section 6.5.1, above). States should be fully engaged into any process of adapting, or revising, or reforming, or modernising the ISSS. Any, ongoing efforts to increase the level of ratification, as well as the proper application and compliance with already ratified ISSS, will *fall on deaf ears* unless political commitment is guaranteed. We come, therefore, to the following issue: how clearly or how seriously are states taking social security and international social security law?

As an example, the case of the Revised ECSS of the CoE can be referred. This international instrument has been open for signature by the CoE member states, as well as for accession by non-member states and by the EU, since the 6th of November 1990. Its aim is the updating and betterment of the provisions of the ECSS. Among the most important improvements in the text – apart from the higher levels of coverage and the extension of both the levels and the duration of benefits, which constitute the basic arguments on the part of the states for non-ratification, and reaching the higher requirements can indeed be problematic for some – are the inclusion of new provisions, flexibility and abatement of the rigidity on the qualifying and other conditions, abandonment of all kinds of discriminations based on sex and an emphasis on prevention. At present, only fourteen countries have signed it[266] and only one has ratified it.[267] The *practical*

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264 See for analysis Chapter 1, Section 1.3.

265 For information and discussion on the working methods and the principles to guide the review, options for the standards to be reviewed, and possible time frames, see Governing Body (2011b), pp. 1–33 (for references to social protection (social security) and social security in general, see pp. 12, 17–19, 25, 28–29, 32).

266 Namely: Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Italy, Luxemburg, the Netherlands, Norway, Portugal, Sweden and Turkey.

267 Namely: the Netherlands.

wisdom, which arises from this example, is that with alacrity the political leaderships of states may welcome improvements on paper, but when they are called upon to affirm this through legally binding obligations (ratifications), they find a reason not to do so.

If however, the adaptation or revision of the ISSS is considered by the ILO, in the near future, an issue that calls for a concentrated effort, which cannot be delayed, an accelerated revision procedure could be launched. The ideal way to do so would be for the CEACR to proceed with the elaboration of the standards without any political meddling (bias); solely on the grounds of empirical evidence emanating from national laws and practices (national legal social security reality), its separate examination of the ISSS in every country, and first and foremost by taking into account the existing obstacles. The increase in the CEACR members and its collaboration with external independent national experts, proposed earlier, would be particularly beneficial for such an effort. If the CEACR could adapt or revise the ISSS in such a way, this would be a big achievement

However, currently this is not possible according to the ILC standing orders on Convention and Recommendation procedures. Be that as it may, , the CEACR, under a *status of emergency*, could prepare either a new text of the C102 or a Protocol attached to it, as already proposed in its suggestions, introducing the required changes and reformatting the wording of the relevant provisions accordingly, without any prior political discussions, and subsequently present them to the ILC. The final approval of the CEACR work should, however, come from the ILC. In any event, a Revised C102, or a new Protocol attached to it, would require national ratification; unless, other ways of actually imposing their acceptance from the national side could be put into effect.

With respect to the elaboration and composition of a new instrument supplementing the C102 (which would also encompass the matter of incorporating new social risks), this should undoubtedly better to be left until later (bearing in mind the ongoing process for overall improvement of the ILO standards-related activities and policy, as well as the establishment and implementation of the SRM). The international political situation as formulated at present is not fertile enough for such an attempt. It has been shown that several problematic points in relation to the existing *minimum* and *higher* ISSS need to be sorted out so as to increase the level of ratifications and ensure proper application.

What seems to be for the moment a more attainable and realistic target is the last suggestion of the CEACR: to make a statement on the adaptation of the minimum standards provisions, but this should not take the form of a declaration. It is about time that the restrictions of the CEACR's competences were overridden and it is actually a matter of principle for the contracting parties to find a compromise. As

correctly noted 'although there have been repeated efforts to differentiate between 'interpretation of law' and the 'application of law', even to prohibit interpretation, it has become clear that the interpretation of norms must be an inherent element of the application of legal norms'.[268] It should be also remembered that the modernization of the EC Social Security Coordination Regulation No. 1408/1971 was done through the ECJ judgments (ruling). The same goes for the CoE ECHR, through the work of the ECoHR. So, also for the ISSS it is suitable to have a judicial review.[269] The ISSS can provide flexible, but meaningful guidance on the establishment of national social floors; nevertheless, as the CEACR has also stated 'the legal framework provided by the existing social security standards needs to be strengthened',[270] and this should come from both the international and the national sides.

Last, it is true that *flexibility* regarding the existing up-to-date ISSS is vital so as to enhance their utility and further promotion; nevertheless, it should not end up undermining them. This is exactly where a more authoritative interpretation can contribute. With respect to their modernization, any action should have as an ultimate goal the enrichment of social protection provided at the national level.

6.5.4 EFFORTS TO OVERCOME NATIONAL PRACTICAL DIFFICULTIES

a. More rational utilisation of available means

It has been demonstrated that hindrance to the further promotion of the ISSS, is associated with certain pragmatic (practical) obstacles coming from the national level, which are, in part, attributed to the presence of legal-technical difficulties.[271] Since their retention would end up de-valuing the ISSS and adversely affect their impact, states should take advantage of the means of action, which they have at their disposal from the international side, in a more rational way.

To start with, states (governments) should not avoid, but seek international support in cases where non-conformity of national legislation with the ratified ISSS has been detected by the international supervisory committees and relevant individual direct requests or individual observations (of the ILO) or resolutions (of the CoE) have been published and communicated to the competent national Ministries, so as to resolve newly arisen issues or pending ones. Within the same context, when states (governments) are about to make decisions on changing

268 See Nußberger, A. (2007), p.47.
269 See also Hofman, B. (2007), p. 144.
270 See International Labour Office (2011a), p. 257.
271 See Section 6.3, Sub-Section 6.3.1, above.

national social security legislation or propose alterations to specific provisions (such decisions may originate from the government itself or from external pressure for changes (one pertinent and recent example, as I have analytically elaborated on,[272] is the requests to the Greek government from the IMF and the EU for changes of social security provisions as part of agreed economic package deals)), apart from a prior thorough national examination of their compatibility with the accepted ISSS, and in terms of clarity, they should – as a rule and not as a last resort – request direct consultations with the experts of the international organisations so as to avoid future cases of non-compliance. This should take place before the submission of draft-bills to the Parliament for adoption. Direct consultation and on regular time-intervals should equally accompany the nationally submitted reports on the reasons for non-ratification of other up-to-date ISSS.

Technical assistance[273] and informal opinions provided by the ILO Bureau need to be used for this purpose as well. As shown by this research,[274] so far, and in the Greek case in particular, one of the problems is not the non-frequent use of technical assistance, but lack of recourse to technical assistance in general. Besides, request for such assistance costs no money; simply, dedication of time and effort. With respect to the informal opinions, they need to be requested by the states. Greece should use this means in future.[275] These opinions may not be *authoritative* (any interpretations given are not binding for the state);[276] nevertheless, they can be of guidance and – taken from another perspective – show on the part of the country concern as regards respecting their international obligations and a will to find solutions. Of course all the above require political will and interest, as well as more involvement by the national administration; civil servants[277] on their own initiative to remind government of issues at stake and press for the utilization of the available means. Furthermore, the power(s) given to the trade unions by the ILO Constitution is another mean, which should be properly employed.[278]

Last, I would like to emphasise the need to increase *the efficiency* and *execution of parliamentary control* in relation to the ratified ISSS and the respective ILO

272 See Section 6.4, above, as well as Chapter 5, Section 5.4, Sub-Sections 5.4.1 and 5.4.2.

273 See also Chapter 1, Section 1.1, Sub-Section 1.1.1.

274 See Section 6.2, above, as well as Chapter 5, Section 5.3, Sub-Section 5.3.2, 5.3.3 and 5.3.5; Section 5.4, Sub-Section 5.4.2.

275 See on this issue also Chapter 5, Section 5.4, Sub-Section 5.4.2.

276 Based on information obtained from the discussions held during the research visit that took place in the ILO Social Security Department in Geneva (17–18/01/2008), the informal opinions are, at the end of the day, 'formal-informal'. So, in practice they are 'formal', because in case a country indeed wants to have its legislation in line with the ISSS will follow them.

277 See also Chapter 5, Section 5.4, Sub-Section 5.4.2.

278 Compare the proposal on the alteration of the mentality of key actors, made in Section 6.5, Sub-Section 6.5.2, above.

Conventions and CoE instruments. Actually, a development which has become evident over the last two decades (it could be characterised as *an unwritten rule*), is that almost all the legislative proposals – draft bills – submitted by the government to the Parliament on social security reforms, and other relevant provisions, is done through the *status of urgency*.[279]

In such a manner, the relevant parliamentary committees have no substantial time to examine the governmental proposals with respect to their compliance or not with the ratified ISSS (another existing issue though pertains to the fact that the parliamentary committees are not familiar with the content of these ISSS) and their subsequent passage to the plenary for final adoption is done in *zero time*. Furthermore, the government does not provide any proof or information in presenting the draft-bills that any prior review of compatibility with the ISSS has been done. Consequently, it seems that the matter of deciding whether the draft-bills are compatible with the international social security legislation is absolutely under the control of the competent Minister.[280] This significantly undermines the institution of Parliament, and reflects, in a sense, *executive authority* over the established parliamentary procedures.

Accordingly, the *custom* of enacting bills without proper parliamentary review must be put in good order. The introduction of stricter legislative review procedures by parliamentary committees, and in plenary, is not only necessary, but both imperative and exigent. The compatibility of new laws to be introduced can no longer be solely a matter for the competent Minister, and constant parliamentary attendance should be entrenched. A specific time-period should also be set within which the Ministry would have to submit its proposals, and sufficient time-period should be set as well for the parliamentary committees to examine them before transfer to the plenary.

Furthermore, an agreed package of information and supporting documentation should accompany legislative proposals and the submission of the draft-bills to the parliament, including all relevant information on the accepted ISSS, and what would be even more efficient, to attach minutes with consultations undertaken with representatives of the international organisations, as well as any informal opinions requested and/or received.[281]

Finally, trade unions[282] should ensure that the adopted international social security instruments, including the up-to-date ISSS, end up for discussion in Parliament.

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279 See also Chapter 3, Section 3.5, Sub-Section 3.5.1.

280 See also Chapter 5, Section 5.4, Sub-Section 5.4.2.

281 Concerning the potential role of the Parliament, see also Chapter 3, Section 3.2, Sub-Section 3.2.3, as well as Chapter 5, Section 5.3, Sub-Section 5.3.4.

282 See for analysis Chapter 5, Section 5.3, Sub-Sections 5.3.4 and 5.3.5.

Otherwise, Parliament should be informed, through the contact of trade union representatives with parliamentarians. Within similar terms, trade unions could request parliamentarians to reopen discussion on the possible ratification of a non-ratified instrument, or launch discussions on non-submitted instruments.

b. Corrective action via beneficent practices

Lack of other resources,[283] forms one more component of the pragmatic (practical) obstacles, coming from the national level, and blocking the way to the further promotion of the ISSS. Thus, corrective action via beneficent practices is essential as well, centered mainly on three things; namely, financial resources reparation, invigoration of statistical and administrative capacity and knowledge diffusion.

Combating mismanagement and misallocation of financial resources[284] should be a primary target in conjunction with better governance[285] structure and management responsibility[286] at the national level. The issue of re-allocation and re-distribution becomes even more important in case of countries with a highly fragmented system, like Greece,[287] aiming at an equal share of the *profits* between the different categories of the population. A re-prioritisation of political decisions and their rationalisation is absolutely necessary to this end.[288] The currently prevailing law and policy-making, which centres solely on increasing competitiveness and economic growth, needs equally to take into account social aspects. The continuation of sacrifices through decreases in the level of social protection as part of austerity measures[289] will only end up having negative consequences – greatest among them that of social unrest. It is now time, more than ever before, that the basic principles and requirement set in the ISSS, and especially those on good organization and management of the system should to be respected and applied. Besides, the obstacle of non-conformity of national legislation with the ISSS is not always a real difficulty and could be overcome (depending though on the case) through proper economic handling.

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283 See Section 6.3, Sub-Section 6.3.1, above.

284 On the issue of lack of financial resources see also Chapter 5, Section 5.3, Sub-Section 5.3.5, and Section 5.4, Sub-Section 5.4.2, as well as Section 6.2 above.

285 It was pointed out back in 2006 that 'good governance and transparency of organisation were not yet topics for Convention 102. Although the importance of good administration, good governance and confidence is now more stressed than in Convention 102, these terms are not in contradiction with this convention', see Hofman, B. (2007), p. 140.

286 As also pointed out 'accountability has been very badly undermined, and the need for supervision and regulation has become much stronger', see Sen, A. (2009), par. 3.

287 See reference on this issue in Section 6.5, Sub-Section 6.5.2.

288 See also Section 6.3, Sub-Section 6.3.1, above.

289 There is currently an increased concern of the CEACR on the impact of the austerity measures applied all over the world over the last two decades on social security and especially minimum levels of protection as well as the financial sustainability and proper management of the national social security systems. See International Labour Office (2011a), pp. 2, 27.

As the CEACR (2011) also pointed out 'the lessons of the current financial and economic crisis prompt the need to elaborate guidelines on sound governance and protection of social security funds, based on principles of prudent finance, tripartite oversight and best actuarial practices.[290] Such guidelines could help rebuild governments' institutional and regulatory capacity to steer their social security systems through crises, find a new balance between the public and private tiers of their pension systems, and strengthen the mechanisms of social solidarity between the economically active and passive, the rich and poor, the young and old, the healthy and sick. They should concretise the general responsibility of the State for the financial and administrative management of social security schemes'.[291]

The above-mentioned beneficent practices on financial resources reparation would – to a significant extent – equally contribute to the improvement of the present lack of statistical and administrative capacity.[292] Be that as it may, for the enhancement of statistical and administrative capacity, financial resources or build up of modern infrastructures are not an absolute solution; put in another way, financial investment should be combined with other practices, such as investment on *educational* and *learning skills* on the content and overall function of the ISSS. Public administration officials – constituting the *human resources* – dealing directly and in first instance with the ISSS, should follow trainings subsidised by the government, and become more familiar with the ISSS and in particular the required social security (standards) statistics.[293] This way they can *transfer knowledge* to the competent Ministers (who could themselves follow relevant training, but usually there is not time for them to do so). Once again the existence of political interest and will is vital.

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290 See also Chapter 5, Section 5.2, Sub-Section 5.2.2, Section 5.4, Sub-Sections 5.4.1 and 5.4.2. It is interesting to note that the CEACR in 2011 also recognised 'for the first time that the international provision of the Code and the ILO C102 on the conduct of actuarial studies is both not well-known and not well understood by countries. (…). It is an international requirement that countries conduct and submit actuarial studies and have audit inspection at regular time-intervals and in any case prior to the conduct of any reforms'. Moreover, the CEACR placed after a very long time so much emphasis on the re-adjustment of benefits and the maintenance of the purchasing power of the benefits. See International Labour Office (2011a), pp. 189–190 and 193–196 respectively.

291 See International Labour Office (2011a), pp. 260–261 (see also the core elements discussed in Part IV, Chapter 1 – Making up the deficit in social security regulation, pp. 180–198).

292 On this issue see also Chapter 5, Section 5.3, Sub-Section 5.3.5, and Section 5.4, Sub-Section 5.4.2, as well as Section 6.2 above.

293 See for example the website of the ILO on Social Security Inquiry, as well as the training opportunities provided by Turin International Training Centre.

This is also in line with the need to spread knowledge at multiple levels,[294] as well as achieve the sensitisation of other actors involved. Trade unions[295] could be characterized as a *springboard* to the initiation of several different practices for this purpose and be conducive for a broader mobilisation to occur. Within their own circle and in collaboration with their international counterparts, exchange of information, knowledge transfer and lessons-drawing should be enhanced, by having common meetings and conducting joint studies as a starting point. Common actions in the form of organised campaigns, conferences, *etc*. may follow. Afterwards, efforts, on the establishment of links with civil society[296] networks for the dissemination of information and relevant materials, should be made. If accomplished, this would lead to a new *civil society structure* and facilitate *coalitions* – both national and international – on both the ratification and the proper application of accepted ISSS, as well as on the role of developing international social security law safeguards. In such a manner, understanding by the wider public would increase.

Furthermore, trade unions could make a request to the ILO Bureau to invite – without actual participation in discussions – to the annual ILO ILC representatives of the parliament (preferably from every political party represented in the Greek Parliament and the European Parliament). If accepted, this initiative would enable parliamentarians to obtain direct knowledge and become familiar with current issues on the ISSS, not only in their country, but also to other European and non-European countries, and this may also increase parliamentary questions in relation to the ISSS to the government.

Last, as the CEACR (2011) also pointed out, the role of national courts[297] should be enhanced, and give further substance to the right to social security. Accordingly, a better study of the ISSS and of possibilities for direct effect, as well as the development of relevant case-law, is needed.[298] An interesting series of recommendations was made back in 2006, by a judge in the international chamber of the Dutch Central Appeals Court (Centrale Raad van Beroep). I refer here to certain points of his recommendations, which I consider of great importance and particularly pertinent for the awareness and the further promotion of the ISSS: (a) the compilation of manuals, which should encompass all the available information about international social security standards-setting instruments

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294 On this issue see also Chapter 5, Section 5.3, Sub-Sections 5.3.5 and 5.3.4, Section 5.4, Sub-Section 5.4.2, as well as Section 6.2 above.

295 See also the proposal made in Section 6.5, Sub-Section 6.5.2, on the alteration of the mentality of key actors.

296 See also the proposal made in Section 6.5, Sub-Section 6.5.2, on the alteration of the mentality of key actors.

297 See also the comments made in Section 6.5, Sub-Section 6.5.2 (Altering the mentality of key actors), concerning courts and acting lawyers, above.

298 See International Labour Office (2011a), pp. 3, 101, 112.

(either including minimum or higher standards) and their provisions, since, as correctly pointed out, it would make things easier for judges – and would add practicing lawyers and academics – to have the comments and discussions of the preparatory work and the relevant remarks given gathered in one place; this was my attempt in Chapter 2 of this doctoral thesis in relation to the C128;[299] (b) judgments of different national competent courts, where reference(s) in relation to the ISSS included both in ILO and CoE instruments, should be made available through the conduction of publications.[300]

PART III
CLOSURE

6.6 ADDED VALUE

Apart from the relevance of the leading research question (research problem), which has been analytically described and justified in the introductory Chapter,[301] this doctoral thesis brought in some additional qualities.

It consists of the first formal comprehensive academic analysis, based on structural rational criteria, of the role and meaning of the ISSS in a specific country, as well as placing the proven out obstacles to the further promotion of the ISSS in a developed social security system into a thorough broader systematic context, following gradual and stable analysis. Consequently, it forms a sound foundation for the conduct of future research in the field of social security international standards-setting.

Taking into account the situation currently existing within the country (especially since the mid-2009), as well as the radical transformation of certain of its political, economic, legal and social constituents, one may argue that Greece does not constitute or is no longer a *typical* country for research investigation. To this, I would like to further counter-argue[302] that through this in-depth single case-study, the research factual findings of the penultimate Chapter and the conclusions, discussion and recommendations included in this last Chapter, shows that Greece, to the contrary, is a country, which deserves even more attention in future in terms of formal systematic academic research. Moreover, the results of this work are equally useful for enquiry in other countries; especially those facing currently similar difficulties as Greece. The research methodology I have employed forms

299 My colleague in the Europe and Social Security Research Programme, Dr. Tineke Dijkhoff, has done the same in relation to the C102. See Dijkhoff (2011), pp. 23–107.
300 See for further analysis De Vries, T. (2007), pp. 99–100.
301 See Chapter 1, Section 1.4, Sub-Section 1.4.4.
302 See also my initial elaboration on this issue in Chapter 1, Section 1.4, Sub-Section 1.4.3.

a sound basis for this purpose as well. It is in situations of *turbulence* – in other words, socio-economic, political and legal disorders – that research studies and field work are even more necessary so as to shed more light and identify factors, which should be thoroughly examined. Besides, which exact characteristics and components may, at the end of the day, categorise countries as being *typical* (put differently, classic examples) or *a-typical*. If such a categorisation prevails, the danger lurks for academic research to end up being *obsolete*.

The dual *legal-political* character of the up-to-date ISSS and their multiple implications has been detected and substantiated in a profound way, based on evidence.[303] The ISSS have been (and still are) the *product of compromises* between national and international perceptions about law and policy-making. Moreover, it has been equally shown, that the interference of economic factors in *social affairs* has always been present (acting though in *older times* more in the background), but has gradually become more at the forefront in *recent times* and has been affecting the further promotion of the ISSS, as well as the tackling of the emerged obstacles.

Furthermore, as illustrated,[304] absence of a constructive social dialogue[305] and of efforts to enhance its effectiveness has unfavourable consequences and undermines the role of the ISSS and the initial purpose of their development, as well as their future potential.

Going further, my research factual findings, their presentation and analysis,[306] as well as the conclusions I have reached, both enrich and supplement the findings of the latest ILO CEACR General Survey (2011) on *Social Security and the Rule of Law*.[307] Besides, the problem and a large part of the issues raising from that survey coincide with my results.[308] In such a manner, I trust that my research shall be of an added value to future – international and national – deliberations in the field of ISSS and social security in more general terms. Moreover, the CoE has initiated investigation of the reasons of why countries do not proceed with the ratification of ISSS.[309] Thus, this doctoral thesis can contribute to the new effort

303 See also Section 6.5.

304 See Section 6.3, Sub-Section 6.3.1, above.

305 See on the reasons for establishing this mean by the ILO in Chapter 1, Section 1.1., Sub-Section 1.1.1.

306 See Chapter 5.

307 See International Labour Office (2011a), pp. 1–284.

308 I have made several cross-references to this survey throughout the entire text of my doctoral thesis.

309 I have obtained this information from an intervention made by Prof. Dr. Paul Schoukens during discussions that I had in one of the meetings with the responsible evaluation committee of my Ph.D. (the Begeleidingscommissie (BC)), of which he was a member, and the UvT research team. As already referred, this evaluation committee has been appointed by the Instituut Gak (SIG) (website: http://www.instituutgak.nl/index.php), which has funded my research within

of the CoE and provide an extended view of the reasons for non-ratification, not only from a purely legal comparative point of view, but also from further data, which emanated from the use of other methodological techniques.

I believe that the research I have undertaken fulfils its aim, regardless of limitations, which could be mainly attributed to the choice I made to proceed with the exploration of such a complex, but in parallel intriguing, research problem through the use of a single country study.[310] Despite this my doctoral thesis can prove beneficial, since it provides food for brainstorming and discovery of new directions that could be followed.

6.7 EPILOGUE

Almost seventeen years ago, in 1996, Amartya Sen[311] remarked at a conference on *Development Thinking Practice* that among the 'many remarkable – and spectacularly diverse – "development experiences" in the post-war world', has been the 'birth of the welfare state,[312] starting from Europe, with a major impact on the quality of life, but with significant financial burden for the state'.[313] He continued by stressing the fact that 'indeed, many countries in West Europe have successfully guaranteed broad social security – including public education and health care – in ways that were previously unknown in the world'.[314]

The following statement of his, however, has been, and still is, pertinent. 'There is certainly plenty of evidence from the experiences of many countries which show that markets can be remarkably vigorous, that exchange within and between nations may be full of rewards, and that a predilection to shut out the markets tends to produce disasters rather than equity (…). But to comprehend what the market can do so well need not involve ignoring what the state can – and does –

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the framework of the *Europe and Social Security Research Programme*, in order to follow-up and ensure the proper implementation and finalisation of my work.

310 See the explanations I have provided to this in the introductory chapter of my doctoral thesis and in particular on the Section 1.4, Sub-Section 1.4.3 – Methodological functionality: The use of case-study.

311 Amartya Sen 'has greatly influenced international organisations such as the United Nations agencies, the ILO and the World Bank. At the same, he takes a broad view of the subject (social choice and welfare economics) and has done much to enlarge the perspective of economists, see Atkinson, A.B. (1999), p. 173. He was awarded the 1998 *Nobel Memorial Prize in Economic Sciences* for his contribution to welfare economics and his interest in the problems of society's poorest members. In 1999, he also received the *Bharat Ratna* the 'highest civilian award in India' by the President of India.

312 *Welfare state* is a system in which the government undertakes the main responsibility for providing for the social and economic security of the state's population by means of pensions, social security benefits, free health care, and so forth (Oxford Dictionary of Politics).

313 See Sen, A. (1996), pp. 1–2.

314 See Sen, A. (1996), p. 3.

achieve, nor entail seeing the market mechanism as a free-standing success irrespective of state policy'.[315]

As he had also pointed out much earlier, back in 1983, 'even in a non-socialist economy, the existence of social security – when present – makes the entitlements go substantially beyond the operation of markets forces'.[316]

If one thinks deeply about these words, it appears that social security, and in particular the developed, acclaimed and adopted up-to-date – *minimum* and *higher* – social security standards, being the product of international consensus, are undoubtedly one of the most fundamental achievements not only for the Western World (European descent), but for all human kind. They could be characterised as an emerged *paradigm*, which has remained alive for many decades now. They gave *flesh* to the right to social security and broadened protection, providing a range of alternatives for application. Social security, especially when based on the basic international principles and requirements set by the ISSS, is the means by which society keeps a balance and helps individuals to make the utmost of all the advantages offered to them within their own country and beyond. It entails the capacity and capability to ban and neutralise fear, as well as despair, for large and potentially vulnerable groups (such as the sick, the elderly, the unemployed, men and women and their families, *etc.*)

It is true that while social security has been sheltering, and promoting the well-being, of the different categories of populations, it also brought, over the course of time, increased financial liability for the State and public institutions. In other words, social security costs money – *public money* – and the fiscal burden involved has been considered, especially in the last two decades, to have adverse consequences for the operation of the economy as a whole. All the same, such concerns cannot and should not overshadow its merits, since, as already shown,[317] alternative routes exist and could be followed, leading to the peaceful coexistence – one could speak of mutual tolerance – between social and economic forces, creating *good fortune* and fostering *social progress.* All that is needed is determination and desire – path or method – to make it happen.

The ISSS are important in order to retain the system, or bring it back to the initially agreed international parameters, especially in times of crise which may appear, separately or simultaneously, in different forms – economic recession, social turmoil, and democratic shortfalls.[318] Therefore, their shortcomings and

315 See Sen, A. (1996), p. 3.
316 See Sen, A. (1983), p. 756.
317 See Section 6.5, above.
318 See also International Labour Office (2011a), pp. 228, 61, 199.

limitations (weaknesses),[319] which *blur* their potentiality and cause *confusions,* should be confronted. 'We live in a world of many institutions (involving the market, the government, the judiciary, the political parties, the media, and so on), and we have to see how they can supplement and strengthen each other, rather than getting in each other's way'.[320] It is only through this path that any kind of obstacles can be tackled – by acting in emulation spirit and in a synergetic way.

As Franklin D. Roosevelt said in 1932, '*the country needs and, unless I mistake its temper, the country demands bold, persistent experimentation. It is common sense to take a method and try it. If it fails, admit it frankly and try another. But above all, try something'.*

[319] See also Section 6.1, above.

[320] See Sen, A. (2001), p. 1. For a review of Amartya Sen's book on *Development as Freedom*, Oxford University Press, 1999, see Yee, D. (2003).

SUMMARY

INTRODUCTION

The standard-setting activity of the International Labour Organisation (ILO) has been ongoing for several decades, actually for approximately 93 years now. It could be defined as a system of international labour standards in all work-related matters, among them, social security. It is this specific activity that contributed significantly and influenced the establishment of social security systems around the globe, or their reconstruction, as well as the work of the ILO descendants in the field, namely the Council of Europe (CoE).

In essence, the standards evolved from a growing international concern that specific action needed to be taken on a particular subject at a particular moment in time. This was also the case with the international social security standards (ISSS).

THE INTERNATIONAL SOCIAL SECURITY STANDARDS (ISSS): A REVIEW

Three generations of standard-setting activity in the field of social security emerged over time, corresponding to different approaches. The first, which followed the Great War (WWI), and lasted from 1919 to 1939, referred to the protection from particular social risks or to the protection of particular categories of workers or activities. This was the so-called social insurance period: establishment of compulsory insurance schemes with the purpose of improving the economic, social and health conditions of workers and their families.

After the Second World War (WWII), the second generation was inspired by the broader concept of social security developed in the Beveridge Report, and lasted from 1944 to 1964. The Declaration of Philadelphia (1944) redefined the ILO's objectives by extending social security measures to include the provision of a basic income to all in need of such protection and comprehensive medical care. Thus, protection was no longer limited to specific categories of workers or activities. This conception inspired the ILO International Labour Conference (ILC) when it adopted Convention No. 102 (C102) (1952). It remains today the cornerstone Convention of social security standard-setting, encompassing the nine traditional branches of social security – medical care, sickness benefit, unemployment

benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit – and providing minimum standards.

At that time, the CoE also commenced its own work in the creation and adoption of ISSS at a regional (European) level. These are laid down in the European Code of Social Security (ECSS) (1964), which includes the same nine traditional branches of social security as those in C102. Aspiring to establish a higher level of social security protection than that already established by C102 on minimum standards, it consolidates minimum standards, which would, however, raise those standards already set in C102. It has equally played an important role in the establishment and development of social security systems all over the world. The Protocol to the ECSS (1964), accepted at the same time as the ECSS, is an instrument that amends and supplements the ECSS by setting even higher ISSS. Moreover, it is worth noting that explicit reference to the right to social security is made in the CoE European Social Charter (ESC) under Article 12, which is also regarded as one of its most significant rights. In particular, under the second paragraph of this Article special mention is made to C102, since it goes into much more detail than the ESC with respect to the right to social security. Thus, it seems rather logical for the creators of the ESC to have insisted upon the rule that any state which has ratified the ESC, and Article 12 in particular, is bound to provide social security protection in the country, at a level which at least corresponds to the requirements set in C102.

In conclusion, from 1965 to 1988 a third generation was born. The ISSS belonging to this generation have further increased the level of social security protection to be provided at a national level. The multilateral instruments in the field of harmonisation, containing much higher ISSS, have also been modelled on C102. Among them, the ILO Convention No. 128 on Invalidity, Old-Age, and Survivors' Benefits (C128) (1967) belongs to this generation, as well as the CoE Revised ECSS (1990). The Revised ECSS has a similar structure to that of the ECSS. Overall, it has three goals to meet: the advancement of the standards set in the ECSS and its Protocol, the achievement of greater flexibility, and neutrality with respect to issues relating to gender (gender equality). All the ISSS belonging to the third generation were thoroughly taken into account when the Revised ECSS was being drafted.

The standards set in the international multilateral instruments falling under both the second and third generations refer in more concrete terms to the content of a national social security system (i.e. personal scope of application, material scope of application, as well as conditions for entitlement to a benefit, level and duration of a benefit, administration, financing, *etc*.), and they provide Member States with greater flexibility. In other words, they consider different social security arrangements as equally valid, as long as they abide by the embodied basic principles and (legal) requirements. Thus, *they do not restrict any standard law, award, custom or agreement which provides for more favourable conditions to the beneficiaries concerned than those outlined in the social security conventions.*

In a nutshell, at the time of their adoption, as well as to the moment of speech, the global, as well as regional (European) ISSS developed and adopted respectively by the ILO and the CoE – with a major emphasis on those developed after WWII – have great potential and serve the following vital purposes: promoting the right to social security for everyone, defining its legal essence and substance, building up strong national social security foundations on an equal footing, advancing domestic levels of protection and preventing them from being lowered, recognising that social justice, social coherence and social stability are matters to be dealt with collectively and not solely between individual states, avoiding social dumping (pricing policy), preventing adverse international commercial competition for the working population groups and their dependants, as well as economic competition in the field of wages, proving that labour is not a commodity and should by no means be treated as such, and lastly reminding governments and social partners that without social security any economy will malfunction.

SOCIAL SECURITY AND THE INTERNATIONAL SOCIAL SECURITY STANDARDS (ISSS) WITHIN THE CONTEXT OF THE EUROPEAN UNION (EU)

The ILO, for at least a decade (1952-1962), assisted the (then) newly created European Economic Community (EEC) (1958) significantly with emerging queries pertaining to several social security and labour mobility matters. In particular, the founding governments had expressly asked for an ILO expert committee to be established in order to advise them on the social competencies to be given to the EEC. Despite the fact that ILO and EEC cooperation was rather extensive at the time, the result was *de rigueur*, meaning that any general harmonisation in the social sphere would be unnecessary, since the market could stand on its own merits against any unwanted effects of competition. Put in another way, the prevailing belief was that higher productivity would counteract the cost that better-regulated social standards could bring. This is more or less the case even today, at least as far as social security is concerned. Complementary competence has been given to the European Union (EU) in this field, which actually emphasises once more that Member States have the principal authority to organise their social security systems. There is still a lack of EU competence in the field of social security harmonisation.

What is particularly interesting, though, and regardless of the aversion on the part of the then EEC (nowadays EU) to access to certain proposed ILO Conventions in 1957, among them C102 (as a means of combating problematic social issues arising from closer future economic cooperation at a European level), is the fact that the initial states that signed the Treaty of Rome (1957), ratified, on their own initiative (by government decision), the C102 (or parts of it) in the period 1956 to 1974. Thus, each country indeed designed and developed its own social security system based on its own political, economic and social heritage, but the ratification of C102 added to this by providing substantial guidance and a normative context to social security.

Perhaps this is also one of the reasons why, from the 1970s onwards, the EEC started slowly to look somewhat more at social affairs, since the C102, as well as the ECSS and its Protocol (after 1964), had been ratified by most of its members. However, it was only in 1997, through the Amsterdam Treaty, that the right to social security was recognised as a fundamental right. The Chapter on Social Policy was included in the Treaty of the European Communities (TEC), and under ex-Article 136 it was expressly stated that the Community and its Member States should respect fundamental social rights such as those included in the ESC of the CoE. Thus, reference was implicitly made to C102 – a reference now also included in the Lisbon Treaty – as well as the urge to respect the basic principles and requirements laid down in this international multilateral instrument.

All the same, and particularly towards the end of the 1980s, the number of ratifications of the minimum and higher ISSS, developed both by the ILO and the CoE, started to decline. The following phenomenon actually gradually emerged: countries considered to have established progressive social security systems began to show disinterest in the ratification of new ISSS (i.e. some of the old Member States of the EU) – even those setting higher levels of protection; while other countries that joined the EU at a later stage, during its fifth and sixth enlargements, as well as those with an acceding status, candidate status, or potential candidate status, began to ratify (at least) the minimum ISSS in the late 1980s and early 1990s (the same counts for the ratification(s) of the ESC and the Revised ESC). As a matter of fact, it is also intriguing that, unlike in the period from 1956 to 1974, one of the main reasons for the increase in the number of ratifications by these latter countries, at least of the C102, but also of the ECSS and its Protocol, was the strong EU support for bringing the national law and practice of these countries into line with the ISSS, so as to have less far to go in terms of their potential future EU accession. In other words, it seems like the EU decided to *commit itself* to placing the ISSS, minimum and higher, at the heart of European social policy.

Hence, not only at an EU level, but also globally, a kind of *haziness* emerged, especially in the last two decades, in relation to the developed and adopted ISSS. There have been fluctuations in how the ISSS have been regarded by different parties in different situations and in different time periods. A complexity and variance in aspirations currently prevails, and this, despite the fact that these standards have played a determinative role, not only in safeguarding a decent level of protection on a global scale, but also in mapping out the route for a potential future establishment of a *Social Europe*. Thus, a *recapitulation* of the ISSS began, as well as international discourse on their present and future role.

REVISING THE INTERNATIONAL SOCIAL SECURITY STANDARDS (ISSS) AND SCOPING OUT THEIR FUTURE PROSPECTS AND UTILITY

In the mid-1990s, the question of revising all the international labour standards adopted by the ILO ILC since 1919 was raised. The Working Party on Policy regarding the Revision of Standards – also known as the *Cartier Working Party* – examined, on a case-by-case basis, all the standard-setting instruments based on their level of ratification and on their current relevance to meeting the needs of the international community in each policy field, with a view to strengthening the coherence and impact of its standard-setting system. Consequently, in 2002 a new list of the so-called up-to-date Conventions, Recommendations and Protocols was compiled.

With regard to social security, eight ILO Conventions were still found to be suitable for addressing the major concerns in the field (namely: C102, C118, C121, C128, C130, C168, C183 and C157), comprising both minimum and higher social security standards. Between 2000 and 2001, written consultations were sent to the ILO constituents in order to obtain information on the obstacles and difficulties encountered that might prevent or delay ratification of these Conventions, on methods for improvement, but also on a possible need for revision. Finally, it was decided that the ratification of these eight Conventions should still be promoted, and it was stressed that any initiative undertaken in future with a view to adopting new social security standards must take their content thoroughly into account, as they are the main tools for realising and advancing the basic human right to social security.

However, gradually, a shift of interest towards the *universality* of social security began to take place, and certain queries started to appear concerning the utility and effectiveness of the existing up-to-date ISSS, their international appraisal and future course. Therefore, in 2008, the ILO Bureau presented a technical paper dealing with the present situation regarding the ratification of ILO social security Conventions, as well as their contribution to the ongoing Campaign on Social Security and Coverage for All. The final draft of this technical paper was based on a research workshop on Strengthening ILO Social Security Standards, organised by the ILO Social Security Department in 2007, with the aim of obtaining academic input through the participation of internationally recognised experts in the field of social security and legal standard-setting, and through consultations with ILO constituents.

The question of 'whether existing social security instruments are effective tools for promoting the extension of social security coverage to all those in need, and hence for fulfilling the ILO's mandate with regard to social security' was explored 'by examining the relevance of these instruments to providing adequate guidance for national legislation and practice in view of the changing concept of social security from the standpoint of: (a) their level of ratification and prospects for future ratifications; and (b) the different

options available to rectify identified weaknesses and improve the level of ratification.' This question generated further questions and an even wider mobilisation concerning the future of social security standard-setting in the ILO.

The international discussion concentrated on how to enforce social security standards. It was affirmed that the world needs the existing minimum and higher ISSS; nevertheless, it seemed that a new mechanism is also needed so as to complement them and to meet the target of providing universal access to a basic social benefit package. To this end, various options started to be examined, such as: promoting a wider application and ratification of existing standards; developing a new stand-alone social security Convention providing a universal right to a basic benefit package for everyone; developing a new instrument linked to C102 providing for a universal right to a basic benefit package for everyone; modernising C102; consolidating the existing up-to-date ILO social security instruments into a single, new overarching Convention; developing an overarching Recommendation setting out core social security principles; and defining the elements of a global social security floor.

Moreover, it has been argued that the existing minimum and higher ISSS can provide so-called *vertical coverage extension*, which is *very much related to the implementation of social insurance coverage standards as defined by the current Conventions and Recommendations*.' However, *horizontal coverage extension*, which *corresponds to the minimum core content of the basic human right to social security and 'consists of an essential level of social security*, is still to be achieved. Social Security was further discussed in the Recurrent Review at the ILO ILC in 2011, while within the framework of the ILO Declaration on Social Justice for a Fair Globalization (2008), a General Survey concerning social security instruments was prepared (the instruments under examination were: C102, C168, as well as R67 (1944) and R69 (1944)), based on the feedback given by the ILO Member States on the position of national law and practice, as well as on the information transmitted by the employers' and workers' organisations in this respect. The academic community did not remain passive either, and quite early on – following the developments in the international social security field, as well as the new issues raised – it showed interest in the matter.

THE RESEARCH PROBLEM

Taking all the above into account, and primarily the fact that the world needs international standards in the field of social security, since they indeed formed the basis leading to the development of organised social security systems around the globe, and they still continue to do so, it was deemed essential that proper attention be paid to their further promotion and on eliminating factors overshadowing it. This may sound like a simple task, but in practice it is not, particularly if one considers the fact that lately the ISSS do not seem to

enjoy much enthusiasm at a national level, even though they are still supported by many countries.

This doctoral thesis intends to contribute to the current international discussion and to enrich it from an academic point of view, by addressing in a manifold way, and through the use of a single, but in-depth, country study, the crucial subject matter of the *international social security standards' blockage*. It is conceived as the existence of obstacles to their further promotion, and it has affected critically, all along, any attempt at their advancement, as well as the functioning of the ILO (and the CoE) standard-setting system in the field of social security as a whole.

Notably, the way in which things eventuate the last period in relation to the existing *minimum* and *higher* ISSS reveals, on the one hand, and from an international perspective, that they are still regarded as valuable tools for extending the provision of increased benefit coverage and levels of benefits, and that they can act as a yardstick for the tenability of reforms. On the other hand, and from a national perspective, the low number of ratifications of them is seen as reflecting the lack of interest in these standards, or in their relevance in fulfilling domestic social protection needs; at the same time, however, their contribution to the development of social security as an institution has never been disputed.

Bearing these two perspectives in mind, the international and the national, but also the history and the reasons for development of the ISSS, one comes to the following presumption: *there is a use in the existent international social security standard-setting framework; however, it is imperative to illuminate present weaknesses so as to give it full substance, improve further its impact at a national level, and by extension its contribution to any impending international social security standard-setting approach*. Thus, there is a current normative starting point (for example, the use of the ISSS to protect against cuts in the levels of social security protection, *etc*.) in relation to the international social security standard-setting framework, which still, however, needs further consideration.

This becomes even more relevant on account of the current phenomena resulting from the globalisation of the economy and the liberalisation of labour markets, because, in parallel to the advantages they may have brought, they have simultaneously jeopardised social protection of workers and of the world population in general. Accordingly, it should not be forgotten that as far as the promotion of the basic rights of people in the field of employment is concerned, the reassurance of the right to social protection – and the right to social security in particular – is a cardinal obligation of both the international and the national communities. Therefore, even when competition becomes fierce, a high level of social security protection should not be seen as a competitive disadvantage, but as a competitive advantage.

Thus, the leading research question (research problem) and point of departure is the following: 'what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system?'

For clarity, I would like to point out that in my view the further promotion of the current up-to-date *minimum* and *higher* ISSS relates to several (multiple) aspects, such as: increasing their ratification level; ensuring their actual implementation by countries that have already adhered to them through the (legal) process of ratification and the conformity of national laws and regulations with the international requirements set by them; enhancing their initial cause of existence, which concerns, among others, the establishment of a (at least minimum) satisfactory level of social security protection at the national level, its preservation and gradual improvement, as well as elevating their role, appraisal and utility in guiding – both at the national and international level – the adoption and application of any new social security arrangements, or the alteration of existing ones.

Obstacles to further promotion of the ISSS do exist – this is undeniable. Nevertheless, it should be noted that these obstacles can vary in type, they can appear in different spheres, and they can be caused by dissimilar circumstances. Moreover, the obstacles to further promoting the ISSS should not only be considered as those preventing or delaying the process of their ratification, or put differently, the factors resulting in the disinclination on the part of a country to ratify the standards, although they are indeed pivotal. Obstacles may also be factors hampering the progress of already ratified standards by disrupting their proper applicability/implementation at a national level; while, the evanescence of the factors that formerly led to the ratification of the ISSS by countries, could, nowadays also be regarded as obstacles to further promoting them. What is more, obstacles to further promoting the ISSS may emanate similarly from other sources, for example, the functioning of the standard-setting system (international and regional) itself, the socio-economic and political changes stemming from the process of globalisation, *etc*.; this is something also worth looking at. These last aspects have not been given a fair amount of attention in pure research (scientific) terms yet. Thus, the first step to be undertaken towards the elimination of obstacles is to identify them in an as accurate way as possible.

In recent years certain obstacles have been pointed out. However and as already referred above, most of them – if not all – relate to difficulties preventing or delaying the ratification process of the ISSS at the national level. This fact actually indicates the strong link between the level of ratification (as well as prospects of future ratification) and the relevance and adequacy of these standards to respond to current or future social security needs. Moreover, the low level of ratification of the up-to-date ILO social security Conventions – and particularly those including higher ISSS – has been a matter of ILO concern for quite a long time now; while recently, it has been placed on the agenda anew, and has been given much more emphasis.

In particular, the ILO came up with a list of the most important obstacles to ratification – factors, in other words, negatively affecting ratification – of its legal (normative) instruments, including the ISSS. These are: (a) non-conformity of national legislation; (b) different societal values and political obstacles; (c) lack of financial resources; (d) lack of administrative and statistical capacity; and (e) lack of knowledge about the Conventions. Be that as it may, there may be other, different reasons why states do not ratify the ISSS. This ILO list of obstacles is not, and cannot be considered, exhaustive, but indicative, and is not the result of in-depth formal academic research.

Therefore, by looking beyond the findings of the ILO, I point out here a few other possible obstacles to ratification, but also to the further promotion of the ISSS in general; these are: (a) the desire for flexibility and the legally binding character of the ISSS; (b) (inter) national political pressure, opportunism, trends and interests; and (c) the dynamism of the ISSS. This way, I have formulated a combined initial *frame of reference* in respect of the obstacles, and through the leading research question ('what are the obstacles to further promoting the international social security standards (ISSS) in a developed social security system?'), I will assess whether this *frame of reference* is indeed valid, and to what extent; whether there are more obstacles to ratification; and whether there are other possible obstacles that may hinder the further promotion of the ISSS in general, and if so to identify and describe them.

In order to give a well-founded answer to the leading research question, the research domain of this doctoral thesis has been confined to that of a developed social security system, and particularly to that of Greece, and the identification of obstacles is achieved through the comprehensive exploration of a number of dimensions that are inextricably linked to the ISSS; namely: the position of national (social security) law and practice in respect of, and in relation to, the ISSS, the attitude of the state (government), political opposition, civil servants and social partners, the functioning of the domestic social security administration, the standpoint of domestic courts and academia, and the role of the national Parliament and that of the international organisations themselves (ILO and CoE).

The factual findings of the research will be placed in a *new systematic framework* that will show which obstacles are relevant today in relation to the further promotion of the ISSS in general, how they actually work, and what could possibly be done to improve the situation. In other words, the aforementioned initial *frame of reference* is taken as a starting point and the conduction of this research intends to either simply confirm it (verify knowledge), or build on it (rectify and extend knowledge). Besides, it is already a challenge to find the degree of accuracy in the official explanations given by the ILO on the non-ratification of the ISSS.

METHODOLOGICAL FUNCTIONALITY

The following research route has been considered the best for providing a well-founded answer to the research problem. More specifically, the research conducted is of a qualitative nature and is based on the research function of description. Three research sub-questions have been chosen in view of facilitating a profound reply to the leading research question, each of them approaching the research problem from a different angle, seeking to detect obstacles to further promoting the ISSS, to describe and analyse them. The research methods of case study, comparative (content) analysis and in-depth interviewing (based on the approach of standardised open-ended interview) have been applied as well, while the data collection consists of a combination of *primary* and *secondary* sources. Overall, the choice of methods has been *problem-driven*. Particularly regarding the use of the case study method, the words of Thomas Kuhn are worth repeating, which encapsulate its ultimate value: *a discipline without a large number of thoroughly executed case studies is a discipline without systematic production of exemplars, and that a discipline without exemplars is an ineffective one*.

THE SEQUENCE AND CONTENT OF THE CHAPTERS

The order, in which the six Chapters of this doctoral thesis are arranged, as well as their content, is as follows. Chapter 1 provides an analytical introduction, focusing on a plurality of topics relevant to the completion of the entire research work. Initially, through a historic overview, the momentous landmarks along the route that social security followed in the context of international organisations is presented, as well as a quick look over their constitution based on domestic interferences. The background of the ISSS is described with specific emphasis on the purpose of creation, temporal evolution, endorsement and course of action both in international and national spheres. Particular attention is paid to the recent global deliberations in relation to social security and the minimum and higher ISSS. Afterwards, and by focusing on the transpiring developments, the research problem is defined and thoroughly explained, and the methodology used to answer it is meticulously discussed. The relevance of the research rationale and certain encountered difficulties are equally laid out.

Chapter 2 contains a description and a critical analysis of the higher ISSS on pensions. The first section is a brief write-up of the causal factors of their final formation. The remaining sections clarify their content in concrete terms and their meaning is further elucidated by also displaying, where applicable, interpretations of specific provisions, useful observations and remarks. In such a manner their dynamism is also pointed out. Cross-references with the minimum standards included in C102 can be found within the whole text, and similarities, but also differences, are highlighted. The C128 has been included in the sample of the unratified instruments because my research aims at describing obstacles in relation to both minimum and higher ISSS. Moreover, C128 encompasses a lengthy

spectrum of social risks compared to the other ILO Conventions on higher standards, and particularly long-term risks (pensions). What is more, it is more interesting, since long-term risks are considered to be – if not the most – among the most costly social risks in a national social security (legal) system, and this relates also to the fact that the duration of social security coverage provided is longer compared to the one provided for short-term social security risks.

Chapter 3 and Chapter 4 concentrate on the core of the research, since they deal with the chosen case study directly. The first section of Chapter 3 is devoted to the delineation of the main components of social protection in Greece. It is principally centred upon the insurance system and deals with its legal foundation, historical evolution, gradual expansion and several changes of an administrative and organisational nature. Reference to recent targeted social insurance interventions and other measures to reinforce the institutional framework of the first pillar is also made; while information on the establishment of the second pillar, through the introduction of a unified legislative and institutional framework for the development of occupational (professional) insurance funds, is given as well. Thereafter, a description of the healthcare system is provided and a mention of the establishment of a unified (single) health insurance fund – the national health services organisation. Last, the functioning of the categorical social assistance system is illustrated. The second section of the Chapter carefully addresses the correlation between the country and the ISSS, and examines it through the behaviour of several different actors and their position towards the ISSS. Initially, an overview is given of the ILO and CoE instruments ratified, or left unratified, by Greece, as well as a description of the division of ministerial competences in relation to these instruments. Subsequently, the section concentrates on the following topics: the motives and reasons for ratifying, as well as for not ratifying, international social security instruments; the actual role of the ratified international social security instruments in the Greek social security law and policy-making processes; the attitude of trade unions when it comes to issues pertaining to the ISSS; and the mentality prevailing in national courts and the impact of the ISSS in Greek case law to this end.

Chapter 4 is made up of four parts. The first consists of an introduction and an overview of the social risks covered at a national level. Under the other three, national social security legislation is depicted and legally compared with the content of the ISSS set in five international instruments, namely the C102, the ECSS, and the Protocol to the ECSS, as well as the C128 and the Revised ECSS. Matters of compliance and incompliance are also discussed. More precisely, the legal comparison goes through the following four aspects: (a) the conformity of the national social security legal system with the ratified ISSS; (b) the non-conformity of the national social security legal system with the ratified ISSS; (c) the conformity of the national social security legal system with the unratified ISSS; (d) the non-conformity of the national social security legal system with the unratified ISSS. This way, the position of national law – and, by extension, practice – is explored with regard to both the ratified and unratified ISSS. This, in turn, advances knowledge, examines the

validity of certain obstacles embodied in the initial *frame of reference* and facilitates the detection and description of other possible obstacles to further promoting the ISSS. The content of the comparative analysis concentrates on the following social security risks – namely medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivorship – and the units of analysis involve: the material and the personal scope of application of each social security risk, the qualifying conditions for granting the benefit, the amount and the duration of the benefit, benefit revision, the suspension of benefits, the right of appeal, as well as social security financing and administration.

As already noted, the primary concern of the leading research question is to detect and describe the obstacles to further promoting the ISSS in a developed social security system. Hence, in the penultimate Chapter 5, each of the three initial research sub-questions is answered separately. The obstacles, as well as the precise content characterising them, are presented and analysed, based on a comprehensive assessment of the overall research factual findings.

Finally, Chapter 6 contains conclusions, discussions and recommendations. Primarily, a coherent answer to the research problem is given and the *new* factual findings are meticulously summarised and placed into a broader systematic context. It is shown which of them have overall proved the greatest and why, and their interrelation is equally demonstrated. Thereafter, discourse on problem-solving takes place, suggestions on how these obstacles may be overcome are made and the added value of this in-depth single-country study is illustrated, followed by an epilogue.

FACTUAL FINDINGS OF THE RESEARCH

GREECE: REASONS FOR RATIFYING CERTAIN ISSS AND THEIR CURRENT VALIDITY

Throughout this research, eight main reasons have been detected, which, in the past, led Greece to ratification. They are as follows: national legislation in conformity with the ISSS prior to ratification; prevalence of a more favourable socio-political and economic climate worldwide; national legislation providing a much higher level of protection than that set out in international legal instruments; the example of other countries; the matter of national pride and international appraisal; the advantage and superiority ascribed to international instruments in relation to national legislation; the influence of political ideology; and the existence of strong political interest and political will. Thus, it emerges that the majority of the previously mentioned reasons for ratification relate to Greek politics and societal values, as well as to the evolution of international politics in the general field of social security protection.

Furthermore, based on the vertical legal comparison that took place between the Greek social security legislation and the ISSS set in the C102 and the ECSS, it appears that for quite some time and until mid-2008 in particular, in respect of the parts that have been ratified by Greece, compatibility between national and international law existed to a rather significant extent (nevertheless, exceptions and problematic areas have been equally detected, as presented below).

Consequently, at a national level, and especially after troublesome periods, Greek political leadership procured a satisfactory level of protection within the country, and at the same time concerned itself with how social security protection is perceived at an international level. The tenet, foundation and organisation of the Greek social security system reflected acceptance of fundamental principles, rights and standards set within adopted international instruments in the field of social security protection and respect of human and social rights. Despite the fact that in the Greek case the ISSS were not taken clearly as a benchmark, the country embraced the international political effort to achieve unity through the promotion of social progress and security, and it considered it vital to participate and follow the example of other countries, especially at the European level. Thus, it was not compatibility or conformity of national legislation with international law (national law and practice, in other words) alone that led Greece to ratification. Nor was it the economic prosperity of the country, or its sufficient financial resources and administrative capacity, which played the leading role in the progression towards ratification.

Moreover, it is apparent that the *transition factor* also had a crucial impact on the process of ratification. In the Greek case, the transition factor related to the evolution from a dictatorial regime to a democracy. Most of the political decisions on the ratification of international instruments in the field of social security in particular, and human and social rights in general, took place in that period. This can be regarded as an expression of the country's wish to belong to a larger and more advanced international democratic community – that of Western Europe – also in terms of protection levels. Put differently, these ratifications can be considered to attest to the fact the country's social security system was brought into line – harmonised – with Western European ones. Recent research has shown that the *transition factor*, albeit within a somewhat different context (i.e. efforts made by countries formerly governed by centrally planned socialist regimes to create wealth and raise living standards (also avoiding the existence of arbitrarily predetermined wages) by embracing free market oriented policies), had considerable impact on ratification decisions in other countries as well.

Ergo, it can be stated that the Greek case shows, in all, three vital reasons for ratification in the period between the beginning of 1950s and end of 1990s: (a) the existence of strong political interest and political will; (b) the existence of a different international socio-political and economic climate, which placed equal emphasis on the achievement of social and economic prosperity at a national level; and (c) the existence of the belief

that the commitment to internationally developed and adopted social security standards and social rights served a twofold purpose – safeguarding existing protection levels and serving as a strong incentive for their further advancement.

These reasons do not, however, appear to be totally in accordance with the reasons that have been cited by the ILO for the ratification (mainly) of the C102, after 1990, by other European countries. To wit: (a) the provision of ILO technical assistance, (b) economic development, (c) the positive effects of the transition in Central and Eastern Europe from centrally planned to market economies, and (d) strong EU and ILO support in bringing national law and practice into line with European social standards and requirements laid down in the C102. It is only the *transition factor* that still corresponds, not literally, since in the Greek case emphasis has been placed more on the influence of democratic values and the enhancement of social rights at a national level, rather than marketisation of the economy. Moreover, the recent ILO remark that the C102 indeed received most of its ratifications prior to 1980 endorses, to a significant extent, the three main reasons for ratification by Greece identified and described previously for the period between the beginning of 1950s and the end of 1990s.

This research has shown that *the existence of strong political interest and political will* on the part of a country, and particularly that of Greece, was present during all proposals for ratification. All the same, *such strong political interest and will no longer seems to exist today.* This old political interest and will has rather been replaced by political inactivity and passivity, if not indifference. The absence of political interest and will is an important obstacle, not only for upcoming ratifications, but it also hinders the advancement of ISSS, as well as their proper applicability, both nationally and internationally. Next, the lack of further action in respect of ratification has been exacerbated by *the eclipse, universally, of a socio-economic and political climate that would foster social security protection.* And that is, indeed, another serious impediment to any effort to further promote both the ISSS and social rights, since it affects not only future ratifications, but also the proper applicability of already accepted ISSS. Several decades ago – especially after the end of the WWII – both social and economic prosperity were recognised as preconditions to global progress and peace; today, social and economic, stand as the two main rivals in the global arena. Finally, in the past, *ratifications were also seen as a way to both reassure and to boost social security protection within a country.* At least that was the political belief for several decades in Greece. The implementation of several ISSS and social rights reflected the advantage ascribed to international instruments and their relevant provisions. It also reflected the wish of the country to gain international praise and recognition for the level of social security protection attained at the national level. *Recently this perception has gradually faded, if not vanished, and has been replaced by aspirations of a national law and policy making variety, which are simply aimed at cost-containment in the field of social security.*

GREECE: REASONS FOR NOT RATIFYING CERTAIN ISSS, OTHER OBSTACLES PREVENTING THEIR RATIFICATION AND THEIR VALIDITY

A variety of reasons were stated as having impeded, especially during the last two decades, new ratifications by Greece of both minimum and higher ISSS. They pertain to: economic difficulties; obscurity of provisions and interpretation problems; non-conformity of national legislation with the ISSS; inability to reach and correspond with the higher standards set in certain instruments; ratification still under consideration and need for prior completion of national legislative reforms; the fact that the content of the provisions of the international legal instruments is more than covered by EU legislation, unwillingness to extend personal coverage, and existence of bilateral social security agreements; other undefined/unspecified reasons; the fact that the international social security standard-setting instruments both of the ILO and the CoE, on certain occasions, do not refer to current circumstances and they are somewhat out-dated; the fact that the international social security standard-setting instruments both of the ILO and the CoE are too technical; and ratification of the rest of the up-to-date international standard-setting instruments of the ILO would not be of value for the country. All the same, throughout this research it was proven that not all these reasons are valid, and also that other obstacles preventing the ratification of the ISSS do exist.

By way of illustration, and based on the results stemming from the legal comparison, indeed Greek legislation does not conform with the ECSS concerning the qualifying period set for family benefits, as it imposes stricter requirements than the ones set in the ECSS and the ECSS does not forecast a *clause of reciprocity*, relative to that of Article 68 of C102. However, it fulfils the qualifying period set for family benefits in the C102, since it imposes less strict requirements. The strange thing is that the C102 includes the above-stated clause of reciprocity. Still, Greece has not ratified Part VII (Family Benefits), neither in the C102, nor in the ECSS.

Moreover, problematic aspects have been noticed concerning the amount of the family benefit and the rate of replacement in relation both to the ECSS, and to the C102. No accurate statistical data are available (within the Greek reports) in order for proper calculations to take place. The problem of statistics also affects the accuracy of fulfilling the personal scope of application. More specifically, considering the current structure of the insurance system, Greece seems to comply with the standards set both in the ECSS and the ILO. All the same, exact figures for the satisfaction of the 50 per cent coverage required in both instruments are not provided. Furthermore, it is not clear whether, indeed, Greek legislation fulfils the requirement set in the material scope of application of both the ECSS and the C102. This is once again due to the fact that proper calculations have not been made concerning the level of the family benefit. It is worth mentioning that the recent cases of non-compliance for Greece with respect to the ESC pertain to Article 16 (the right

of the family to social, legal and economic protection) and Article 12, paragraph 4 (the right to equal treatment with respect to social security).

In relation to the non-ratified Part IV (Unemployment Benefit) of the ECSS, from the legal comparison it appears that Greece cannot, with certainty, proceed to ratification. In particular, once more there is no statistical data in percentages. Thus, as in the case of the family benefit, Greece may comply with the standards set in the ECSS with respect to the personal scope of application, but all the same, exact figures for the satisfaction of the 50 per cent coverage are not given. Added to this, unemployment coverage does not extend to certain categories of the working population, such as agricultural workers and self-employed persons. Moreover, there are no calculations within the reports, showing, in figures, that the country fulfils the amount and the benefit's rate of replacement of the standards; while appropriate data for making such calculations are missing. Pertinent, to a certain extent, to this matter is that the ECSR – responsible for the application of the ESC – quite recently asked Greece, in its conclusions on the application of Article 12 of the ESC, to provide in its report figures, in percentages, forthe active population insured as regards certain categories of benefits, among them that of the unemployment benefit; concerning Article 12, paragraph 1 of the ESC (the right to social security and the existence of a social security system), the same Committee observed for Greece that 'the minimum unemployment benefit for beneficiaries without dependants is manifestly inadequate.'

Problematic aspects also exist in relation to the material scope of application for unemployment. The issues 'of someone being available for work' and 'of suitable employment' are not, in practice, taken into account. Additionally, and concerning the qualifying conditions (despite the fact that these are to be determined at a national level, and, therefore, Greece seems to fulfil them), better attention should be paid to the issue of precluding abuse.

In a nutshell, and based on the factual findings of this research, points of *non-conformity of national legislation* exist. They do not, though, actually and solely relate to the nationally stated reason for non-ratification, but basically relate to other aspects – some of them relating to insufficient examination of the option of ratification, or efforts to solve non-conformity, others relating to economic matters. What is more, this nationally stated reason for the non-ratification of both the unemployment and family benefit parts of the ECSS is not well-grounded. This clause pertains to acquired rights or rights in the course of acquisition, and is related to the unwillingness of the country to recognise the same rights (or some rights) of non-nationals, and most probably to count, in respect of the payment of the benefits, their periods of insurance. Given the fact that the ECSS only requires 50 per cent coverage, this nationally stated reason for non-ratification could be easily overcome (i.e. non-coverage of non-nationals).

Lastly, the more general reasons that have been stated as affecting the process of ratification of the above-mentioned standards on unemployment and family benefits (namely, that the

international social security standard-setting instruments, of the ILO and the CoE do not, in certain instances, refer to current circumstances, or, put differently, they are somewhat out-dated and the international social security standard-setting instruments of the ILO and the CoE are too technical) are not valid, and are also not confirmed by the research results of this doctoral thesis.

Furthermore, with respect to C128 it appears that Greece, especially in 2006 (and even in 2009), complied with certain ISSS (if not all). However, attention should be paid to the fact that it is not quite clear what the exact process followed for making the calculations was in the national reports back in 2006 (this issue will be further elaborated in Section 5.4).

In addition, with regard to the issue of long-term benefit readjustment, and as already mentioned, Greece, for quite a long time, paid significant attention to it. Nevertheless, a lack of government interest has been observed in this respect in the last decade. Moreover, Greece would most probably encounter difficulties with the requirement set out in the C128 to provide findings of long-term benefit reviews and specification of actions taken in terms of proper readjustment, especially in most recent years.

Taking these research results into account, it seems that since 1987 when the first two main reasons for the non-ratification of the C128 were given (economic difficulties and the obscurity of provisions/interpretation problems), Greece has gone through a lot of changes as a country, and has had a lot of chances to reconsider the ratification of at least one part, if not all parts, of the C128. Moreover, since 1987 the economic situation within the country had somewhat improved, especially in the period up to 2006, while the ILO Bureau has always been there to provide help and guidance. It also has to be noted that the need expressed for prior completion of national legislative reforms does not count as a valid reason for non-ratification, because several legislative reforms have taken place within the country since 2001, to the pension system in particular. As the legal comparison has revealed, if Greece had asked for some international support, ratification of at least one part of the C128 could have been possible. What is more, the other articulated reasons for non-ratification mentioned above are not that convincing, and are also not in accordance with the expressed need for prior completion of national legislative reforms, because it has once again been shown that insufficient attention has been paid by the government and the country to the possibility of ratification since the creation of its SIS, and extensive protection and priority has been provided and given with regard to the risks of old-age, invalidity and death, compared to other social risks.

Next, concerning the inability to reach the higher standards set within the Protocol to the ECSS and the Revised ECSS, proper assessment at a national level is required, involving collaboration of all the relevant ministerial departments and certainly technical support by international experts of the CoE and the ILO, which, to date, has not been undertaken (notwithstanding that several national legislative reforms have taken place the last two decades).

Equally, with respect to the non-conformity of national legislation with the higher ISSS set in the C121, which was the main nationally stated reason for the non-ratification of this instrument (to wit, the absence of a specific catalogue for occupational diseases and other problematic aspects concerning the categories of arduous and unhealthy occupations (AUOs)), this research shows that ratification would have been possible and could have taken place (or at least could have been thoroughly considered many years ago), especially if the Greek government had, from an early stage, recourse to the ILO technical assistance and had looked seriously into the matter from a legislative perspective. More precisely, Article 8 of the C121, which has been acknowledged as the basic provision hindering ratification, provides three alternatives to Member States so as to facilitate ratification. It actually serves as a flexibility clause. Therefore, Greece could have opted for the second alternative, including a more general definition of occupational diseases in its national legislation, though broad enough to at least cover the diseases enumerated in Schedule I to the Convention.

Further, and as already mentioned, with regard to the other nationally stated reason (back in 2001) for non-ratification, namely, the need for prior completion of national legislative reforms, this does not stand as a valid reason for non-ratification, and an effort could have been made towards ratification, because several legislative modifications have taken place in Greece during the last two decades, and the issue of ratification, or non-ratification, has not been brought up. In addition, the absence of a proper re-examination of the possibility of ratification sees off the other nationally expressed reason for non-ratification, namely, that the international social security standard-setting instruments are too technical. An instrument cannot be characterised as excessively technical when no proper examination of the possibility of ratifying it has taken place. Last, and in relation to the need for prior completion of national legislative reforms, such reasoning for non-ratification could be characterised as a rather too transparent political equivocation, especially on the part of the Greek government, if not on the part of the rest of the 'players' within the Greek political scene.

In respect of C183, the picture is rather vague. Greek social insurance legislation has been examined and has been found to comply with its provisions. This fact also contradicts the nationally expressed reason for non-ratification that the international social security standard-setting instruments are too technical. Going further, if not for the rest of the rights included in the Revised ESC, in relation to the acceptance by Greece of Article 12, referring to the right to social security, no particular legislative shortcomings seem to have been present, or to have significantly hindered its acceptance. Besides, Greece established, and retained for a significantly long time period, a social security system which is at least equal to that necessary for the ratification of the European Code of Social Security – requirements set in the above-mentioned Article 12§1 and 2.

In conclusion, it is worth noting that some other matters have been detected, which seem to also obstruct, in certain ways, the ratification of the ISSS at the national level. The first

relates to the mandate set by each of the international organisations – ILO and CoE – with respect to Member States' international obligations as regards the ratification procedure; in other words, the different approaches of the ILO and the CoE concerning the ISSS ratification procedure at the national level. The second pertains to the extent that Member States fulfil their international obligations apropos the ratification procedure. The third relates to deficiencies with respect to the issue of ratification caused both at the national and the international levels. Each one of them has given rise to deficiencies vis-à-vis the ratification procedure, and they may negatively affect a possible ratification of the ISSS.

GREECE: ISSUES OF INCOMPLIANCE WITH THE RATIFIED ISSS AND FURTHER OBSTACLES CAUSING IMPROPER APPLICABILITY OF THE RATIFIED STANDARDS, AS WELL AS AFFECTING THEIR FURTHER PROMOTION

Finally, during the conduction of this research, certain other issues of non-compliance and matters of concern have been found out, which directly relate to the ISSS ratified by Greece, and cause or affect their improper applicability at the national level, as well as their further promotion, in general.

In sum, they comprise: lack of proper statistical data on the exact percentage of risk coverage; the issues of suitable employment and the initial period where jobseekers may refuse a job offer if regarded as unsuitable; long-lasting non-compliance, which still exists in relation to the benefit that should be provided in the case of partial loss of earning capacity; non-conformity of the national list of occupational diseases with the Schedule (referred under Article 2) established by the C42; issue of incompatibility in relation to the length of the qualifying period imposed recently (in 2008) for access to medical care and the provision of the sickness benefit; failure on the part of Greece to comply with Article 8 of the ESC, since for the provision of maternity leave, periods of unemployment are not taken into account when calculating the employment period needed for access to maternity leave; time-limitation allowed under the standards for the provision of the sickness benefit (for the same sickness or for different illnesses); the fact that in the case of an employment injury, an issue of non-conformity exists, since under international law the benefit shall be granted throughout the contingency; the issue of non-compliance regarding the replacement of the reduced long-term benefit with a short-term benefit; the fact that with respect to periodical payments to standard beneficiaries proper calculations have not taken place at a national level – and even when calculations did take place, they were not for all the benefits, but only for pensions (in other words, old-age, invalidity and death); the fact that in relation to the revision of long-term benefits by abolishing the method of automatic indexation and employing since 2009 annual re-adjustment, which was replaced by *ad hoc* economic policy measures Greece does not entirely comply with the ISSS – what is more, the recent replacement (in 2010) of the annual readjustment (revision) policy of long-term social security benefits by *ad hoc* economic policy measures, as well as the complete freezing of their readjustment (revision) to the inflation and/or cost

of living, constitute serious issues of non-compliance with the ratified ISSS set both in the C102, and the ECSS (similar standards are also set in other international social security instruments (i.e. the C128 and the Revised ECSS); the fact that in terms of maintaining the reliability and financial sustainability of the system, and in this way also procuring the due provision of benefits as the final guarantor and the proper administration of the competent funds, Greece has not, for quite a long time, performed satisfactorily; the limited role of ISSS in Greek case law and its contribution to the further weakening of their legal (binding) framework; and so forth.

Lastly, the legislative modifications/changes brought about by the Law No. 3863/2010 are a major cause for concern with respect to the future compatibility of the entire system, and especially of the pension system, with the ratified ISSS. It has left a number of issues open for future clarification and regulation through the enactment of further legislation. To this end, particular attention should be paid to the provisions referring to the basic principles and requirements laid down by the ISSS, especially those pertaining to: the standards to be complied with by periodical payments and the revision of the rates of periodical payments for long-term benefits; the general responsibility of the state for the due provision of the benefits and the proper functioning of the social security administration; the form of social security benefits as prescribed benefits replacing previous income up to a certain level, or establishing a guaranteed minimum; and the benefits' duration.

ANSWERING THE RESEARCH PROBLEM

From the overall factual findings of the research, it has been confirmed that almost all of the obstacles included in the *initial frame of reference*, apply in the Greek case-study and still have relevance today. In particular, those stated by the ILO – different societal values and political obstacles, lack of financial resources, lack of statistical and administrative capacity, lack of knowledge about the Conventions and non-conformity of national legislation – have been demonstrated. However, their content has somewhat altered, since they do not just provoke non-ratification; they also hamper the further promotion of the up-to-date – *minimum* and *higher* – ISSS in general.

As far as the other proclaimed obstacles are concerned, the existence of (inter)national political trends of and interest in pressure-opportunism has been indeed found to negatively affect ratification and the proper application of ratified standards, while the (national) wish for flexibility and the legally binding character of the ISSS mainly block prospects for future ratification(s). Both of them, though, lead to the general obstruction of the further promotion of the ISSS, and have obtained a broader content. The dynamism of the ISSS is not evident in the Greek case study. Despite the fact that the ISSS have come under criticism for being outdated and not corresponding to current circumstances, they have not (so far) been clearly considered an impedance to more innovative or progressive domestic social security law and policy-making. Still, it should not be implied that the

dynamism of the ISSS may not consist of an obstacle in other countries (in different situations). This still remains to be seen.

Thereafter, certain new intriguing obstacles emanated from the in-depth exploration of the Greek case-study, obstacles which have not, so far, been explicitly detected, mentioned, and/or defined, in national or international academic research studies, but certainly provoke the *international social security standards' blockage*. They were as follows: lack of political interest and will; universal decline of a socio-economic and political setting fostering social security protection; global aspirations for cost-containment law and policy-making in the field of social security; lack of interest and will of social partners; lack of interest and will of other actors; lack of international technical assistance; absence of substantial promotion of the ISSS and exertion of appropriate 'pressure' with regard to their ratification from the international side; gaps in the proper functioning of the international supervisory procedure; and the international displacement of the ISSS and its impact at the national level. These last-mentioned obstacles enrich the combined *initial frame of reference* utilised in this doctoral dissertation. In such a manner, a *new frame of reference* concerning the overall obstacles has been produced.

PLACING THE 'NEW FRAME OF REFERENCE' INTO A BROADER SYSTEMATIC CONTEXT

If one has a closer look at the content of the *new frame of reference* concerning the obstacles to the further promotion of the ISSS, one can notice certain characteristics, through which the obstacles may be clustered into two distinct categories: *ideological* and *pragmatic* (practical). In order to shed light on this categorisation, the following paragraphs explain what exactly is meant by ideological and pragmatic obstacles, what their origins are, how they turn out to be, in a sense, interrelated, but also why the ideological obstacles override the pragmatic ones.

IDEOLOGICAL AND PRAGMATIC (PRACTICAL) OBSTACLES: CAUSALITY AND SUPREMACY

Beginning at the global level, one main characteristic is the tendency to confine social security protection provided by the state to that of the *essentials* (i.e. regulating basic protection packages; targeting provisions' coverage, *etc*.) and to simplify, as much as possible its legal basis and legislative structures, as well as its legal enforceability as a social right. Social security tends to be seen as a burden to the general functioning of the economy and as a factor impeding economic prosperity, which can only be achieved through the ultimate emancipation of the market, limited (selected) state intervention and enhancement of individual responsibility. Despite the fact that within the so-called European *social model*, social, labour and economic policies have been conceived as supplementary to each other, their interrelation has altered. The globalisation of the

world economy reflects the conviction that social provisions' increase and/or increments hold back advancement, which could emanate from further employment, and cause inflexibility and/or rigidity to economic competitiveness.

To this end, the ideological obstacles relate to and reflect the international development of new social security perceptions – *new mind-sets* – held by different stakeholders or, put differently, *a change of beliefs and principles on the role of social security*. Over the last decades (1970s to 2000s), this has gradually become obvious in several ways, such as: emphasis of the State on workers' participation as a substitute for grant of further provisions; introduction of numerous reform policies as an antidote to the first elements of an evolving economic crisis; reductions in social security expenditure; transfer of responsibility from the state to the private sector; public-private partnerships; drastic structural fiscal (monetary) changes for cost-effectiveness; austerity measures and privatisation trends (models) as ultimate means for economic recovery, as well as enhancement of individual responsibility, and so forth.

In turn, this *change of beliefs and principles on the role of social security*, triggered and gave rise to *a changing view on the role of the ISSS*, which have been considered by numerous countries, for several decades, to be one of the most compact and solid mechanisms for the establishment and mainly the realisation of the – human – right to social security and the concretisation of it legal essence. The positive approximation of the ISSS, as an opportunity to show legal-political commitment to social viably economic growth, and gain international appraise by building, at the same time, stronger foundations for the development of sound social protection systems, lessened. Especially at an EU level, the *fashionable trend* towards soft-law mechanisms – which has been construed as a new *political ideology* – is pronounced. It is true that the motives, which led to the establishment of the ILO, were from the very beginning not only humanitarian, but also political and economic. Equally, the CoE as commonly cited *is the oldest political organization of the old Continent*. Only member states' representatives have direct participation in its work. Apparently, certain of these political and economic motives converted and pressed towards a *transformation of the international labour rights regime (...) so as to provide the necessary flexibility in the face of forces of globalization*. Thereby, a re-prioritisation in the ILO standards-setting system was evoked. Certain standards – but not those on social security – were placed at the centre of governments' and social partners' attention. Special monitoring procedures were introduced as well, while their proper application – and regardless of whether or not they have been ratified at a national level (ILO membership has been set as the key requirement to this end) – is under constant observance. All these proved to have an adverse impact both on how the ISSS ended up being seen domestically over the years and on how their further promotion is enhanced from the international side.

At the end of the day though, and regardless of the fact that it may be criticised as a *truism*, the presence of ideological obstacles to the further promotion of the ISSS is

mainly attributed to the upset of a balanced relation between state and market, which was (supposed) to have been achieved in the post-war period, where state intervention in social affairs was not expected to constrain the operation of market forces, but rather to contribute to sustainable growth.

Thereafter, looking at the national level, and in particular at the attitude of governments (ruling parties), as well as other political and non-political actors, towards the ISSS, ideological obstacles are similarly present and actually *mirror* to a significant extent the relevant *patterns* at the global level.

A familiar characteristic is the inclination to think – *political views* – that what has been achieved so far in terms of legally binding international obligations in the field of social security is more than sufficient (this usually pertains to *social minima*), proving that the level of protection within the country has been internationally acceptable – so the target has been achieved – and followed the *old fashion-trend* prevailing at the time of ratification. Since times have changed, and universally socio-economic reality differs, an *open window of opportunity* is a vital component so as to allow *flexibility* in terms of adjusting domestic systems to current circumstances and international dispositions, which may not necessarily coincide with the (international) political consensus on social security standards-setting dating from more than half a century ago. Besides, leading social security principles may well be respected through other soft-law mechanisms, which entail less detailed (or even rigorous (rigid)) requirements than those set by the ISSS and better match domestic needs.

Another characteristic is the detachment – *lack of interest* – of other political and non-political actors from confronting these *political views* and/or questioning or debating their legitimacy. With respect to social partners, and trade unions in particular, this could also be said to entail elements of *absenteeism* from substantial social dialogue. On the one hand, the representatives (trade unions) of the working population's interest(s) – for which, both nationally and internationally, forums have been established aiming towards a regulated interaction between them, the employers and the State – tends to be concentrated on their, as is also internationally proclaimed, *core business*. This shows selectivity of interference, or, one might say, alignment with the prevailing *political views* on the ISSS and of national handling of social affairs in general. On the other hand, academia, not to mention civil society networks, are not keen on negotiating international social security norms in debates, and the national judiciary – as well as practicing lawyers – are not pro-active in exploring matters of international conventional law supremacy, or anti-constitutionality when political decisions on law-making have been taken.

The prominence of an ideology, however, is never hemmed in abstraction – despite the fact that its *cultivation* requires temporal length to become strong and the necessary *ground for fertility*. Its semantics have connotations, which can hardly be hidden away. Put differently, the ideological obstacles to the further promotion of the ISSS, both nationally

and internationally, maximise their substance through pragmatic (practical) ones, since political beliefs and principles are based on actions, situations and events, as well as eventual behaviour.

More specifically, looking at the global level, deficiencies have come to the surface in relation to the control system of the ratified ISSS, which is actually their *guardian*. Ascribing this situation to *lack of human* and *financial resources* is one side of the coin (tails). From the other side however (heads) certain other elements derive, such as *lack of power* (in the sense that real sanctions cannot be imposed), or better yet *lack of determination*, or presence of *considerable tolerance*, from regulating the remedy of events of non-compliance – besides, the ISSS (once ratified) are not only legally binding, but also politically featured; longer periods for national reporting – this concerns the ILO supervisory procedure for the ISSS, which has been changed (since 2003) from once a year to every five years in the field of social security; etc. The improper follow-up of the states' obligations with respect to the ratification procedure foreseen by the ILO Constitution, with reference to its adopted standards, is also pertinent.

At the national level, pragmatic obstacles are shaped around situations of *legal-technical difficulties* and *lack of* (other) *resources*. The non-ratification of new ISSS and the improper application of ratified ones are attributed with ease to non-conformity of national social security legislation with the ISSS, as well as to the shortage and scarcity of financial means. Moreover, and in relation to this, as has also been correctly pointed out, *the question of priorities of public expenditure is strictly associated to a number of political decisions, related to the establishment of social rights*. Moreover, international technical assistance is elegantly avoided, despite the fact that technicalities stemming from the nature of the ISSS, as well as low administrative and statistical capacity, have numerous times been stated as obstructions to the further promotion of the ISSS.

Taking all the above into account, the obstacles to the further promotion of the ISSS in a developed social security system, stand on a line drawn between two points: causes and effects. This line, in a sense, also defines the existing distance between them. And when covering their distance is worth it, the query arises to what extent this is feasible and how it could be done.

This distance can be covered through the mutual approach of the two points towards the middle of the line. If one of the two points covers more distance than the other this does not really matter as such; what matters is for each point to make an elemental movement towards the middle. Where this does not happen, elasticity impinges and pulls backwards. The easiest solution, of course, where no mutual interaction is viewed as feasible, is simply to delete them. However, this way distance is never covered.

In this doctoral thesis, however, the easiest solution is rejected. Below, discussion takes place, presenting in parallel a series of recommendations, in an effort to *eliminate the distance*.

DISCOURSE ON PROBLEM-SOLVING

By now, it has become clear that the answer to the research problem is a dual one. The research problem has actually touched upon and revealed the complex reality in relation to the ISSS. The obstacles, regardless of their number, belong to two main perceivable categories: one related to *ideology*, another to *pragmatism*.

Such a categorisation, at the end of the day, sets forth, and even reinforces, the fact that the ISSS, by their very existence, apart from having a legal-normative morphology (and once ratified consisting legally binding rules and creating obligations), hold a strong political value and background, which has become much more evident and determinative during the course of time, and especially the last two decades, something that certainly entails multiple implications (i.e. situations of conflict between law *vs*. politics; state *vs*. market; society *vs*. economy; *etc*.).

So, any attempt towards problem-solving also requires a twofold approach, both with respect to matters of ideology and pragmatism, so as (at least) to try to move the ISSS from a *blockage* state, to a *constructive* state; to move them from simply being in the world's *social armament*, towards being efficiently utilised and promoted in the world's current *socio-economic arena*.

Speaking solely about technical solutions to a research problem which is closely involved with politics and political creeds would be neither sufficient nor efficacious. Therefore, such solutions, and regardless that they are certainly required, should be accompanied by resolving attempts of a more penetrating nature. Such attempts could contribute commence discussion and stimulate (if possible) change of standing views on the role of the ISSS and practices followed, both at the international and national levels, and, by extension, on the role and practice in relation to social security in general.

In what follows, based on the research's factual findings, I continue the discussion and propose certain recommendations. Still, it should be borne in mind that not all obstacles can be overcome (or at once), and especially those touching upon matters of *ideology*. This is simply due to the fact that no one can predict how *pressure*, both political and non-political, will evolve from both international and national sides, and which exact direction it will follow or why. There may be limitations in solving the obstacles caused by chronic or time-specific, or incidental factors, *etc*. For instance, in the past, the existence of political interest and will was profound in signing and/or ratifying ISSS, and in general the ideological climate was different – the desire to move from dictatorship to democracy;

from a communist regime to a market one, *etc*. This is certainly a matter not feasible to be addressed by a single researcher. The task of a researcher is to provide certain substantiate indications – *food for thought* – on what can be done (see Table 4, below), based on what has been learnt so far in terms of the research work completed on the existing *state of affairs*.

DISCUSSION AND RECOMMENDATIONS

RECOMMENDATION NO. 1: RECONCILIATION BETWEEN 'SOCIAL COMMITMENTS' AND 'ECONOMIC FREEDOMS' IN THE INTERNATIONAL ARENA: A NEED FOR ACTION

a. Incorporating social conditionality into the economic regime: Reasons, utility and prospects

The IMF's *lack of social conditionality* in general terms could be described as too little, or even as an absence of attention to social and human costs, caused by the requested implementation, at a national level, of corrective policies, structural reforms, austerity measures, *etc*., in order to fix the financial system(s) of countries in economic deadlock, either because they were hit by the economic crisis, or have entered into transition periods (i.e. towards market-oriented policies, *etc*.).

The fact that the IMF and the ILO agreed to cooperate (at the end of 2010) in the *exploration of the concept of a social protection floor,* as well as the fact that the whole international (economic) community embraced such an initiative, and that the Recommendation was adopted, is certainly intriguing.

Especially for a believer in good (political) intentions, this is a real step forward, marking a change in the perceptions of the role of social security and that of the ISSS in particular, since the ISSS shall assist and show member states the way to construct social protection floors within encompassing social security systems, and could contribute to the resetting of the global *socio-economic equilibrium*, which is so much needed. Besides, among the latest recommendations concluded at the G20 meeting of labour and employment ministers (September 2011), strengthening social protection by establishing social protection floors adopted by each country, is a *political priority*, together with the promotion of the effective application of social and labour rights, as well as coherence of economic and social policies.

To a slightly more critical thinker, or even a sceptic, the concentrated interest over the last decade in settlements aiming at the creation of global floors, or basic social security packages, or horizontal coverage extension, or national social protection floors, or social safety nets, *etc*., has equivocal connotations. For instance, the conviction that the *social state* is nowadays needed only for the poor and the deprived – for the rest only work and

no benefits are required – or that social security protection through contribution-based schemes has reached its stagnation point and a new formula will bring new profits, or the shift of the political interest and will towards protection floors is simply a way to legitimise negative globalisation effects.

Interesting in this respect is the remark that *a fundamental shift has occurred regarding the primary objective of social security: it has moved away from being an income replacement measure towards becoming an indispensable tool for poverty alleviation*. If indeed this is correct, we need to reflect upon the future role of social security. If so, it should indeed be seriously considered how to proceed – and not simply *deal* – with the strategic objective of social security, especially at the European level where the systems are considered to be rather developed ones.

In my opinion, now is the right moment for this, since international deliberations have started and the ILO-IMF collaboration has been launched and is assisting the ILO, as well as the CoE, to strengthen the position of the already adopted and broadly internationally accepted, not only *minimum*, but also *higher*, social security standards.

The Greek case-study has shown that the mobilisation of the international (ILO) and regional (CoE) organisations (as well as of their respective supervisory bodies) and their corrective action with respect to the proper applicability of the ratified ISSS was depleted. Already by 2008, the economic situation within the country was deteriorating and the first reforms to be undertaken touched upon the social security system. Problems with financial sustainability and good governance (management/administrative structure), which already existed for decades, grew, and by the end of 2009 to the beginning of 2010 a new reform of the system was being discussed within the country. Finally, in mid-2010 pressure from the EU, the IMF and the ECB for structural fiscal reforms to be launched and austerity measures to be introduced, created, apart from tremendous social unrest, misgivings about whether the minimum social security standards (and other ratified international labour standards) were not only to be retained, but respected (in terms of provisions coverage, benefits' adequacy, *etc.*). Still, even at that time the ILO – like the CoE – was so much involved in requesting the country, and before the passage of the relevant legal and policy modifications, both the IMF and the EU to take into account that Greece has ratified certain legally binding social security (and labour) standards, which must be attained and applied at the national level. Requests for detailed reporting came much later and only after the passage of the relevant national laws.

The CEACR recently (2011) pinpointed that a *proactive role* is considered necessary. Indeed, the *proactive role* is imperative. Especially in relation to the Greek case, it might have *pulled the strings* towards another direction than the one the country is facing at present. Nevertheless, although imperative, it is not sufficient and more drastic action should be taken, this time by the ILO (and by extension the CoE) as an international organisation.

At an EU level most (if not all) of the member states have ratified parts (or even as a whole) either the C102 or the ECSS (so have other countries). It was the EU itself, in the 1990s, which encouraged the ratification of these instruments by countries, and especially by those, which had applied for EU membership, or had already a candidate status. Within similar terms the CEACR noted that *during the last decade of the twentieth century, the Code/Convention No. 102 remained a stronghold against excesses of certain neo-liberal economic policies, putting in danger social cohesion and solidarity in the European nations; gave necessary guidance to Central and Eastern European countries transforming their social security systems to provide protection in the emerging market economy.* The ILO has also invoked as one of the main reasons – which led countries after 1990 to the ratification of the C102 – the strong support provided by the EU. Nevertheless, in the Greek case, it was the EU (in 2010) which gave its consent and supported, in line with the IMF economic policy, the implementation of measures and the introduction of regulatory changes, without making any reference or even allusion to compliance with the ISSS ratified by the country, both of the ILO and the CoE, which had supported this approach with such alacrity in the recent past for other European countries.

Hence, it is recommended, in an effort to find a *new socio-economic equilibrium* and re-balance the upset relation between *state* and *market*, to work on an *elemental move* from the prevailing *economic rationality* towards a *social rationality*, so as to re-establish peace and prosperity in Europe, and beyond, and to stop seeing the market – both internal and external – as the ultimate goal. The developed and adopted up-to-date ISSS can provide a sound *social conditionality* basis, through the incorporation of a normative framework, which would also act as a *catalyst* – in other words, a vetting factor – hedging against economic activities and/or operations. This also consents to the principal objectives of the ISSS. They can act as a legal reference point. Moreover, the CEACR in one of its recent reports (2011) meticulously elaborated the role and importance of the ISSS developed both by the ILO and the CoE. This analysis – which conforms in several parts to the one already completed in this research work – could form a *handbook* on *building social conditionality*.

The ILO needs to become the innovator to this end, and based on the competences and responsibilities given to it after WWII, request that the present principal donors, the leaderships of the countries supporting them, as well as the EU itself (the same goes for the WTO), integrate in their mandates specific *social conditions* to be found within the ISSS (something which ought to have already been done), in order to make social security a goal *per se*. And this is more pertinent than ever before, taking into account the current financial and economic turbulence.

The attempt of the ILO (in collaboration with other global actors) to introduce worldwide *social protection floors* can be seen as an improvement, if such an attempt succeeds, since (in principle) it requires countries to bear the *moral obligation* to support them, and forasmuch it certainly involves heavy cost implications, not to mention administrative discipline. Moreover, it should not be forgotten that the introduction of *social protection*

floors has received the form of a Recommendation, which is another *soft-law mechanism*; particularly beneficial, however, for countries with developed systems, in view of their expressed *wish for flexibility* and *non-(legally) binding obligations,* as well as the *nationally stated inability to conform to international obligations*. Besides, this supplementary Recommendation could be easily interpreted by a country as an indirect direction given by the ILO to member states to override the legal nature of the ISSS and conceptualise them as a *soft law walking crutch* – a similar situation evolved over time with the division between *core labour standards* and *the other standards*.

So certain things should be distinguished. The initiative for *social protection floors* is one thing, the other thing being the necessity of introducing *social conditionality*. The incorporation of *social conditionality,* grounded on the ISSS, into the *economic regime* and its concretisation, could prove beneficial. Besides, it is a significant attempt to influence *ideology* in another direction; plus, if such an attempt succeeds, it could ease the way to surpass pragmatic obstacles; a positive *osmotic process* might begin.

Being more precise, countries knowing that a regulated (standardised) *social shield* is part of a *package deal* which they (may) need to agree (i.e. IMF debt solutions or WTO agreements and negotiations), so as to overcome domestic irregularities and get *back on track*, would encourage them to pay proper attention to the implementation of already ratified standards (minimum or higher), as well as to proceed with new ratification(s) (this involves countries, which have so far accepted none of the up-to-date ISSS). In parallel, this would also help the main global financial institutions to move away from their *crisis of legitimacy*.

One can also see this from a different angle and interpret it as a way of motivating countries by rewarding them through the provision of easier access to donations (support) through the subscription to and/or application of the standards. However, I embrace the previous train of thought, because in that manner the ISSS gain the respect they deserve, and the right to social security is recognised; not just as an aspect of the need to reassure a loan. In addition, the ILO could further amplify this action by organising a global campaign concentrating exclusively on the ratification of the up-to-date ISSS by key countries, as well as countries with developed social security systems, and to persuade ruling parties and other actors through providing practical examples of the value they add.

Achieving a *suitable* and *functional compromise* between *economic and social conditionalities* in the beginning of the twenty-first century would be a big achievement, and not at all an easy task, especially because the dynamic of social conditionality continues to be severely questioned and disputed as compared with the prevailing economic one.

b. Towards a more socially balanced European integration

Currently in Europe two regional supranational systems coexist, namely the EU and the CoE. Put in another way, two regional organisations stand next to each other, producing law with *supra-legislative force* in relation to the law of the national states. This situation ultimately generates an *un-institutional geometry of multiple variables*. By way of illustration, in the past, the legal order seemed like a *pyramid*. At the top, the national (state) legal system was seated (holding the prevailing position), while below, all the other rules (norms) were placed (in a subordinate position), which were in accordance with it. Nowadays though, there is no *top of the pyramid*. Actually, it appears that there is no more one single pyramid, but three separate; to wit, the European Community (Constitutional) Law, the ECHR and the ESC of the CoE, as well as the national constitutions.

Most of the Member States of the EU, or rather nearly all European countries, have the *social state principle* in their national constitutions – this is also the case for Greece. In the EU there is not a social clause as a constitutional fundamental principle. The EU's internal market, however, guarantees the so-called *four* (basic or fundamental) *freedoms*: free movement of persons, goods, services and capital (freedom of competition could be included in this list as well).

The CoE exceeds in this respect the EU because it is the most socially-oriented system, possessing both the ESC, as well as other important legal instruments of social substance, such as the ECSS and its Protocol (materialising the right to social security), which also directly both internalise and integrate, and also expand the minimum social security standards of the ILO C102. The EU, even in the new Lisbon Treaty (2009) makes once again an indirect reference to the C102 through the new Article 151 (ex Article 136 TEC) (under Title X/Social Policy) in which the respect by the Union and the Member States of those fundamental social rights as set in the ESC is mentioned.

It is apparent that an *asymmetry* exists between the systems of the states, the EU and the CoE (it should not be forgotten that all the Member States of the EU are equally Member States of the CoE), which both causes and amplifies several frictions. Thence, this imbalance needs to be rectified, eliminated and finally normalised – as the French would say, *la situation devrait être aplanie*. One of the most constructive ways to eventually establish not only *symmetry*, which is *de facto* imperative, but also to build an inclusive system, which will provide for legal commitments with respect to the preservation and safeguarding of both human and social rights, as well as of setting common guarantees at the supranational level, would be for the EU to accede to the ESC. The incorporation of the ESC would also entail its conversion into EU legislation.

Such a recommendation is completely valid and defensible, bearing also in mind that political interest and will for the EU's accession to the ECHR of the CoE has recently restored and the European Commission has proposed negotiation directives (actually

the CoE, since 2006, has been 'appealing to the European Union (EU) to accede'). Besides, Article 6§2 (ex Article 6 TEU) now clearly foresees the Union's accession to the Convention. At a national level, EU Member States (and other European countries as well) have already ratified the ECHR; consequently, its provisions have become part of their domestic legal order and they are subject to the Strasbourg's Court jurisdiction.

Therefore, the EU should take up another crucial political action and *anchor* simultaneously to the ESC, which is institutionally and practically attainable, and would reinforce the generally restricted scope and adequacy of EU law on social protection matters and that of the ECHR. Moreover, both the Community Charter of the Fundamental Rights of Workers (1989) and the Charter of Fundamental Rights of the EU (2007) – this last Charter pursuant to Article 6§1 of the consolidated Treaty on EU, has the same legal value as the other Treaties – provide for a level of social rights protection, which is not nearly up to the standard of protection provided by the ESC.

Additionally, and within the same context, it should be noted that in parallel to the progression of negotiations for EU accession to the ECHR, the EU incorporated into the *acquis communautaire* the Maritime Labour Convention (2006) of the ILO, through Council Directive 2009/13/EC, on the 16th of February 2009. This suggests that the issue of EU acceding to the existing minimum ISSS based on the ILO C102 can be placed back on the discussion table too.

One could argue that the common ISSS as embodied in the C102, as well as in the ECSS, are not sufficient or are significantly low (correspond in other words, to a framework of minimum protection (level of benefits, coverage, *etc.*)) in relation to the level of development of most of the social protection systems, especially within the EU. Another argument could add that today the systems are very heterogeneous and any effort to apply the ISSS would end up being problematic. Such speculations, however, hold no water unless first an effort is made in order to see how the ISSS could be incorporated within the EU legal system together with the ESC and what would that bring to the states. Furthermore, the EU could start formal discussions with the ILO to this end and also consider expanding the claimed minimum framework of protection by making proper use of the *higher* social security standards, included in the other up-to-date ILO Conventions. It is worth repeating at this point that certain EU and other European countries have already ratified these aforementioned instruments (or at least some of their parts), as well as that the drafting of the Revised ECSS of the CoE has been based on these *higher* standards.

In conclusion, the suggestion of *moving towards a more socially balanced European integration* and re-opening at an EU level the discussion of incorporating the ISSS, through the previously elaborated way of implementation, is consistent with the recommendation (analysed above) of *incorporating social conditionality into the economic* regime, since both target the establishment of a *new socio-economic equilibrium*. Before judging or criticising them, it is better to think and reflect on what possible positive benefits this could bring.

RECOMMENDATION NO. 2: A SHIFT IN THE 'PARADIGM': CHANGING THE FOCUS OF NATIONAL STRATEGIES

a. From an ideology based on clientelism to the respect and acceptance of objective and impersonal criteria (standards)

The suggested efforts as regards the change of global ideological perceptions would be certainly underpinned by a simultaneous change of established political attitudes and doctrines at the national level. Put another way, the proposal for reconciliation between 'social commitments' and 'economic freedoms' should be embedded and take such features as the domestic circumstances and peculiarities necessitate.

Being more precise, in the Greek case, the formulation of the social insurance system (SIS), has been based since the very beginning solely on *politics* and on criteria relating to *clientelism* (the *patron-client model of politics*); an informal institution dependant on reciprocal giving and receiving. Its structural preparation did not ever follow specific social planning techniques or sensible political choice approaches; the result being a highly fragmented system and a disjointed status. The fact that through *clientelism* the state also gained its *political legitimacy*, contributed significantly to this end as well. Moreover, it should be stressed that the existence domestically of a highly fragmented and incoherent system reinforces *influences*, which may be exerted at a given point in time by external actors and events.

If one looks back to history for a moment, during the whole of the nineteenth century the so-called *spoils system* applied in Greece, rather than a *merit system*. This certainly contradicted the governmental institutional approach followed in the European West with respect to the *social question of the 19th century*, which (back then) touched upon the matter of making the market work well, together with the parallel development of both political and social rights. In Greece, the political parties were not engaged in the promotion of social rights for the citizens as such. Moreover, a *fusion* of public and economic power existed, and still exists. The market did not function independently, but through constant political intervention – intervention, however, which did not regulate market forces.

The *national practice* continued causing significant social imbalances. The society was divided between *winners* and *losers* – those that had access to state resources (i.e. benefits' provision, *etc.*) and the rest who had either less or even none. This dichotomy became more intense in the period after the Greek Civil War (1946-1949) and it went on after the fall of the Colonels' Regime (1967-1974) (the last dictatorship) and the restoration of democracy. Consequently, this was equally reflected in the welfare structures of the country, giving rise to a disparate and segmented income maintenance system.

It is also worth noting that due to *clientelism* the wealth was unevenly distributed; emphasis being paid to pensions and the health care system. Provision for the rest of the risks – for example, family, unemployment – was lagging behind. Likewise, the administrative organisation was not based on objective criteria. Thus, a clear *social orientation* has not been a basic part in policy and decision-making, while the reform attempts, which took place (especially since the beginning of the 1990s), cannot be characterised as consistent, or uniform; regardless of their proclaimed targets. Furthermore, a contradiction, which should be kept in mind, is that in Greece, unlike Western Europe, the *golden welfare state* dates from the 1980s.

Ultimately, it is contended that the national political ideology described above, as developed, does not cater for the proper understanding of social rights in general, and of the content of the right to social security in particular, as also enshrined in the ISSS, and ends up being harmful; one could equally speak of an unsophisticated method of state function. Therefore, such an ideology, which is extremely individualistic and all the more absurd, as well as problematic, should be abandoned and substituted with the establishment of a new one, which will have as its main aim the advancement of both social rights and social citizenship. This alteration in ideology would be further facilitated by a division between public and economic power. In other words, there is a need to have public power based on democratic values and a rational public administration.

Lastly, it should not be neglected that an effort on the part of the state (government) to work on meritocracy and equality with the aim of combating the *pathogenesis* of the system is diametrically opposite to effort which targets the eradication of *clientelism* in order for the market to be able to act unperturbed; since, if this last case scenario is applied, nothing changes and *steers back to dawn*. These are two dissimilar political approaches and need to be distinguished.

The trend that globally prevails nowadays is to free the market and let it be self-regulated; however, what is much more decisive and urgently needed, is for a part of the *profits* to be distributed downwards. Interference from the state to supplement the market is undoubtedly desirable, but inappropriate state intervention will contribute to a further deterioration of the present macroeconomic problems, which beset national economies. Therefore, both the ruling parties, as well as the political opposition, need to commit to economically efficient choices of law and (implemented) policies.

b. Altering the mentality of key actors

The above described prevailing national political ideology permeated, and proliferated, the constitution and configuration of unions (and unionisation), as well as their function within the country, from an early stage. So far, the representative organisations were not undisturbed in serving the interests of their members, but were following the developed *state patterns*. They have been principally *party dependent* and not *politically motivated*.

Thus, it should not come as a surprise that through the passage of time and even more profoundly in recent years, both the political system and the unions lack legitimacy and they have been gradually disregarded by a great share of the population.

In relation to the ISSS accepted by Greece, trade unions, despite the fact that *power* has been attributed to them by the ILO as well as the CoE, have not been actively defending the right to social security, while their stance towards state-governmental behaviour and decisions undertaken, which have hampered the further promotion of the ISSS, has been *one of* – elegantly expressed – *avoiding conflicts*. Through this research work it was found that only when the country entered into the deep political, democratic and economic crisis, did trade unions settle doubt and start to dispute law-making and policy orientation, which undermined citizens' rights, especially concerning social security; and this with a considerable delay (in juxtaposition to labour rights and international labour standards; because in this domain they have been – as is invariably the case – more involved). It is clear that the unions, especially with respect to the right to social security and the ISSS, passed a long period in *stagnation* and *decline*.

For that reason, it is urgently required that a change should take place from the *turning aside from international social security obligations mentality* towards one of *abiding* by them, as well as a complete disengagement from the 'path of dependency', set by inherited norms and interests. In such a manner, influence can be exerted, aiming at obtaining a *shift from lack of political interest* and *will* towards more *circumspect political behaviour*.

A change in unions' mentality through a movement closer to their representation responsibilities, as well as an organised accelerated effort in protecting accepted ISSS and social security rights, by engaging in a real and productive social dialogue, would both restore the working populations' and citizens', trust in them, as well as be a means to rebuild their density (membership levels). Put another way, by placing national needs and priorities up front and by investing in making claims which are reliable, creditworthy and justifiable, regain of trust could be achieved.

Furthermore, with respect to civil society, which cannot be characterised as strong and influential, and has played a very limited role in international social policy affairs, and even more to issues touching upon the ISSS – this has been also caused by the fact that so far the practical impact from the acceptance and ratification of the ISSS by the country has not been visible both to the working population and the citizens. In other words, nothing seems to have changed in peoples' lives and this certainly diminishes the utility and potentiality of the ISSS. It should be noted that this situation does not solely relate to limited available resources, but is also linked to – as in the case of trade unions – the dominant role of state and political parties over civil society. The customary national political ideology drilled holes in the organisation of this group of actors as well. Thence, it is vital that attention be drawn by civil society networks to the importance of enhancing the understanding and respect for social values, so as to alter the behaviour of individuals,

and establish a coherent system based on principles and rules, which would serve the common good and attempt an alteration in the *status quo*.

Finally, concerning the mentality that has developed over the years of the national courts and practicing lawyers, with respect to international conventional social law, it could not be said to relate as such or to have been influenced by the national political ideology. There is no ideological issue as such against international conventional social law. What actually happens is an unjustifiable depreciation of the international social security conventions, and the standards set therein, compared to the gradually extended acceptance of the provisions included in other international conventions and treaties, such as the ECHR, the ESC and EU law. This behaviour, however, has to be rectified and follow another perspective. A spread of knowledge regarding the ratified ISSS and their legal context is essential to this end.

RECOMMENDATION NO. 3: FURTHER INTERVENTION AND MOBILISATION FROM THE INTERNATIONAL SIDE

a. Filling in existing gaps: A series of activities

It has been identified, described, and analysed that one of the new obstacles to further promoting the ISSS is the existence of *gaps in the proper functioning of the international supervisory procedure*. To this end, an effort from the international side, through a series of activities, is considered necessary in order to fill in the gaps and support the further promotion of both the *minimum* and *higher* ISSS.

Thus, in my opinion there is a need to increase the number of the CEACR members, so as to be able to have, when necessary, more than one expert responsible for the execution of the Committee's tasks per group of Conventions and ameliorate supervision and control over proper application, respect of the ILO constitutional obligations and possibilities for new ratifications. Of course, such an initiative is not that simple to be implemented, since not many independent experts specialised in the standards-setting activity of the ILO, at least in the field of social security, exist, and even if appropriate training on the content of the standards and the relevant provisions took place (where the experts are familiar in general terms with policy fields and not with the standards as such), this would require a reasonable amount of time until they become fully operational. Furthermore, and even more importantly, their appointment also depends on the available budget of the organisation and its (political) priorities. The ILO GB (executive body/*tripartite* structure) holds the last word on such kind of decisions.

Another alternative, however, may be equally considered, which would be particularly valuable with respect to the ISSS. Instead of increasing the number of the CEACR members as such, the idea would be to establish a form of collaboration of the CEACR with independent external national experts. An electronic database (portal) could be created.

More precisely, a registration system could be installed where the previously mentioned experts (by field) would be able to upload their curriculum vitae. Then, based on the workload and/or any complications, which may occur during the examination of the nationally submitted reports (on the application of accepted ISSS or on non-ratified ISSS, *etc*.) by the CEACR designated member (i.e. as noted, the national laws when submitted to the CEACR are translated and it is much easier for a native speaker and expert to provide clarifications on specific provisions of these laws and other matters (better follow-up of national issues at stake)), one (or more) of these experts may be contacted and – if found competent – be recruited through an appointment letter (this way a kind of a supportive evaluation sub-committee could be composed as well) for the specific time period that the examination of the reports takes place, or in any other time-period that his/her expertise may be required, and facilitate the work of the CEACR member. All the same, in case of appointment, the national expert should confirm that he/she has no relation with the work of the government in the field. Once again though, the ILO GB should give its consent for such an activity.

These suggestions may improve the current system of supervision. Besides, several of the emerged national practical difficulties may be enforced via a continuation in the existence of gaps in the proper functioning of the international supervisory procedure, which apparently needs to follow a somewhat more peremptory manner. Moreover, by further staffing the CEACR – either internally (increase of its members) or externally (collaboration with external experts) or both (ideal case scenario) – other required and recognised activities could be facilitated.

In particular, and as shown from the analysis of the research's factual findings, there is a need for better cross-checking of the information provided by governments on issues of non-compliance, on the reasons for non-ratification, on data provided, on more accurate reporting, on the role of trade unions, as well as better comparison of national laws with the ISSS, awareness of the domestic (political, economic, social and legal) situation, *etc*. Hence and as also re-affirmed in a recent report of the CEACR (2011), more emphasis should be placed on targeted missions, additional contact and communication, provision of preventive comments and results-oriented supervision, conduct of feasibility studies on a regular basis, guidance not only on paper, but through direct contacts at the national level, strengthening the ISSS through technical cooperation and normative action, building up functional connections between the observations given by the CEACR and the technical assistance (this though presupposes the acceptance, as well as initiative from a national level to have recourse to technical assistance), and so on. In addition, technical cooperation with other international organisations could be also developed.

The ILO Bureau already provides a lot of support for the execution of the CEACR's tasks and even prepares its reports and other relevant documentation. Moreover, a significant number of its officials apart from working on technical cooperation programs and projects also participate in country missions, providing comments and remarks on specific issues

at hand. In comparison, an increase in the number of CEACR members or external help from others may seem trivial. Still, the ILO Bureau is the ILO's administration, and especially with regard to the reports of the CEACR, as well as the individual direct requests and individual direct observations addressed to the countries, the CEACR is the body which conducts the final legal scrutiny, not the ILO Bureau. Even the comments or remarks that may be given by the ILO Bureau are based on instructions given by the CEACR. Consequently, the aid of the ILO Bureau officials, cannot substitute for the international selected experts of the CEACR. Apart from the aforementioned merits, by increasing the number of the CEACR members, a stronger link between supervision and technical assistance provision will also be established.

With regard to trade unions, their involvement in social security law and policy-making, and in fulfilling their obligations under the ILO Constitution, should be improved. The same goes for social dialogue. It seems that trade unions in other parts of the world, and not so much in Europe, are more active in terms of defending the ISSS; maybe, at the end of the day, in Europe some things have been taken too much for granted over the last two decades. This is exactly where the CEACR should step in.

It has been said that it is very helpful to have comments of trade unions pointing directly at issues to be discussed, since the work of the CEACR becomes much easier if concrete questions are posed and in this way the examination or interpretation of whole new laws is limited. Indeed, such activities – and not only on the part of the trade unions, but also from governments – would make the work of the CEACR more efficacious. Still, this does not absolve the CEACR of its own supervisory responsibilities and its work, which similarly includes the duty (function) of posing questions to states and requesting specific information and clarifications; especially, when national situations are or tend to become complex (i.e. states facing serious economic difficulties, or hit by economic crisis; nevertheless, it is in such situations that the interference of the CEACR is vital so as to avoid a lessening of the level of protection and encroachment of basic principles and requirements). The need for the proactive role of the CEACR was recently marked by the CEACR itself, as already mentioned.

One more suggestion, which may prove beneficial, is for the CEACR to make a first elaboration and request for an update of the report forms adopted by the GB, in terms of making them more user-friendly for national administration(s) (and trade unions), as well as to provide practical examples about how these forms should be completed before being submitted to the governments (the composition of these forms dates back decades). Further, the reporting period currently set every five years, should be replaced by annual reporting (as it is for the ECSS) or at least be set every two years (as for the core labour standards). This would lead to a better follow-up on the application of the ISSS and aid national administrations not to lose contact with the ISSS, becoming much more inured with their content.

It can be argued that through such a series of activities, the international supervisory procedure would become worryingly strict and rigorous, resulting in negative consequences for the further promotion, and overall future, of both the *minimum* and *higher* ISSS. This mainly pertains to the issue of denunciation. Countries that have ratified ISSS and relevant Conventions may opt to denounce parts or all of these Conventions, as well as show disinterest and unwillingness to ratify in general.

All the same, the issue of denouncing international instruments is not uncomplicated, and relates to several aspects. Apart from the fact that the act of denunciation can take place (per instrument) at a specific point in time and requires former notification on the part of the state and relevant justification (until denunciation is accepted by the international side a great deal of communication between the state and the international organisations will transpire), bears high *political cost,* especially because it clearly shows (or testifies, in other words) that the state has no intention to deliver on the international obligations undertaken through the act of ratification. Not only does the country become internationally exposed (or better, politically exposed), but introspective reflections may also occur, creating unrest. So, through such behaviour states will bring themselves to a very uncomfortable position. Besides, cases of denunciation or expressed intentions to denunciate already exist (Greece can be noted as an example), even without there being such strict international supervision.

Moreover, from a different angle, if having more responsible supervision of the ISSS will bring such effects, maybe this is better in the sense that if states proceed one after the other denouncing ISSS, and bear this *political burden* on their shoulders, the scenery will improve and the true *political intentions* and *plans* will be finally revealed both for the ISSS and international social security law in general. As a *defence* of the need to work on a better international supervisory procedure, I would like to put emphasis on the issue of lack of hard legal sanctions. Since this possibility does not exist, and also because sanctioning by *naming and shaming* is usually avoided, what remains is, if not a stricter, at least a more responsible supervision and greater effort to convince states and at the same time to have a more systematic *surveillance*.

Lastly, it is worth mentioning that in the recent past the CoE has begun a re-structuring process. As part of this activity, and according to a Resolution adopted by the Committee of Ministers in November 2011, a new committee has been established, the so-called *Governmental Committee of the European Social Charter and the European Code of Social Security*. This decision actually end the work of the CoE CS-SS (now named the former CS-SS), which previously, and in close collaboration with the ILO CEACR (see Article 74§4 of the ECSS), was responsible for the examination of the annual national reports submitted by the states on the application of the ECSS (under Article 74 of the ECSS), as well as the examination of the reports required (as a proof of capacity) in cases where states make political decisions to proceed with the ratification of parts of the ECSS (Article 2, paragraphs 2(b) and 3, and Article 78§3 of the ECSS), and transfers the relevant

responsibilities to the new Governmental Committee. Consequently, from January 2012 onwards the conclusions delivered up to now by the ILO CEACR on the monitoring of compliance with the ECSS are executed by this new Committee instead. Furthermore, based on the Resolution the ILO *will be invited to send one representative to the part of the meetings of the Governmental Committee that concerns the exercise of its tasks under the Code, for whom the travelling and subsistence expenses will be at the charge of the Council of Europe budget*.

Despite the fact that through this development the workload of the CEACR may decrease, since also in the event that the Revised ECSS will enter into force, the examination of the relevant reports will be done by a specialised Committee set up by the CoE, this does not imply that the need to strengthen the ILO supervisory procedure, through the activities previously set out, vanishes. Besides, the advantage of the CEACR and of its enforcement lies in the fact that the examination carried out is done solely by independent and impartial experts, while the new CoE Governmental Committee is composed by representatives of the states party to the ESC and assistance will be provided as well by representatives of the European social partners with an observer status.

b. The international standards-setting activity and social security: which way now?

It is indeed intriguing that the CEACR after quite a long time itself proceeded with a more concrete *orientation* on what could possibly be done in relation to the present status of the ISSS, touching upon different aspects of implementation; especially if one recalls previous statements such as that *it has become clear that the time is not yet ripe for a revision of these standards.* It is very likely that these proposals of the CEACR are associated partly with the ongoing process of improving the standards-related activities of the ILO, as well as the establishment and implementation of a standards review mechanism (SRM) (a new international *labour code*). This actually consists of a continuation of the first revision of the ILO labour standards by the *Cartier Working Party*. As far as social security is concerned the final structure for revision, as well as the actual timing, is meant to be defined.

In my view, before seeing which of the above alternatives best fits the adaptation of the ISSS to the progression of social security and the development of different arrangements in the field, it is much wiser to have a thorough look at the existing obstacles to further promoting the ISSS and especially the one of *lack of political interest and will*. It should be first reassured that at national level a real political interest and will on these ISSS exists or whether the complaints and/or the evidential proof (if given) on claims regarding difficulties with applying or ratifying these standards act as a *cloak* concealing the belief that their time has expired. Because only if a sincere political decision is taken – and this should primarily come from the more wealthy states – in favour of these standards, actions for their improvement can indeed have fruitful results. And here comes once again the *hot potato* issue of *reconciling the 'social commitments' and 'economic freedoms'*

in the international arena. States should be fully engaged with any process of adapting, or revising, or reforming, or modernising the ISSS. Any ongoing efforts to increase the level of ratification, as well as the proper application and compliance with already ratified ISSS, will *fall on deaf ears* unless political commitment is guaranteed. We come, therefore, to the following issue: how clearly or how seriously are states taking social security and international social security law?

As an example, the case of the Revised ECSS of the CoE can be noted. This international instrument has been open for signature by the CoE member states, as well as for accession by non-member states and by the EU, since 6 November 1990. Its aim is the updating and improvement of the provisions of the ECSS. Among the most important improvements in the text – apart from the higher levels of coverage and the extension of both the levels and the duration of benefits, which constitute the basic arguments on the part of the states for non-ratification, and reaching the higher requirements can indeed be problematic for some – are the inclusion of new provisions, flexibility and abatement of the rigidity on the qualifying and other conditions, abandonment of all kinds of discriminations based on sex and an emphasis on prevention. At present, only fourteen countries have signed it and only one has ratified it. The *practical wisdom,* which arises from this example, is that with alacrity the political leaderships of states may welcome improvements on paper, but when they are called upon to affirm this through legally binding obligations (ratifications), they find a reason not to do so.

If however, the adaptation or revision of the ISSS is considered by the ILO, in the near future, an issue that calls for a concentrated effort, which cannot be delayed, an accelerated revision procedure could be launched. The ideal way to do so would be for the CEACR to proceed with the elaboration of the standards without any political meddling (bias); solely on the grounds of empirical evidence emanating from national laws and practices (national legal social security reality), its separate examination of the ISSS in every country, and first and foremost by taking into account the existing obstacles. The increase in the CEACR members and its collaboration with external independent national experts, proposed earlier, would be particularly beneficial for such an effort. If the CEACR could adapt or revise the ISSS in such a way, this would be a big achievement

However, currently this is not possible according to the ILC standing orders on Convention and Recommendation procedures. Be that as it may, the CEACR, under a *status of emergency*, could prepare either a new text of the C102 or a Protocol attached to it, as already proposed in its suggestions, introducing the required changes and reformatting the wording of the relevant provisions accordingly, without any prior political discussions, and subsequently present them to the ILC. The final approval of the CEACR work should, however, come from the ILC. In any event, a Revised C102, or a new Protocol attached to it, would require national ratification; unless other ways of actually imposing their acceptance from the national side could be put into effect.

With respect to the elaboration and composition of a new instrument supplementing the C102 (which would also encompass the matter of incorporating new social risks), this should undoubtedly better to be left until later (bearing in mind the ongoing process for overall improvement of the ILO standards-related activities and policy, as well as the establishment and implementation of the SRM). The international political situation as formulated at present is not fertile enough for such an attempt. It has been shown that several problematic points in relation to the existing *minimum* and *higher* ISSS need to be sorted out so as to increase the level of ratifications and ensure proper application.

What seems to be for the moment a more attainable and realistic target is the last suggestion of the CEACR: to make a statement on the adaptation of the minimum standards provisions, but this should not take the form of a declaration. It is about time that the restrictions of the CEACR's competences were overridden and it is actually a matter of principle for the contracting parties to find a compromise. As correctly noted 'although there have been repeated efforts to differentiate between 'interpretation of law' and the 'application of law', even to prohibit interpretation, it has become clear that the interpretation of norms must be an inherent element of the application of legal norms'. It should be also remembered that the modernisation of the EC Social Security Coordination Regulation No. 1408/1971 was done through the ECJ judgments (ruling). The same goes for the CoE ECHR, through the work of the ECoHR. So, equally for the ISSS it is suitable to have a judicial review. The ISSS can provide flexible but meaningful guidance on the establishment of national social floors; nevertheless, as the CEACR has also *stated the legal framework provided by the existing social security standards needs to be strengthened*, and this should come from both the international and the national sides.

Last, it is true that *flexibility* regarding the existing up-to-date ISSS is vital so as to enhance their utility and further promotion; nevertheless, it should not end up undermining them. This is exactly where a more authoritative interpretation can contribute. With respect to their modernisation, any action should have as an ultimate goal the enrichment of social protection provided at the national level.

RECOMMENDATION NO. 4: EFFORTS TO OVERCOME NATIONAL PRACTICAL DIFFICULTIES

a. More rational utilisation of available means

It has been demonstrated that hindrance to the further promotion of the ISSS is associated with certain pragmatic (practical) obstacles coming from the national level, which are in part attributed to the presence of legal-technical difficulties. Since their retention would end up de-valuing the ISSS and adversely affect their impact, states should take advantage of the means of action, which they have at their disposal from the international side, in a more rational way.

To start with, states (governments) should not avoid, but rather seek international support in cases where non-conformity of national legislation with the ratified ISSS has been detected by the international supervisory committees and relevant individual direct requests or individual observations (of the ILO) or resolutions (of the CoE) have been published and communicated to the competent national Ministries, so as to resolve newly arisen issues or pending ones. Within the same context, when states (governments) are about to make decisions on changing national social security legislation or propose alterations to specific provisions (such decisions may originate from the government itself or from external pressure for changes (one pertinent and recent example, as I have analytically elaborated on, is the requests to the Greek government from the IMF and the EU for changes of social security provisions as part of agreed economic package deals)), apart from a prior thorough national examination of their compatibility with the accepted ISSS, and in terms of clarity, they should – as a rule and not as a last resort – request direct consultations with the experts of the international organisations so as to avoid future cases of non-compliance. This should take place before the submission of draft bills to the Parliament for adoption. Direct consultation and on regular time-intervals should equally accompany the nationally submitted reports on the reasons for non-ratification of other up-to-date ISSS.

Technical assistance and informal opinions provided by the ILO Bureau need to be used for this purpose as well. As shown by this research, so far, and in the Greek case in particular, one of the problems is not the non-frequent use of technical assistance, but lack of recourse to technical assistance in general. Besides, request for such assistance costs no money, simply dedication of time and effort. With respect to the informal opinions, they need to be requested by the states. Greece should use this means in future. These opinions may not be *authoritative* (any interpretations given are not binding for the state); nevertheless, they can be of use as guidance and –from another perspective – show on the part of the country concern for respecting their international obligations and a will to find solutions. Of course all the above require political will and interest, as well as more involvement by the national administration; civil servants on their own initiative to remind government of issues at stake and press for the utilisation of the available means. Furthermore, the power(s) given to the trade unions by the ILO Constitution is another means which should be properly employed.

Moreover, I would like to emphasise the need to increase *the efficiency* and *execution of parliamentary control* in relation to the ratified ISSS and the respective ILO Conventions and CoE instruments. Actually, a development which has become evident over the last two decades (it could be characterised as *an unwritten rule*), is that almost all the legislative proposals – draft bills – submitted by the government to the Parliament on social security reforms, and other relevant provisions, is done through the *status of urgency*.

In such a manner, the relevant parliamentary committees have no substantial time to examine the governmental proposals with respect to their compliance or not with the

ratified ISSS (another existing issue though pertains to the fact that the parliamentary committees are not familiar with the content of these ISSS) and their subsequent passage to the plenary for final adoption is done in *zero time*. Furthermore, the government does not provide any proof or information in presenting the draft bills that any prior review of compatibility with the ISSS has been done. Consequently, it seems that the matter of deciding whether the draft bills are compatible with the international social security legislation is absolutely under the control of the competent Minister. This significantly undermines the institution of Parliament, and reflects, in a sense, *executive authority* over the established parliamentary procedures.

Accordingly, the *custom* of enacting bills without proper parliamentary review must be put in good order. The introduction of stricter legislative review procedures by parliamentary committees, and in plenary, is not only necessary, but both imperative and exigent. The compatibility of new laws to be introduced can no longer be solely a matter for the competent Minister, and constant parliamentary attendance should be entrenched. A specific time-period should also be set within which the Ministry would have to submit its proposals, and sufficient time should also be set aside for the parliamentary committees to examine them before transfer to the plenary.

Furthermore, an agreed package of information and supporting documentation should accompany legislative proposals and the submission of the draft bills to Parliament, including all relevant information on the accepted ISSS, and what would be even more efficient, to attach minutes with consultations undertaken with representatives of the international organisations, as well as any informal opinions requested and/or received.

Finally, trade unions should ensure that the adopted international social security instruments, including the up-to-date ISSS, end up for discussion in Parliament. Otherwise, Parliament should be informed, through the contact of trade union representatives with parliamentarians. In similar terms, trade unions could request parliamentarians to reopen discussion on the possible ratification of a non-ratified instrument, or launch discussions on non-submitted instruments.

b. Corrective action via beneficent practices

Lack of other resources, forms one more component of the pragmatic (practical) obstacles, coming from the national level, and blocking the way to the further promotion of the ISSS. Thus, corrective action via beneficent practices is essential as well, centered mainly on three things; namely, financial resources reparation, invigoration of statistical and administrative capacity and knowledge diffusion.

Combating mismanagement and misallocation of financial resources should be a primary target, in conjunction with better governance structure and management responsibility at the national level. The issue of re-allocation and re-distribution becomes even more

important in case of countries with a highly fragmented system, like Greece, aiming at an equal share of the *profits* between the different categories of the population. A re-prioritisation of political decisions and their rationalisation is absolutely necessary to this end. The currently prevailing law and policy-making, which centres solely on increasing competitiveness and economic growth, needs equally to take into account social aspects. The continuation of sacrifices through decreases in the level of social protection as part of austerity measures will only end up having negative consequences – greatest among them that of social unrest. It is now time, more than ever before, for the basic principles and requirement set out in the ISSS, and especially those on good organisation and management of the system, to be respected and applied. Besides, the obstacle of non-conformity of national legislation with the ISSS is not always a real difficulty and could be overcome (depending though on the case) through proper economic handling.

The above-mentioned beneficent practices on financial resources reparation would – to a significant extent – equally contribute to the improvement of the present lack of statistical and administrative capacity. Be that as it may, for the enhancement of statistical and administrative capacity, financial resources or build up of modern infrastructures are not an absolute solution; put in another way, financial investment should be combined with other practices, such as investment on *educational* and *learning skills* on the content and overall function of the ISSS. Public administration officials – constituting the *human resources* – dealing directly and in first instance with the ISSS, should follow trainings subsidised by the government, and become more familiar with the ISSS and in particular the required social security (standards) statistics. This way they can *transfer knowledge* to the competent Ministers (who could themselves follow relevant training, but usually there is not time for them to do so). Once again the existence of political interest and will is vital.

This is also in line with the need to spread knowledge at multiple levels, as well as achieve the sensitisation of other actors involved. Trade unions could be characterised as *springboards* for the initiation of several different practices for this purpose and be conducive to the occurrence of a broader mobilisation. Within their own circle and in collaboration with their international counterparts, the exchange of information, knowledge transfer and the drawing of lessons should be enhanced, by having common meetings and conducting joint studies as a starting point. Common actions in the form of organised campaigns, conferences, *etc*. may follow. Afterwards, efforts should be made towards the establishment of links with civil society networks for the dissemination of information and relevant materials. If accomplished, this would lead to a new *civil society structure* and facilitate *coalitions* – both national and international – on both the ratification and the proper application of accepted ISSS, as well as on the role of developing international social security law safeguards. In such a manner, understanding by the wider public would increase.

Furthermore, trade unions could make a request to the ILO Bureau to invite – without actual participation in discussions – to the annual ILO ILC representatives of the

parliament (preferably from every political party represented in the Greek Parliament and the European Parliament). If accepted, this initiative would enable parliamentarians to obtain direct knowledge and become familiar with current issues on the ISSS, not only in their country, but also to other European and non-European countries, and this may also increase parliamentary questions in relation to the ISSS to the government.

Last, the role of national courts should be enhanced, and give further substance to the right to social security. Accordingly, a better study of the ISSS and of possibilities for direct effect, as well as the development of relevant case-law, is needed.

IN CLOSING

I hope that my doctoral thesis will prove to be a valuable tool for other researchers, academics and students in the field of law and policy formulation in relation to social security, as well as an inspirational guide for politicians, international organisations, social partners and designers of social security, contributing in this way to the future planning of social security law and policy-making both at a national and international level.

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APPENDICES

In this part of the publication the reader can find a list with the people who participated in the conduction of the interviews in relation to this research work, their names, job titles, as well as the date of each interview.

Moreover, four representative Decisions of the Hellenic Council of State have been chosen, translated and included, which pertain to the international social security standards (ISSS) ratified by Greece. It was considered that a full reproduction of these Decisions would be of an added value for the readers, since they provide for a full insight of the role and impact these standards have in Greek case-law, as well as on how they are conceived and treated by domestic judges and acting lawyers. The writing layout used by the Hellenic Council of State has been retained.

APPENDIX A. LIST OF INTERVIEWEES (IN ALPHABETICAL ORDER)

Names	Job Title	Date
	Hellenic Universities/Research Centres & Institutes	
Mr. Nikitas Aliprantis	Prof. Emeritus/Law Faculty/Democritus University of Thrace/ Director of the Centre for Comparative & European Labour Law/(Ex-)Vice President of the European Committee of Social Rights of the CoE	26/05/2008
Mr. Gabriel Amitsis	Assistant Prof. of Social Security Law/Department of Health &Welfare Administration/Athens Higher Technology Institute/ Head of Social Planning &Research Unit of the Social Innovation Institute/Chairman of the G&D Social Lab	20/05/2008
Mr. Constantinos Antonopoulos	Assistant Prof. of International Law/Law Faculty/Democritus University of Thrace	19/12/2008
Mr. Xenophon, I. Contiades	Prof. of Public & Social Law/Dean at the School of Social Sciences/ University of Peloponnese/Scientific Director of the Centre for European Constitutional Law	26/05/2008
Mr. George, S.-P. Katrougalos	Prof. of Public Law/ Democritus University of Thrace	19/05/2008
Mr. Christos Morfakidis	Lecturer/Department of Social Administration/ Democritus University of Thrace	15/09/2008
Mr. Savas Robolis	Prof. of Economics of Social Policy/Department of Social Policy/Panteion University of Athens/Scientific Director of the Labour Institute INE-GSEE-ADEDY	27/05/2008
	Hellenic Council of State	
Mrs. Stavroula Ktistaki	Associate Counselor of the Council/Associate Prof. of Public Administration/Department of Social Administration/ Democritus University of Thrace	28/05/2008
	Hellenic Parliament	
Mrs. Aikaterini Panourgia-Stamadianou	Head of the Parliamentary Committees' Department	25/09/2009
	Hellenic Ministry of Employment & Social Protection	
Mrs. Georgia Antonopoulou	Assistant to the Head of Section for Relations with the ILO/ International Relations Department	23/09/2008
Mrs. Evangelia Bage-Michou	Former Head of Section for Relations with the International Organizations/ General Secretariat of Social Security	29/05/2008
Mrs. Kyriaki Beka	Head of Section for Relations with the International Organizations/General Secretariat of Social Security	21/05/2008

Names	Job Title	Date
	Hellenic Universities/Research Centres & Institutes	
Mrs. Evdokia Chrysanthou	Head of Section for Relations with the ILO/ International Relations Department	23/09/2008
	Hellenic Ministry of Economy & Finance	
Mr. Nikos Kalatzis	Social Policy Expert/ Directorate for Social Policy/Vice-President of the OECD Social Policy Working Group	26/05/2008
	Independent Experts	
Mrs. Sophia Koukouli-Spiliotopoulou	Dr./Expert on Labour Matters/Representative of the League of Women's' Rights/Hellenic Republic-National Committee for Human Rights/EU External Expert	28/05/2008
Mr. George Romanias	Social Security Expert/Scientific Councilor of the Labour Institute INE-GSEE-ADEDY	26/05/2008
	Trade Unions	
Mr. Theodoros Deligiannakis	Head of Legal Section/GSEE	25/09/2008
Mrs. Elli Varchalama	Assistant to the Head of Legal Section/GSEE	25/09/2008

APPENDIX B. DECISIONS OF THE HELLENIC COUNCIL OF STATE (IN CHRONOLOGICAL ORDER)

number 2606/1989

THE COUNCIL OF STATE

PLENARY SESSION

The Council of State composed of its members, [redacted], President of the Council of State, [redacted] Councillors, [redacted] and [redacted], Associate Councillors.

Met in public audience, on the 9th of June 1989, in the presence of the Council's Registrar, [redacted], in order to judge the hereunder case of major significance, which was referred before the Plenary Session by decision No. 648/1989 of the First Chamber, and which concerns an application filed on the 9th of January 1987, by the Social Insurance Institute (IKA), represented by [redacted], Legal Counsellor of the Administration, versus Mr. [redacted]., resident of [redacted], represented by Mr. [redacted], lawyer, whom he appointed with a warrant of attorney, concerning an appeal against decision No. 221/1986 of the Administrative Court of First Instance of [redacted].

Having heard the report of the Rapporteur, Councillor of the Council of State [redacted], who read and stated the opinion of the First Chamber.

Having heard the appellant's representative, who stated the grounds of the appeal, and who asked for the application to be accepted as well as the representative of the respondent who asked for the application to be rejected.

Having examined the relevant documents,

Considered in accordance with the Law that

1. All the appropriate fees as well as the legal deposits have been paid for the filing of the application according to the [redacted] Authority for the collection of judicial levies No. 1720650, 1720651 of the year 1987 and No. 482094 and 1488642 special deposit forms.

2. With this application, which was filed on the 14th January, 1987 and was referred to the Plenary Session by decision No. 648/1989 of the First Chamber in order to be judged, due to the case's significance, in accordance with Article 14, paragraph 2b of the Legislative Decree No. 170/1973, as it was replaced by Article 16 of Law No. 702/1977 (Article 14, paragraph 2b of Decree No. 18/1989), the applicant Institute (IKA) admissibly seeks to set aside the decision No. 221/1986 of the Administrative Court of First Instance

of [redacted] (which was served on the 25th of November, 1986), which upheld an action of the respondent, former employee of the Management Company of Greek State Monopoly Goods, which quashed decision No. 244/27 of the 31st of January 1986 of the Local Administrative Committee of the [redacted] branch office of the applicant Institute (IKA) that dismissed the respondents objections against rejecting decision No. 330/21-03-1986 of the branch's Director and ruled that the right to pension's benefit of the respondent should be judged in accordance with Article 9, paragraph 1(d) of the Statute of the former Pensions Scheme of the Personnel Insurance Fund of the aforementioned Company, according to the provisions of Article 4, paragraph 1 of Law No. 1276/1982.

3. Seeing that Article 1 of Law No. 1276 of the 24th of August 1982 (A' 100) provides in paragraph 1 that the Pensions Scheme of the Personnel Insurance Fund of the Management Company of Greek State Monopoly Goods is abolished from the entry into force of the same law, that is to say, according to Article 25 of this law, from the 1st of September 1982, in paragraph 2 it is stated that from the Scheme's abolishment, all the persons who were insured in the aforementioned Personnel Insurance Fund are now subject to the insurance of the Social Insurance Institute (IKA) and are governed by its corresponding legislation, and finally, in paragraph 4, that the persons insured at the abolished Scheme, who will retire from work until the 31st of December 1987, have the right to choose, as regards their pension, the implementation of the provisions, which were governing the abolished Scheme in the way they were applicable at the time this law came into force, instead of the provisions of the legislation of the Social Insurance Institute (IKA); in which case, however, as an insurance period that is admeasured for the calculation of the pension, will be considered the insured period served in the abolished Scheme, as well as the insured period in the Social Insurance Institute (IKA). Besides, according to Article 9, paragraph 1 of the Statute of the Personnel Insurance Fund of the aforementioned Company, which was approved with decision No. 49427/1932 of the Minister of Labour, as it was amended by decision No. 2311/1941 of the Minister of Labour and, after that, by decisions No. 38602/4723/1948 and 37096/E. 1018/1961 of the Minister of Labour, "every insured person is entitled to a pension a) after thirty (30) years of insured service, independent of age, b) …, c) …, d) after ten (10) years of real insured service, independent of age, if he was discharged due to the abolition of his working position and after twenty-five (25) years of real insured service, if he was discharged for other reasons, not due to his responsibility, e) …".

4. Seeing that, according to the meaning of this last provision, which, in accordance with the aforementioned, may also apply after the consolidation of the aforementioned Fund with the Social Insurance Institute (IKA), for the provision of a pension regardless of age, after the completion of only ten (10) or twenty-five (25) years of real insurance service (according to the distinctions set therein) a necessary precondition is that the insured employee is discharged, that is to say his involuntary removal prior to the termination of his employment contract and in general, prior to the lapse of the time his obligation for the provision of services would have ended. Moreover, the cause for this discharge may either be the abolition of his working position, in which case the discharge is equated with the termination of the company's operation, a fact that entails the abolishment of all

the working positions, which had been created up to that time, or other reasons, which, in any case, are not due to the discharged employee's responsibility, which signifies that this provision does not apply when the termination of the employment contract coincides with the working position's abolishment, or the termination of the company's operation. Nevertheless, according to three (3) members of the Court with decisive vote, in view of the fact that the company's operation depended on the assignment of the monopolistic good's management to it with contracts of limited time, which were contracted with the State in accordance with the Legislative Decree 245/1973 (A' 382) and seeing that after the 31st of December 1985, it became impossible for the company to carry on with its operation, due to the expiry of the relevant time-limit set by the Decree 976/1981 (A' 245), an employee's removal, when the termination of his employment contract with the company coincides with the – according to the aforementioned – termination of the company's operation, equates with discharge due to the working position's abolishment for employees who have completed ten (10) years only of real insurance service, and with discharge not due to the employee's responsibility, for employees who have completed twenty-five (25) years of such service.

5. The applicant Organization's complaint that the principle of equality has been violated must be rejected, given that the persons insured to the aforementioned Fund constitute, in comparison with the persons insured at the Social Insurance Institute (IKA), a particular category, which is governed by special rules, since it comes from another social security organization; this fact justifies that, during the transitional period, these persons will continue to be governed by the same provisions, which were governing them prior to their integration to the Social Insurance/Institute (IKA), as it is customary provided for when social security organizations are consolidated with the Social Insurance/Institute (IKA).

6. The applicant Organization's complaint for violation of Article 25 of the ILO Convention No. 102, which was ratified by Law No. 3251/1955 as well as of Article 25 of the European Code of Social Security, ratified by Law No. 1136/1981. These pleas must be, at any case, rejected, given the fact that the provisions of these (aforementioned) international Conventions do not prevent or obstruct the national legislator from granting a right to a pension, independent of age limit, for persons insured that have completed certain time of insurance period.

7. The contested decision accepted that the request for the provision of a pension to the respondent employee of the aforementioned company, who allegedly has completed twenty-five (25) years of service to this company and has left on the 31st of December, 1985, at the time the company terminated its operation, should have been reviewed by the applicant Institute in accordance with Article 9, paragraph 1d of the Fund's Statute (as this had been amended), in view of the potentiality provided by Article 1 of Law No. 1276/1982, and this, regardless of whether the employment contract between the respondent and the company is permanent, or of a fixed-term. The decision must, according to the aforementioned, be set aside, for incorrect interpretation and deficient implementation of the provisions mentioned above, as well as for failure to state sufficient reasons in reference with the significant issue of the employment contract's nature, being

permanent or of a fixed-term, according to the relevant argumentation, and this case must be referred to the Administrative Court of First Instance, since it has not yet been settled on its merits.

8. In view of the case's circumstances, the respondent must be exempted from the obligation to pay the costs of this trial to the applicant Institute (IKA), according to Article 39, paragraph 1 of Legislative Decree No. 170/1973 (Article 39, paragraph 1 of Decree 18/1988).

On these grounds,

The Court

Accepts the application,

Sets aside the Decision No. 221/1986 of the Administrative Court of First Instance of [redacted], to which refers the case according to the statement of reasons

Orders the forfeiture of the fee

Exempts the respondent from paying the costs

Was judged and adjudicated on the 16th of June, 1989, and the decision was made public on a public hearing on the 14th of July of the same year.

The President The Registrar

According to the corrective decision No. 148/1990, a part of the present decision's operative part is corrected as follows:

"Sets aside the Decision No. 221/1986 of the Administrative Court of First Instance of [redacted]".

Number 2348/1991

THE COUNCIL OF STATE

FIRST CHAMBER

Met in public audience, on the 28th of May 1990, composed of: [redacted], Vice President, President of the First Chamber, [redacted], [redacted], Councillors, [redacted], [redacted], Associate Councillors. Registrar: [redacted], in order to judge an appeal, filed on the 5th of January 1987 by the Social Insurance Institute (IKA), represented by Mr. [redacted], attorney at law, whom IKA

appointed with a power of attorney, versus Mrs. [redacted], resident of [redacted], who was not present during the hearing.

With this application, the appellant Institute (IKA) seeks the decision No. 2289/1985 of the Administrative Court of First Instance of [redacted] to be set aside.

The hearing commenced with the reading of the report of the Rapporteur, Associate Councillor, [redacted].

Thereafter, the Court heard the appellant's representative, who stated the grounds of the appeal, and asked for the appeal to be accepted.

After the completion of the public hearing, the Court met in conference and, after having examined the relevant documents, decided according to Law that:

1. All the appropriate fees as well as the legal deposits have been paid for the filing of the application (1722084/1987 duplicate receipt of the Authority for the collection of judicial levies, 157653, 812910/1987 special deposit form).

2. This application seeks to set aside the decision No. 2289/1985 of the Administrative Court of First Instance of [redacted], which dismissed an action of the appellant Institute (IKA) against the decision No. 80/19.1.1984 of the Local Administrative Committee of the IKA branch office that operates in [redacted] Str., [redacted]. In this latter case, it had been accepted that a supplementary confinement allowance should have been paid to the respondent woman.

3. The case has been legally discussed, despite the fact that the respondent woman was not present at the hearing, and since the appellant Institute (IKA) served to her properly and within the required time limits copies of the appeal and of the act of the President of the Court's Chamber on the appointment of the hearing as well as of a Rapporteur.

4. According to Article 21, paragraph 1 of the (Hellenic) Constitution, maternity is protected by the State. Besides, Article 39 of Compulsory Law No. 1846/1951 (A΄ 179), which is applied in this case, states that: "The insured woman is entitled to receive a per diem pregnancy and post natal allowance, for forty-two (42) days before the presumed day of confinement and for an equal period after this day, of a sum equal to the basic sickness benefit. To this amount are added any increases awarded for dependent family members, if the insured woman abstains from work. The allowance is paid for the non working days as well.

Article 35 of Decision No. 25078/28-5/1.6.1938 of the Deputy Minister of Labour concerning the "Endorsement of the Social Insurance Institute (IKA) Health Regulation" (B 112), of which the first two sentences have been replaced by decision No. 9614/23-5/28.5.1941 of the Minister of Labour (B 88), states the following: "To determine the period of six (6) weeks before confinement, during which the pregnancy allowance is paid, the anticipated confinement day, as it is specified by an opinion of the competent doctor, is taken into account. This written opinion is validated by the Health Agency of the

IKA branch office. If confinement takes place before the anticipated day, the pregnancy allowance is nevertheless still paid for a period of six (6) weeks before confinement, retrospectively, provided that the insured woman can provide an attestation that she was absent from work during that period, which was not covered by the doctor's written opinion. The post natal allowance is paid from the day of confinement, ending the last day of the sixth week following, or the day before the insured woman returns to work, if this day is before the end of the six (6) week period".

In Article 36 of the same Decision it is stated that: "In order for the insured woman to be entitled to receive pregnancy and post natal allowance, she must certify that she was absent from work, or service during the days for which she requests the provision of the allowance».

Besides, Article 3 of the "Maternity Protection Convention No. 103 (Revised) (1952)", which was ratified by the first Article of Law No. 1302/1982 (A 133), states that: "1. A woman to whom this Convention applies shall, on the production of a medical certificate stating the presumed date of her confinement, be entitled to a period of maternity leave. 2. The period of maternity leave shall be at least twelve (12) weeks, and shall include a period of compulsory leave after confinement. 3. The period of compulsory leave after confinement shall be prescribed by national laws or regulations, but shall in no case be less than six (6) weeks; the remainder of the total period of maternity leave may be provided, before the presumed date of confinement or following expiration of the compulsory leave period or partly before the presumed date of confinement and partly following the expiration of the compulsory leave period, as may be prescribed by national laws or regulations".

Article 4 of the Convention states that: "1. While absent from work on maternity leave in accordance with the provisions of Article 3, the woman shall be entitled to receive cash and medical benefits". Finally, Article 2 of Law No. 1302/1989 states that: "The total maternity leave shall be twelve (12) weeks, out of which, six (6) weeks will be taken, necessarily, before the expected date of confinement and the remaining six (6) weeks after confinement. If the confinement will take place at a time earlier than that originally presumed, the remainder of the pregnancy leave will be granted mandatorily after confinement to ensure a period of twelve (12) weeks of leave in total".

5. The provisions of Articles 39 of Compulsory Law No. 1846/1951 and 35–36 of the Social Insurance Institute (IKA) Health Regulation aim to protect maternity through the provision of social insurance to the insured woman during pregnancy and after confinement. From these provisions, in combination with those of Article 21 § 1 of the (Hellenic) Constitution, Articles 3 and 4 of the Maternity Protection Convention No. 103 (Revised) (1952), and Article 2 of Law No. 1302/1982 it is concluded that: If the woman gives birth before the presumed date of confinement, she does not lose part of her maternity leave due to prematurity, which she is entitled to receive after the expiration of the six (6) weeks period of leave due to confinement, so that the total time of her leave amounts to twelve (12) weeks. Besides, the woman insured at IKA does not lose the part of the pregnancy allowance she did not receive due to premature confinement, but she is entitled to request and receive it immediately after the expiration of the six (6) weeks period of leave due to confinement, so as to complete a total subsidy period of eighty-four

(84) days. If, however, after the expiration of the period of the aforementioned six (6) weeks after confinement, she does not apply immediately for the remaining maternity leave she is entitled to, but does so after she has returned to work, she loses the right to apply for the remaining (rest) of the pregnancy benefits not received due to premature birth.

6. The contested judgment, in combination with the other procedural documents, leads to the following: the respondent woman insured at IKA, gave birth prematurely on the 10th of January 1983, whereas confinement was scheduled on the 25th of January 1983, thus obtaining a compulsory leave of sixty-nine (69) days (twenty-seven (27) days before and forty-two (42) days after confinement) as well as a pregnancy allowance of twenty-seven (27) days and a post natal allowance of forty-two (42) days, sixty-nine (69) days of maternity benefit in total. Upon expiry of her compulsory leave, she returned to work and took from her employer [redacted] a supplementary maternity leave of fifteen (15) days, for the period from 13-06-1983 to 27-06-1983, in order to complete the eighty-four (84) days of compulsory leave, and she applied to IKA in order to be paid the remaining allowance for the fifteen (15) days. This application was rejected by the Decision No. 14160/02-11-1983 of the Director of the IKA branch office, which operates in [redacted] Str., [redacted], on the ground that the insured woman took the remaining leave four (4) months after the expiry of the compulsory maternity leave period. Against this Decision, the respondent filed a complaint before the Local Administrative Committee of the same IKA branch office. Her plea was accepted by the Decision No. 80/8/19/1/1984 of this Committee, which judged that the remaining confinement allowance should be granted to the respondent. This decision was challenged by IKA against the Administrative Court of First Instance of [redacted]. The Court held that according to the provisions outlined in the preceding paragraph, in case a woman insured at IKA gives birth prematurely, she is entitled to request and receive the remaining maternity leave and subsequently the remaining pregnancy allowance, not only immediately after the end of the post natal allowance, but even after that date; however, within a reasonable time, in which the infant, due to natural functions (lactation process) is in dire need of the mother. The Court of First Instance also judged that the period from 13-06-1983 to 27-06-1983, when the respondent received the remaining maternity leave, came within the concept of reasonable time as set above, and on these grounds rejected the appeal of IKA, by the contested judgment. This judgment is, however, not legitimate, because it is based on a different interpretation of the provisions cited above than the one given in the preceding paragraph. Therefore, on these grounds, which are justifiably raised, the present application should be accepted, the contested decision to be set aside and the case, since it has not yet been settled on its merits, should be referred back to the Administrative Court of First Instance to be judged again.

7. According to Article 57, paragraph 1b of Presidential Decree No. 18/1989, if the appeal is accepted, the return of any amount previously paid, by virtue of the contested judgment, is ordered, provided that it was sought with the appeal. In the present case, the relevant request of IKA should be rejected, since the appellant Institute (IKA) does not produce any proof that it paid such an amount to the respondent by virtue of the contested judgment.

8. The Court, considering the circumstances, considers that the costs of the appellant IKA should be limited to [redacted] drachmas.

On those grounds,

The Court

Accepts the application

Sets aside the Decision No. 2289/1985 of the Administrative Court of First Instance of [redacted] to which remits the case according to the statement of reasons

Orders the forfeiture of the fee

Orders the respondent to pay the costs to the appellant, amounting to [redacted] drachmas

The conference was held on the 19th of June 1990 and on the 24th of June 1991,

and the decision was made public on the 16th of July 1991.

Number 2254/1994

THE COUNCIL OF STATE

FIRST CHAMBER

Met in open audience, on the 3rd of May 1993, composed of: [redacted], Councillor of State, Acting President, in replacement of the Chamber's President and its senior Councillor, who were not able to attend, [redacted], [redacted], Councillors, [redacted], [redacted], Associate Councillors. Registrar: [redacted], in order to judge an appeal filed on the 26th of June 1989 by: 1) Mrs. [redacted], daughter of [redacted] and 2) Mrs. [redacted] daughter of [redacted], residents of [redacted], who appeared before the Court with their lawyer, Mr. [redacted], whom they appointed with a power of attorney, versus the Greek Seamen Retirement Fund, a Legal Entity of Public Law (herein referred to as NAT – Naftiko Apomachico Tameio), which appeared before the Court with its lawyer, Mr. [redacted] whom it appointed with a power of attorney.

With this application, the appellants seek the decision No. 140/1989 of the [redacted] Administrative Court of Appeal to be set aside.

The hearing commenced with the reading of the report of the Rapporteur, Councillor, [redacted].

Thereafter, the Court heard the appellants' representative, who stated the grounds of the appeal, and asked for the appeal to be accepted, as well as the representative of the respondent Fund, who referred to the report of the Rapporteur.

After the completion of the public hearing, the Court met in conference and, after having examined the relevant documents, decided according to Law that:

1. This application, for which all the appropriate fees (No. 2057681 and 2057682 duplicate receipts of the Public Tax Authority for the collection of judicial levies of the year 1989) as well as the legal deposits have been paid (No. 1255153 and 2903296 special deposits forms of the year 1989), admissibly seeks to set aside the decision No. 140/1989 of the Three-member Administrative Court of First Instance of [redacted] This decision had rejected an appeal, filed by Mrs. [redacted] mother of the applicants, who died while the appeal was pending before the Administrative Court of First Instance and therefore, the daughters continue the pending trial before the Administrative Court of First Instance of [redacted]. This action was filed against the decision No. 4708/27.11.1986 of the NAT Benefits' Director, with which he had rejected Mrs. [redacted] request for granting her a pension according to the provisions of Law No. 1085/1980 (A 255) concerning the provision of minimum insurance protection, based on the service at sea of her late husband, Mr. [redacted] who died on the 5th of March 1965.

2. The provisions of paragraphs 1 and 2, Article 5 of Compulsory Law No. 1846/1951 (A 179) maintained the pre-existing special – by professional category – main insurance funds, but also established their obligation to provide to the individuals insured by these funds a minimum protection, which is at least equal in terms of level and duration to the one provided from the Social Insurance Institute (IKA) under the same conditions. Moreover, this regulation applies not only to social insurance organizations under the supervision of the Minister of Health, Welfare and Social Security, but also to organizations under the supervision of other Ministries, as in the case of NAT, which, according to the standard provisions governing it (Articles 1 and 2 of Law No. 792/1978, Presidential Decree No. 913/1978, A 220), is subject to the supervision of the Ministry of Shipping (see Council of the State No. 2820/1989). Besides, Article 4 of Law No. 374/1976 (A 166, Article 14, paragraph 10 of Presidential Decree No. 913/1978) states that: "The provisions governing the Social Security Institute (IKA), which relate to minimum insurance protection, do not apply to the members of NAT, who are subject exclusively to the provisions of the NAT legislation". Law No. 1085/1980, which followed, added, with its provision of Article 1, an article 3a to the aforementioned Presidential Decree No. 913/1978, which provided that a pension is granted in cases of permanent incapacity for work or death of a seafarer, on the concurrence of certain preconditions. This pension is the minimum insurance protection for the members of NAT. In addition, according to Article 5 of Law No. 1085/1980, this added an Article 3e to the Presidential Decree No. 913/1978, «1. The provisions of Articles 3a – 3d of Regulatory Law No. 792/1978 also apply to the following cases: a) in case the rights provided by Article 3a of Regulatory Law No. 792/1978 are acquired prior to its entry into force, on the condition that incapacity for sea work is still present, b) in case of death of a seafarer, in any way and at any time it occurred, prior to the publication of the present Law. 2. The recognition of the right to minimum social insurance protection, in accordance with the paragraph set above, takes place following an application of the person who has legitimate interest, submitted within a limitation period of three (3) years following the publication of the present Law, whereas the payment of the pension commences the month following the day the application was filed. 3 …".

3. From the aforementioned provisions of Law No. 1085/1980, interpreted also in view of the explanatory report of this Law, it follows that the acquisition of the right for minimum social insurance by the members of NAT, is exclusively governed by the provisions of this law, and consequently the aforementioned paragraphs 1 and 2 of Article 5 of Compulsory Law No. 1846/1951 do not apply to these persons. This regulation is not opposed to the principle of equality, which is enshrined in the (Hellenic) Constitution under Article 4, since this constitutional provision does not obstruct or prevent the common legislator, in view of the special working conditions existing in certain professions, as in this particular case, from adopting different insurance regulations, after having taken into consideration these special conditions, from the ones applying to other insured persons. Likewise, this special legislative arrangement for the persons insured under NAT, is not opposed to paragraph 4 of article 22 of the (Hellenic) Constitution, which provides that the State shall care for the social insurance of the working people, as specified by law, because, with the aforementioned provisions of Law No. 1085/1980, the legislator saw to the acquisition of the right to minimum social insurance protection to the members of NAT as well (see also Council of the State 2017/1988, 2820/1989).

4. In this particular case, the contested judgment accepted the following: Mrs. [redacted] filed the application No. 14717/10.2.1986 to NAT, requesting, according to the provisions of Law No. 1085/1980, concerning the right to minimum social insurance protection, the granting of a pension, the amount of which was calculated on the basis of the time her late husband, who died on the 5th of March 1965, served at sea. The NAT's Benefits Director, with his decision No. 4708/27.11.1986 rejected this petition, as overdue, and more specifically, on the grounds that it was filed after the expiration of the three-year limitation period that is set by Article 5, paragraph 2 of Law No. 1085/1980, namely because it was filed after three years of the publication of this Law in the Official Gazette. Under these circumstances, the Court before which Mrs. [redacted] appealed, having accepted that by implementation of paragraph 8 of Article 3 of Law No. 1711/1987 (A 108) the contested act of the NAT Benefits' Director is not subject to review before NAT's Review Committee and that it was admissibly subject to an appeal, furthermore judged that since the aforementioned request for minimum insurance protection according to the provisions of Law No. 1085/1980 was filed after the expiration of the three-year strict time-limit foreseen by this law, the rejection of her application by the decision of the NAT's Benefits Director decision was legal, taking also into account the fact that, since no pleas concerning concurrence of force majeur were invoked before the Administrative Court of First Instance. Finally, the Court also rejected the pleas presented for the implementation of the provisions for minimum social insurance foreseen by Law No. 1846/1951, on the ground that NAT, being an autonomous social insurance fund, is governed by special legislation that establishes specific pre-conditions – corresponding to the nature of the profession insured by this Organisation – for the acquisition of the right to minimum social insurance for its insured persons. On those grounds, the application of Mrs. [redacted] was rejected with the decision against which the appeal is brought.

5. The contested judgment, with the aforementioned context, that is to say by accepting that for the acquisition of the right to minimum social insurance by the

members of NAT, like the deceased husband of Mrs. [redacted], the aforementioned provisions of Law No. 1085/1980 are implemented exclusively and not paragraphs 1 and 2 of Article 5 of Law No. 1846/1951, is in accordance with the law. And this because, according to the aforementioned, the acquisition of the right to minimum social insurance by the NAT insured persons is exclusively governed by the relevant provisions of Law No. 1085/1980, whereas in these cases paragraphs 1 and 2 of Article 5 of Law No. 1846/1951 are not applied. And although, according to the appellants' pleas in law, these latter provisions also apply to social insurance organizations, which are not supervised by the Minister of Health, Welfare and Social Security, like NAT, be that as it may, these provisions do not apply to the NAT insured persons, since specific regulations have been established for them, concerning the acquisition of their right to minimum social insurance. Moreover, according to the aforementioned, this legislation is not opposed to the constitutionally guaranteed principle of equality, since this principle does not obstruct or prevent the common legislator, in view of the particular prevailing working conditions in this professional category (insured persons of NAT), from establishing a specific legislation, which differs from the one applying to other insured professions. Likewise, it is not contrary to paragraph 4 of Article 22 of the Hellenic Constitution, given that, with the aforementioned provisions of Law No. 1085/1980, the legislator provided, in particular, for the acquisition of the right to minimum social insurance of the insured persons of NAT. In consequence, the plea in law raised by the appeal that the contested judgment, having denied the implementation of paragraphs 1 and 2 of Article 5 of Compulsory Law No. 1846/1951 is contrary to the law, since implementing Law No. 1985/1980 and not implementing the relevant provisions of Compulsory Law No. 1846/1951 makes the contested judgment contrary to articles 4 and 22 paragraph 4 of the (Hellenic) Constitution, is rejected as unfounded.

6. The provision of Article 31 of Law No. 1027/1980 (A 49) states that: "1. The right to pension and lump-sum benefits/one-off allowances by the Social Security Organizations supervised by the Ministry of Social Services is imprescriptible. 2. The provisions of the above paragraph also apply to the pension rights that had been time-barred before the entry into force of the present Law. 3. Any contrary provision is repealed". Through this provision it is established that an already acquired, non-exercised, right to pension is imprescriptible; on the contrary, the exclusive period for the acquisition of this right is not repealed (see Supreme Special Court 11/1989, 43/1991). Consequently, the plea raised in the appeal, according to which the decision against which the appeal is brought is illegal, having accepted that the contested act that rejected Mrs. [redacted] application, because it was filed after the time-limit provided by Article 5 of Law No. 1085/1980, is in accordance with the law, must be dismissed as unfounded. This, because, apart from the fact that the provision of Article 5 of Law No. 1085/1980 (article 3a of Presidential Decree No. 913/1978), by implementation of which the decision against which the appeal is brought was issued, is posterior (entry into force from 06-11-1980, Article 51 of Law No. 1085/1980) to the one of Article 31 of Law No. 1027/1980 (entry into force from 01-04-1980, Article 33 of Law No. 1027/1980), invoked by the appellants, in any case the three year time-limit established by paragraph 2, Article 5 of Law No. 1085/1980 (Article 3a

paragraph 2 of Presidential Decree 913/1978) was not repealed, since this exclusive time-limit, as suggested by the wording of the relevant provision, is set in order to regulate the acquisition of the right for minimum social insurance of the insured persons of NAT and not in order that they exercise an already acquired right. Moreover, the aforementioned exclusive three year time-limit is not opposed to article 25 of the Hellenic Constitution, which enforces an obligation to the State to acknowledge and protect the fundamental and imprescriptible human rights, since this constitutional provision does not obstruct or prevent the common legislator from enacting time-limits or other preconditions for the acquisition of social insurance rights (see also Council of the State 635/1988). Consequently, the appellants' specific assertion that Article 31 of Law No. 1027/1980 was set in execution of article 25 of the Hellenic Constitution, in the sense that paragraph 2 of Article 3a of the Presidential Decree No. 913/1978, which establishes the exclusive three year time-limit for the filing of the application for the acquisition of the right to minimum social insurance on behalf of the insured persons of NAT is contrary to the Hellenic Constitution must be dismissed, as unfounded.

7. Seeing that the ILO Convention 102 on minimum social security standards, which was ratified by Law No. 3251/1955 (A 140), in Part X, which refers to survivors' benefit, regulates the provision of benefits – due to the loss of the breadwinner – to the family members of the deceased person. More specifically, according to the provision of Article 59 of this International Convention, "Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of survivors' benefit in accordance with the following Articles of this Part". Furthermore, according to Article 60 of this International Convention "1. The contingency covered shall include the loss of support suffered by the widow or child as the result of the death of the breadwinner; in the case of a widow, the right to benefit may be made conditional on her being presumed, in accordance with national laws or regulations, to be incapable of self-support. 2. National laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if contributory, may be reduced where the earnings of the beneficiary exceed a prescribed amount, and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount". On the other hand, according to Article 61 of this same International Convention, "The persons protected shall comprise: a) the wives and the children of breadwinners in prescribed classes of employees, which classes constitute not less than 50 per cent of all employees; b) the wives and the children of breadwinners in prescribed classes of the economically active population, which classes constitute not less than 20 per cent of all residents; or c) all resident widows and resident children who have lost their breadwinner and whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 67; or d) where a declaration made in virtue of Article 3 is in force, the wives and the children of breadwinners in prescribed classes of employees, which classes constitute not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more". Moreover, article 62 of this International Convention states that: "The benefit shall be a periodical payment calculated as follows:

a) …". Furthermore, according to Article 63 of this Convention "1. The benefit specified in Article 62 shall, in a contingency covered, be secured at least: a) to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period which may be 15 years of contribution or employment, or 10 years of residence. b) … 3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part XI but a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected whose breadwinner has completed, in accordance with prescribed rules, five years of contribution, employment or residence. 4. A proportional reduction of the percentage indicated in the Schedule appended to Part XI may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds five years of contribution or employment but is less than 15 years of contribution or employment; a reduced benefit shall be payable in conformity with paragraph 2 of this Article. 5. In order that a childless widow presumed to be incapable of self-support may be entitled to a survivor's benefit, a minimum duration of the marriage may be required". Besides, article 1 of this International Convention states that: "1. In this Convention: a) the term "*prescribed*" means determined by or in virtue of national laws or regulations; b) the term "*residence*" means ordinary residence in the territory of the Member and the term "*resident*" means a person ordinarily resident in the territory of the Member; c) the term "*wife*" means a wife who is maintained by her husband; d) the term "*widow*" means a woman who was maintained by her husband at the time of his death; e) the term "*child*" means a child under school-leaving age or under 15 years of age, as may be prescribed; f) the term "*qualifying period*" means a period of contribution, or a period of employment, or a period of residence, or any combination thereof, as may be prescribed. 2. …".

8. The aforementioned provisions, as it results from their phrasing and context, in any case, presuppose the national legislator's intervention, or the regulative action of the administration, following the national legislator's authorization. Without this intervention, which, according to the International Convention mentioned above, is not subject to any time limitations, these provisions cannot be implemented. More specifically, paragraphs 3 and 4 of article 63 of the aforementioned International Convention, which establish a form of a minimum social security benefit, on behalf of the family members of the deceased breadwinner, explicitly demand the existence of enacted rules ("… in accordance with prescribed rules …"), either before the entry into force of the International Convention or after, by which, each of the contracting states, had already chosen, or chose either generally or by professional category (employees, freelancers, etc) as a precondition for acquiring the right to be granted this benefit that the deceased breadwinner *a) was insured or b) served for or c) was domiciled in Greece for a period of five years.* On this or a similar choice, would depend on the further necessary identification of the competent body that provides the minimum social security benefit. Therefore, it is understood that paragraphs 3 and 4 of Article 63 of this International Convention do not apply to Greece for the moment, since the internal Hellenic social insurance legislation does not include a regulation relevant to the aforementioned (see also Council of the State 3970/1990).

9. Besides, the European Code of Social Security, ratified by Law No. 1136/1981 (A. 61), in Part X (articles 59–64) foresees the Survivors' Benefit. More specifically, the provisions of paragraphs 3 and 4 of Article 63 of this Code establish a form of minimum social insurance for the members of the family of the deceased person. Furthermore, article 72 of this Code states that: "This Code shall not apply to: a) Contingencies which occurred before the coming into force of the relevant part of the Code for the Contracting Party concerned; b) Benefits for contingencies occurring after the coming into force of the relevant part of the Code for the Contracting Party concerned in so far as the rights to such benefits are derived from periods preceding that date". Hereupon, according to article 77 of this Code "1. This Code shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification. Instruments of ratification shall be deposited with the Secretary General, provided that the Committee of Ministers in appropriate cases has previously given an affirmative decision as provided for in Article 78, paragraph 4. 2. This Code shall enter into force one year after the date of the deposit of the third instrument of ratification. 3. As regards any Signatory ratifying subsequently, this Code shall enter into force one year after the date of deposit of its instruments of ratification". Moreover, as it derives from the Notice of the Ministry of Foreign Affairs on the 17th of June 1981 (A 166), the document with which Greece ratified the European Code of Social Security, which was ratified by Law No. 1136/1981, was deposited to the Secretary General of the Council of the EU on the 9th of June 1981, and, according to paragraph 3 of article 77 of this Code, the Code entered into force in Greece on the 10th of June 1982. From these, it is concluded that in our country, the provisions of the European Code of Social Security do not apply in those cases where the insurance risk occurred before the 10th of June 1982. More specifically, in reference with the Code's provisions for the survivors' benefit (articles 59 to 65) a necessary precondition for the implementation of these provisions is that the death of the person through which the survivors acquire the right to the benefit has occurred since the 10th of June 1982 onwards, given the fact that when it is persons indirectly insured, the insurance risk occurs the day of death of the directly insured person, through which they are related to the Social Security Organization (see also Council of State 1947/1973 etc).

10. According to the pleas in law of the application, the decision against which the appeal is brought, which rejected an action filed by Mrs. L. F. against a decision of the NAT Benefits' Director, who rejected her request for the provision of the minimum social insurance protection due to the death, on the 5th of March 1965, of her husband, A. F., who, while in life, was insured in the respondent Fund, violated paragraphs 3 and 4 of article 63 of the ILO Convention 102 concerning minimum social security standards, which was ratified by Law No. 3251/1955, as well as paragraphs 3 and 4 of article 63 of the European Code of Social Security, also ratified by Law No. 1136/1981. These pleas to appeal must be also rejected, as unfounded. And this, because, for the part that paragraphs 3 and 4 of article 63 of ILO Convention 102 concerning minimum social security standards which was ratified by Law No. 3251/1955, are invoked, independent of whether these provisions do prevail, according to paragraph 1 of Article 28 of the Hellenic Constitution, over the provisions of the internal Greek law (see also Council of State 4505/1983, 1975/1984,

2678/1992), in any case, these provisions of the ILO Convention 102 may not, according to the aforementioned recitals, be implemented in this particular case, because the internal Greek legislation never included such provisions, awarding a choice potentiality to the protected family members, either in general, or per specific categories of insured persons, concerning the preconditions of acquiring a right to a social security benefit accruing from five years of insurance of the deceased breadwinner of the family or five years of service or, finally, five years domicile in Greece; especially given the fact that, according to the provisions of the aforementioned International Convention, this necessary intervention by the national legislator has no time limitations. As for the part that these pleas for appeal invoke paragraphs 3 and 4 of article 63 of the European Code of Social Security, which was ratified by Law No. 1136/1981, they must be similarly rejected because these provisions are not implemented since the insurance risk occurred on the 5th of March 1965, when Mr. A. F. died, before the 10th of June 1982, when the provision of the Code were actually put into force in Greece.

11. According to the aforementioned recitals, and since no other plea for appeal is raised, the present application is dismissed in total.

For this reason,

Rejects the application

Orders the forfeiture of the fee

Orders the appellants to pay pro rata the costs to the NAT, amounting to the sum of [redacted]

The conference was held in [redacted], on the 4th of May 1993 and the 15th of March 1994

The Acting President, Vice President [redacted] The Registrar [redacted]

And the decision was made public on the 16th of August 1994.

The Acting President Councillor [redacted] The Registrar [redacted]

IN THE NAME OF GREEK PEOPLE

Orders any bailiff to enforce, when asked, the above decision, the Prosecutors to act according to their competence and the Commanding Officers and the other bodies of the Public Power to help when asked

This order is certified with the drawing and the signature of the present.

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The President of the First Chamber The Registrar of the First Chamber

Number 3465/2006

THE COUNCIL OF STATE

FIRST CHAMBER

Met in public audience, on the 13th of June 2006, composed of: , Vice President, Acting President, replacing the Chamber's President, who was not able to attend, , , Councilors, , , Associate Councilors. Registrar: .

In order to judge an appeal, filed on the 23th of March 2000 by Mr. , resident of , who appeared before the Court with his lawyer, Mr. , whom he appointed with a power of attorney, versus the Greek Seamen Retirement Fund, Legal Entity of Public Law (herein referred to as NAT – Naftiko Apomachico Tameio), which has its registered office in , and which appeared before the Court with its lawyer, Mrs. , whom it appointed with a power of attorney.

With this application, the appellant seeks the decision No. 1641/1999 of the Administrative Court of Appeal of , to be set aside.

The hearing commenced with the reading of the report of the Rapporteur, Councilor .

Thereafter, the Court heard the appellant's representative, who stated the grounds of the appeal and who asked for the appeal to be accepted, as well as the representative of the respondent Fund, who asked for the appeal to be rejected.

After the completion of the public hearing, the Court met in conference and, after having examined the relevant documents, decided according to Law that:

1. Seeing that, for the filing of the adjudicated petition, all the appropriate fees have been paid (No. 2707310/2000 duplicate receipts of the Public Tax Authority for the collection of judicial levies), as well as the deposit (No. 1865704/2000 Special Deposit Form).

2. With the application is admissibly sought that the decision No. 1641/1999 of the Administrative Court of Appeal of , which rejected an appeal the appellant had filed

against the decision No. 1835/1997 of the Administrative Court of First Instance of [redacted], is set aside. The Court of First Instance had dismissed a claim of the appellant, a pensioner of NAT, against the Greek State and NAT, seeking a declaration that the defendants must pay the sum of [redacted] drachmas or, alternatively, the sum of [redacted] drachmas, for damages, representing the difference between the pension he received according to the NAT legislation and the pension that would have been paid to him, for the period from 01-12-1993 to 31-10-1995, had the provisions of the International Labour Convention No. 71 concerning Seafarers' Pensions and of the European Code of Social Security had been implemented in his case, or had the provisions of the legislation concerning NAT been judged contrary to the constitutional provisions invoked. Furthermore, the claim sought declaration that the sum of [redacted] drachmas, or alternatively, the sum of [redacted] drachmas should be paid to the appellant per month, following the filing of the action.

3. The appellant's action sought to restore the damage caused by the illegal, according to his allegations, calculation of his pension by the competent NAT bodies that implemented the legislation concerning NAT, which, according to the appellant, was contrary both to the provisions of the Constitution and to the invoked international conventions. Consequently, both the Court of First Instance and the contested judgment rightly stated that, in the opening trial, only NAT had the capacity to be made a defendant and not the Greek State. Consequently, the second, contrary, ground of appeal is rejected as unfounded.

4. Furthermore, the appellant raises that the contested judgment directly infringed the provision of Article 28, paragraph 1 of the Hellenic Constitution, because it accepted that the provisions of Article 3, paragraph 2 of the International Convention No. 71 concerning Seafarers' Pensions, ratified by Law No. 1639/1986 and of Article 65, paragraph 1 of the Convention of the European Code of Social Security, which was ratified by Law No. 1136/1981, serve only as guidelines for the national legislator and are not legally binding. On the contrary, according to the appellant's opinion, the aforementioned international provisions, should have been directly implemented in his case as well, and consequently, the trial Courts, by accepting the relevant grounds of the action and the appeal, should have ruled the calculation of his pension by NAT should have been made in accordance with the provisions of these international conventions, which, ratified by Law, prevailed over Article 23 of the Presidential Decree No. 913/1978, according to which the old-age pension was granted.

5. With the Law No. 1639/1986 (A' 109), which ratified the International Convention No. 71 concerning Seafarers' Pensions, which was done at Seattle, on the 6th of June 1946, by the General Conference of the International Labour Organization (ILO), under the title "Convention on Seafarers' Pensions", Article 2 of this Convention defines that: "Each Member of the International Labour Organization for which this Convention is in force shall, in accordance with national laws or regulations, establish or secure the establishment of a scheme for the payment of pensions to seafarers on retirement from sea service. 2. …", whereas, article 3 defines that: "1. The scheme shall comply with one of the following conditions: a) the pensions provided by the scheme: I) shall be payable to seafarers having completed a prescribed period of sea service on attaining the age of

fifty-five or sixty years as may be prescribed by the scheme, II) shall, together with any other social security pension payable simultaneously to the pensioner, be at a rate not less than the total obtained by computing for each year of his sea service 1.5 per cent of the remuneration on the basis of which contributions were paid in respect of him for that year if the scheme provides pensions on attaining the age of fifty-five years or 2 per cent of such remuneration if the scheme provides pensions at the age of sixty years; b) the scheme shall provide pensions the financing of which, together with the financing of any other social security pension payable simultaneously to the pensioner, … requires a premium income from all sources which is not less than 10 per cent of the total remuneration on the basis of which contributions are paid to the scheme. 2. Seafarers collectively shall not contribute more than half the cost of the pension's payable under the scheme".

Besides, the Convention of the European Code of Social Security, dating 16.4.1964, which was ratified by Law No. 1136/1981 (A' 61), sets in its preamble, among other things, that the Member States of the Council of Europe who have signed the Code stipulated its provisions "Convinced that it is desirable to establish a European Code of Social Security at a higher level than the minimum standards embodied in the International Labour Convention No. 102 concerning Social Security Minimum Standards". Furthermore, articles 25 and 28 of Part V, which refer to old-age benefit, define that: "Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following Articles of this Part" (article 25). The benefit shall be a periodical payment calculated as follows: (a) where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66; (b) … (article 28). And Article 65 defines that: "In the case of a periodical payment to which this Article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this Part, at least the percentage indicated therein of the total of the previous earnings of the beneficiary or his breadwinner and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary. 2. The previous earnings of the beneficiary or his breadwinner shall be calculated according to prescribed rules, and, where the persons protected or their breadwinners are arranged in classes according to their earnings, their previous earnings may be calculated from the basic earnings of the classes to which they belonged. 3. A maximum limit may be prescribed for the rate of the benefit or for the earnings taken into account for the calculation of the benefit, provided that the maximum limit is fixed in such a way that the provisions of paragraph 1 of this Article are complied with where the previous earnings of the beneficiary or his breadwinner are equal to or lower than the wage of a skilled manual male employee. 4. The previous earnings of the beneficiary or his breadwinner, the wage of the skilled manual male employee, the benefit and any family allowances shall be calculated on the same time basis …". Article 70 of this Code provides that: "1. The cost of the benefits provided in compliance with this Convention and the cost of the administration of such benefits shall be borne collectively by way of insurance

contributions or taxation or both … 2. The total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees … For the purpose of ascertaining whether this condition is fulfilled, all the benefits provided by the Member in compliance with this Convention, except … may be taken together … 3. The Member shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention, and shall take all measures required for this purpose; it shall ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question.".

Furthermore, Article 77 of the ILO Convention No. 102, ratified by Law No. 3251/1955 (A' 140), defines that: "This Convention does not apply to seamen or sea fishermen; provision for the protection of seamen and sea fishermen has been made by the International Labour Conference in the Social Security (Seafarers) Convention, 1946, and the Seafarers' Pensions Convention, 1946".

Finally, Article 14 of the Presidential Decree No. 913/1978 (A 220) "Codification of the NAT legislation" defines that: "1. A retirement pension (due to old-age) is granted to a seafarer who permanently retires from his profession, under the following conditions: a) he has reached the age of, at least, fifty (50) years, as proven by a registered birth certificate, according to Article 30 of the present law; b) he has completed, at least, fifteen (15) years of service at sea and c) the number of years of sea service, added up to the number of years of the seafarer's age, must result to the number seventy (70) at minimum. 2. a) Exceptionally, the seafarer is entitled to a pension regardless of age, if, dividing the days of actual work on sea vessels:aa) by the number 1 for service on tankers, or for service that is treated by law as service on tankers, where the crew salaries are determined by collective agreements or, failing that, by a ministerial decision, paid in foreign currency, or in drachmas converted and disbursed in free exchange, bb) by the number 1.05 for service on all other kind of vessels or for service that is treated by law as service on other kind of vessels, where the crew salaries are determined as above, cc) by the number 1.10, for service on vessels where the crew salaries are paid in drachmas, as above, for service on sailboats, diesel ships and floating crafts, as well as on cabin cruisers up to 100 ton gross capacity and dd) by the number 1.20 for service on sailboats and diesel ships (cargo, passenger and fishing vessels) above 25 ton gross capacity and cabin cruisers from 25.01 up to 100 ton gross capacity result quotients, which added together give a total of 7.920 days or more", while Article 23 of the same Presidential Decree states that: "… from its effective date the benefits as well (pensions and one-off allowances/lump-sum benefits) are increased at the average rate that the salaries determined by collective agreements concerning ocean-going vessels of 15.000 ton DW are increased. The amount of the raise is paid once the increase of the salaries is effective according to the collective agreements, following a decision of the board of directors, adopted by a joint decision of the Ministers of Finance and of Shipping and on the condition that NAT can afford the payment of such raises in pensions and allowances.

6. The conditions laid down by the provision of paragraph 1, Article 3 of International Convention No. 71, and to which the legislation of each Member State must comply, concerning the issue of providing minimum social insurance protection to seafarers, are not set cumulatively, but alternatively, and by choice of the national legislator. More specifically, the condition set in paragraph 1a, requires that the pensions shall be payable to persons having completed the age of fifty-five (55) or sixty (60) years, respectively; whereas, the condition set in paragraph 1b, refers to ensuring that the insurance fund, from which the pensions are provided, is secured. Furthermore, with the paragraph 2 of the same Article 3 a maximum limit is set on the contributions paid by the seafarers. In particular, the NAT legislation [Article 14, paragraph 1 of the Presidential Decree No. 913/1978, A' 220] sets as a precondition for the provision of old age pensions to seafarers that they have reached the age of fifty (50) years – meaning, a time limit, which is less than the one provided by the paragraph 1, Article 3 of the International Convention – which is, actually, combined with a minimum naval service time of fifteen (15) years and which is overridden in the cases provided for in paragraph 2, Article 14 of the previously mentioned Presidential Decree No. 913/1978. Consequently, in view of this choice of the Greek legislator, it is not possible to implement paragraph 1a, Article 3 of the aforementioned Convention in the case of the pensioners of NAT. Besides, the European Code of Social Security, in its preamble, mentions that it is inextricably linked to the Convention No. 102 of the International Labour Organisation (ILO) and aims to establish minimum social security standards higher than the ones set under this Convention. Consequently, the Code's provisions are not implemented to the pensions provided by NAT, as, according to Article 77 of this Convention, seafarers are expressly excluded from its scope.

7. In this particular case, as it apparent from the contested decision, the seafarer, who was insured by NAT for twenty-one (21) years, two (2) months and twelve (12) days, was granted, according to the NAT, decision No. 499/1994, a monthly pension of [redacted] drachmas starting from 1.12.1993. In the lawsuit, which he brought against the Greek State and NAT, he requested, invoking the application of the aforementioned provisions of these International Conventions, his monthly pension to be determined at the amount of [redacted] drachmas, or [redacted] drachmas, and on top of that to be paid for damages the amount of [redacted] million drachmas as the difference between the pension he received and the one he claims that he should have received for the period from 1.12.1993 to 30.10.1995.

The Administrative Court of First Instance rejected as inadmissible the application for the part that was directed against the Greek State, on the grounds that the illegal, according to the seaman's allegations, act, which determined his pension, was not issued by one of its bodies. Furthermore, the Administrative Court of First Instance, considering the action (according to Article 105 of the Introductory Law of the Greek Civil Code) for the part it is directed against NAT, rejected it on its merits, as it accepted that: a) the provisions of the aforementioned International Conventions are not autonomous from a regulative aspect, and thus, they cannot constitute a binding basis for the calculation of the level of the appellant's pension, and b) his pension's calculation, in accordance with the

provisions of Law No. 792/1978 is legitimate, and not opposed to the provisions of Articles 22 and 4 of the Hellenic Constitution. The Administrative Court of Appeal dismissed the appellant's appeal against the decision of the first instance, considering also that the provisions of the International Conventions invoked where not legally binding, because they are not regulatory autonomous and they do not acknowledge rights to individuals and may not be defended in Courts. This judgment of the contested decision, regardless of its individual reasoning, is correct in its conclusion for non implementation of the provisions of the Convention No. 71 and of the European Code of Social Security. And this, because, independently of whether the provisions of these international conventions may be found/are self executing, so as to be possible for the individual to draw rights from them and to invoke them before the national courts, as it was argued above in paragraph 6, the conditions set in paragraph 1, Article 3 of International Labour Convention No. 71, are set alternatively and not cumulatively, as the appellant claims in his suit and appeal, and furthermore, since the NAT legislation, as it was cited above, did not choose to regulate the term 1a of Article 3 of the International Convention No. 71, those defined in this article could not be implemented in the appellant's case. Besides, the implementation of the term 1b of Article 3 of the International Convention No. 71, apart from the fact that it does not refer to the level of the pension to be provided, does not lead, according to those indicated in the appellant's suit to the provision of a pension higher than the one he received from NAT, but to a lower, whereas also the invocation of paragraph 2 of Article 3 of this Convention, which is similarly based on the aforementioned reasoning, does not affect the level of the provided pension, does not lead to this result. Finally, the implementation of the provisions of the European Code of Social Security, which the appellant invoked, is also not possible, since, as it was mentioned above, this International Convention does not apply to seafarers. Consequently, all the opposite grounds on which the appeal is based must be rejected as unfounded.

8. Finally, the appellant claims that the calculation of his pension by the contested decision, in accordance with the provisions of the NAT legislation, is opposed to the provisions of Articles 4 paragraph 1 and 5, 17 paragraph 1, 22 paragraph 4 and 25 of the Hellenic Constitution. And this, because the comparison of the relation between the level of salary – contributions – pensions, among the insured persons of the same insurance fund, demonstrates, according to the appellant's allegations, the violation of the fair distribution of the insurance charges/economic burden and of the violation of the obligation of equal protection of those insured. More specifically, the appellant claims, by reference to the suit and the appeal, that a) the pensions provided by NAT to other professions (radio operators, cooks) represent a percentage from 64,72% to 80,40% of the corresponding percentages salaries of these professions, whereas the pensions of his professional field/category (captain), is are limited to a percentage of 50,86%, b) the proportion between the contributions and the pensions for the other professions is limited to a percentage of 38,26% to 28,60%, whereas, for captains, the percentage amounts to 45,22%. This ground must also be rejected, as unfounded. And this, because although Article 22, paragraph 4 of the Hellenic Constitution establishes the legislator's obligation to provide social security coverage for the whole working population of the

country, it does not, however, create a direct claim regarding the nature of social security or its extent, but merely creates an obligation on the part of the common legislator to proceed, without restrictions, to the regulation of these issues, based on the criterion of protecting and promoting social security of the working population (Council of State 2330/2003). Furthermore, the constitutional principle of equality does not prevent the common legislator and the Administration, when acting as a rule-maker, from adjusting or changing the pension system, and more particularly, the amount of the insurance benefits, even through a reduction made by sliding scale, against the higher benefits scale, in a manner that greater financial burdens are imposed to insured parties that have made more contributions (see Council of State 2499/2003, 2827/2005). Besides, radio operators and cooks do not constitute, in view of their duties, a category of NAT pensioners similar to captains. Finally, the violation of the provisions of Articles 5, paragraph 1 and 17, paragraph 1 of the Hellenic Constitution is vaguely alleged, given that the present application does not determine which provisions of the NAT legislation are opposed to the aforementioned constitutional provisions and on what grounds.

9. Since the appellant does not make another plea, the application must be rejected in its whole.

On these grounds,
The Court

Rejects the application,
Orders the forfeiture of the fee
Orders the appellant to pay the costs to NAT, amounting to [redacted]
The conference was held on the 14th of June 2006
and the decision was made public on the 27th of November 2006

The Acting President,
Vice President, [redacted]

The Registrar [redacted]

IN THE NAME OF GREEK PEOPLE

Orders any bailiff to enforce, when asked, the above decision, the Prosecutors to act according to their competence and the Commanding Officers and the other bodies of the Public Power to help when asked

This order is certified with the drawing and the signature of the present.

[redacted]

The President of the First Chamber [redacted]

The Registrar of the First Chamber

ANNEX

Within the first three parts of this Annex, the ratification status of the ILO and the CoE international social security legal instruments referred in this research work is presented, as well as the dates ratification took place. The fourth and final part includes the text of the ILO Convention No. 128 on Invalidity, Old-Age and Survivors' Benefits (1967), since the second chapter of this doctoral dissertation entails a detailed description and critical analysis of this international instrument.

PART I

The Ratification Status of Instruments on Up-to-date International Social Security Standards of the ILO and the CoE (last update: 20/05/2012, based on the data included in the ILO NORMLEX Website and the CoE Treaty Office Website).

ILO, SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION, 1952 (No. 102)

(Date of entry into force: 27/04/1955 – No. of Ratifications 47 – No. of Denunciations 0)

Albania (2006), Austria (1969), Barbados (1972), Belgium (1959), Bolivia (Plurinational State of) (1977), Bosnia and Herzegovina (1993), Brazil (2009), Bulgaria (2008), Costa Rica (1972), Croatia (1991), Cyprus (1991), Czech Republic (1993), Democratic Republic of the Congo (1987), Denmark (1955), Ecuador (1974), France (1974), Germany (1958), Greece (1955), Iceland (1961), Ireland (1968), Israel (1955), Italy (1956), Japan (1976), Libya (1975), Luxembourg (1964), Mauritania (1968), Mexico (1961), Montenegro (2006), Netherlands (1962), Niger (1966), Norway (1954), Peru (1961), Poland (2003), Portugal (1994), Romania (2009), Senegal (1962), Serbia (2000), Slovakia (1993), Slovenia (1992), Spain (1988), Sweden (1953), Switzerland (1977), The former Yugoslav Republic of Macedonia (1991), Turkey (1975), United Kingdom (1954), Uruguay (2010), Venezuela (Bolivarian Republic of) (1982).

ILO, EMPLOYMENT INJURY BENEFITS CONVENTION, 1964 [SCHEDULE I AMENDED IN 1980] (No. 121)

(Date of entry into force: 28/07/1967 – No. of Ratifications 24 – No. of Denunciations 0)

Belgium (1970), Bolivia (Plurinational State of) (1977), Bosnia and Herzegovina (1993), Chile (1999), Croatia (1991), Cyprus (1966), Democratic Republic of the Congo (1967), Ecuador (1978), Finland (1968), Germany (1972), Guinea (1967), Ireland (1969), Japan (1974), Libya (1975), Luxembourg (1972), Montenegro (2006), Netherlands (1966), Senegal (1966), Serbia (2000), Slovenia (1992), Sweden (1969), The former Yugoslav Republic of Macedonia (1991), Uruguay (1973), Venezuela (Bolivarian Republic of) (1982).

ILO, INVALIDITY, OLD-AGE AND SURVIVORS' BENEFITS CONVENTION, 1967 (No. 128)

(Date of entry into force: 01/11/1969 – No. of Ratifications 16 – No. of Denunciations 0)

Austria (1969), Barbados (1972), Bolivia (Plurinational State of) (1977), Cyprus (1969), Czech Republic (1993), Ecuador (1978), Finland (1976), Germany (1971), Libya (1975),

Netherlands (1969), Norway (1968), Slovakia (1993), Sweden (1968), Switzerland (1977), Uruguay (1973), Venezuela (Bolivarian Republic of) (1983).

ILO, MEDICAL CARE AND SICKNESS BENEFITS CONVENTION, 1969 (No. 130)

(Date of entry into force: 27/05/1972 – No. of Ratifications 15 – No. of Denunciations 0)

Bolivia (Plurinational State of) (1977), Costa Rica (1972), Czech Republic (1993), Denmark (1978), Ecuador (1978), Finland (1974), Germany (1974), Libya (1975); Luxembourg (1980), Netherlands (2006), Norway (1972), Slovakia (1993), Sweden (1970), Uruguay (1973), Venezuela (Bolivarian Republic of) (1982).

ILO, EMPLOYMENT PROMOTION AND PROTECTION AGAINST UNEMPLOYMENT CONVENTION, 1988 (No. 168)

(Date of entry into force: 17/10/1991 – No. of Ratifications 8 – No. of Denunciations 0)

Albania (2006), Belgium (2011), Brazil (1993), Finland (1990), Norway (1990), Romania (1992), Sweden (1990), Switzerland (1990).

ILO, MATERNITY PROTECTION CONVENTION, 2000 (No. 183)

(Date of entry into force: 07/02/2002 – No. of Ratifications 23 – No. of Denunciations 0)

Albania (2004), Austria (2004), Azerbaijan (2010), Belarus (2004), Belize (2005), Benin (2012), Bosnia and Herzegovina (2010), Bulgaria (2001), Cuba (2004), Cyprus (2005), Hungary (2003), Italy (2001), Latvia (2009), Lithuania (2003), Luxemburg (2008), Mali (2008), Moldova (Republic of) (2006), Morocco (2011), Netherlands (2009), Romania (2002), Serbia (2010), Slovakia (2000), Slovenia (2010).

ILO, EQUALITY OF TREATMENT (SOCIAL SECURITY) CONVENTION, 1962 (No. 118)

(Date of entry into force: 25/04/1964 – No. of Ratifications 38 – No. of Denunciations 1 (The Netherlands, in 2004 (date of effect: 20/12/2005))

Bangladesh (1972), Barbados (1974), Bolivia (Plurinational State of) (1977), Brazil (1969), Cape Verde (1987), Central African Republic (1964), Democratic Republic of the Congo (1967), Denmark (1969), Ecuador (1970), Egypt (1993), Finland (1969), France (1974), Germany (1971), Guatemala (1963), Guinea (1967), India (1964), Iraq (1978), Ireland (1964), Israel (1965), Italy (1967), Jordan (1963), Kenya (1971), Libya (1975), Madagascar

(1964), Mauritania (1968), Mexico (1978), Netherlands (1964), Norway (1963), Pakistan (1969), Philippines (1994), Rwanda (1989), Suriname (1976), Sweden (1963), Syrian Arab Republic (1963), Tunisia (1965), Turkey (1974), Uruguay (1983), Venezuela (Bolivarian Republic of) (1982).

CoE, EUROPEAN CODE OF SOCIAL SECURITY, 1964 (CETS No.: 048)

(Date of entry into force: 17/03/1968 – No. of Ratifications 21 – No. of Denunciations 0 (The Netherlands denounced Part VI on Employment Injury Benefits on the 17/03/2008))

Belgium (1969), Cyprus (1992), Czech Republic (2000), Denmark (1973), Estonia (2004), France (1986), Germany (1971), Greece (1981), Ireland (1971), Italy (1977), Luxembourg (1968), Netherlands (1967), Norway (1966), Portugal (1984), Romania (2009), Slovenia (2004), Spain (1994), Sweden (1965), Switzerland (1977), Turkey (1980), United Kingdom (1968).

CoE, PROTOCOL OF THE EUROPEAN CODE OF SOCIAL SECURITY, 1964 (CETS No.: 048A)

(Date of entry into force: 17/3/1968 – No. of Ratifications 7 – No. of Denunciations 0)

Belgium (1969), Germany (1971), Luxembourg (1968), Netherlands (1967), Norway (1966), Portugal (1984), Sweden (1965).

CoE, REVISED EUROPEAN CODE OF SOCIAL SECURITY, 1990 (CETS No.: 139)

(Date of entry into force: // – No. of Ratifications 1 – No. of Denunciations 0)

Netherlands (2009)

PART II

The Ratification Status of Instruments in the field of Social Security Coordination of the ILO and the CoE (last update: 20/05/2012, based on the data included in the ILO NORMLEX Website and the CoE Treaty Office Website).

ILO, MAINTENANCE OF SOCIAL SECURITY RIGHTS CONVENTION, 1982 (No. 157)

(Date of entry into force: 11/09/1986 – No. of Ratifications 4 – No. of Denunciations 0)

Kyrgyzstan (2008), Philippines (1994), Spain (1985), Sweden (1984).

CoE, EUROPEAN CONVENTION ON SOCIAL SECURITY, 1972 (CETS No.: 078)

(Date of entry into force: 1/3/1977 – No. of Ratifications 8 – No. of Denunciations 0)

Austria (1975), Belgium (1986), Italy (1990), Luxembourg (1975), Netherlands (1977), Portugal (1983), Spain (1986), Turkey (1976).

CoE, SUPPLEMENTARY AGREEMENT FOR THE APPLICATION OF THE EUROPEAN CONVENTION ON SOCIAL SECURITY, 1972 (CETS No.: 078A)

(Date of entry into force: 1/3/1977 – No. of Ratifications 8 – No. of Denunciations 0)

Austria (1975), Belgium (1986), Italy (1990), Luxembourg (1975), Netherlands (1977), Portugal (1983), Spain (1986), Turkey (1976).

PART III

The Ratification Status of the European Social Charter and the Revised European Social Charter of the CoE (last update: 20/05/2012, based on the data included in the CoE Treaty Office Website).

CoE, EUROPEAN SOCIAL CHARTER, 1961 (CETS No.: 035)

(Date of entry into force: 26/02/1965 – No. of Ratifications 27 – No. of Denunciations 0)

Austria (1969), Belgium (1990), Croatia (2003), Cyprus (1968), Czech Republic (1999), Denmark (1965), Finland (1991), France (1973), Germany (1965), Greece (1984), Hungary (1999), Iceland (1976), Ireland (1964), Italy (1965), Latvia (2002), Luxembourg (1991), Malta (1988), Netherlands (1980), Norway (1962), Poland (1997, Portugal (1991), Slovakia (1998), Spain (1980), Sweden (1962), The former Yugoslav Republic of Macedonia (2005), Turkey (1989), United Kingdom (1962).

CoE, REVISED EUROPEAN SOCIAL CHARTER, 1996 (CETS No.: 163)

(Date of entry into force: 01/07/1999 – No. of Ratifications 32 – No. of Denunciations 0)

Albania (2002), Andorra (2004), Armenia (2004), Austria (2011), Azerbaijan (2004), Belgium (2004), Bosnia and Herzegovina (2008), Bulgaria (2000), Cyprus (2000), Estonia (2000), Finland (2002), France (1999), Georgia (2005), Hungary (2009), Ireland (2000), Italy (1999), Lithuania (2001), Malta (2005), Moldova (2001), Montenegro (2010), Netherlands (2006), Norway (2001), Portugal (2002), Romania (1999), Russia (2009), Serbia (2009), Slovakia (2009), Slovenia (1999), Sweden (1998), The former Yugoslav Republic of Macedonia (2012), Turkey (2007), Ukraine (2006).

PART IV

The ILO Convention No. 128 on Invalidity, Old-Age and Survivors' Benefits (1967)

PREAMBLE

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-first Session on 7 June 1967, and

Having decided upon the adoption of certain proposals with regard to the revision of the Old-Age Insurance (Industry, etc.) Convention, 1933, the Old-Age Insurance (Agriculture) Convention, 1933, the Invalidity Insurance (Industry, etc.) Convention, 1933, the Invalidity Insurance (Agriculture) Convention, 1933, the Survivors' Insurance (Industry, etc.) Convention, 1933, and the Survivors' Insurance (Agriculture) Convention, 1933, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and sixty-seven the following Convention, which may be cited as the Invalidity, Old-Age and Survivors' Benefits Convention, 1967:

PART I. GENERAL PROVISIONS

Article 1

In this Convention--

(a) the term ***legislation*** includes any social security rules as well as laws and regulations;
(b) the term ***prescribed*** means determined by or in virtue of national legislation;
(c) the term ***industrial undertaking*** includes all undertakings in the following branches of economic activity: mining and quarrying; manufacturing; construction; electricity, gas, water and sanitary services; and transport, storage and communication;
(d) the term ***residence*** means ordinary residence in the territory of the Member, and the term ***resident*** means a person ordinarily resident in the territory of the Member;
(e) the term ***dependent*** refers to a state of dependency which is presumed to exist in prescribed cases;
(f) the term ***wife*** means a wife who is dependent on her husband;
(g) the term ***widow*** means a woman who was dependent on her husband at the time of his death;
(h) the term ***child*** covers--
    (i) a child under school-leaving age or under 15 years of age, whichever is the higher; and
    (ii) a child under a prescribed age higher than that specified in clause (i) of this subparagraph and who is an apprentice or student or has a chronic illness or

infirmity disabling him for any gainful activity, under prescribed conditions: Provided that this requirement shall be deemed to be met where national legislation defines the term so as to cover any child under an age appreciably higher than that specified in clause (i) of this subparagraph;

(i) the term ***qualifying period*** means a period of contribution, or a period of employment, or a period of residence, or any combination thereof, as may be prescribed;

(j) the terms ***contributory benefits*** and ***non-contributory benefits*** means respectively benefits the grant of which depends or does not depend on direct financial participation by the persons protected or their employer or on a qualifying period of occupational activity.

Article 2

Each Member for which this Convention is in force shall comply with--

(a) Part I;

(b) at least one of Parts II, III and IV;

(c) the relevant provisions of Parts V and VI; and

(d) Part VII.

2. Each Member shall specify in its ratification in respect of which of Parts II to IV it accepts the obligations of the Convention.

Article 3

1. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of one or more of Parts II to IV not already specified in its ratification.

2. The undertakings referred to in paragraph 1 of this Article shall be deemed to be an integral part of the ratification and to have the force of ratification as from the date of notification.

Article 4

1. A Member whose economy is insufficiently developed may avail itself, by a declaration accompanying its ratification, of the temporary exceptions provided for in the following Articles: Article 9, paragraph 2; Article 13, paragraph 2; Article 16, paragraph 2; and Article 22, paragraph 2. Any such declaration shall state the reason for such exceptions.

2. Each Member which has made a declaration under paragraph 1 of this Article shall include in its reports upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation a statement in respect of each exception of which it avails itself--

(a) that its reason for doing so subsists; or

(b) that it renounces its right to avail itself of the exception in question as from a stated date.

3. Each Member which has made a declaration under paragraph 1 of this Article shall increase the number of employees protected as circumstances permit.

Article 5

Where, for the purpose of compliance with any of the Parts II to IV of this Convention which are to be covered by its ratification, a Member is required to protect prescribed classes of persons constituting not less than a specified percentage of employees or of the whole economically active population, the Member shall satisfy itself, before undertaking to comply with any such Part, that the relevant percentage is attained.

Article 6

For the purpose of compliance with Parts II, III or IV of this Convention, a Member may take account of protection effected by means of insurance which, although not made compulsory by its legislation for the persons to be protected--

(a) is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of employers and workers;
(b) covers a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee; and
(c) complies, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Convention.

PART II. INVALIDITY BENEFIT

Article 7

Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of invalidity benefit in accordance with the following Articles of this Part.

Article 8

The contingency covered shall include incapacity to engage in any gainful activity, to an extent prescribed, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity.

Article 9

1. The persons protected shall comprise--
   (a) all employees, including apprentices; or
   (b) prescribed classes of the economically active population, constituting not less than 75 per cent. of the whole economically active population; or
   (c) all residents, or residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 28.

2. Where a declaration made in virtue of Article 4 is in force, the persons protected shall comprise--
   (a) prescribed classes of employees, constituting not less than 25 per cent. of all employees;
   (b) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent. of all employees in industrial undertakings.

Article 10

The invalidity benefit shall be a periodical payment calculated as follows:

(a) where employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 26 or with the requirements of Article 27;
(b) where all residents or all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 28.

Article 11

1. The benefit specified in Article 10 shall, in a contingency covered, be secured at least--
   (a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 15 years of contribution or employment, or ten years of residence; or
   (b) where, in principle, all economically active persons are protected, to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of three years of contribution and in respect of whom, while he was of working age, the prescribed yearly average number or yearly number of contributions has been paid.
2. Where the invalidity benefit is conditional upon a minimum period of contribution, employment or residence, a reduced benefit shall be secured at least--
   (a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of five years of contribution, employment or residence; or
   (b) where, in principle, all economically active persons are protected, to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of three years of contribution and in respect of whom, while he was of working age, half of the yearly average number or of the yearly number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.
3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V but at a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, five years of contribution, employment or residence.

4. A proportional reduction of the percentage indicated in the Schedule appended to Part V may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds five years of contribution, employment or residence but is less than 15 years of contribution or employment or ten years of residence; a reduced benefit shall be payable in conformity with paragraph 2 of this Article.
5. The requirements of paragraphs 1 and 2 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V is secured at least to a person protected who has completed, in accordance with prescribed rules, a qualifying period of contribution or employment which shall not be more than five years at a prescribed minimum age and may rise with advancing age to not more than a prescribed maximum number of years.

Article 12

The benefit specified in Articles 10 and 11 shall be granted throughout the contingency or until an old-age benefit becomes payable.

Article 13

1. Each Member for which this Part of this Convention is in force shall, under prescribed conditions--
   (a) provide rehabilitation services which are designed to prepare a disabled person wherever possible for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity; and
   (b) take measures to further the placement of disabled persons in suitable employment.
2. Where a declaration made in virtue of Article 4 is in force, the Member may derogate from the provisions of paragraph 1 of this Article.

PART III. OLD-AGE BENEFIT

Article 14

Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following Articles of this Part.

Article 15

1. The contingency covered shall be survival beyond a prescribed age.
2. The prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to demographic, economic and social criteria, which shall be demonstrated statistically.
3. If the prescribed age is 65 years or higher, the age shall be lowered, under prescribed conditions, in respect of persons who have been engaged in occupations that are

deemed by national legislation, for the purpose of old-age benefit, to be arduous or unhealthy.

Article 16

1. The persons protected shall comprise--
   (a) all employees, including apprentices; or
   (b) prescribed classes of the economically active population, constituting not less than 75 per cent. of the whole economically active population; or
   (c) all residents or residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 28.
2. Where a declaration made in virtue of Article 4 is in force, the persons protected shall comprise--
   (a) prescribed classes of employees, constituting not less than 25 per cent. of all employees; or
   (b) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent. of all employees in industrial undertakings.

Article 17

The old-age benefit shall be a periodical payment calculated as follows:

(a) where employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 26 or with the requirements of Article 27;
(b) where all residents or all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 28.

Article 18

1. The benefit specified in Article 17 shall, in a contingency covered, be secured at least--
   (a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution or employment, or 20 years of residence; or
   (b) where, in principle, all economically active persons are protected, to a person protected who has completed, prior to the contingency, a prescribed qualifying period of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid.
2. Where the old-age benefit is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least--
   (a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of 15 years of contribution or employment; or
   (b) where, in principle, all economically active persons are protected, to a person protected who has completed, prior to the contingency, a prescribed qualifying

period of contribution and in respect of whom, while he was of working age, half of the yearly average number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.

3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V but a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, ten years of contribution or employment, or five years of residence.
4. A proportional reduction of the percentage indicated in the Schedule appended to Part V may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds ten years of contribution or employment or five years of residence but is less than 30 years of contribution or employment or 20 years of residence; if such qualifying period exceeds 15 years of contribution or employment, a reduced benefit shall be payable in conformity with paragraph 2 of this Article.

Article 19

The benefit specified in Articles 17 and 18 shall be granted throughout the contingency.

PART IV. SURVIVORS' BENEFIT

Article 20

Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of survivors' benefit in accordance with the following Articles of this Part.

Article 21

1. The contingency covered shall include the loss of support suffered by the widow or child as the result of the death of the breadwinner.
2. In the case of a widow the right to a survivors' benefit may be made conditional on the attainment of a prescribed age. Such age shall not be higher than the age prescribed for old-age benefit.
3. No requirement as to age may be made if the widow--
   (a) is invalid, as may be prescribed; or
   (b) is caring for a dependent child of the deceased.
4. In order that a widow who is without a child may be entitled to a survivors' benefit, a minimum duration of marriage may be required.

Article 22

1. The persons protected shall comprise--
   (a) the wives, children and, as may be prescribed, other dependants of all breadwinners who were employees or apprentices; or

(b) the wives, children and, as may be prescribed, other dependants of breadwinners in prescribed classes of the economically active population, which classes constitute not less than 75 per cent. of the whole economically active population; or

(c) all widows, all children and all other prescribed dependants who have lost their breadwinner, who are residents and, as appropriate, whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the provisions of Article 28.

2. Where a declaration made in virtue of Article 4 is in force, the persons protected shall comprise--

(a) the wives, children and, as may be prescribed, other dependants of breadwinners, in prescribed classes of employees, which classes constitute not less than 25 per cent. of all employees; or

(b) the wives, children and, as may be prescribed, other dependants of breadwinners in prescribed classes of employees in industrial undertakings, which classes constitute not less than 50 per cent. of all employees in industrial undertakings.

Article 23

The survivors' benefit shall be a periodical payment calculated as follows:

(a) where employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 26 or with the requirements of Article 27;

(b) where all residents or all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 28.

Article 24

1. The benefit specified in Article 23 shall, in a contingency covered, be secured at least--

(a) to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period which may be 15 years of contribution or employment, or ten years of residence: Provided that, for a benefit payable to a widow, the completion of a prescribed qualifying period of residence by such widow may be required instead; or

(b) where, in principle, the wives and children of all economically active persons are protected, to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period of three years of contribution and in respect of whose breadwinner, while he was of working age, the prescribed yearly average number or the yearly number of contributions has been paid.

2. Where the survivors' benefit is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least--

(a) to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period of five years of contribution or employment; or

(b) where, in principle, the wives and children of all economically active persons are protected, to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period of three years of contribution and in respect of whose breadwinner, while he was of working age, half of the yearly average number or of the yearly number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.

3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V but at a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected whose breadwinner has completed, in accordance with prescribed rules, five years of contribution, employment or residence.
4. A proportional reduction of the percentage indicated in the Schedule appended to Part V may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds five years of contribution, employment or residence but is less than 15 years of contribution or employment or ten years of residence; if such qualifying period is one of contribution or employment, a reduced benefit shall be payable in conformity with paragraph 2 of this Article.
5. The requirements of paragraphs 1 and 2 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V is secured at least to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period of contribution or employment which shall not be more than five years at a prescribed minimum age and may rise with advancing age to not more than a prescribed maximum number of years.

Article 25

The benefit specified in Articles 23 and 24 shall be granted throughout the contingency.

PART V. STANDARDS TO BE COMPLIED WITH BY PERIODICAL PAYMENTS

Article 26

1. In the case of a periodical payment to which this Article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this Part, at least the percentage indicated therein of the total of the previous earnings of the beneficiary or his breadwinner and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.
2. The previous earnings of the beneficiary or his breadwinner shall be calculated according to prescribed rules, and, where the persons protected or their breadwinners

are arranged in classes according to their earnings, their previous earnings may be calculated from the basic earnings of the classes to which they belonged.

3. A maximum limit may be prescribed for the rate of the benefit or for the earnings taken into account for the calculation of the benefit, provided that the maximum limit is fixed in such a way that the provisions of paragraph 1 of this Article are complied with where the previous earnings of the beneficiary or his breadwinner are equal to or lower than the wage of a skilled manual male employee.
4. The previous earnings of the beneficiary or his breadwinner, the wage of the skilled manual male employee, the benefit and any family allowances shall be calculated on the same time basis.
5. For the other beneficiaries the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.
6. For the purpose of this Article, a skilled manual male employee shall be--
   (a) a fitter or turner in the manufacture of machinery other than electrical machinery; or
   (b) a person deemed typical of skilled labour selected in accordance with the provisions of the following paragraph; or
   (c) a person whose earnings are such as to be equal to or greater than the earnings of 75 per cent. of all the persons protected, such earnings to be determined on the basis of annual or shorter periods as may be prescribed; or
   (d) a person whose earnings are equal to 125 per cent. of the average earnings of all the persons protected.
7. The person deemed typical of skilled labour for the purposes of subparagraph (b) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the contingency in question, or of the breadwinners of the persons protected, as the case may be, in the division comprising the largest number of such persons or breadwinners; for this purpose, the international standard industrial classification of all economic activities, adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 August 1948, as amended up to 1958 and reproduced in the Annex to this Convention, or such classification as at any time further amended, shall be used.
8. Where the rate of benefit varies by region, the skilled manual male employee may be determined for each region in accordance with paragraphs 6 and 7 of this Article.
9. The wage of the skilled manual male employee shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national legislation, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 8 of this Article is not applied, the median rate shall be taken.

Article 27

1. In the case of a periodical payment to which this Article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency,

shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this Part, at least the percentage indicated therein of the total of the wage of an ordinary adult male labourer and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.

2. The wage of the ordinary adult male labourer, the benefit and any family allowances shall be calculated on the same time basis.
3. For the other beneficiaries, the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.
4. For the purpose of this Article, the ordinary adult male labourer shall be--
   (a) a person deemed typical of unskilled labour in the manufacture of machinery other than electrical machinery; or
   (b) a person deemed typical of unskilled labour selected in accordance with the provisions of the following paragraph.
5. The person deemed typical of unskilled labour for the purpose of subparagraph (b) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the contingency in question, or of the breadwinners of the persons protected, as the case may be, in the division comprising the largest number of such persons or breadwinners; for this purpose the international standard industrial classification of all economic activities, adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 August 1948, as amended up to 1958 and reproduced in the Annex to this Convention, or such classification as at any time further amended, shall be used.
6. Where the rate of benefit varies by region, the ordinary adult male labourer may be determined for each region in accordance with paragraphs 4 and 5 of this Article.
7. The wage of the ordinary adult male labourer shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national legislation, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 6 of this Article is not applied, the median rate shall be taken.

Article 28

In the case of a periodical payment to which this Article applies--

(a) the rate of the benefit shall be determined according to a prescribed scale or a scale fixed by the competent public authority in conformity with prescribed rules;
(b) such rate may be reduced only to the extent by which the other means of the family of the beneficiary exceed prescribed substantial amounts or substantial amounts fixed by the competent public authority in conformity with prescribed rules;
(c) the total of the benefit and any other means, after deduction of the substantial amounts referred to in subparagraph (b), shall be sufficient to maintain the family of the beneficiary in health and decency, and shall be not less than the corresponding benefit calculated in accordance with the requirements of Article 27;

(d) the provisions of subparagraph (c) shall be deemed to be satisfied if the total amount of benefits paid under the Part concerned exceeds by at least 30 per cent. the total amounts of benefits which would be obtained by applying the provisions of Article 27 and the provisions of--
   (i) Article 9, paragraph 1, subparagraph (b) for Part II;
   (ii) Article 16, paragraph 1, subparagraph (b) for Part III;
   (iii) Article 22, paragraph 1, subparagraph (b) for Part IV.

Article 29

1. The rates of cash benefits currently payable pursuant to Article 10, Article 17 and Article 23 shall be reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living.
2. Each Member shall include the findings of such reviews in its reports upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation, and shall specify any action taken.

SCHEDULE TO PART V – PERIODICAL PAYMENTS TO STANDARD BENEFICIARIES

Part	Contingency	Standard Beneficiary	Percentage (%)
II	Invalidity	Man with wife and two children	50
III	Old-Age	Man with wife of pensionable age	45
IV	Death of the breadwinner	Widow with two children	45

PART VI. COMMON PROVISIONS

Article 30

National legislation shall provide for the maintenance of rights in course of acquisition in respect of contributory invalidity, old-age and survivors' benefits under prescribed conditions.

Article 31

1. The payment of invalidity, old-age or survivors' benefit may be suspended, under prescribed conditions, where the beneficiary is engaged in gainful activity.
2. A contributory invalidity, old-age or survivors' benefit may be reduced where the earnings of the beneficiary exceed a prescribed amount; the reduction in benefit shall not exceed the earnings.
3. A non-contributory invalidity, old-age or survivors' benefit may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.

Article 32

1. A benefit to which a person protected would otherwise be entitled in compliance with any of Parts II to IV of this Convention may be suspended to such extent as may be prescribed--

(a) as long as the person concerned is absent from the territory of the Member, except, under prescribed conditions, in the case of a contributory benefit;

(b) as long as the person concerned is maintained at public expense or at the expense of a social security institution or service;

(c) where the person concerned has made a fraudulent claim;

(d) where the contingency has been caused by a criminal offence committed by the person concerned;

(e) where the contingency has been wilfully caused by the serious misconduct of the person concerned;

(f) in appropriate cases, where the person concerned, without good reason, neglects to make use of the medical or rehabilitation services placed at his disposal or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries; and

(g) in the case of survivors' benefit for a widow, as long as she is living with a man as his wife.

2. In the case and within the limits prescribed, part of the benefit otherwise due shall be paid to the dependants of the person concerned.

Article 33

1. If a person protected is or would otherwise be eligible simultaneously for more than one of the benefits provided for in this Convention, these benefits may be reduced under prescribed conditions and within prescribed limits; the person protected shall receive in total at least the amount of the most favourable benefit.
2. If a person protected is or would otherwise be eligible for a benefit provided for in this Convention and is in receipt of another social security cash benefit for the same contingency, other than a family benefit, the benefit under this Convention may be reduced or suspended under prescribed conditions and within prescribed limits, subject to the part of the benefit which is reduced or suspended not exceeding the other benefit.

Article 34

1. Every claimant shall have a right of appeal in the case of refusal of benefit or complaint as to its quality or quantity.
2. Procedures shall be prescribed which permit the claimant to be represented or assisted, where appropriate, by a qualified person of his choice or by a delegate of an organisation representative of persons protected.

Article 35

1. Each Member shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention and shall take all measures required for this purpose.
2. Each Member shall accept general responsibility for the proper administration of the institutions and services concerned in the application of this Convention.

Article 36

Where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management under prescribed conditions; national legislation may likewise decide as to the participation of representatives of employers and of the public authorities.

PART VII. MISCELLANEOUS PROVISIONS

Article 37

Any Member whose legislation protects employees may, as necessary, exclude from the application of this convention--

(a) persons whose employment is of a casual nature;
(b) members of the employer's family living in his house, in respect of their work for him;
(c) other categories of employees, which shall not exceed in number 10 per cent. of all employees other than those excluded under subparagraphs (a) and (b) of this Article.

Article 38

1. Any Member whose legislation protects employees may, by a declaration accompanying its ratification, temporarily exclude from the application of this Convention the employees in the sector comprising agricultural occupations who are not yet protected by its legislation at the time of the ratification.
2. Each Member which has made a declaration under paragraph 1 of this Article shall indicate in its reports upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation to what extent effect is given and what effect is proposed to be given to the provisions of the Convention in respect of the employees in the sector comprising agricultural occupations and any progress which may have been made with a view to the application of the Convention to such employees or, where there is no change to report, furnish all the appropriate explanations.
3. Each Member which has made a declaration under paragraph 1 of this Article shall increase the number of employees protected in the agricultural sector to the extent and with the speed that the circumstances permit.

Article 39

1. Any Member which ratifies this Convention may, by a declaration accompanying its ratification, exclude from the application of the Convention--
   (a) seafarers, including sea fishermen,
   (b) public servants,
   where these categories are protected by special schemes which provide in the aggregate benefits at least equivalent to those required by this Convention.
2. Where a declaration under paragraph 1 of this Article is in force, the Member may exclude the persons belonging to the category or categories excluded from the application of the Convention from the number of persons taken into account when calculating the percentages specified in paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 9; paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 16; paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 22; and subparagraph (c) of Article 37.
3. Any Member which has made a declaration under paragraph 1 of this Article may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of this Convention in respect of a category or categories excluded at the time of its ratification.

Article 40

If a person protected is entitled, under national legislation, in case of death of the breadwinner, to periodical benefits other than a survivors' benefit, such periodical benefits may be assimilated to the survivors' benefit for the application of this Convention.

Article 41

1. A Member which--
   (a) has accepted the obligations of this Convention in respect of Parts II, III and IV, and
   (b) covers a percentage of the economically active population which is at least ten points higher than that required by Article 9, paragraph 1, subparagraph (b), Article 16, paragraph 1, subparagraph (b), and Article 22, paragraph 1, subparagraph (b), or complies with Article 9, paragraph 1, subparagraph (c), Article 16, paragraph 1, subparagraph (c), and Article 22, paragraph 1, subparagraph (c), and
   (c) secures in respect of at least two of the contingencies covered by Parts II, III and IV benefits of an amount corresponding to a percentage at least five points higher than the percentages specified in the Schedule appended to Part V,
   may take advantage of the provisions of the following paragraph.
2. Such Member may--
   (a) substitute, for the purposes of Article 11, paragraph 2, subparagraph (b), and Article 24, paragraph 2, subparagraph (b), a period of five years for the period of three years specified therein;

(b) determine the beneficiaries of survivors' benefits in a manner which is different from that required by Article 21, but which ensures that the total number of beneficiaries does not fall short of the number of beneficiaries which would result from the application of Article 21.

3. Each Member which has taken advantage of the provisions of paragraph 2 of this Article shall indicate in its reports upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation the position of its law and practice as regards the matters dealt with in that paragraph and any progress made towards complete application of the terms of the Convention.

Article 42

1. A Member which--
   (a) has accepted the obligations of this Convention in respect of Parts II, III and IV, and
   (b) covers a percentage of the economically active population which is at least ten points higher than that required by Article 9, paragraph 1, subparagraph (b), Article 16, paragraph 1, subparagraph (b), and Article 22, paragraph 1, subparagraph (b), or complies with Article 9, paragraph 1, subparagraph (c), Article 16, paragraph 1, subparagraph (c), and Article 22, paragraph 1, subparagraph (c),

   may derogate from particular provisions of Parts II, III and IV: on condition that the total amount of benefits paid under the Part concerned shall be at least equal to 110 per cent. of the total amount which would be obtained by applying all the provisions of that Part.
2. Each Member which has made such a derogation shall indicate in its reports upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation the position of its law and practice as regards such derogation and any progress made towards complete application of the terms of the Convention.

Article 43

This Convention shall not apply to--

(a) contingencies which occurred before the coming into force of the relevant Part of the Convention for the Member concerned;
(b) benefits in contingencies occurring after the coming into force of the relevant Part of the Convention for the Member concerned in so far as the rights to such benefits are derived from periods preceding that date.

Article 44

1. This Convention revises, on the terms set forth in this Article, the Old-Age Insurance (Industry, etc.) Convention 1933, the Old-Age Insurance (Agriculture) Convention, 1933, the Invalidity Insurance (Industry, etc.) Convention, 1933, the Invalidity

Insurance (Agriculture) Convention, 1933, the Survivors' Insurance (Industry, etc) Convention, 1933, and the Survivors' Insurance (Agriculture) Convention, 1933.

2. The legal effect of the acceptance of the obligations of this Convention by a Member which is a party to one or more of the Conventions which have been revised, when this Convention shall have come into force, shall be as follows for that Member:
   (a) acceptance of the obligations of Part II of the Convention shall, ipso jure, involve the immediate denunciation of the Invalidity Insurance (Industry, etc.) Convention, 1933, and the Invalidity Insurance (Agriculture) Convention, 1933;
   (b) acceptance of the obligations of Part III of the Convention shall, ipso jure, involve the immediate denunciation of the Old-Age Insurance (Industry, etc.) Convention, 1933, and the Old-Age Insurance (Agriculture) Convention, 1933;
   (c) acceptance of the obligations of Part IV of the Convention shall, ipso jure, involve the immediate denunciation of the Survivors' Insurance (Industry, etc.) Convention, 1933, and the Survivors' Insurance (Agriculture) Convention, 1933.

Article 45

1. In conformity with the provisions of Article 75 of the Social Security (Minimum Standards) Convention, 1952, the following Parts of that Convention and the relevant provisions of other Parts thereof shall cease to apply to any Member having ratified this Convention as from the date at which this Convention is binding on that Member and no declaration under Article 38 is in force:

(a) Part IX where the Member has accepted the obligations of this Convention in respect of Part II;

(b) Part V where the Member has accepted the obligations of this Convention in respect of Part III;

(c) Part X where the Member has accepted the obligations of this Convention in respect of Part IV.

2. Acceptance of the obligations of this Convention shall, on condition that no declaration under Article 38 is in force, be deemed to constitute acceptance of the obligations of the following parts of the Social Security (Minimum Standards) Convention, 1952, and the relevant provisions of other Parts thereof, for the purpose of Article 2 of the said Convention:
   (a) Part IX where the Member has accepted the obligations of this Convention in respect of Part II;
   (b) Part V where the Member has accepted the obligations of this Convention in respect of Part III;
   (c) Part X where the Member has accepted the obligations of this Convention in respect of Part IV.

Article 46

If any Convention which may be adopted subsequently by the Conference concerning any subject or subjects dealt with in this Convention so provides, such provisions of this Convention as may be specified in the said Convention shall cease to apply to any Member

having ratified the said Convention as from the date at which the said Convention comes into force for that Member.

PART VIII. FINAL PROVISIONS

Article 47

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 48

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 49

1. A Member which has ratified this Convention may, after the expiration of ten years from the date on which the Convention first comes into force, denounce the Convention or any one or more of Parts II to IV thereof by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention or any one or more of Parts II to IV thereof at the expiration of each period of ten years under the terms provided for in this Article.

Article 50

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 51

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102

of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 52

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 53

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
   a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 49 above, if and when the new revising Convention shall have come into force;
   b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 54

The English and French versions of the text of this Convention are equally authoritative.