GENERAL CHARACTERISTICS OF THE GREEK LABOR LAW

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I. INTRODUCTION

Industrial growth, connected with traditional labor laws, had a delayed start in Greece resulting in laws that only started taking shape at the beginning of the twentieth century. Accelerating after the Second World War, this legislation has been aligned with that of other European nations, mainly French and German. Recently it began transforming with a sequence of new statutes under the principle of flexibility. Aside from labor legislation, with its various forms—laws, decrees, and ministerial decisions—important influence has been exercised by the Constitution and, from 1975 onward, by collective work agreements. However, the basic sources are the regulations of governmental origin.

Being relatively new, the Constitution belongs to a category that supplements traditional protections of individual freedoms with a string of social rights. Additionally, under the diffuse control system of constitutionality control, Greek courts may review the compatibility of labor laws with the Constitution (see Chapter 3, VI, *C*).

The following are the most important labor law provisions of the Constitution:

a) Article 22:

> 1. Work constitutes a right and shall enjoy the protection of the State, which shall care for the creation of conditions of employment for all citizens and shall pursue the moral and material advancement of the rural and urban working population. All workers, irrespective of sex or other distinctions, shall be entitled to equal pay for work of equal value.

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2. General working conditions shall be determined by law, supplemented by collective labor agreements concluded through free negotiations and, in case of the failure of such, by rules determined by arbitration.

3. The matters relating to the conclusion of collective labor agreements by civil servants and the servants of local government agencies or of other public law legal persons, shall be specified by law.

4. Any form of compulsory work is prohibited. Special laws shall determine the requisition of personal services in case of war or mobilization or to face defense needs of the country or urgent social emergencies resulting from disasters or liable to endanger public health, as well as the contribution of personal work to local government agencies to satisfy local needs.

5. The State shall care for the social security of the working people, as specified by law. Interpretative clause: The general working conditions include the definition of the manner of collection, and the agent obliged to collect, and return to trade unions membership fees specified in their respective by-laws.

b) Article 23:

1. The State shall adopt due measures safeguarding the freedom to unionize and the unhindered exercise of related rights against any infringement thereon within the limits of the law.

2. Strike constitutes a right to be exercised by lawfully established trade unions in order to protect and promote the financial and the general labor interests of working people. Strikes of any nature whatsoever are prohibited in the case of judicial functionaries and those serving in the security corps. The right to strike shall be subject to the specific limitations of the law regulating this right in the case of public servants and employees of local government agencies and of public legal persons as well as in the case of employees of all types of enterprises of a public nature or of public benefit, the operation of which is of vital importance in serving the basic needs of the society as a whole. These limitations may not be carried to the point of abolishing the right to strike or hindering the lawful exercise thereof.

c) Article 25:

1. The rights of the human being as an individual and as a member of the society and the principle of the welfare state rule of law are guaranteed by the State. All agents of the State shall be obliged to ensure the unhindered and effective exercise thereof. These rights also apply to the relations between individuals to which they are appropriate. Restrictions of any kind which, according to the Constitution, may be imposed upon these rights, should be provided either directly by the Constitution or by statute, should a reservation exist in the latter's favor, and should be complied with the principle of proportionality.

2. The recognition and protection of the fundamental and inalienable rights of man by the State aims at the achievement of social progress in freedom and justice.

3. The abusive exercise of rights is not permitted.

4. The State has the right to claim of all citizens to fulfill the duty of social and national solidarity.

d) Article 106:

1. In order to consolidate social peace and protect the general interest, the State shall plan and coordinate economic activity in the Country, aiming at safeguarding the economic development of all sectors of the national economy. The State shall take all measures necessary to develop sources of national wealth in the atmosphere, in underground and underwater deposits, and to promote regional development and to further especially the economy of mountainous, insular and frontier areas.

2. Private economic initiative shall not be permitted to develop at the expense of freedom and human dignity, or to the detriment of the national economy.

3. With the reservation of the protection provided in Article 107 in connection with the re-export of foreign capital, the law may regulate the acquisition by purchase of enterprises or the compulsory participation therein of the State or other public agencies, in the event these enterprises are of the nature of a monopoly or are of vital importance to the development of sources of national wealth or are primarily intended to offer services to the community as a whole.

4. The cost of purchase or the counterpart to the compulsory participation of the State or other public agencies must indispensably be determined by a court and must be in full, so as to correspond to the value of the purchased enterprise or the participation therein.

5. A shareholder, partner or owner of an enterprise, the control of which devolves upon the State or upon an agency controlled by the State as a result of compulsory participation in accordance with paragraph 3, shall be entitled to request the purchase of his share in the enterprise, as specified by law.

6. The law may specify matters pertaining to the contribution to the State expenditure by beneficiaries from the execution of public utility works or works of a more general significance for the economic development of the Country. Interpretative clause: The value specified in paragraph 4 does not include such value as is due to the monopolistic nature of the enterprise.

Furthermore, international labor agreements ratified by Greece prevail over internal laws under Article 28 I Constitution (see Chapter 3, Section I *D*). References thereto are quite usual and useful to both

the employer and the employees. In addition, as a member of the EU, Greece also complies with Community rules, drawing greatly therefrom.

As is the case with other countries of Continental Europe, the employment agreement acquires fundamental importance provided that it contains terms more favorable than those of the other sources. As labor laws are traditionally divided into individual and collective ones, their presentation will be made on that basis.

II. INDIVIDUAL LABOR RELATIONS

A. Individual Work Relations

Labor or work (*εργασία*, ergasia), as distinguished from employment or productive activity generally, and the related agreement, is characterized by personal and legal dependence, sometimes even only economic dependence. Article 1 of Law 1876/1990 offers the possibility to workers who are not wage earners but work under dependent financial conditions to enter into collective workplace agreements. Furthermore, Article 1 of Law 2639/1998 also introduces the "evidence" rule, according to which an employment agreement for services for a certain, determined or undetermined time, especially in cases of "unit" work (garment), remote work or residential employment, is deemed not to conceal an agreement of dependent employment provided it is in writing and is made available within fifteen days for workplace inspection.

An invalid work agreement is considered as *de facto* preserving the rights of the worker. However, specifically for wages, worker's claims are limited only to unjust enrichment. Labor law applies only to workers who are ready to offer their services at the place of work as requested by the employer (for example, firemen), while the readiness of the worker on call is not considered to come under labor law.

B. Classes of Employees

While labor legislation has a general application, different wage earner categories are common. Wage earners in the private sector are mainly divided into laborers (offering bodily work), employees (offering intellectual work), and managerial staff (directing and monitoring employees), with laborers having minimal compensation when dismissed and managerial staff not being subject to the requirements as to the time frame of employment—including regulations on recreation. Special protective provisions apply to

minors (Law 1837/1979; Presidential Decree 62/1998), while Law 1414/1984 ensures for the woman wage earner complete equality with regard to access to employment, working terms, remuneration, and generally all her working rights. Legislation for individuals with special needs incorporates many provisions of modern social policy, including the obligation of an employer of more than fifty individuals to employ a certain percentage of such workers (Law 2643/1998). Those working in the public sector are distinguished into public servants (whose work is regulated only by public law) and wage earners of the public sector subject to a work agreement under labor law. The remaining workers are subject to special legislation codified in Presidential Decree 410/1988 where, however, many ordinary labor law provisions are restated.

C. The Employer

From the employer's point of view, apart from the legislation on the transfer of a community-based enterprise and generally on any change of the person of the employer whereby the new employer assumes the totality of obligations and rights from the workplace agreement as well as the payment of owed wages (Presidential Decree 178/2002[1]), mention must be made of the employer's right to "loan" a wage earner and, more recently, the recognition of a right of engagement via the offices of temporary employment (renting of workers; Law 2656/2001). The law establishes, among others, the employer's obligation to pay to the wage earner the compensation that is provided for the remaining wage earners of the business.

Sometimes a workplace "split" occurs resulting in what I have previously termed a "tripartite" workplace relationship, in other word, a relationship with two employers with different roles (direct and indirect employer, primary and secondary employer, main and fictitious employer).

The formation of groups of enterprises is quite usual but *Areios Pagos* has not received well the substitution of a single employer. Nevertheless, inferior courts recently considered the mother company responsible for payment of wages on the basis of the idea of abuse of legal personality. Also, the modern problems that outsourcing has generated have not as yet been confronted adequately in labor laws.

1. PD 178/2002, ransposing Council Directive 98/50 of June 29, 1998 amending Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, OJ L 201/88–92 (1998).

D. Mediation in Hiring

As regards the workplace agreement, while brokerage of work is prohibited (ILO Convention 95 concerning the Protection of Wages, ratified by Law 3248/1955, GG A 138), private offices of work advisers have been legalized (Art. 5 II of Law 2639/1998, as modified by Law 2874/2000 and Presidential Decree 160/1999), albeit under strict terms prohibiting the financial burdening of wage earners.

E. Terms of Work

Regarding the work terms, we will limit ourselves to two basic sectors that concern work time (Section 1, below) and health, safety, and injury (Section 2, below).

1. Work Time

In relation to work time, the traditional system of legal time, which is the general system, must be distinguished from the potential system of flexibility and the organization of work time on an annual basis. According to the traditional system, legal time is determined by eight hours daily and by forty-eight hours weekly (Presidential Decree of June 27, 1932). However, since 1984, the forty hour, five-day week was established for the majority of employees (Collective Agreements of February 14, 1984). The possibility of exceeding this time limit is possible through two institutions, additional work and overtime. Additional work is that exceeding the forty-hour week by five hours a week, distributed equally to all five days. This is permissible by the employer's decision alone but with an increase of 25% in pay (Art. 1 of Law 3385/2005). Overtime is work after the forty-fifth hour, which practically means daily work above nine hours (five days at eight hours = 40 hours, + 1 hour additional work – 9 hours). This is possible but subject to notice, a maximum daily limit of three hours and an annual maximum determined by the Minister of Employment (Presidential Decree 515/1970). The cost of overtime is high because a 50% increase is provided for overtime up to 120 hours per year and 75% for hours exceeding this limit. If the terms of the law are not observed, overtime is considered illegal and is remunerated at 100%. Lesser legal time is also possible, i.e., partial employment, and is regulated by Article 2 of Law 2639/1998 and Articles 7 and 8 of Law 2874/2000. This requires written documentation, the proportional treatment with the full-time worker, and the right of priority to full-time employment.

There are two types of flexibility of annual work time. The first includes a four-month period within which the segments of increased and decreased employment are determined. The second uses the whole year as a reference point within which the period of increased employment is up to thirty-two weeks with a total limit of 256 hours. In both cases, a collective agreement, concluded with the workers' representatives of the business, is required. In the first situation, however, if no agreement exists, a tripartite committee finally decides—where the main role is assigned to the work inspector (Art. 2 of Law 3385/2005). Fluctuations of time do not result in fluctuations in wage, so long as the forty-hour work per week limit is observed.

Annual paid leave is also included in the work timeframe and amounts to four weeks (20–22 days in the five-day workweek, or 24–26 days in the six-day workweek system) and, after ten years of service in the business or twelve years in previous service generally, twenty-five days in the five days, thirty days in the six days (Law 539/1945, as repeatedly modified by national general collective work agreements). At the same time, the wage earner is entitled to all the benefits of working during leave days plus one-half of his monthly wages as leave benefit. Special authorizations are also provided for various categories such as student leave, etc.

2. Health, Safety, and Injury at Work

There are many rules on health and safety of workers at the working place. A large part of the legislation is transposition of, or adaptation to, Community law. Since 1985, the main aim of the legislature is prevention, e.g., from chemical factors, etc. Generally the legislation, which is particularly technical and detailed in this sector, is divided into types: on the one hand a law-frame (Laws 1568/1985 and 2224/1994) creating general obligations and rights, and on the other hand an abundance of statutes that specifically regulate the issue of safety because they either cover a particular kind of enterprise activity (e.g., shipping) or they protect from a concrete danger (e.g., explosives). The legislature does not assign the observation of safety to the employer alone. Parallel bodies of control have been created, such as the Safety Technician, the Doctor at the Working Place, and the Committee of Health and Safety at Work. In addition, compensation for working accidents and occupational illnesses is provided for. However, when the employer is insured with IKA (Social Insurance Organization; see Chapter 15, Section III *B*) and the accident is not due to his fault he is exempted from liability.

The employer is only potentially criminally liable and responsible for pecuniary satisfaction for moral damage.

F. Wages

Wages are determined by collective work agreements. The general minimum wage limit is determined by national general collective work agreement given that Greece is one of the few countries that established an inter-sectoral general collective agreement. Minimum wage limits are determined according to sector and business under the corresponding collective workplace agreements. The legal regime for wages is particularly extensive. Generally, the legislature handles the wage as he would handle a claim for maintenance (prohibition of cession, confiscation, etc.). Moreover, beyond the classic wage there exist additional bonuses for overtime, etc. Additionally, the principle of equal treatment of men and women is completely established.

G. Remaining Obligations of the Employer Apart from Wages

The following non-wage obligations, some of them established by the courts, also exist: (a) the obligation of respecting the justified interests of wage earners, also known in German law as "obligation of providence," that is founded in good faith (e.g., obligation to safeguard the workers' property against theft); (b) the obligation of respecting the personality of the wage earner that has been recently connected to the obligation to respect personal data; (c) the obligation for equal treatment that is also supported by good faith and that allows each worker to take advantage of benefits extended to certain colleagues if he proves that his exclusion is without an objective reason (arbitrary discrimination); and, (d) the obligation of employment, which means that for those categories of workers where employment is connected to their good name it is not enough for the employer to just pay them, but they should moreover be substantially employed.

H. General Principles

Basic principles include: (a) equal treatment of men and women regarding wages and remaining terms of work, guaranteed constitutionally (Arts 4 I, 22 Const.), recognized as an EU right and regulated in detail by Law 1414/1984, and (b) non-discrimination on the basis of religion, nationality, race, sexual orientation, etc. (Law

3304/2005). Also applicable to all decisions of the employer is Article 281 CC prohibiting abuse of rights (see above, Ch. 4, Section IV *B*). Practically this means that the decisions of the employer (e.g., redundancies) that are not justified by the general interest of the enterprise but made for personal reasons, such as revenge, are considered invalid.

I Dissolving a Work Relationship (Work Contract)

A work relationship is dissolved for redundancy. The division of workplace agreements into indefinite and fixed-time agreements is decisive.

1. Indefinite Agreements

Termination of a work agreement of indefinite time by an employer is subject to certain conditions such as written notification or adequate warning; compensation is doubled when the proper notice period is not observed (Laws 2112/1920 and 3198/1955). Termination may be nullified when these terms are not observed, and the employer is compelled to continue to pay the wages so long as he does not establish a legal basis. The amount of compensation due to termination for employees begins at a monthly wage that increases progressively depending on service time (e.g., after ten years of service it amounts to six months' wages) and ends at twenty-four monthly wages for those with over twenty-eight years of service. For laborers it is much less. Compensation begins at five daily rates ending in 160 days for those with thirty years of service. The obligation of compensation is not terminated in case of neglect of responsibilities but only in the commitment of criminal acts.

Contrary to most legislation in Western Europe, termination of employment is permitted without the employer having to justify his action or invoke some reason. Consequently, an employer can dismiss freely according to his financial requirements, e.g., to reduce labor costs. However, the courts have put up a barrier in order to prohibit abuse of right (Art. 281 CC; see above, and Ch. 4, Section IV *B*) so that termination of employment is invalid when not done in the interests of the business but because a wage earner has behaved in a manner disapproved of by the employer. For example, dismissals are considered invalid when made for lawful trade union or political involvement not welcomed by the employer, or because an employee resorted to an intervention by work inspectors or the courts, or generally exercised his rights in a manner that dissatisfied the

employer. Specifically, dismissals due to redundancy are treated by the courts as abusive when an employer does not follow the proper social order. In order for them to be valid, the employer should prepare a table of wage earners classified into four categories on the basis of objective criteria, namely work output, period of service, family responsibilities, and general financial condition.

In multiple redundancies that exceed four wage earners a month per a company that employs between twenty and 200 wage earners, and 2–3% a month for enterprises that employ above 200 wage earners, Directive 75/129[2] applies as modified (Law 1387/1983). However, in Greek law, contrary to most European countries, the possibility of preventing mass dismissals remains valid by decision of the Minister of Employment. Special legal and practical rules apply to a redundancy that was created by a unilateral harmful change of working conditions by the employer.

Within his managerial rights, an employer may make decisions that modify the terms of employment (*ius variandi*). It is, however, obvious that this power must not harm any legal rights and must conform to the conditions of the work agreement. When it exceeds these limits, it is considered as a violation of working conditions. The wage earner then has the right to accept or decline. In the former case, the agreement is considered to have been modified by new terms. In the latter case, according to Article 7 of Law 2112/1920, the modification is considered as a unilateral harmful change of working conditions and the wage earner can disjunctively either seek compensation and leave, or consider the dismissal invalid and ask for overdue wage payments. If the employer wants to alter the working terms in a valid way, he has the right to propose a change for redundancy, where the wage earner will not be able to accept the new terms.

2. Fixed-term Agreements

In a fixed-term agreement, premature dismissal for redundancy can take place only for very significant reasons (Art. 672 CC); otherwise, compensation is due. On the one hand, when the needs of a company are constant, a fixed-term agreement is considered to violate provisions for compensation and is treated as an indefinite one. This long tradition, which goes back to Article 8 III of Law

2. Council Directive 75/129 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 48/29–30 (1975).

2112/1920, has been strengthened by Directive 1999/70,[3] incorporated by virtue of Presidential Decrees 81/2003, 164/2004 and 180/2004. On the other hand, for enterprises employing stable personnel, like banks and the public sector, the retirement age provides the end of the term. In such situations, dismissal for redundancy is possible for serious concrete reasons.

J. Flexible Work Terms

As illustrated above, it is obvious that Greek legislation has completely legalized the flexible or informal labor relationship, including partial employment, temporary employment, fixed-term agreement, work time on an annual basis, and free dismissals, with certain restrictions for mass firings. As Greek law does not require the employer to justify any dismissals, in practice he is free to do so at will.

III. COLLECTIVE LABOR LAW

First, let us consider the trade union right. Basic Law 1264/1982 was a turning point, because trade union freedom was for the first time established completely—mainly the freedom of creation, internal operation, and action. Trade union organizations are made up of associations recognized by judicial decision. The law regulates their democratic operation (election, decision-making, etc.). These rules pave the way toward judicial disputes where the cancellation of unlawful decisions may be sought.

The pursuit of unity has led to the acceptance of a proportional electoral system within the trade union administration resulting in representation within the same organization of various trade union parties with various ideologies. Thus, in each organization (federation, confederation) workers from all ideological tendencies participate. This enables the creation of a General Confederation that engages in high-level collective negotiations. This is an important particularity compared to the legislation of other countries. Moreover, the law permits the exercise of trade union activity in workspaces, and protects trade union action from employer interference (Art. 16 of Law 1264/1982).

3. Council Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE, and CEEP, OJ L 175/43–48 (1999).

A. Collective Negotiation

Following major reforms in 1990 (namely Law 1876/1990), collective negotiations currently ensure complete freedom to select the level that interested parties prefer. Thus, high-level negotiations are possible as are base negotiations. The possibility of multiple negotiations is also secured. This is why a wage earner may simultaneously participate in a sector-based collective agreement and an operational one, and a choice may have to be made. The law describes the various types of collective agreements and regulates contract terms (dominating system). However, it also provides interested parties with the option to put forward their own terms.

The scope of collective work agreements is broad, so that it covers all work terms with certain restrictions for retirement issues. Following a long tradition, a national collective work agreement is also provided, which practically means that a high-level inter-professional agreement is to determine wages and employment terms for the totality of wage earners at the minimum general wage limit. Usually, after such a collective work agreement remains in effect for one or two years, other collective work agreements follow for each sector, profession, or enterprise. To make sure that substantial negotiations take place, the law requires obtaining information and campaigning.

B. Mediation and Arbitration

If collective negotiations fail, wage earners can either continue working or go on strike. However, for the peaceful resolution of differences, each party may resort to mediation and, in case of failure, to arbitration. The regulation of these two institutions contains some unique elements. Experience has shown that they are applied with success. One-third of collective negotiations lead to mediation and among them only roughly half end up in arbitration.

The responsibility for resorting to mediation and arbitration lies with an independent organization of private law that is financed by contributions from workers and employers. It is called the Organization of Mediation and Arbitration (*Οργανισμός Μεσολάβησης και Διαιτησίας*, Organismos Meslolavisis kai Diaitisias; OMED). It is managed by eleven members from which six are elected by the worker and employer groups, two from academic circles (labor law and economics professors), one specializing in labor relations, one as a representative of the Ministry of Employment, and one as chairman elected by the other ten. In this way, independence from the

government is ensured, thus leaving to the employers and the workers the decisive word. OMED does not take the initiative. Its role is to select the mediators and arbitrators, to offer technical support, and to overlook the proceedings.

Mediation is provided only in case of failure of negotiations, implying that essential negotiations on the basis of considered proposals should have preceded it. But failure also ensues if any party denies negotiation. The mediator is selected by common agreement or by lot after application by one of the two parties, and has wide-ranging duties such as the examination of witnesses, the carrying out of expert analysis, the search for information from employers and public services, etc. The mediator's role expires: (a) with an agreement that is considered a collective work agreement; (b) by certifying the failure of mediation; or, (c) through submission of his own proposal upon failure if he judges that the dispute should be the subject of arbitration. This last element is also the most original, because it constitutes a central point of connection between negotiations, mediation, and arbitration.

All parties have a deadline of five days to accept the proposal. If one rejects it (usually the employer) and the other accepts (usually the wage earners) the accepting party has the right to resort to arbitration, whose decision is henceforth obligatory for both parties. The proposal is usually rejected by employers not because it is partial but because disputes that go to mediation usually involve weak trade unions to whom employers refuse to offer wage concessions. The above arbitration may be characterized as almost obligatory but, as it stands, it is not contrary to ILO Convention 154 concerning the Promotion of Collective Bargaining (Arts 6 and 16 III; ratified by Law 2403/1996, GG A 99) and 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (Art. 4; ratified by Law Decree 4205/1961, GG A 174). This is explained in connection to the facts that: (a) OMED is supported by both sides; (b) resorting to arbitration is marginal when bad faith of one party is obvious; (c) the decision of the arbitrator is limited in practice to provide for the minimal wages that a weak trade union cannot ensure; and, (d) labor arbitration is totally insulated against government interference.

Arbitration in Greece functions as a social contract that ensures social cohesion. That is why trade unions defend arbitration, while employers in their majority at least tolerate it. The fifteen-year application of this institution is considered successful since it has deterred major conflicts and safeguarded an elementary level of existence for workers in small enterprises and feeble trade unions. With

the recent weakening of worker power, intervention by a third party in the form described is a decisive means of fighting poverty.

C. Work Council

The council of workers at the operational level also belongs to collective labor representation, as provided by Law 1786/1988. However, their role has been marginal because, in the Greek labor relations system, business-wide trade unions always had the first word.

D. Strike

Striking is included among the trade union freedoms that are secured by the Constitution (Art. 23 II) and are further regulated by statute (Art. 19 *et seq.* of Law 1264/1982). The main characteristic of this regulation is that, to call a strike, the approval of a general assembly is needed, via secret voting. If called by a federation or confederation, the decision of the administrative council and prior warning are required. Therefore, only trade unions have the right to declare a strike. Wildcat strikes are illegal, as are strikes with political characteristics, except for those that are related to labor problems and interests, provided that they are of short duration. For a strike not to be considered illegal the other side must receive a twenty-four-hour notice (Art. 19 I of Law 1264/1982). At the same time, security personnel are required, while for enterprises of common utility additional restrictions exist. The right to strike must not be abused. A lawful strike does not cause a breach of the labor contract. On the other hand, an illegal strike is considered to be a breach of labor contract.